

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 26th day of February 1997.

Contempt Application no. 161 of 1994
in
Original Application no. 715 of 1992.

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member

Ansar Ahamde Siddique,
S/o Sri N.A. Siddique,
R/o Rly., Qr. no. 843/B,
Goods Shed Colony,
Leader Road, Allahabad.

... Applicant.

C/A Sri K.S. Saxena.

Versus

1. Sri Massih-ul-zaman,
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Sri A.K. Jain,
Divisional Railway Manager,
Northern Railway, Allahabad.
3. Sri A.K. Singh,
Senior Divisional Mechanical Engineer,
Northern Railway, Allahabad.

... Respondents.

C/R Sri D.C. Saxena.

ORDER

Hon'ble Mr. S. Dayal, Member-A

This is an application for contempt of the

....2/-

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direction contained in the order in judgement dated 04.04.94 in O.A. no. 715 of 1992. This is an application under section 17 of the Administrative Tribunals Act, 1985.

2. Learned counsel for the applicant extracted paragraph 7 of the judgment which contains following directions:-

i. Respondents shall appoint the applicant against post of Safaiwala or any other equivalent post within a period of 3 months from the date of communication of this order. It is mentioned in that, the seniority will count with effect from 20.01.91 after his appointment, which is date of appointment of six casual workers.

ii. The respondents were directed to grant temporary status to the applicant with effect from the date from which he is entitled to grant temporary status as per rules.

3. This application for contempt made by the applicant, states that the respondents have wilfully and deliberately not complied with the direction within a period of three months. They have mentioned that the judgement was communicated by the applicant by his application dated 25.04.94 to the respondents.

4. Argument of Sri K.S. Saxena learned counsel for the applicant and Sri D.C. Saxena learned counsel for the respondents were heard.



....3/-

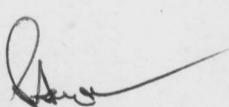
5. The respondents in their counter reply have mentioned that the applicant was appointed as casual/temporary status Safaiwala as special case and thereby compliance of the order of the Tribunal had already been made. In Supplementary counter reply filed on 13.07.95, the respondents have mentioned that the applicant had already joined as Safaiwala on 20.06.95. In an annexure to the supplementary counter reply, a copy of letter no. E/4/KA/Substitute/Sa. Va./95 dated 20.06.95, it has been mentioned that the applicant was appointed as substitute Safaiwala.

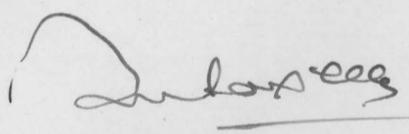
6. The applicant in their counter reply has shown that 134 casual labours/substitutes were found suitable and brought on the provisional list of Group 'D' posts in C & W department as a result of screening held on 12.12.94, 15.12.94, 16.12.94, 19.12.94 and 20.01.95. By ~~yet~~ another supplementary counter reply filed on 24.01.96 the respondents have brought on record of this case that the seniority of the applicant will be fixed by personnel branch and that the matter has been referred on 17.07.95 to that branch.

7. The facts as revealed through the pleadings of the respondents themselves, shows that the compliance of the order in judgment dated 04.04.94 in OA 715/92 has not been made. Judgment clearly says that the seniority of the applicant shall count with effect from 20.01.91 and yet the respondents have decided to refer the matter to assignment of seniority to their personnel branch.

8. In addition, it is clear that the direction of the Tribunal was to grant temporary status to the applicant with effect from his date of entitlement as per rules. Although Supplementary counter reply was filed on 24.1.1996 which is more than 1½ years after the direction was given, the respondents have not come up with information that the date of grant of temporary status has been decided. Although no period of compliance of second direction was fixed, it is accepted that the compliance shall be made within reasonable time and period of six months should have been reasonable for this purpose.

9. It is clear from above discussion that a prima-facie case of contempt of court has been made out. The opposite parties who are primarily responsible for commission of contempt are Shri A.K.Jain and Shri A.K. Singh who had to take action for grant of temporary status and for passing an order for counting of seniority from 2.1.1991 in accordance with the directions of the court. Shri A.K.Jain and Shri A.K. Singh are ordered to appear in person on 14th April 1997 to receive and answer the charges, in the court before this Bench. The notices for appearance on Shri A.K.Jain and Shri A.K. Singh shall be served in person.


MEMBER-A


MEMBER-J

O.R

The Notices have been
Issued to the Respondents

No. 223.

The Hon'ble Court had
ordered to list this case on 14-4-97.
but 14-4-97 being declared
due to Ambedkar Jayanti
holiday. Hence, Submitted
on 2-7-97.

SG
117/47

O.R

The MISC. App. 2248/97
in C.C.A. 161194 in O.A
715/92 had been filed
by Sri D.C. Saxena Adv.
on behalf of the Petitioners.

The MISC. App. received to day
So that MISC. App. could not
be mentioned in Regular Case
list.

Submitted.

SG
117/97

2/7/1997

Hon'ble Dr. R.K. Saxena, J.M.
Hon'ble Mr. S. Dayal, A.M.

Shri K.S. Saxena counsel for the applicant and Shri D.C. Saxena for the contemners present. The bench had directed vide order dated 26.2.1997 that the contemners A.K. Jain and A.K. Singh ~~who~~ appear in person before the Tribunal to answer the charges. The matter could not be taken up on 14.4.1997 because it was declared ~~holiday~~ and all the cases were adjourned to this date. None of these contemners are present and the application for exemption has been moved. We find no justification in the application for the simple reason that the contemners have been directed to appear and answer the charge. Therefore, the application for exemption stands rejected. Shri D.C. Saxena, however, contends that some time be granted, so that the contemners may appear before the Tribunal. We allow one and last opportunity by fixing 5.8.1997 to appear before the Tribunal. In case there is any default in appearance, necessary order shall be passed on that date.

of
intimation letter
by Sir, B.B. Paul Adv.
on behalf of the Respondents
and same is kept on record.

SS
28/7/97


A.M.


J.M.

O.R.
MISL. APP. NO 2566/97
in C.C.A. 161/94 in O.A.
715/92(D) had been
filed by Sir, B.B. Paul Adv
on behalf of the Respondents.
Submitted before Hon'ble
Court as mentioned above.

SS
24/8/97

30-7-97

Hon'ble Mr. R.K. Saxena, J.M.

Hon'ble Mr. S. Dayal, A.M.

The case has been put up before this Bench specially constituted because different Bench was working today. The matter has been put up before us for disposing of the MA No. 2566/97 whereby the exemption from personal appearance of the alleged contemners has been prayed. It may be mentioned that the prima facie case of contempt was found ~~to be~~ established by this Bench on 26-2-1997. Accordingly, the alleged contemners were directed to appear on 14-4-1997. Since 14-4-97 was declared holiday, the cases were taken up on 2-7-1997 but on that date too the alleged contemners failed to appear. The matter was adjourned to 5-8-1997 with clear stipulation that it would be the last opportunity, for their appearance voluntarily.

2. Shri BB Paul appears on behalf of the alleged contemners and raises several questions. The first is that no contempt is made out; secondly, that the contempt proceedings are meant to see the compliance of the directions given by the Court or Tribunal and since in this case the compliance has now been done, there was no point to continue with their presence. So far as the first ground is concerned, we have already held that there was a prima facie case. Thus, the argument that no case of contempt was made out, there is no weight.

3. The alleged contemners have been asked to appear to answer the charge, to be framed against them. For answering charge, the contemners are required to appear in person. There can be no exemption at that stage. As regards, the compliance of the direction is concerned, it can be stated by the contemners themselves in reply to the charges and ~~on being~~ given the opportunity of hearing to defend themselves.

4. In view of the above fact, we find no justification to exempt the alleged contemners from appearing before this Bench on 5-8-97. The MA is disposed of accordingly.

Dube/

Member (A)

Member (J)

05/8/97

Hon. Dr. R.K. Saxena, J.M.
Hon. Mr. S. Dayal, A.M.

Sri K.S. Saxena, counsel for the applicant and S/Shri D.C. Saxena, Shri B.B. Paul and Shri S.K. Jaiswal counsel for the respondents, are present. The contemner - A.K. Jain is also present but A.K. Singh has not appeared. It has been informed by Sri D.C. Saxena who represents him that he has gone out of country. An application in this regard has been moved.

Sri B.B. Paul argues that since the counsel for the contemner is tendering unqualified apology, the proceeding should be dropped. He has cited the case 'Dinabandhu Sahu and another vs. State of Orissa A.I.R. 1972 S.C. page 180'. In order to arrive at a conclusion whether this submission is acceptable, we adjourn the case to 06/8/97. The alleged contemner shall execute a personal bond of Rs. 10,000 to appear on 06/8/97 and if other dates are fixed, also on those dates. The application which is moved on behalf of Sri A.K. Singh shall also be disposed of on 06/8/97.


A.M.


J.M.

/m.m./

06/8/97

Hon.Dr. R.K. Saxena, J.M.
Hon.Mr. S. Dayal, A.M.

The case has been taken up today. Sri D.C. Saxena and Sri S.K. Jaiswal for the alleged contemner present. Sri K.S. Saxena who had been the counsel for the applicant, is also present. In this case, we do not find it necessary to designate any advocate for our assistance because the contemner-A.K. Jain has already tendered unqualified apology in response to the charge which was read over and explained to him. The order on his plea of unconditional apology has been passed separately.

In this case, one of the contemner was A.K. Singh who has not turned up. His application for exemption from personal appearance was already rejected but again an application has been moved pointing out that the said contemner is at present in France and is unable to appear. Thus, the case relating to A.K. Singh is separated and office is directed to open a separate file. The copy of charge to be framed, shall be sent to the said contemner through Foreign Affairs Ministry, ~~or such Ministry as may have been provided~~ to be served on him and to be returned within the reasonable period of time. The matter relating to A.K. Singh shall be listed before the Bench on 31.10.1997.


A.M.


J.M.

/m.m./

o/p
The file received today
- 21-8-97


SS
21/8/97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Contempt Petition Civil No. 161 of 1994
In
Original Application 715 of 1992

Ansar Ahmed Siddiqui

Vs.

1. Shri A.K. Jain, Divisional Railway Manager, Northern Railway, Allahabad.
2. Shri A.K. Singh, Senior Divisional Mechanical Engineer, Northern Railway, Allahabad.

Central Administrative Tribunal, Allahabad Bench Allahabad hereby charges you Shri A.K. Jain, Divisional Railway Manager, Northern Railway, Allahabad as under:-

That on 04.4.1994 Division Bench of this Tribunal while disposing O.A.no.715/92 (Ansar Ahmed Siddiqui Vs. Union of India and Others) had given following clear directions:-

"That the respondents shall appoint the applicant against a post of Safaiwala or any other equivalent post within a period of three months from the date of communication of this order. Once appointed, his seniority shall count w.e.f. 20.1.1991 i.e. the date on which six casual workers were appointed as Safaiwala, pursuant to the letter dated 15.11.1990 (Annexure A-5). He shall not be entitled to get any backwages. The respondents are also directed to grant temporary status to the applicant w.e.f. the date from which he is entitled to be granted temporary status as per rules."

That though the aforesaid order of the Court alongwith application for appointment of Shri A.A. Siddiqui was communicated to you on dated 25.4.94, yet you after having the knowledge of the aforesaid order, you in disregard to the directions of the Tribunal failed to comply with orders of the Court within the specified period of three months and thereby committed contempt of this Tribunal punishable under section 12 of the Contempt of Courts Act, 1971, read with Section 17 of Administrative Tribunals Act, 1985 within our cognizance.

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

Dayal
(S. Dayal)
Administrative Member

Quinton
(Dr. R.K. Saxena)
Judicial Member

The charge was read over and explained to the alleged contemner and his plea was recorded as under:-

(1) Do you plead guilty to the charge ?

Answer : I am sorry for any act of omission or commission on my part or on the part of my staff. I tender unqualified apology.

(2) Do you have anything else to say ?

Answer : Nothing

(A.K. JAIN)
Signature of the alleged
Contemner

Dayal
(S. Dayal)
Administrative Member

Quinton
(Dr. R.K. Saxena)
Judicial Member

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Contempt Petition No. 161 of 1994
In
Original Application No. 715/92

Allahabad this the 06th day of August 1997

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. S. Dayal, Member (A)

Ansar Ahmad Siddiqui S/o Sri N.A. Siddiqui, R/o
Rly.Qtr.No. 843/B, Goods Shed Colony, Leader Road,
Allahabad.

Applicant

By Advocate Sri K.S. Saxena.

Versus

1. Sri Massi-hul-zaman, General Manager, Northern Railway, Baroda House, New Delhi.
2. Sri A.K. Jain, Divisional Railway Manager, Northern Railway, Allahabad.
3. Sri A.K. Singh, Senior Divisional Mechanical Engineer, Northern Railway, Allahabad.

Respondents

By Advocates Sri D.C. Saxena
Sri S.K. Jaiswal

ORDER (Oral)

By Hon'ble Dr. R.K. Saxena, Member (J)

The contemner-A.K. Jain was directed to appear in person to answer the charge because prima-facie case of contempt was found established vide order dated 26.2.1997 of this Bench. In response to the said notice, Sri A.K. Jain appeared. The charge is framed against him today and he tendered unqualified apology for the same. He has also filed a written reply in which it is pointed out that the contemner is a senior officer of railway and ^{can} never imagine to disobey or flout the directions passed by a court of law. It is further pleaded by the contemner that compliance has already been done though belatedly. Sri K.S. Saxena, counsel for the applicant

corroborated this fact by admitting that the compliance of the directions given by this Tribunal, has now been done.

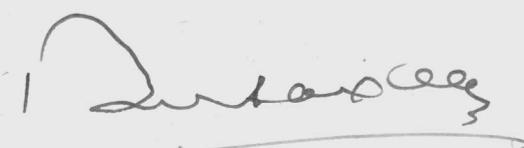
2. In a contempt proceedings, the purpose is that the dignity of the Court or the Tribunal be maintained. It should not be allowed to be lowered by any person or authority. If a direction is given to any authority or a person, on final adjudication of the matter that particular relief is given to an aggrieved person, it should be promptly complied with. On non-compliance and in absence of other channel of execution, the only course which remains open is to initiate the contempt proceedings. We may at the very outset point out that it does not give any pleasure to the Court or Tribunal to initiate such proceedings but under compelling circumstance, this step is required to be taken.

3. Since the contemner has tendered unqualified apology and it is also established from the statement of Sri K.S. Saxena, Advocate that now the compliance, though belatedly, has been done, we accept the said apology. Before we part with it, we would like to observe that a senior officer like A.K. Jain, as he claims, should see that such things do not occur in future.

4. In view of these facts and circumstances, the charge against the contemner - A.K. Jain is dropped and the proceedings are also closed.

/M.M./


Member (A)


Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Contempt Petition No. 161 of 1994

In

Original Application No. 715 of 1992

Allahabad this the 6/12 day of Aug. 1997

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. S. Dayal, Member (A)

Ansar Ahmad Siddique S/o Sri N.A. Siddique, R/o
Rly. Qtr.No. 843/B, Goods Shed Colony, Leader Road,
Allahabad.

Applicant

By Advocate Sri K.S. Saxena

Versus

1. Sri Massihul-zaman, General Manager, Northern Railway, Baroda House, New Delhi.
2. Sri A.K. Jain, Divisional Railway Manager, Northern Railway, Allahabad.
3. Sri A.K. Singh, Senior Divisional Mechanical Engineer, Northern Railway, Allahabad.

Respondents

By Advocates Sri B.B. Paul
Sri D.C. Saxena
Sri S.K. Jaiswal

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

This case in which the alleged contemners A.K. Jain and A.K. Singh were found prima-facie responsible for deliberate disobedience of the directions of the Tribunal, is fixed for answering the charge against them. The prima-facie case was found established on 26/2/97 and thereafter it was ordered that the alleged contemner should appear on 14.4.1997. No appearance was made by these contemners because 14.4.1997 was declared holiday and the matter was adjourned to 02/7/1997. Fresh notices were issued to the alleged contemners but they

again failed to appear on that date. An application was, however, moved for exemption from their personal appearance. We had directed the contemners through their counsel to appear on 05/8/1997. Again applications for the exemption from their personal appearance were moved on 30/7/1997 but the same were rejected. and they were directed to appear on 05/8/1997. The learned counsel appearing for the alleged contemners had argued on 30/7/97 that no contempt was made out and the contempt proceedings were meant to see the compliance of the directions given by the Tribunal. This aspect was considered by the Bench when order of prima-facie case was passed on 26/2/1997 and it was found that there was a prima facie case of contempt.

2. The alleged contemner - A. K. Jain has put in appearance but other contemner - A. K. Singh did not appear on 05/8/1997 and the plea taken was that A. K. Singh had gone abroad. That application shall be dealt with separately. Sri B. B. Paul, learned counsel for the alleged contemner-A. K. Jain made a submission that he was prepared to tender unqualified apology on behalf of the alleged contemner who was also present in the court. He has placed reliance on 'Dinabandhu Sahu and another Vs. State of Orissa A.I.R. 1972 S.C. page 180' to support the contention that the plea of apology could be tendered by the counsel for the contemner. In the above case their Lordships had held that element of sincerity, if exhibited, in tendering unqualified apology, it should have been accepted. Thus we have to find out whether there was an element of sincerity on the part of the alleged contemner. The circumstances

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which have been disclosed above, go to show that the sincerity element is lacking. The alleged contemner never appeared during the proceedings in which a prima-facie case was found established. When he was issued notice to appear in person to answer the charge, he tried to seek exemption from personal appearance. When he appeared, he himself is not saying anything. The matter is listed for framing the charge. The opportunity is available to the alleged contemner to state whatever he wants to say and may explain the facts and circumstances which are found necessary. In view of these facts, the contention of the learned counsel for the alleged contemner that the apology which may be tendered by him (the counsel for the alleged contemner) be accepted, is not tenable.

Rao
Member (A)

Dundee
Member (J)

/M.M./