

Open Court

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 28th Day of March, 2000.

Coram:

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

Hon'ble Mr. Rafiq Uddin, J.M.

Civil Contempt Application No. 329 of 1993

in

Original Application No. 334 of 1992.

Jawahar Lal
son of Jamuna Prasad,
R/O Village Vishara
P.O. Vishara Tahsil Sirathu,
Distt. Allahabad.

. . . Applicant.

Through Sri K.S. Rathore, Adv.

Versus

1. Raj Kumar (General Manager) Northern Railway,
Baroda House, New Delhi.
2. Sri S.P. Mehta, General Manager, Northern
Railway, Baroda House, New Delhi.

. . . Opp. Parties.

Through Sri A.V. Srivastava, Adv. and
Sri Lalji Sinha, Adv.

Order (Open Court)

(By Hon'ble Mr. S. Dayal, Member (A.)

This contempt petition has been filed for proceeding against the Opp. parties for committing contempt by wilfully disobeying the order of the Tribunal dated July 3, 1992 in O.A. 334 of 1992.

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2. The Tribunal by its order dated 3.7.92 had directed the General Manager to make an enquiry as to whether the work of Fitter was being taken from the applicant within three months from the date of communication of order and if the work of fitter was being taken, there appear to be no reason as to why a direction for paying higher salary and allowances should be given to the respondents as the applicant was entitled to these.

3. It is the case of the applicant that after communication of order dated July 3, 1992 by registered post on 12.9.92, the order remained unimplemented and the learned counsel for the applicant stated that it is still remains unimplemented till this date. It has also been stated that the Opp. party was resorting ^{to} _{to} undue delay in implementing the order.

4. The arguments of learned counsel for applicant Sri S.S. Tyagi and Sri Lalji Sinha and Sri A.V. Srivastava counsels for Opp. party were heard.

5. The learned counsel for the applicant has drawn attention to paragraph 3 of the counter reply filed by one Mr. Jitendra Tyagi Divisional Superintending Engineer on behalf of the General Manager. He mentioned that the Opp. party showed disinclination to comply with the order of the Tribunal by seeking necessary legal information before deciding to implement the judgment. Secondly no enquiry was conducted because it has

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only been mentioned that the Opp. party after taking into account the entire facts and circumstances decided that no work of fitter/grade Rs. 950-1500 had been taken from the applicant. The learned counsel for the applicant had drawn attention to another counter affidavit filed by Sri S.P. Mehta, General Manager Northern Railway later on, in which it has been mentioned that the case for compliance of the order of the Tribunal was placed before the deponent only in the second week of Aug. 1997 and the deponent, going through the entire record of the applicant, passed the order dated 14.8.97. The learned counsel for the applicant contends that no enquiry was made associating the applicant and that the case was placed before the General Manager only in August 1997 and therefore the first counter reply filed by Sri Jitendra Tyagi was incorrect and action should be taken against the Opp. party for perjury. The learned counsel for the applicant placed reliance on Asha Ram M. Jain Versus A.T. Gupta and others 1983 Crl. L.J. 1499 to contend that the Opp. parties have disregarded all decencies and required to be severely dealt with so that the right of public is protected in carrying out the administration of justice. The learned counsel for the applicant has also relied on State Vs. R.N. Patru 1976 Crl. L.J. 440 in which it has been held that apology should not be accepted in case a plea for justification has been made. The learned counsel for the applicant has relied on Mattur Hajee Abdul Rahman and Co. ver

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Deputy Commercial Tax Officer Vaniyambadi A.I.R. 1969 Madras 232 in which it has been laid down that it is not open to an officer of Government however high or exalted he may be can take upon himself the responsibility of judging the order and take any action contrary to or inconsistent with the same on the basis of his own judgment. If the officer in bonafide discharge of his functions feels that the order is erroneous or requires any modification, he should approach the court by way of review or a higher court by way of appeal. Yet another case cited by learned counsel for the applicant is that of Sri Ram Pratap Sharma and others Vs. Daya Nand and others A.I.R. 1977 S.C. 809 in which it has been laid down that any apology tendered before the court arrived at a finding that the contemner had committed any contempt of court could not be accepted because the occasion for its acceptance had not arisen. The learned counsel for the applicant contended that any apology tendered by the Opp. parties in their counter reply therefore can not be accepted at this stage.

6. Sri Lalji Sinha, learned counsel for the Opp. parties mentioned that Sri Raj Kumar Opp. party No. 1 had retired on 31.5.96 and that Sri S.P. Mehta who was General Manager Northern Railway was impleaded by an order dated 26.11.98. The two counter replies filed by these two Opp. Parties have to be reviewed in this context. He has mentioned that the counter reply filed by Sri Jitendra Tyagi on behalf of Raj Kumar had mentioned in paragraph 8 that the Opp. Parties after issuing necessary files and ~~decrees~~

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documents had decided that no work of fitter in the grade of Rs.950-1500 had been taken from the applicant. This decision had been communicated to the applicant and a copy of the communication is annexed as C.A.-1. The second opposite party impleaded subsequently had also gone through the entire record of the applicant and passed the order dated 14.8.97 which unequivocally mentioned that Sri Jawahar Lal had never worked in the regular scale of pay as a fitter since 6.11.80 till date. He had never been selected and promoted as fitter. He had not worked as even casual fitter and the work of fitter was not being taken from him. No person junior to Sri Jawahar Lal was working as a fitter and the applicant will be considered for promotion as a fitter in his turn in the seniority list.

7. The learned counsel for the Opp. parties relied on the order of this Tribunal in Civil Contempt Application No. 131 of 1995 in O.A. 1610/92. In this order the Opp. parties were directed to investigate the claim which the applicant had made and the claim was investigated by a committee which came to the conclusion that the same was not tenable. The Division bench of the Tribunal relied on judgment of the Apex Court between V. Kanak Rajan Vs. General Manager South Eastern Railway and others J.T. 1996(7) S.C. 517, who came to the conclusion that the applicant could raise the question arising from the order of the Opp. parties in a fresh O.A.

8. The contention of learned counsel for the

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applicant that since the second counter reply mentioned that the papers of the case were placed before the deponent only in the second week of Aug. 1997 and therefore the first Opp. party could not have enquired into the matter. If the first Opp. party had done so, the second Opp. party namely Sri S.P. Mehta General Manager would have mentioned in his counter reply to this fact. We find from the record that the first Opp. party namely Sri Raj Kumar had not filed any counter reply but counter reply of one Sri Jitendra Tyagi, Divisional Superintending Engineer (I.) was filed on his behalf. It has been mentioned in paragraph 8 that the Opp. parties had seen necessary files and documents and taken into account the entire first and circumstances before coming into conclusion that no work of fitter had been taken from the applicant and that this conclusion had been communicated to the D.R.M. and the D.R.M. had communicated it to the applicant. Annexure C.A-1 has been annexed as a proof of this averment. Annexure C.A-1 is a letter from A.En. Allahabad to Sri Jawahar Lal and others informing them that as per seniority cum suitability trade test would be conducted when vacancy occurs in the Sub Division. No work of fitter was being taken from the applicant. The learned counsel for the applicant has argued that the proof of serving this letter has not been given by the Opp. parties. However, we find that in the rejoinder sworn by the applicant on 20.8.97 reply to para 8 of the counter has been contained in

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paragraph 11 and 12 of the rejoinder. There is no specific denial that Annexure No.1 to the C.A. was received by the applicant. Therefore the contention of learned counsel for the applicant that no enquiry was held only because the second opp. party mentioned that the papers were placed before him in the second week of August 1997 can not be accepted.

9. The second Opp. party has also stated that they made an enquiry and passed order dated 14.8.97. The contention of learned counsel for the applicant that since the applicant was not associated, therefore no enquiry was made, can not be accepted in view of the direction given by the Tribunal in its order dated 3.7.92 that the General Manager should make an enquiry as to whether work of fitter was being taken. There was no specific mode of enquiry which was mentioned and the two General Manager decided to make enquiries on the basis of record. Merely because their enquiry was confined to record, We can not accept the claim of learned counsel for the applicant that the enquiry was not made. The learned counsel for the Opp. parties has produced the notings ^{was} ~~paste~~ based on enquiry report furnished by the Divisional Executive Engineer (Head Quarters) Northern Railway Allahabad.

10. The learned counsel for the applicant's contention that the counter reply filed by the first

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Opp. party could only have ^{been} construed as disinclination to obey the order of the Tribunal. The mention of the fact of seeking the necessary legal opinion before taking a decision to implement can not be construed as disinclination to obey the order. The Opp. parties have a right to file an appeal and in that context they a right to obtain legal information.

11. Therefore we do not find that there is any disobedience of the direction given by the Tribunal and we dismiss the contempt petition and discharged the notices issued to the Opp. parties.

Rafiquddin
Member (J.)

Hassan
Member (A.)

Nafees.