

(47)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

**Civil Contempt Petition No.92 of 2005
In
Original Application No. 1362 of 1997.**

Allahabad, this the ¹⁴28 day of February, 2006.

**Hon'ble Mr. A.K. Bhatnagar, J.M.
Hon'ble Mr. A.K. Singh, A.M.**

Sanjay Kumar Gond S/o Shri Ram Jatan Gond, resident of 114/10 Jawahar Nagar, Kazipur Road, Naini, Allahabad.

...Applicant.

(By Advocate : Shri Swayambar Lal)

Versus

Brig. R.K. Sharma, Commandant & M.D. 508 Army Base Workshop, Allahabad.

...Respondent.

(By Advocate : Shri S.K. Misra)

ORDER

By Hon'ble Mr. A.K. Bhatnagar, J.M.

This contempt application has been filed for punishing the respondent for willful disobedience of the order-dated 31.05.1999 passed in O.A. No.1362 of 1997. By the Order dated 31.05.1999, following direction was passed: -

“In view of the foregoing we set aside the letter dated 13-10-1997 (Annexure-1 to the O.A.), and direct the respondents to appoint the applicant, against the ST quota, in the post for which he was selected in the Special Recruitment Drive 1990. We dispose of the O.A. accordingly with no order as to costs.”

2. Notices were issued to the respondents by Order dated 08.08.2005. Learned counsel for the respondents filed counter affidavit and submitted that the Judgment/Order dated 31.05.1999 is still subjudice in the Hon'ble High Court, therefore, present contempt petition is barred by the order-dated 08.10.2003 passed by this Tribunal in Contempt Petition No.86 of 1999. Learned counsel for the respondents further submitted that as stated in



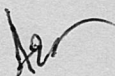
paragraph no.11 of the counter affidavit, against the Order passed in O.A. No.1362 of 1997, a Writ Petition No.45934 of 1999 was filed in the Hon'ble High Court, in which counter and rejoinder affidavits have been exchanged and the same is matured to be heard on merits. Learned counsel further submitted that during the pendency of the aforesaid Writ Petition, the applicant filed a Contempt Petition No.86 of 1999 in which contempt notices were issued against the alleged contemnors though the matter was subjudice before the Hon'ble High Court in Writ Petition No.45934 of 1999.

3. Aggrieved by the Order passed in Contempt Petition No.86/99, the alleged contemnor Brig. B.S. Dadwal filed Writ Petition No.40669 of 2000 before the Hon'ble High Court and the Hon'ble High Court was pleased to stay further proceedings of the contempt case. Thereafter, contempt petition no.86/99 was dismissed on 08.10.2003 with the observation that "it shall be open to applicant to file a fresh application in case order of this Tribunal is upheld by the Hon'ble High Court and order is not implemented." Learned counsel for the respondents submitted that the order of the Tribunal passed in O.A. No.1362/97 is still subjudice before the Hon'ble High Court in Writ Petition No.45934/99, therefore, there is no occasion to file this contempt petition again as the order passed by this Tribunal in Contempt Petition No.86/99 on 08.10.2003 is estoppel for the petitioner and the same is not maintainable unless the Judgment/Order passed by the Central Administrative Tribunal dated 31.05.1999 is not upheld by the Hon'ble High Court. After this order was passed, then on the submission made by the Counsel Shri S.K. Misra, the Writ Petition No.40669 of 2000 filed against the contempt petition no.86/99 was dismissed as infructuous vide order dated 28.01.2005, filed as annexure-8 of the contempt petition.

4. Admittedly, the Writ Petition No.40669 of 2000 was filed before the Hon'ble High Court against the Order dated 31.05.1999 passed in O.A. No.1362 of 1997, which is still subjudice. This is also true that Contempt Petition No.86/99 was dismissed vide Order dated 08.10.2003 with the following observation: -

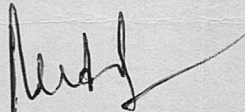
"The Contempt Petition is dismissed. Notices are discharged. However, it shall be open to the applicant to file fresh application in case order of this Tribunal is upheld by the Hon'ble High Court and order is not implemented. No order as to costs."

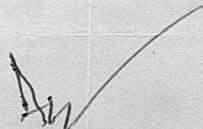
5. We find force in the arguments of respondents' counsel that the present contempt petition is not maintainable in view of the observation made



in the above mentioned contempt petition no.86/99, as the matter is subjudice before the Hon'ble High Court. The applicant can very well file the contempt petition at appropriate time if the Order of this Tribunal is upheld by the Hon'ble High Court and the Order is not implemented, as observed in the earlier order in Contempt Petition No.86/99.

6. In view of the aforesaid, this Contempt Petition is not maintainable, therefore, dismissed and the notice issued to the respondent is discharged. However, liberty is granted to the applicant to file fresh application incase order of this Tribunal is upheld by the Hon'ble High Court and the Order is not implemented.


Member-A


Member-J

M.M/