

17.11.99.

Hon'ble Mr. L. Hmingliana, A.M.

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

Sri K.P. Singh for the applicant. Sri A.K. Gaur for the opposite parties.

Heard.

Misc. Contempt Application No. 215/94 is against Sri R.K. Singh, Divisional Railway Manager, Northern Railway, Lucknow for the alleged non implementation of the Tribunal's interim order dated 25.8.1984 staying the order of transfer of the applicant till 20.9.94.

The counter affidavit was filed by Sri Ashima Singh, Senior Divisional Commercial Manager, Northern Railway, Lucknow who claimed that she was authorised to file the affidavit on behalf of the Opp. party. It is stated in her affidavit that the applicant was suspended by the Senior Divisional Operating Manager's order dated 10.5.1994 and he was transferred to Jodhpur vide General Manager (Personnel) Northern Railway, New Delhi's letter dated 27.7.94 and he was spared for Jodhpur on 7.8.94 but he refused to accept the spare memo. The spare memo and a copy of the transfer order were pasted at his railway residence in the presence of five witnesses.

Sri A.K. Gaur, learned counsel for the respondents stated that the authority who had to implement the interim order of the Tribunal was Smt. Ashima Singh and she was the proper authority to file the counter affidavit. He further stated that the D.A. 1250/94 filed by the applicant in which the interim order of the Tribunal was made, had subsequently been dismissed by the Tribunal as infructuous by order dated 6.3.95 as by then the applicant had retired from service on his superannuation.

Sri K.P. learned counsel for the applicant contended that it was Sri R.K. Singh, Divisional Railway Manager, the Opp. Party who should have filed the counter affidavit offering his explanation for non implementation of the Tribunal's order to which the learned counsel for the respondents pointed out that he was out of India and

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he was not in a position to file the affidavit and that in any case he was not the person in authority to implement the order of the Tribunal. The counter argument of the applicant's learned counsel to that is that Sri R.K. Singh was the one to whom the applicant made his representation for implementation of the order of the Tribunal.

Now that the O.A. itself has been dismissed by the Tribunal as infructuous after the retirement on superannuation of the applicant, the question before us is limited to the alleged non implementation of the Tribunal's order during the brief period from 25.8.94 to 20.9.94 after the lapse of five years. We find that the responsibility of the alleged contemner Sri R.K. Singh was rather remote because it appears that he was not ^{the} authority to give the order for the applicant's retention in his post. In any event, it appears to us that the violation of the order of the Tribunal on his part if any would not be sufficient for awarding him punishment under Contempt of Court's Act after ^{the} lapse of five years.

The C.C.A. No. 215/94 is therefore disposed of and the notices issued to the alleged contemner is hereby discharged.

R. A. Mehta

J.M.

W.H. Bhandarkar
A.M. 17/1/99

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