

(Signature)

**Central Administrative Tribunal
Principal Bench, New Delhi**

C.P.No.423/2004 in O.A.No.689/2004 with
C.P.492/2004

Thursday, this the 31st day of March 2005

**Hon'ble Shri Justice M.A. Khan, Vice Chairman (J)
Hon'ble Shri S. K. Naik, Member (A)**

Major (Retd.) T.R. Sharma
S/o Shri Kirpa Ram Sharma
R/o Village & PO Jarol
Tehsil Sunder Nagar
Distt. Mandi, Himachal Pradesh

..Applicant

(By Advocate: Shri A.K. Shukla)

Versus

1. Lt. Col. VRK Nair
HQ 11 Corps Arty Bde
C/o 56 APO
2. Colonel G.S. Chugh
Chairman Managing Committee
CO 21 Sata Regiment
C/o 56 APO
3. Brig. A.S. Anand
Commander
11 Corps Arty Brigade
c/o 56 APO

..Respondents

(By Advocate: Shri S. K. Gupta)

O R D E R (ORAL)

Justice M.A. Khan:

In OA-689/2004, this Tribunal passed an interim order dated 18.3.2004 with the following effect:-

“4. By way of interim order, though the respondents may proceed to complete the action regarding selection of candidate for the post of Canteen Manager in pursuance of Annexure-O, they are restrained from appointing the selected candidate to the post of Canteen Manager till further orders. They are also restrained from terminating the services of the applicant till 24.5.2004.”

2. The applicant filed contempt petition being CP-423/2004 complaining that the directions of this Tribunal have been intentionally and deliberately disobeyed by the respondents and the

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services of the applicant have been terminated w.e.f. 1.11.2004 vide order dated 25.10.2004. As such, they are in contempt and should be punished under the Contempt of Courts Act, 1971.

3. The respondents have filed their reply. Thereafter the applicant filed another Contempt Petition being CP-492/2004 for direction to the respondents to release applicant's monthly salary, etc. Reply thereto has also been filed by the respondents. The arguments on these applications were heard on 21.2.2005 when the following order was passed:-

"MA Nos.296/2005, 297/2005 and 107/2005

Learned counsel for the parties have submitted that all these MAs in the meantime have become infructuous and may be disposed off. At their request, these MAs stand disposed off accordingly.

CP Nos.423/2004 and 492/2004 in OA No.689/2004

Heard the learned counsel for the petitioner. Learned counsel for the respondents seeks time to take instructions from the respondents. List on 18.3.2005. Respondent No.1 who has passed the order of termination of the petitioner shall be present in person on that date.

Issue DASTI to both parties."

4. In the meantime, an application being MA-483/2005 for exemption of respondent No.1 from personal appearance before the Tribunal on 18.3.2005 was filed on behalf of the respondents. This application came up for hearing before the co-ordinate Bench of this Tribunal on 14.3.2005 when the prayer made in the application for exemption from personal appearance on 18.3.2005 was granted. The case was directed to be listed on 18.3.2005 for further hearing in terms of the order of the Tribunal dated 21.2.2005.

5. Today, learned counsel for respondents has stated that the order of the Tribunal, disobedience of which was complained against in the contempt proceedings, has been duly complied with and implemented.

6. The grievance of the applicant is that MA-483/2005 was allowed by the co-ordinate Bench of this Tribunal in his absence and further that the said application was not filed by respondent No.1 but by some other person. It is argued that even if the order of the

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Tribunal has been fully implemented, the proceedings against Lt. Col. VRK Nair – respondent No.1 – should be brought to its logical end by punishing him under the provisions of Contempt of Courts Act. He further argued that apology tendered on behalf of the respondents for disobedience of Tribunal's order is not the mitigating circumstance for stopping the contempt proceedings. He has cited two judgments of the Hon'ble Supreme Court in **T.M.A. Pai Foundation & others v. State of Karnataka & others**, (1995) 4 SCC 1 and in **D.N. Taneja v. Bhajan Lal**, (1988) 3 SCC 26 in support of his arguments.

7. We have carefully perused the cited judgments. He has referred to paras 10 & 11 in **T.M.A. Pai Foundation's case** (supra), which are reproduced as under:

“10. All the five officers, viz., Shri Arvind Choudhari, Capt. Shaikh, Smt. Joyce Sankaran, Shri P.S. Mane and Shri B.G. More, have no doubt tendered unqualified apology to this Court but in the facts and circumstances stated above, it would be a travesty of justice to accept the same. They are senior and experienced officers and must be presumed to know that under the constitutional scheme obtaining in this country, orders of this Court have to be obeyed implicitly and that orders of the Apex Court – for that matter, any Court – should not be trifled with. We have found hereinabove that they have acted deliberately to subvert the orders of this Court, evidently at the instance of the Association of Private Medical College. It is equally necessary to erase an impression which appears to be gaining ground that the ‘mantra’ of unconditional apology is a complete answer to violations and infractions of the orders of this Court.

11. Accordingly, we reject the “unconditional apology” tendered by the five officers, hold them guilty of contempt of court and do hereby censure their conduct. A copy of this order shall form part of the Annual Confidential Reports/Record of Service of each of the said officers.”

8. Each case has to be decided on its own peculiarity of facts. The contempt proceedings in the said judgment were initiated by the Hon'ble Supreme Court *suo moto* when it was brought to the notice of the Court that the Government of Maharashtra had framed rules regarding admission to medical, dental and engineering courses reserving fifteen per cent seats for NRIs/Foreign students contrary to the orders of the Hon'ble Apex Court. In reply to the show cause notice, an affidavit sworn to by Shri Arvind Choudhari, Under Secretary, Medical Education and Drugs Department, Government of Maharashtra was filed stating that the said rules were framed after obtaining the opinion of the Law and Judiciary Department to the

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effect that the number of seats permitted to be filled by NRIs for the academic year 1994-95 under the orders of the Hon'ble Court is fifteen per cent. On the basis of the said opinion, it was stated, that the earlier orders fixing the said quota at ten per cent were revised to fifteen per cent. After perusing the said affidavit, the Hon'ble Apex Court expressed a tentative view that there has been "*an obvious attempt at overreaching the orders of this Court*" and accordingly, issued notice to the Secretary/Officer concerned in the Law and Judiciary Department, who has tendered the said opinion, to show cause why contempt proceedings be not initiated against him. The Principal Law Secretary to the Government of Maharashtra was directed to identify the Officer/Secretary with reference to records – vide orders dated 24.10.1994. Pursuant to the orders dated 24.10.1994, Shri Prabhakar Shivaji Mane, Secretary to the Government, Law and Judiciary Department filed an affidavit in which he tried to explain his conduct and the opinion expressed by him in the matter. After perusing the affidavit of Shri Mane, the Hon'ble Court issued notice to Shri Arvind Choudhari, Capt. Shaikh and Shri B.G. More (Principal Secretary to Law and Judiciary Department) to show cause why contempt proceedings be not initiated against them. The reply was filed and the explanations for the directions in the matter were given. The Hon'ble Apex Court then called for the records and the files relevant to the order dated 9.6.1994. On perusal of the relevant records, the Hon'ble Court issued notice to Mrs. Joyce Sankaran, Secretary in the Medical Education Department, Government of Maharashtra to show cause why she should not be punished for contempt of the Court for violating the order dated 13.5.1994. She filed an affidavit in which she inter alia stated "*it was with my knowledge and consent that this action of seeking the opinion of Law and Judiciary Department in this matter was taken*". She also stated that the corrigendum was issued on 9.6.1994 with her knowledge and consent. The Hon'ble Supreme Court observed that the directions dated 13.5.1994 were plain and simple and have been misunderstood. It was also noticed that the representation of Association of Private Medical Colleges was processed with extraordinary speed and by the time the matter was brought to the notice of the Hon'ble Court, the admissions were made and completed in accordance with the revised quota. The students so admitted in excess of ten per cent also approached the Hon'ble Supreme Court pleading that they are innocent parties in the entire transaction and that they have bona fide obtained admission after

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paying substantial amounts by way of consideration for obtaining admission. On the consideration of the relevant facts and circumstances, the Hon'ble Court came to the conclusion that there was no room for a bona fide error on the part of the officers concerned, viz., Shri Arvind Choudhari, Under Secretary, Capt. Shaikh, Deputy Secretary, Medical Education Department, Smt. Joyce Sankaran, Secretary to the Medical Education Department and Shri Mane and Shri More, Secretary and Principal Secretary respectively of Law Department and the Hon'ble Apex Court was of the view that they could not have made any mistake in understanding the order of the Court, which are worded in simple and unambiguous language and they could have simply advised the Government to approach the Hon'ble Court for clarification. But they lent themselves as willing tools for achieving the illegitimate design of the Association of Private Colleges actively abetted by the Medical Education Department. Their explanations were accordingly rejected as also the explanations offered by Shri Arvind Choudhari, Capt. Shaikh and Smt. Joyce Sankaran. As far as Smt. Joyce Sankaran was concerned, the Hon'ble Court was told by Shri Andhyarujina that a copy of the representation of the Association was filed before her and she had sent it down to Shri Arvind Choudhari. She has herself admitted that whatever Shri Choudhari and Capt. Shaikh ^{did} was done with her knowledge and consent. She has also offered an explanation for the unusual speed with which the representation of the Association was processed. The Hon'ble Apex Court, after considering all the facts of the case, held that Smt. Joyce Sankaran, being the Head of the Department and a senior and experienced officer, ought to have scotched the exercise at the very inception. Instead of doing that she, on her own statement, was party to the revised, i.e., distorted – reading and understanding of the order of the Hon'ble Court and was also responsible for issuing the corrigendum. It was further held that she and the Deputy and Under Secretaries of her Department had entertained the 'impression' that the NRI quota has been continued at fifteen per cent (as against their earlier presumption that it was ten per cent) and asked for the opinion of the Law Department.

9. It was on these facts that the above orders were passed. There is no comparison between the facts, which were before the Hon'ble Supreme Court in the cited case and the facts of the case before us. Here a direction was given to the respondents restraining them from

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terminating the services of the applicant. However, respondent No.1 had issued the order terminating the services of the applicant and not paid him the salary by subsequent order, which led him to file the present CP.

10. In **D.N. Taneja's case** (supra), an order of the Hon'ble Punjab & Haryana High Court dismissing the application for contempt of court against the then Chief Minister of the State, ~~Shri Bhajan Lal~~ was challenged before the Hon'ble Supreme Court by the appellant. In the application, it was alleged that one Shri Devinder Sharma was a Forest Minister in the Council of Ministers headed by Shri Bhajan Lal and he was defeated in the legislative assembly election held in 1982 because of political and personal relations with Shri Devinder Sharma. Shri Bhajan Lal was personally very keen on giving him an office of profit. In order to achieve this objective, Bhajan Lal got an Ordinance, being Ordinance No.44 of 1982, promulgated by the Governor. The Ordinance, inter alia, provided for the constitution of a Forest Development Board. According to the appellant, such Board was constituted with a view to appointing the said Devinder Sharma as its Chairman. The validity of the said Ordinance was challenged before the High Court. It was alleged that the respondent Shri Bhajan Lal, through Shri R.K. Vashisth, the Superintendent of Police, pressurised and threatened the writ petitioners to withdraw the said writ petition and, pursuant to that, eleven officers withdrew from the petition. It was only the appellant who continued to prosecute the writ petition and, as a consequence of which, the appellant was transferred from the Forest Expert Special Project Cell to the Forest Department, Haryana. Having failed to threaten and demoralise the appellant through indirect means, the respondent, Bhajan Lal, called him to his official residence on 27.7.1983 through the Acting Chief Conservator of Forests and criminally intimidated him to withdraw the writ petition. Thereafter, the appellant filed an application for contempt against the respondent, Bhajan Lal, in the High Court complaining of interference by the respondent with the due course of judicial proceedings. The application was admitted and notices were issued. The Hon'ble High Court did not find it a fit case for exercising its jurisdiction under the Contempt of Courts Act, so the notice was discharged. The Hon'ble Supreme Court made the following observations:-



"There can be no doubt that whenever a court, tribunal or authority is vested with a jurisdiction to decide a matter, such jurisdiction can be exercised in deciding the matter in favour of or against a person. For example, a civil court is conferred with the jurisdiction to decide a suit; the civil court will have undoubtedly the jurisdiction to decree the suit or dismiss the same. But when a court is conferred with the power or jurisdiction to act in a particular manner, the exercise of jurisdiction or the power will involve the acting in that particular manner and in no other. Article 215 confers jurisdiction or power on the High Court to punish for contempt. The High Court can exercise its jurisdiction only by punishing for contempt. It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties and considers the materials produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution."

11. A perusal of the case, relevant portion of which had been reproduced above, clearly shows that the facts in that case are not parallel to the facts, which are raised before the Tribunal in the present contempt proceedings. As observed earlier, each case has to be decided on its own facts and circumstances.

12. In the present case, it may be noticed firstly that this Tribunal had directed respondent No.1 – Lt. Col. VRK Nair – to be present before the Court on 18.3.2005. On an application (MA-483/2005) moved on behalf of the respondents, the co-ordinate Bench of this Tribunal exempted his personal presence before the Tribunal on 18.3.2005. We cannot sit in an appeal and decide its legality and validity. The personal presence of the alleged contemnor has been dispensed with. Therefore, his non-appearance before the Tribunal on 18.3.2005 cannot be taken note of.

13. Learned counsel for applicant has fervently argued that the respondents, even after the order of the Tribunal is implemented, having committed gross disobedience of the Tribunal's order, should be punished and an unqualified apology, which has not been tendered by respondent No.1 himself, should also not be accepted. The personal presence of respondent No.1 was ordered by the



Tribunal since the order was *prima facie* not complied with and was disobeyed. The Court was yet to take a decision in the matter whether it is a case where the contempt action should be taken against him under the provisions of Contempt of Courts Act, 1971. The application for exemption of respondent No.1 for personal appearance was filed on behalf of the respondents, which includes respondent No.1 also. The unqualified apology, which has been tendered, is on behalf of all the respondents, including respondent No.1 – Lt. Col. VRK Nair, the alleged contemnor. Accordingly, keeping in view the facts and circumstances of the case that the order of the Tribunal has been duly implemented and complied with, we accept the apology tendered on behalf of the respondents, in particular, respondent No.1.

14. Accordingly, we do not find it to be a fit case to proceed with ~~the case~~
are any further. CPs ~~are~~ dismissed. Notices are discharged.

S. K. Naik
(S. K. Naik)
Member (A)

M. A. Khan
(M. A. Khan)
Vice Chairman (J)

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