

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Contempt Petition No. 124 of 1994

IN

O.A. No. 514 of 1994

Dated: 18 April, 1995

Hon. Mr. S. Das Gupta, A.M.  
Hon. Mr. J.S. Dhaliwal, J.M.

Kamta Prasad Tewari, son of  
Sri Raghubar Dayal Tewari, R/o  
Village Mangalpur, P.O. and Tehsil  
Etmadpur, District Agra.

...Applicant.

( By Advocate Sri N.D. Keshari )

VERSUS

1. Sri D.N. Tripathi, Telecom District  
Manager, Agra.
2. Sri S.R. Chaubey, Divisional Engineer  
(Administration) Office of Telecom,  
District Agra.
2. Sri A.S. Yadav, Sub Divisional Officer,  
Telephone Communication East,  
Foundry Nagar, Agra. ... Opp. Party.

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( By Advocate Sri A. Mohiley )

ORDER

( By Hon. Mr. S. Das Gupta, Member(A) )

This contempt application has been filed alleging disobedience to an interim order passed by a Bench of the Tribunal staying the operation of the order dated 1.12.1993 by which the applicant was transferred from Etmadpur to Tundla.

2. The applicant was earlier transferred from Tundla to Etmadpur on his own request. He joined there on 15.7.1993. However, by another order dated 22.10.1993

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the applicant was transferred back to Tundla. He filed O.A. No. 1740 of 1993 challenging the said order before this Tribunal, and a bench of the Tribunal passed an interim order making the transfer subject to the final decision of the application. Thereafter, another order was passed by the respondents dated 1.12.1993 by which the applicant was directed to proceed on transfer from Etmadpur to Tundla. This order was challenged by the applicant by filing a fresh O.A. bearing No.514 of 1994. When the case came up for admission, a Bench of the Tribunal passed an interim order on 15.4.1994 staying the impugned order dated 1.12.1993. The applicant alleges that he was on medical leave from 31.10.1993 to 18.5.1994. When, he came to assume his duties on 19.5.1994 along with medical fitness certificate, the respondents issued a direction that the applicant may not work at Etmadpur. The applicant contends that he had served a certified copy of the interim order dated 15.4.1994 on the Opp. Parties personally on 18.4.1994 and inspite of the service of the said order, the applicant has not, yet been permitted to resume his duties and thus there has been violation of the interim order by the respondents.

3. All the three respondents have filed separate counter affidavits, though all the submissions made

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in all these affidavits is the same. It has been stated that the Tribunal did not stay the original order of transfer dated 22.10.1993 when the applicant filed the earlier O.A. No. 1740 of 1993. Thereafter by order dated 1.12.1993, the applicant was directed to join at Tundla and he was relieved forthwith. He, however, did not join his duties at Tundla but filed a fresh case bearing O.A. No. 514 of 1994 suppressing the fact that he had already been relieved from his post and thus obtained an ex-parte interim order from the Tribunal staying the operation of the order dated 1.12.1993. The counter affidavit was filed by the respondents together with stay vacation application which was pending for disposal. The respondents have contended that in view of the above ~~decision~~ there has been no wilful violation of the order of the Tribunal.

4. We have heard the learned counsel for the parties and have gone through the pleadings of the case.

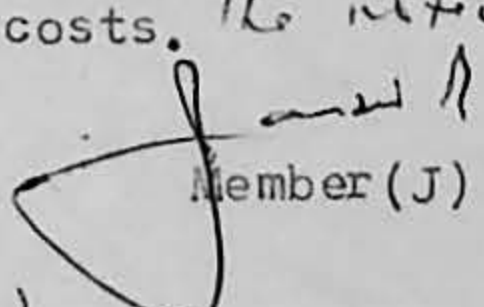
5. We have seen a copy of the order dated 1.12.1993 which was annexed to the O.A. No. 514 of 1994 which has since been dismissed on merits. The order clearly states that the said order of transfer of the applicant to Tundla will have immediate effect. It is, thus, clear that the order of transfer had come into effect long before the interim order dated 15.4.1994 was passed. It is a settled position of law that what has already been done cannot be undone by way of interim order.

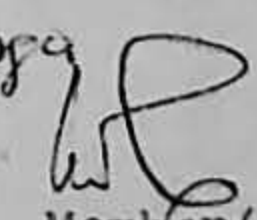
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This was the view taken by the Hon'ble Supreme Court in the case of Mulraj Vs. Murthi Raghunathji Maharaj, AIR 1967 SC 1386. In the present case, if the applicant was relieved from his duties with immediate effect; the interim order which was passed much later become incapable of being implemented. The applicant, however, has disputed the fact that he was relieved from service. He has averred that he was on medical leave when the impugned order dated 1.12.1993 was passed. There is nothing on record to show that he was granted any leave on medical ground. If, however, he deliberately chooses to absent himself in order to avoid service of the transfer order, he cannot say that the order of transfer was <sup>not</sup> actually served on him.

6. In any case, ~~when~~ there is a dispute on the fact as to whether the applicant was actually relieved for joining at Tundla. If he was actually relieved, he could not have been taken back by the stay order passed in the absence of a specific order to take him back at Etmadpur ~~at~~ itself.

7. We are, therefore, of the view that no case has been made out about contempt of court. The application is, therefore, dismissed. There will be no order as to costs. *The notice issued are discharged*

  
Member (J)

  
Member (A)

(n.u.)