

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD.

Allahabad this the 27th day of February 1996.

C.C.A. 1713 of 1993 in
Original Application No. 927 of 1993

Hon'ble Mr. T.L. Verma, JM
Hon'ble Mr. D.S. Baweja, AM

Chandrama Prasad S/o Sri Ram Deo,
Working as Gangman (CPC) under
P.W.I. Northern Railway, Mirzapur,
R/o Village Chorwa Bari, P/o Sagmohal,
Distt. Mirzapur.

..... Applicant.

C/A Sri Anand Kumar

Versus

1. Union of India through General
Manager, N. Railway, Baroda House,
New Delhi.
2. Sr. Divisional Engineer (I) N. Railway,
Allahabad.
3. Asstt. Engineer, N. Railway, Mirzapur.
4. Permanent way Inspector, N. Railway,
Mirzapur.

..... Respondents.

C/R Sri M.C. Misra

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This contempt application has been filed alleging non compliance of the interim order dated 15.6.1993 in O.A. 927/1993.

2. The applicant while working as casual Gangman at Mirzapur was transferred to Panki. Against the same, he filed an O.A. 927/1993 praying relief of quashing the order of transfer vide order dated 15.6.1993, interim stay was granted as " In the mean while the transfer order will remain stayed."

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The stay order was extended from time to time on various dates and was not extended further as per the order dated 21.3.1994.

3. The contempt application has been filed on 13.3.1993 for non compliance of the above interim order inspite of the repeated representations after the copy of the interim order was handed over to the apposite party No. 2 on 2.7.1993. The applicant has alleged that the opposite parties have wilfully disobeyed the order of the Tribunal and thus committed contempt of the court.
4. The O.A. has been finally decided on 8.11.94 in favour of the applicant and the transfer order has been quashed.
5. We have heard the learned counsel for the parties and perused the material brought on the record.
6. The respondents have countered the contempt application based on the following pleadings:

(i) The applicant had been already released on 29.5.93 from Mirzapur for reporting at Panki, before granting of the interim stay on 15.6.93. Therefore the compliance of the stay order could not be done as the transfer order has already been effected.

(ii) Against the ex-parte stay granted on 15.6.93, while filing the written statement in the O.A., an application was also filed for violation of stay. ^{vacation} Hon'ble Supreme Court in the judgement in Special Leave Petition of 1992 State of Jammu & Kashmir Vs. Mohamad Yakub Khan & Oths, has held that once the application for vacation of ex-parte interim stay is pending the contempt proceedings cannot be continued. *without despoising of this application*

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In view of these facts and circumstances, no wilful or intentional disobedience of the order of the Tribunal has been done.

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On perusal of O.A. file, it is noted that the application for vacation of stay was moved on 23.2.94 while the contempt application was filed on 15.9.93. In view of this status, the contention made by the respondents seeking support of Hon'ble Supreme Court judgement is not tenable as at the time of filing of the contempt application, no application for stay vacation was pending. Any application for vacation of stay filed subsequently does not provide shield for non compliance of the direction of the Tribunal.

As regards the contention of the respondents that the applicant had been already released on 29.5.93 on transfer before grant of interim stay, perusal of the OA and CCA files reveals that this fact had not been disclosed clearly by the applicant in the OA 927/93. Original order for interim stay was passed on 15.6.93 and the same was extended from time to time even after filing the contempt application. The applicant did not aver about his being released ^{either in} application or any time at the ^{granting of} initial stay or when the prayer for the extension of the interim stay was made. However from the facts of the case, it transpires that the applicant had been released ~~when~~ the interim stay was granted. The impugned order ^{at} annexure I and ^{it} admitted has been received by the applicant on 29.5.93. This order is the release order for joining the place of posting as per the transfer order. Once the release letter is received by the applicant, he stands released for reporting at the place of posting. Further this is also confirmed by the fact that the applicant ~~has~~ alleged in the contempt application that he has not been allowed to join duty. If the applicant had not been released, then the question of not allowing on duty after the interim stay order would have not arisen. The applicant did not join after being released at his place of posting and filed an application in which this fact has not been disclosed.

If this averment had been made, appropriate interim stay order could have been passed keeping this fact in view. Once the transfer had been effected, there was no transfer order in existence which was ordered to be stayed.

7. In view of the above facts, we are of the opinion that no contempt of the Court has been committed by the opposite party. The contempt application is accordingly dismissed. The contempt notices are discharged.

Sharma
Member - A

John
Member - J

Arvind.