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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 14th day of September, 2000

CURIA : -

Hon'ble Mr. Rafiquddin, J.M.

Hon'ble Mr. M.P. Singh, A.M.

Civil Misc. Contempt Petition No. 42 of 1996

District : Agra

Dr. (Km.) Nirmala Gupta

Presently posted as Chief Medical Officer,
Incharge Posts and Telegraph Dispensary,
Agra.

(Sri Sudhir Agrawal, Advocate)

.....Applicant

Versus

1. S.K. Sharma, Post Master General,
Agra Region, Agra.
2. Dr. (Smt.) Rani Kapoor,
Chief Medical Officer,
Posts and Telegraph Dispensary, Agra.
(Km. Sadhna Srivastava, Advocate)

.....Opp. Parties

In

Original Application No. 388 of 1996

District : Agra

Dr. (Km.) Nirmala Gupta Applicant

Versus

Union of India and Others Respondents

O R D E R

By Hon'ble Mr. Rafiquddin, J.M.

This contempt petition has been filed by Dr. (Km)

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Nirmala Gupta under Section 19 of the Administrative Tribunals Act, 1985 to punish the respondents for committing contempt of this Tribunal by flouting the order dated 03-4-1996 passed in OA No.388/1996 (Dr. (Km) Nirmala Gupta Vs. Union of India and others).

2. Brief facts of the case are that the petitioner filed the O.A. No.388/1996 before this Tribunal seeking the following reliefs:-

- (i) to quash the order dated 8-12-1995 (Annexure-A-1) passed by respondent no.4 and to declare the letter dated 1-12-1995 and 5-12-1995 referred to in the order dated 8-12-1995 as illegal and consequently quash the same.
- (ii) to quash the order dated 26-3-1996 (Annexure-A1A) passed by respondent no.2 on the applicant's representation.
- (iii) issue a mandamus restraining the respondents from disturbing the applicant's status as Chief Medical Officer Incharge of P & T Dispensary Agra.
- (iv) to issue any other suitable order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- (v) award costs throughout to the applicant.

3. The respondent nos.1 and 2 were impleaded as respondent nos.4 and 5 in the aforesaid OA. Since the petitioner also prayed for interim order, this Tribunal vide order dated 03-4-1996 passed the following orders:-

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3-4-1996

Hon'ble T.L. Verma, J.M.
Hon'ble Mt. S. Dayal, A.M.

Heard Sri Sudhir Agarwal, learned counsel for the applicant. Admit. Issue notice. C.A. may be filed within 4 weeks. R.A., if any, within 2 weeks thereafter. Sri Vikram Gulati, Addl. Standing Counsel present in the court, has taken notice of this case on our direction.

There is prayer for interim relief of staying the operation of the impugned order dated 8-12-1996 and 26-3-1996 pending final disposal of this application. The applicant is stated to be working as Chief Medical Officer (Incharge) P&T Dispensary, Agra. In her place, respondent no.5, who is junior to the applicant, has been appointed as Chief Medical Officer (Incharge) by order dated 8-12-1995 contrary to the instruction issued by the Government of India in that behalf. The representation of the applicant filed against the said order has been rejected by order dated 26-3-1996. Orders on the interim prayer shall be passed on 20-5-1996. Respondents may file objection, if any, to the prayer of interim relief before that date. Respondents are, however, directed to maintain status quo, in respect of the applicant, as on date, till that date. List for orders/directions on 19-4-1996.

A copy of the order alongwith the notices meant for the respondents may be given to Sri Vikram Gulati".

4. The case of the petitioner is that one of the basic contentions of the applicant in the OA was that the post of Chief Medical Officer (Incharge) Agra is the post of higher status, who exercises supervisory and administrative control over the entire staff working in the particular Dispensary including the Chief Medical Officer. The petitioner also claimed that the Government of India has made provisions for appointment of Medical Officer Incharge, Dispensary

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on the basis of seniority. The applicant was not only the seniormost Chief Medical Officer working in the P & T Dispensary, Agra, but also was in one grade higher than the respondent no.2, Dr. (Smt.) Rani Kapoor.

5. The relevant facts, as disclosed in the petition are, that the applicant joined as Chief Medical Officer Incharge at Agra on 6-8-1994 and was duly handed over charge of the said post by the respondent no.2 Dr. (Smt.) Rani Kapoor on 9/10 Aug, 1994. It appears that vide order dated 1-10-1995, however, the Post & Telegraph Department, New Delhi, directed the applicant to hand over the charge of the said post to the respondent no.2 and the petitioner was directed to work as Chief Medical Officer, the same dispensary. This order dated 1-12-1995 as communicated to the petitioner by the Post Master General, Agra Region, Agra vide letter dated 8-12-1995. The applicant made representation against this order. This, however, was rejected vide order dated 26-3-1996. According to the applicant, ^{that} ~~she was~~ relieved on 26-3-1996 and ^{she} proceeded on medical leave on 29-3-1996 after giving direction to the respondent no.2 to lookafter her work as Chief Medical Officer Incharge in her absence. In the meantime, the office of the Post Master General, Agra Region, Agra, issued order dated 29-3-1996 through Sri V.D.Sharma, Asst. Director Postal Services, directing that Dr. (Smt.) Rani Kapoor would function as the Chief Medical Officer Incharge until further orders. Aggrieved by this, the applicant filed OA No.388/1996 before this Tribunal, which came up for admission on 03-4-1993 and the interim order in question was passed with the direction to the respondents to maintain status quo.

in respect of the petitioner till 19-4-1995.

6. The petitioner resumed her duties on 5-4-1996 after her medical leave. The petitioner claims that respondents were duly informed by her about the interim order passed by this Tribunal by supplying a photocopy of the interim order but they refused to receive the same and consequently the applicant sent a copy of the interim order by registered Post on 07-4-1996. The petitioner alleges that in order to frustrate the interim order passed by this Tribunal after knowing well about the interim order in question, respondent no.2 Dr.(Smt.) Rani Kapoor requested the petitioner to comply with the order dated 29-3-1996 issued by respondent no. and hand over the charge to her immediately. A copy of the aforesaid order dated 29-3-1996 issued by the Post Master General, Agra Region, Agra, was received by the applicant on 6-4-1996. The petitioner further states that the respondent no.2 knowing fully well about the interim order and also aware of the fact that the petitioner had not handed over charge of the office of the Chief Medical Officer Incharge, sent a letter dated 9-4-1996 to the respondent no.1 mentioning therein that she was having charge of the Chief Medical Officer Incharge since 29-3-1996, and she had taken charge of the stores from the petitioner without disclosing existence of the interim order passed by this Tribunal. Respondent no.2 also requested respondent no.1 in this letter to issue further orders to ensure functioning of the dispensary claiming herself as the Chief Medical Officer Incharge of the dispensary. The petitioner

alleges that despite full knowledge of the fact that there was no handing over or taking over of charge of the Chief Medical Officer Incharge of the dispensary and that this Tribunal had passed the interim order to maintain status quo in respect of the petitioner, respondent no.1 with a view to frustrate the order of this Tribunal directed the respondent no.2 to continue to function as the Chief Medical Officer Incharge vide his order dated 10-4-1996. The respondent no.2 even sent a letter dated 11-4-1996 to M/s. Jain Medical Stores informing them that the respondent no.2 herself would continue as Chief Medical Officer Incharge and as such deliberately violated the order of this Tribunal. The letter dated 02-5-1996 was issued on behalf of respondent no.1 by one Sri V.D.Sharma again to direct the petitioner to submit the charge relinquishment report so that ~~such~~ leave sanction order on medical ground might be issued.

7. This Tribunal vide order dated 17-5-1996 after considering the pleadings of the parties confirmed the interim order dated 3-4-1996. It was further directed by this Tribunal vide order dated 17-5-1996 that the respondents shall make suitable administrative arrangements in which the petitioner shall not have to report administratively to the respondent no.2. It is pertinent to mention here that the 'UA filed by the petitioner was allowed by this Tribunal quashing the orders dated 1-12-1995, 5-12-1995, 8-12-1995 and 23-6-1996 and directing the respondents to restore the position of the petitioner as Chief Medical Officer Incharge.

8. Thus, in short, the case of the petitioner is

that despite knowledge of the fact that the petitioner had not handed over charge as Chief Medical Officer Incharge by the time the copy of the interim order passed by the Tribunal was received by the respondents. They deliberately did not comply with the order of this Tribunal and wilfully violated the same and therefore, are liable to be punished for committing contempt of this ~~xxxxxxxx~~ Tribunal.

9. It may be stated that after hearing the parties and considering the explanation submitted by the respondents to the show cause notice, issued in the present contempt petition, this Tribunal framed the following charges against the respondents:-

Against Contemner No.1.

"Central Administrative Tribunal Allahabad Bench hereby charges you S.K. Sharma, Post Master General, Agra Region, Agra as under:-
That you on or about 4.4.1996 got the letter sent through Sri V.D. Sharma, A.D.P.S. acknowledging Dr. (Km.) Nirmala Gupta as C.M.O. Incharge, P&T Dispensary Agra yet after the Tribunal passed the order of maintaining status quo with respect to Dr. (Km) Nirmala Gupta on 3.4.1996 you after having the knowledge of the said interim order through Sri V.D. Sharma, A.D.P.S. directed Dr. (Smt) Rani Kapoor on 10.4.1996 to discharge the duties as Chief Medical Officer Incharge P&T Dispensary, Agra in disregard of the interim order of the Tribunal and thereby committed contempt of this Tribunal punishable under Section 12 of the Contempt of Courts Act,

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1971 read with Section 17 of the Administrative Tribunals Act, 1985, within our cognizance.

You are hereby directed to be tried by this Tribunal for the aforesaid charge."

Against Contemner No.2.

Central Administrative Tribunal, Allahabad

Bench hereby charges you Dr. (Smt.) Rani

Kanpoor, Medical Officer, Post & Telegraph

Dispensary, Agra as under :-

That you on 6-4-1996 wrote office note directing Dr. (Km) Nirmala Gupta to hand over the charge of Incharge Chief Medical Officer, P&T Dispensary, Agra to discharge the duties of Incharge Chief Medical Officer, P&T Dispensary on direction of Post Master General, Agra communicated through letter dated 10-4-1996 in complete disregard to the interim order passed by the Tribunal on 3-4-1996 of which you had knowledge and thereby committed contempt of this Tribunal punishable under Section 12 of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985, within our cognizance.

You are hereby directed to be tried by this Tribunal for the aforesaid charge".

Respondents have not pleaded guilty to the charges and claim trial.

10. The parties also were directed to file affidavit in support of their respective claims. Accordingly, affidavits/counter affidavits have ^{been} filed by the petitioners

11. The case of the respondents in short is that the petitioner was not holding charge of the dispensary on 3-4-1996 when the interim order in question was passed because respondent no.1 had already issued

has been deemed to be given effect. Since by the interim order in question, the respondents were directed to maintain status quo in respect of the petitioner as on date i.e. on 3-4-1996 and, accordingly the respondents maintained the order passed by this Tribunal by maintaining status quo of the applicant which was on 3-4-1996. It is further claimed that on 3-4-1996, respondent no.2 has been working as Chief Medical Officer Incharge and has not ceased to look after the work of Chief Medical Incharge. It is further explained by the respondent no.1 that the petitioner had already been relieved from the post of Chief Medical Officer Incharge on 29-3-1996 when the Tribunal passed the interim order of status quo, the status of the petitioner was 'Chief Medical Officer on Leave' and as such she was not the Chief Medical Officer Incharge.

12. We have heard Sri K.C. Sinha and Km. Sadhna Srivastava, counsel for the respondents and Sri Sudhir Agrawal, as amicus curiae and also considered the written statement submitted on behalf of the respondents.

13. It has been contended on behalf of the respondents that it is pertinent and relevant to ascertain as to what was the status of the petitioner on 3-4-1996 when the order of status quo was passed by the Tribunal. It is argued that there is no post of Chief Medical Officer Incharge and the petitioner was simply Chief Medical Officer, P&T Dispensary, Agra. But we find from the record as well as from the submissions made on behalf of the respondents that the status of the petitioner was that of chief medical officer Incharge, P&T Dispensary, Agra. It is admitted case that on 1-12-1995 the Director General Post issued a letter to the respondent no.1 through Chief Post

In Master General, U.P. Circle, Lucknow intimating that a decision had been taken that Dr. (Smt.) Reni Kapoor (respondent no.2) may be asked to lookafter the work of Chief Medical Officer, P&T Dispensary Agra, till a suitable Senior Doctor is posted at Agra and on the basis of this decision, the respondent no.1 issued a letter to the respondent no.2 to lookafter the work of the Chief Medical Officer Incharge, P&T Dispensary, Agra in place of the petitioner and the petitioner will continue to work as Chief Medical Officer P&T, Dispensary, Agra. Thus, the arguments of the learned counsel for the respondents are self-contradictory because in one breath they argued that there is no post of Chief Medical Officer Incharge, on the other hand respondent no.1 issued a direction to the effect that respondent no.2 would work as Chief Medical Officer in place of the petitioner. It is not disputed that the petitioner ~~was~~ ^{was} the seniormost Chief Medical Officer at Agra at the relevant time. It is not disputed that the Government of India issued instructions that the seniormost Chief Medical Officer would work as Incharge of the Dispensary. It is not disputed that the formal charge of the dispensary and its stores was handed over to the petitioner by respondent no.2 when the former took over the charge of the dispensary as Chief Medical Officer Incharge when her transfer to Re LUCKNOW ~~to lookafter~~ dispensary was cancelled vide order dated 6-5-1994. Even in the letter dated 8-12-1995 issued from the office of respondent no.1, the respondent no.2 was directed to work as Chief Medical Officer Incharge in place of the petitioner. Respondent no.1 in his counter affidavit vide para 11 filed against the show cause notice issued by the Tribunal against

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the contempt petition has clearly indicated that the petitioner was relieved from the post of Chief Medical Officer Incharge w.e.f. 29-3-1996. In other words, the status of the petitioner being Chief Medical Officer Incharge is not disputed by the respondents. We find that it was only when the status of the petitioner was disturbed by the order issued by the respondent no.1, she was compelled to indulge in litigation by approaching this Tribunal. It is also not explained on behalf of respondents as to why the order for replacing the petitioner from the post of Chief Medical Officer Incharge by the respondent no.1 ^{was} ~~was~~ issued when both the petitioner as well as respondent no.2 were holding same post, namely, Chief Medical Officer Incharge, P&T Dispensary, Agra at the relevant time.

14. It has been next contended by the learned counsel for the respondents that it is not clear as to what was the status of the petitioner as on 3-4-1996. The learned counsel for the respondents have also in this context contended that the interim order being in the nature of 'maintain status quo' is vague and the same has created confusion in the mind of the respondents. We, however, find from the record that the respondents, particularly respondent no.1, understand the meaning of 'status quo' and its implications. Because it is an admitted case of the respondent no.1 that when the petitioner submitted a representation against the order dated 8-12-1995 ^{on} 18-12-1995 and again on 30-12-1995 to the Director General Post, New Delhi, she made a specific request to the respondent no.1 to

maintain status quo till her representation is decided.

Respondent no.1 admits that in view of "her request" respondent no.1 did not take any action in pursuance of the order dated 1-12-1995/8-12-1995 till 26-3-1996 when her representation was rejected by the Director General Post, New Delhi (page40 of the written statement)

It is evident from this statement that the respondent no.1 understands the meaning of status quo. But here we find that the respondent no.1 in his counter affidavit has ridiculed this Tribunal as well the interim order in question by stating that the status of the petitioner on 3-4-1996 was that of a 'Chief Medical Officer on medical leave'. Therefore, there is no merit in the argument of the learned counsel for the respondents that the interim order of status quo created confusion in the mind of respondent no.1. Besides, it is admitted by the respondent no.1 that the copy of the order in question was received on 8-4-1996 which was sent to him by Registered Post by the petitioner on 7-4-1996.

It is admitted by him that no formal relinquishing or report charge ~~before~~ was prepared by the petitioner handing over charge after enjoying the medical leave when she rejoined duty on 5-6-1996. She also did not prepared charge on assuming duty. It is also the admitted case of the respondents that the applicant was on casual leave on 22-3-1996 and on 28-3-1996, ~~which~~ was Sunday and on 29-3-1996 she applied for medical leave for a week. It is fully established that till 26-3-1996 the petitioner was holding the charge of Chief Medical Officer ~~XXXXX~~ (Incharge). Thus, what a lay man of even ordinary prudence would have done on 8-4-1996 on receiving the copy of the order of interim order passed

by this Tribunal. In our considered opinion, he would have permitted the petitioner to continue on the charge which she was holding without taking the ~~device to~~ recourse to deprive her of her position in compliance of the interim order passed by this Tribunal. But in utter disregard for the order of this Tribunal, the respondent no.1 even got issued instruction on 10-4-1996 stating that the impugned order dated 3-4-1996 will not effect incumbency of respondent no.2 as Incharge Chief Medical Officer, putting his own interpretation of the order in question, even though the respondent no.1 fully understands the meaning of the word 'status quo'. Heavens would not have fallen if the respondent permitted the petitioner to work till ~~the~~ ^{By} 19-4-96 the next date of hearing on her post.

14. We understand that if a Government servant is on leave his or her status or designation is not changed. Respondent no.1, who is, no doubt, a senior Government servant, does not understand the simple principle. It appears that respondent no.1 became furious on having come to know about the interim order passed by this Tribunal. His action ~~reflects~~ ^{It demonstrates} that he was bent upon to frustrate and disobey the order of this Tribunal by resorting ^{to} all sorts of devices for this purpose. Respondent no.1 even obtained some legal advice to put some teeth to his action of refusing the petitioner to work as Chief Medical Officer Incharge, P&T Dispensary, Agra. It appears that interpretation of the interim order of this Tribunal put up by the respondent is that the petitioner should have remained on medical leave till further order. This is most ridiculous interpretation and meaning of the interim order stated by the respondent

no.1.

state that

15. Even at the risk of repetition, we ~~had~~ in the present case that respondent no.1 is more concerned for implementing the order dated 29-3-1996 notwithstanding the order of this Tribunal, for maintaining status quo, even though admittedly no formal charge was handed over by the petitioner to respondent no.2. The stand taken by respondent no.1 is not justified.

16. We also do not find any force in this argument that since the petitioner herself had asked respondent no.2 to lookafter her work as Chief Medical Officer Incharge, amounts to deemed handing over of charge. Because it was a temporary arrangement made by the petitioner herself during her absence on leave. The respondent cannot take any advantage of this arrangement for treating the action of the petitioner as having handed over charge to respondent no.2.

17. Therefore, in our considered opinion the letter dated 10-4-1996 is clearly contemptuous of the order dated 3-4-1996 passed by this Tribunal and also proves that respondent no.1 knowingly and deliberately disobeyed the interim order of this Tribunal and thus he is ^Q ~~is~~ guilty of committing contempt of this Tribunal.

18. We also find sufficient material to prove that respondent no.2 also committed contempt of this Tribunal. We find force in the argument of Sri Sudhir Agrawal, amicus curie, that the respondent no.2 knew very well that she was not handed over charge of the office of Chief Medical Officer Incharge by petitioner on 29-3-1996. However, respondent no.2 sent a letter dated 9-4-1996 to the respondent no.1 stating that she is having the charge of the Chief Medical Officer

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Incharge since 29-3-1996 and also demanded the charge of stores from the petitioner on 6-4-1996 without referring to the interim order of this Tribunal.

Besides, respondent no.2 became party to the action of respondent no.1 by issuing the letter dated 11-4-1996 to M/s. Jain Medical Stores, Agra, claiming herself to be the Chief Medical Officer Incharge and she thus deliberately violated the order of this Tribunal.

It is also worth mentioning here that this Tribunal had confirmed the interim order dated 3-4-1996 but the respondents did not comply with the order deliberately.

This fact also shows the attitude of the respondents towards a judicial institution and this also proves their attitude towards the Tribunal which has been set up with the sole aim to remove the grievance of the Government servants and respondents under the law are bound to follow the orders issued by this Tribunal. Therefore, we also hold respondent no.2 guilty of committing contempt of this Tribunal. Lastly it has been contended by the learned counsel for the respondents that while giving reply to this contempt petition, both the respondents in their respective counter affidavits have tendered unqualified apologies. Similarly, reply given to the charges framed against them, respondents have again tendered their unqualified apologies. Therefore, in view of the provisions contained in Sub-section (1) of Explanation to Section 12 of the Contempt of Courts Act and Rule 20 of the Contempt of Courts (CAT Rules), 1992, their apologies should be accepted by this Tribunal. But this Tribunal has not even ~~a whisper~~ ^{ad} about the apologies of the respondents, which they have made in their counter affidavits,

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while passing the order dated 29-5-1997 through which a prime facie case against the respondents has been made out. It is contended that unless the said apology is rejected, this Tribunal should not have proceeded with the present contempt case to this stage. However, we do not find any force in this contention for simple reason that apology tendered under Rule 20 of the Contempt of Courts (CAT Rules), 1992 should be unqualified and bonafide. We, however, find that the respondents have not made bonafide apology in the present case. Therefore, the question of accepting the so called apology by the Tribunal does not arise.

18. For the reasons stated above, we hold guilty Sri SK Sharma, Post Master General, Agra Region, Agra, respondent no.1 and Dr. (Smt.) Rani Kapoor, Chief Medical Officer, P&T Dispensary, Agra guilty of the contempt of this Tribunal under Section 12 of the Contempt of Courts Act. Accordingly, respondent nos. 1 and 2 are sentenced to undergo simple imprisonment for one week and also to pay a fine of Rs.1000/- (Rupee one thousand only) each, which will be deposited by the respondents within a week from today. In case of their default the Registrar would take action to recover the amount of fine as provided under Section 472 of the Criminal Procedure Code. The Registrar is also directed to issue warrants against respondent nos.1 and 2 for execution of sentence awarded to them provided under Rule 17 of the Contempt Of Courts (CAT) Rules, 1992.

M. B. B.
Member (A)

D. Rajreddu
Member (J)

Dube/