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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP 306/2008

IN

OA 1564/2004

New Delhi, this the 27th day of August 2008

HON'BLE MR. L.K. JOSHI, VICE-CHAIRMAN (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Dr. A.K. Belwal
137 Sukhdev Vihar
P.O. Jamia Nagar
New Delhi 110025

... Applicant

(By Dr. A.K. Belwal, applicant in person)

VERSUS

1. Shri Dr. D. Subha Rao
Secretary
Union of India/Deptt. of
Economic Affairs
North Block,
New Delhi-110011

2. Shrimati Mala Dutt
Director (IES Cadre)
Deptt. of Economic Affairs
North Block
New Delhi

Currently, Director
Cabinet Secretariat
Room No.23A, South East Wing
2nd Floor, Rashtrapati Bhavan
New Delhi

... Respondents/Contemnors

ORDER

By Hon'ble Mrs. Meera Chhibber:-

Applicant, who appears in person, has filed this Contempt Petition alleging disobedience of the order dated 06.1.2005 passed in OA 1564/2004.

2. It is submitted by the applicant that this Court had directed the respondents to regularize the period of his leave from 01.12.2003 on his



joining at Simla. Even Hon'ble High Court had allowed the applicant to join Simla in terms of Tribunal's orders with a further direction that if applicant seeks for leave the same shall be considered sympathetically and granted to the extent admissible in accordance with the rules. It was also directed that after he joins necessary orders for regularization of his service for the period of absence shall be passed.

3. It is submitted by the applicant that in spite of the orders of Hon'ble High Court, respondents not only issued chargesheet for unauthorized absence to the applicant (presumably on the letter written by the counsel for the respondents, even though applicant had joined at Labour Bureau Simla) but they have also passed order of punishment. This according to the applicant is in violation of Court's orders, therefore, he has prayed respondents no.1 & 2 may be punished for having committed contempt of court.

4. We have heard the applicant who appeared in person. Applicant has also filed application for condonation of delay in filing the contempt petition before this Tribunal.

5. It is relevant to note that the contempt petition has been filed alleging disobedience of the order passed in OA 1564/2004. The scope of OA No.1564/2004 was restricted, as is mentioned in para-1 of the judgment dated 06.1.2005 itself. Perusal of the judgment shows applicant had claimed only the following relief.

"(i) The applicant's salary w.e.f. 1.10.2003 to the present day may please be released by treating it as Duty, compulsory Wait, special leave, leave not debitable to any leave account because the applicant was willing for work but the respondents did not allow him to work."



6. After noting down the rival contentions, OA was disposed off vide judgment dated 06.1.2005 by directing the applicant to join the Labour Bureau within one week from the said date. The second direction was to the respondents to decide his pay & allowances and period from 01.10.2003 till he joins as directed above for regularizing his leave in accordance with rules on the subject within four weeks from applicant's joining in the Labour Bureau.

7. Perusal of above would show the first direction was given to the applicant to join the Labour Bureau within one week. Second direction was subject to applicant complying with the first condition that too in accordance with rules. Admittedly, even after passing the above order dated 06.1.2005, applicant did not join at Simla. Applicant has not placed on record any order to show that the order dated 06.1.2005 was stayed by the Hon'ble High Court, therefore, the period of unauthorized absence was definitely for the applicant to explain. There was no direction to regularize the period but it was to be considered in accordance with law. Since applicant himself did not comply with the first direction given to him within the stipulated period, he cannot be allowed to allege disobedience by the respondents.

8. It is relevant to note that since applicant was not joining his duty, chargesheet under Rule 14 of CCS (CCA) Rules was issued to the applicant for unauthorized absence from duty w.e.f. 01.10.2003 and for non-compliance of govt. orders for handing over the keys of the room occupied by him in the Tariff Commission. Ultimately, final order dated 06.2.2007 has been passed whereby President has been pleased to impose penalty of withholding 25% of the monthly pension for a period of five years.



9. All these facts were noted by the Hon'ble High Court but their Lordships refused to interfere in the matter, therefore, the present CP has to be dismissed on this ground also.
10. The order passed by this Tribunal on 06.1.2005 was challenged by the applicant before Hon'ble High Court of Delhi by filing Writ Petition (C) 10978/2005. We do not know what exactly transpired in the Hon'ble High Court nor are we aware whether any oral observations were made by the Hon'ble High Court during court proceedings. We have to go by the orders passed in his Writ Petition. On perusal of records, which are annexed by the applicant himself, we find on 08.7.2005 Hon'ble High Court recorded the statement of applicant that he would comply with the orders of CAT, therefore, respondents were directed to allow the applicant to join in terms of Tribunal's order. Thereafter if he seeks leave, it shall be considered sympathetically to the extent admissible in accordance with rules. After his joining necessary orders for regularizing the period of his absence shall be passed in accordance with law (page-16). Respondents were directed to place the orders in this regard on record by the next date.
11. The very next order dated 01.8.2005 passed by Hon'ble High Court shows that though petitioner was reported to have joined at Simla but respondents also informed the Hon'ble Court that a chargesheet had already been issued to the petitioner for his unauthorized absence. Hon'ble High Court noted that this fact was not brought to their Lordships notice on 08.7.2005 when first order was passed. The order was modified by saying that if any dues are payable to the petitioner in accordance with law, the same shall be paid (page-18).



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12. Finally the Writ Petition filed by petitioner was disposed off on 22.9.2005 having become infructuous as petitioner had retired in the meantime and their Lordships recorded the grievance of petitioner was with regard to transfer only (page-28).

13. It is relevant to note that after the Writ Petition was disposed off on 22.9.2005, final orders were passed by the respondents on 06.2.2007 in the chargesheet dated 12.3.2004, whereby penalty of withholding 25% of pension for 5 years was imposed on the petitioner (page-26). At this stage, applicant again filed RA in the Writ Petition No.10978/2005 wherein applicant's whole case was that since orders were passed by the Hon'ble High Court to regularize the period after he joins at Simla and applicant had joined at Simla, therefore, disciplinary action initiated against him is bad in law. It clearly shows disrespect. Departmental proceedings are uncalled for and shows biased attitude of the respondents. In Review Application, applicant had narrated all the facts, as have been stated now before us and he sought the following relief:-

"A. Direct the respondents to initiate action against the official responsible for initiating department disciplinary proceedings on the basis of oral observation as it has been spelled out in the letter 11.8.2005 of Sr. Central Govt. Counsel A.K. Bhardwaj Annexure V herewith.

B. Regularize the period of absence as per the earlier direction of the Hon'ble Court and in the light of the letter dt.5.8.2005 of Director General, Labour Bureau, Shimla.

C. Direct for closing the departmental action regarding absence without leave.

D. Initiate disciplinary action against Smt. Mala Dutt for contempt of Court and acting in a manner just opposite to the direction of the Central Administrative Tribunal New Delhi, Delhi High Court and Director General, Labour Bureau, Shimla.

E. Legal cost may please be paid.

F. Pass any *other* or further order to meet the ends of justice. Review its own orders if necessary."



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14. However Hon'ble High Court was pleased to pass the following order:-

"04.04.2008

Present: Petitioner in person.

RP No.129/08 and CM Nos.5167-71/08 in WP(C)
10978/05

We had disposed of the writ petition on 22nd September, 2005 observing that the order of transfer was carried out and the petitioner had joined as Director, Labour Bureau, Shimla and thereafter retired from service. In that context we had held that nothing survives in the writ petition and the order of transfer was of academic interest only.

We are not inclined to either review or modify our orders passed in the said writ petition or pass any further direction. If the petitioner has any cause of action, he may approach the appropriate forum for redressal of such grievance.

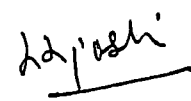
The applicants stand disposed of in terms of the aforesaid order."

15. From above, it is clear that Hon'ble High Court refused to pass any further directions in spite of having passed order dated 08.7.2005. If Hon'ble High Court felt no case for contempt was made out, naturally no CP would lie in the Tribunal on same facts. Hon'ble High Court had clearly observed that if petitioner has any cause of action, he may approach appropriate forum. This was obviously for challenging the final order dated 06.2.2007 on original side.

16. In view of above, CP is not maintainable. The same is accordingly dismissed. However if applicant is aggrieved by the order dated 06.2.2007, he would be at liberty to challenge the same.


27/8/08
(Mrs. Meera Chhibber)
Member (J)

/gkk/


(L.K. Joshi)
Vice-Chairman (A)