

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Contempt. Application No. 81/B/T of 1988

In

Transfer Application No. 610 of 1986

Inderjit Oberai

..... Applicant

Versus

Sri S.P. Endlaw

..... Respondent

CORAM:

Hon'ble Justice U.C. Srivastava, V.C

Hon'ble Mr. K. Chayya, Member (A)

The applicant has filed this application initially on 22.10.88 for committing contempt of Court. Earlier Sri P.S. Endlaw, Chief General Manager and thereafter Sri Ram Lal the then Deputy General Manager, Telecommunication was impleaded but it appears that after they vacated posts the applicant moved an application for fresh impleadment of these two functionaries who seems to have replaced them and order in this behalf was passed by this Tribunal on 6.4.92. In the impleadment application the ground for contempt^{is} that the compliance of order No.1 to 6 has not been done.

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2. The grievance of the applicant that the department has not taken any action to consider his promotion to the lower selection grade monitor w.e.f. 17.9.90 in accordance with the directions contained in the judgement and one charge sheet was issued to him in the year 1970 and 76 and his pay for the suspension period has not been paid to him and three increments were directed to be paid in the operative portion of the judgement would have been paid to him and that his computation of pension and gratuity has not been done till the date.

3. The respondents in their return have stated that in view of the judgement of this Tribunal that no contempt has been committed and the grievance of the applicant has been made and the order passed by the Tribunal has already been complied with and that any willful contempt has not been committed. The respondents have greatest regard for the court and they will be the last persons to commit any contempt. It has been stated by them that the applicant has been promoted to the non higher scale of Rs.425-700 w.e.f. 30.11.83 and it was further directed that his pay will be fixed under F.R.22-C. The Telecommunication Divisional Engineer

who was the ~~Competent~~ Authority for fixation of pay has fixed his pay and his pay has been raised from 500-15-530 respectively w.e.f. 1.12.86 and after pay fixation his arrears have also been calculated as he has worked on 1.4.86 to March 1987 within the jurisdiction of Telecom Divisional Engineer and his arrears of pay were allowed to be paid w.e.f. 1.9.80 and he is at liberty to approach the Accounts Officer for payment of the said arrear. In between 1.12.83 to March 1986 he has worked with the Divisional Telecom Engineer, Rampur, therefore a letter has been sent to the Accounts Officer of Pay fixation for making entry in the original vouchers and return to the office of the Telecom Engineer, Sultanpur and the other grievance was that his three increments for which he has been paid arrears of increments by crossing Efficiency Bar and he has received a sum of Rs.7351.90p in the shape of arrears from 15.7.68 to 31.8.68 and till November 1987 and so far as computation of pension and gratuity is concerned, it has now been finalised in accordance with Departmental rules after withdrawal of the difference of pension and gratuity and revised pay of promotion he can visit the office of the Accounts Officer for receiving the payment of difference of pension as well as difference of DCRG from this office and if there is any mistake in calculation the same can be rectified with the help of

the applicant and the Accounts Officer Telecom Division.

4. The applicant's grievance is that the operative portion of the orders of the Judgement have not been complied as such a contempt is there in this connection, the first contention that vide rule 79 CSR can be brought into line. As far as this contention is concerned, suffice to say that it is not a matter which can be looked into in contempt jurisdiction. For implementing a judgement a particular rule is also looked into and considered for which there was no declaration. It cannot be said that any contempt has been committed. The next contention is that as far as confidential remarks is concerned, that no action in accordance with observation made in the judgement dated 30.5.88 in regard to the quashing of punishment for moderating the adverse entries has been taken in the judgement the respondents are directed to examine whether the reports for a period for which the remarks have been taken into consideration by the D.P.C were held to judge the suitability. Later on the D.P.C was substituted by the above Contempt Authority. According to the applicant his representation against the adverse remarks was never considered and therefore adverse remarks became final. As a matter of fact, when entire relief has been granted to the applicant this point loses its significance and even if

there is some mistake or some misunderstanding in implementing the judgement which can be implemented and it cannot be said that any contempt has been committed. No element of deliberate act to flout the order passed by this Tribunal and disregard which is found to be existing in the order said to be committed and as such it cannot be said that any contempt has been committed.

5. The another grievance regarding consequential benefits, and the period of suspension has not been regularised as the contemners have never declared the period of suspension under the Divisional Engineer, Bareilly relating to the said cancellation of charge sheet whether he is to be counted on duty. As a matter of fact, all these matters according to the respondents were taken into account and thereafter what ever relief was directed by the Tribunal was given. It cannot be said that any contempt in this behalf has been committed and so the other ground pointed out by the applicant that any contempt has been committed as a matter of fact even if any entry exists that does not affect and that has not stood in the way of the applicant getting the benefits as per direction given by the Tribunal and as the respondents themselves have stated that incase any mistake has occurred on order any relief was not fully granted it is

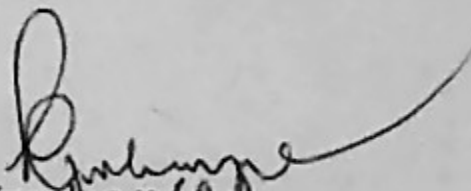
open for the applicant to approach the authorities concerned.

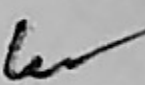
6. In this case it is to be pointed out that original contemnors were removed from the array of the parties and instead of their names, the names of their successors were placed on the record. No allegation against the successors has been made that they have been asked to comply with a particular part of the order and it was brought to their notice that they failed to do so. It is only thereafter it could be said that they have committed contempt of court. No such allegation has been laid and as such no action against contempt of court can be taken against them.

7. Here, in this case it appears, the grievance of the applicant appears to be that desired relief has not been given by the respondent. It is not his case that the respondents have not given any relief or rather ~~there was~~ any intention not to grant relief or the act indicates that they had every intention to flout the order passed by this Tribunal or disregard it. It may or may not be that, certain mistakes may have ^{been} done while implementing the order but merely mistake which has been committed for which this could be said to be non intention for the same has been pointed out. It will not make out a case of punishment under

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the contempt of courts act. In these, circumstances, the contempt application has got to be ~~dismissed~~ ^{consigned} and the notices are to be discharged but with a direction ~~to~~ the respondents that so far as the period of suspension and salary is concerned, the respondents shall reconsider the claim filed by the applicant regarding the period of suspension and salary and will also consider any other payment which has not been made to the applicant or short payment has been made to the applicant. Incase the same is pointed out by him within a period of ~~two~~ ^{one} months ^{from the date of communication of this order} and thereafter they will decide the matter within a period of one month taking into consideration the pleas raised by the applicant and we hope that the respondents will do so within the period so fixed. ^{With the above directions the notices are discharged and the case is consigned}


Member (A)


Vice Chairman

Dated: 11th Feb: 1993

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Review Application No. 788 of 1987

IN

Registration (T.A.) No. 610 of 1986

Inder Jit Oberai Applicant.

Versus

Union of India & others Respondents.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

(By Hon. Justice K. Nath, V.C.)

This case was originally decided by judgment dated 30.5.1988. Review Application No.788 of 1987 against that decision came up before us. By our judgment dated 7.8.1989 we allowed the review in part and after directing certain corrections to be made on page 13 of the original judgment we further directed that the question of validity of the charge-sheet dated 18.3.1976 against the applicant shall be reheard. In all other respects the review application was rejected. The judgment dated 30.5.1988, therefore, stands to the extent indicated above.

2. We now proceed to consider the validity of the charge-sheet dated 18.3.1976. The admitted facts are that the applicant, Indra Jit Oberai, who has appeared in person and has argued the matter, was initially appointed as a Telephone Operator (TO) on 14.9.1947 and was appointed as Lower Selection Grade Monitor (LSG Monitor), also described as Junior Supervisor (JS), on 17.9.1963 in purely temporary and ad hoc capacity. We do not refer to some other litigations which took place in connection with his appointment and promotion, etc. as they were subject matter of other proceedings; it would be enough to state that on 18.3.1976 when he was still working as JS the impugned charge-sheet issued by the Divisional Engineer (Telephones) (DE(T)) was served upon him. One of the

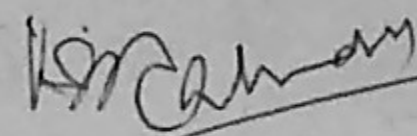
points raised by him in the Original Application (OA) was that the charge-sheet was without jurisdiction because the DE(T) was not the competent authority and that the only competent authority was the Director (Telephones). That was his specific pleading in para 17 of the plaint. The reply of the respondents to that pleading is contained in para 46 read with para 43 of the written statement. The respondents' case is that since the applicant was not approved for regular appointment as JS, he had no legal right to that post and that his title was confined only to his original post as TO. It was said that the DE(T) was the competent authority of a TO and, therefore, even though the applicant was working as JS in purely ad hoc and temporary capacity the DE(T) was the competent authority to issue charge-sheet against him. We find no warrant for this proposition. In deed in the very judgment under review the principle involved in this regard was considered by the Bench in para 8 while dealing with an earlier charge-sheet leading to imposition of punishment in 1970. It will be appropriate to set out the following observations of the Bench on this matter in connection with the earlier charge-sheet :-

"The plaintiff's reversion orders were quashed by the Allahabad High Court. So he continued to be the LSG Monitor during the period he was imposed the minor penalty. It is the position at the relevant time that has to be seen and not that he was officiating only in an ad hoc manner so he had to be taken only as telephone operator and not as LSG Monitor as averred by the defendants. If he was officiating in the LSG grade the appropriate authority would be that who could be taken as the disciplinary authority for LSG Monitor. Since this was not so the punishment imposed in 1970 by an incompetent authority would be illegal, and is liable to be quashed."

3. That is precisely the position with regard to the impugned charge-sheet of 18.3.1976 as well. The authority who could issue the charge-sheet on 18.3.1976 while the applicant was still working as a LSG Monitor, also known as JS, could not be the DE(T), who

was only competent so far as the TOs are concerned. We hold, therefore, that the impugned charge-sheet was issued by an authority who was not competent to do so. The result of the situation is that the enquiry proceedings on the basis of the charge-sheet dated 18.3.1976 must also be quashed and the applicant must get the consequential benefits thereof.

4. In addition to the decision of this Tribunal rendered in the above mentioned judgment of 30.5.1988, we quash the charge-sheet dated 18.3.1976 as well as the disciplinary enquiry proceedings on that basis and direct that the respondents shall accord consequential benefits to the applicant in that light within a period of three months from the date of receipt of a certified copy of this judgment.


MEMBER (A).


VICE-CHAIRMAN.

Dated: October 4, 1990.

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