

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated: Allahabad this 27th Day of March, 1995

C.C.A. NO. 151 OF 1994

IN

ORIGINAL APPLICATION NO. 1123 OF 1994

FORAM: Hon'ble Mr T.L.Verma, JM

Hon'ble Mr S. Dayal, AM

Ravi Kant Pandey son of Late Sri H.K.Pandey,
resident of 1/O, 1/2, G.P.O. Compound Agra,
presently posted in the Telecommunication
Civil Division, Agra

--- PETITIONER
APPLICANT

Versus

1. Sri Santosh Kumar, Executive Engineer,
Tele. Communication, Civil Division,
H.P.O. Building, Kanpur
2. Sri B.K. Agarwal, Assistant Executive Engineer,
Civil Division, Tele. Communication Agra

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RESPONDENTS

ORDER

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

1. This is contempt petition filed by the applicant for alleged deliberate and wilful non-compliance of the order of Stay on transfer of the applicant from Agra to Kanpur given on 29.7.94 by a Bench of this Tribunal.

2. In the Affidavit accompanying the Contempt Petition, the applicant stated that the Petitioner remained on leave since 17.5.94 till 29.7.94 and resumed his duties on 30.7.94 after furnishing proper information to the Respondents. This information included the Interim Order passed by the Tribunal on 21.7.94. It is stated that the applicant resumed his duty on 30.7.94 but he was restrained from continuing on post at Agra from 2.8.84. It is said that Respondent No.2 in this case passed an order at the instance of Respondent No.1 on 2.8.94 restraining the applicant from entering the premises of the Office at Agra. It is also claimed that the Petitioner resumed his duties on 30.7.94 and was allowed to work in the Office and it is significant that the applicant had never handed over charge of his post in pursuance of the transfer order impugned in the O.A.

3. That the applicant was treated by Respondent No.2 as relieved and the Security Guard was directed not to allow the applicant to enter into the Office premises with effect from 2.8.94. Thus it is alleged that the Respondents willfully disobeyed the Interim Order passed by the Tribunal in O.A. No.1123/94. Therefore, the applicant has come here for initiating the contempt proceedings against the Respondents. Another Supplementary Affidavit was filed by the applicant in which he mentions that that the applicant had done some official work on 30.7.94 and was filing a copy of the work done on that date. The applicant has also stated in the Supplementary Affidavit that Respondent No.2 directed the applicant not to put his signature on the Attendance Register which appears to have been done under instructions of Respondent No.1 and that Respondent No.2 had scored out the signature of

the applicant which was made on 30.7.94 and wrote in the Register that the applicant's name has been struck off the Attendance Register with effect from 20.7.94 and signed this Register on the back date which was 26.7.94 while the applicant had signed the Register on 1.8.94. It is also mentioned that Respondents had approached the Superintending Engineer for seeking approval of the transfer of the applicant on 6.8.94.

4. In the Counter Affidavit filed by Respondent No.1, it has been mentioned that the Interim Stay granted by the Tribunal on 29.7.94, the order was passed without hearing the Counsel for the Respondents. It has been stated that the applicant had already stood relieved from his duties from Agra on 26.7.94 before he had received the Stay Order from the Tribunal and that the Tribunal was not aware of the fact in passing the Interim Order granting Stay on transfer. It is also mentioned that the successors of the applicant, Sri Krishna Nand has reported for duty with effect from 20.5.94 and that the applicant stood relieved with effect from 26.7.1994. It is stated that the applicant had applied for sanction of Casual Leave from 9.5.94 to 13.5.94 and after joining his service on 16.5.94, he submitted an application for sanction of Earned Leave from 17.5.94 to 24.5.94, thereafter the applicant submitted an application for sanction of commuted leave with effect from 25.5.94 to 29.7.94. The transfer order of the applicant dated 19.5.94 was not in connection with his proceeding on leave but on the ground of various complaints. It is also mentioned that the applicant came to the Office of the Assistant Executive Engineer Telecom Civil Sub-Division, Agra, for joining on 30.7.94. He was informed that he stood relieved with effect from 26.7.94 and directed to the Executive Engineer, Telecom Civil Division, Kanpur. A copy of the order dated 26.7.94 was sent to him. He was shown this copy which he refused to receive after perusal. It is also stated that

the Assistant Executive Engineer reported that he was on a visit to Transport Nagar, Agra, when the applicant came for reporting for duty. The applicant is stated to have resumed duty in his absence and submitted his joining report and other related documents to Sri Krishna Nand, Telecom Assistant. The applicant is also alleged to have signed the Attendance Register for past without seeking permission from the Assistant Executive Engineer, and, when the Assistant Engineer returned, he informed the applicant that he had already been relieved and gave letter dated 30.7.94 to this effect. The applicant refused to accept the letter and the letter was despatched by Registered Post at his residential address. It is mentioned that Sri Krishna Nand had joined on the post of the applicant on 20.5.94 and that the applicant could not be allowed to join because there was only one post of Telecom Office Assistant at Agra. The applicant was treated as relieved with effect from 26.7.94. The transfer, thus, had been totally implemented before the Stay Order dated 29.7.94 was passed. It is stated that the entry of the applicant was stopped in to the office premises because he was creating nuisance and was acting in an indisciplined manner in the Office. It is also mentioned that the applicant was asked to hand over the keys and locks of the Office almirah but he refused to hand over these items. It is also alleged that the applicant had removed some papers from the files dealing with his case and kept them in the almirah of the Office. It is also alleged that the applicant had come to know of his transfer order dated 19.5.94 which is evident from ANNEXURE A-5 to the O.A. and he was avoiding to join the Office, therefore, his name was struck off from the Rolls of Agra Office from

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26.7.94. The Respondent No.1 has denied that he willfully discharged the order of the Tribunal and has denied all the allegations made against him. The Respondent No.2 filed a Supplementary Counter Affidavit in reply to the Supplementary Affidavit filed by the applicant. In this Supplementary Counter Affidavit he has explained in detail the happenings of 30.7.94 and 1.8.94 and has denied that the applicant was allowed to join on 30.7.94. The details given by Respondent No. 2 in the Supplementary Counter Affidavit corroborative what had been stated by Respondent No.1 in his Counter Affidavit. Respondent No.2 also filed a Counter Affidavit in which too the same facts have been narrated. In this Counter Affidavit the Respondent No.2 has given full facts of the case which corroborate the facts mentioned by Respondent No.1 in his Counter Affidavit. The applicant had filed a Rejoinder Affidavit in which he had denied the allegations and the averments contrary to what he had stated in the application and the Supplementary Affidavit and he reiterated, the facts already given by him in O.A. and S.A. The Respondent had filed a Supplementary Counter Affidavit, reiterating the facts already given by the Respondents in their Counter Affidavit. The applicant has filed a Rejoinder Affidavit to the Supplementary Counter Affidavit and has contested the averments made by the Respondents in their S.C.A. In this R.A. the applicant had **countered** allegations made by Respondents that the applicant had left the Office without leaving any information and submitting any leave application. He has mentioned that the leave from 17.5.94 to 27.9.94 has been sanctioned and ANNEXURE-4 - copy of the sanction order. He has also annexed order dated 11.1.94 passed by Respondent No.1 under Rule 18 CCA Rules exonerating the applicant from the charge of proceeding

on leave without obtaining sanction.

5. The Respondents have filed another S.C.A. In this S.C.A. the Respondents have reiterated their stands and have explained the circumstances in which the order R.A. I dated 14.11.94 regarding the sanction of leave was issued.

6. The arguments of Sri A.P. Srivastava, Counsel for the Applicant and Sri A.K. Mohiley, Counsel for Respondents were heard along with the arguments in the main A.O. No. 1123/94. The Judgement has already been delivered in that case on 27.2.96 and we have found substance in the plea of the Respondents in that case that the applicant had not come with clean hands to the Tribunal in his application. He had denied the knowledge of the order of the transfer before 30.7.94 but he had mentioned this order in his application and attached a copy of it. His application was filed in the Tribunal on 27.7.94 and must have been drafted before that date. This falsifies the applicant's plea that he remained out of touch with the office from 8.5.94 to 30.7.94 and was unaware of the happenings in the office especially as the applicant has not mentioned as to how he obtained the copy of the order which was meant for him and sent to him as averred by the respondents. This plea is further falsified by the applicant's own averment in Paragraph 4.5 of his application that the applicant was on leave and the opposite parties were trying to give effect to the transfer order and were not permitting the applicant to resume duties (Para 4.5 of the O.A.). This means that the applicant had tried to join but was not allowed to do so by the parties before the O.A. was drafted. Thus the applicant appears to have obtained the Interim Stay by concealing the facts that the only post of Telecom Office Assistant available in the Office of P & T, Civil

Sub-Division, Agra, had been filed up as early as on 20.5.92 because Sri Krishna Nand Sachan, who was transferred to Agra had taken over on the post of the applicant which was vacant due to the applicant's proceeding on leave. Therefore, his application against transfer was dismissed and he was not found entitled to any relief.

7. The applicant's contention that the order of his relief was passed by Respondent No. 4 after he communicated the Stay on his transfer on 30.7.94 has also not been found correct. The applicant was ordered to be relieved on 26.7.94 when his name was struck off from the rolls of the Office of Telecom Sub-Division, Agra, while the Stay on transfer was given by this Tribunal on 29.7.94 and was communicated by the applicant on 30.7.94. This belated relief of the applicant was not actually necessary because his post had already been occupied on 20.5.94 by his successors and there was no post left for him, to join after that date. Therefore, the transfer order stood implemented on 20.5.94 and its implementation could not have been undone by Stay on transfer given on 29.7.94. We, therefore, do not come to conclusion that the Respondents are guilty of a wilful and deliberate dis-obedience of the orders of this Tribunal. The stay on transfer was obtained by the applicant because he concealed the fact that his successor had joined. A perusal of that part of paragraph 4.5 which has been added by the applicant in hand written form is quite revealing. It reads as under:-

" The applicant is on leave and the opposite parties are trying to give effect the order and is not permitting the applicant to resume duties"

8. The applicant has thus obtained stay on transfer on his averment that the post was vacant and suggestion that he had not been relieved. It is quite clear from the order sheets dated 12.8.94 that the Tribunal never intended to restore the status quo^{ante}. The order reads as follows:-

" Shri A.P.Srivastava, learned counsel for the applicant Sri Prashant Mathur, learned counsel for the respondents appeared and requested for short time for filing objection against Misc. Application No.2034 of 1994 moved by the applicant. The learned counsel for the applicant states that the applicant has been restrained from entering the office by the respondents. However, the counsel for the respondents states that the applicant had already been relieved. The position regarding the actual date of relieving is not clear. The case was earlier listed for hearing on 15.9.1994. The case is preponed and be listed on 30.8.1994, on which date the learned counsel for the respondents may produce the connected records. The interim order passed earlier shall continue till then. The copy of this order may be given to the parties today itself".

9. The discussion in the previous paragraphs shows that this is no case of wilful and deliberate disobedience of the orders of the court. Therefore, the petition for Contempt fails and the notices are discharged.



RJ


JM