

open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Contempt Petition No. 122 of 2003

IN

original Application No. 601 of 1999

this the 8th day of April 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)
HON'BLE MR. S.C. CHAUBE, MEMBER(A)

R.N. Rastogi, S/o late Saligram Rastogi, R/o 128/2-
107-A, Yasoda Nagar (Lahariya Park near Central Bank),
Kanpur.

Applicant.

Versus.

1. Sri I.P.S. Anand, General Manager, North Central Railway, Allahabad.
2. Sri Shree Prakash, Divisional Railway Manager, North Central Railway, D.R.M.'s office, Nawab Yusuf Road, Allahabad.

Respondents.

By Advocate : Sri A.K. Gaur.

O R D E R

PER MRS. MEERA CHHIBBER, MEMBER(J)

The applicant has filed this Contempt petition stating therein disobedience of the directions given by this Tribunal in its order dated 15.5.2002. By the said order, respondents were directed to release the Gratuity as well as leave encashment due to the applicant after revising his pay as per 7th Pay Commission and give him the same within a period of six months positively alongwith ~~the~~ interest at the rate of 9% per annum from the date it had become available to the applicant in law as per rule 87 of Railway Service (Pension) Rules, 1993. However, liberty was given to the respondents to recover any legitimate dues from the applicant which they were entitled

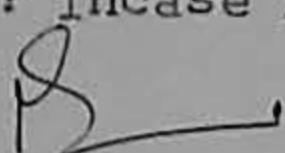
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to under the rules after following due process of law. Respondents were further directed to release complementary passes to the applicant for current year and thereafter in accordance with rules and instructions. Lastly, cost of Rs.1500/- was awarded to the applicant and against the respondents.

2. Today, when the matter came up for hearing, it was admitted by the applicant that the pay of the applicant has been revised as per 5th pay Commission. But according to the applicant, respondents have not released the full gratuity because they have deducted the damages from D.C.R.G. amount on account of unauthorised occupation of quarter. As per order dated 8.10.2002 the D.C.R.G. amount due to the applicant was Rs. 99141, whereas recovery was shown to be Rs. 97930/-. Accordingly, balance of Rs.1211/- was passed under Co7 dated 13.8.1999. It is submitted by the applicant that the damage charges cannot be said to be the legitimate dues as per the judgment of Hon'ble Supreme Court reported in 2003 (1) ATJ 246 in re. Union of India & Others Vs. Madan Mohan Prasad. He has, thus, submitted that the respondents have not complied with the directions of this Tribunal keeping in view of the judgment of Hon'ble Supreme Court. At this juncture, it would be relevant to quote the judgment of Hon'ble Supreme Court in the case of M/S Ashok Paper Kamgar Union & Others vs. Dharam Godha and others reported in AIR 2004 SC 105 wherein the Civil Contempt has been defined as follows :

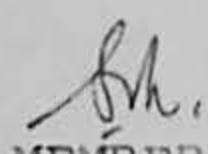
"Section 2(b) Contempt of Courts Act defines 'civil contempt' and it means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of undertaking given to a Court. Willful means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law."

3. Even otherwise the Hon'ble Supreme Court has already held that in contempt proceedings the correctness of the order cannot be looked into, therefore, if the applicant is aggrieved by the decision of the respondents or the order passed by them, the remedy open to him is to challenge the same in original side by filing O.A. Therefore, liberty is given to the applicant to challenge the order, if so advised, by filing fresh O.A. As far as second direction is concerned, it is admitted by the applicant that complementary passes have been released to the applicant for the current year. As far as third direction relating to award the cost of Rs.1500/- is concerned, counsel for the respondents has filed an affidavit wherein in para 4 they have stated that the amount of Rs.1500/- as intimated by the respondents' counsel before this Tribunal has already been sanctioned and sent to the applicant by registered post by means of cheque no. 699015 dated 27.8.2002. However, Annexure annexed with the affidavit shows that this is only a pay order for Rs.1500/- issued on 26.7.2002 and sent to the Cashier, but there is no acknowledgement to show that this amount has indeed been paid to the applicant, even though the respondents have stated in the affidavit that the amount of Rs.1500/- was sent to the applicant by registered post by means of the aforesaid cheque dated 26.7.2002. Therefore, it cannot be said to be contempt of court, but yet we have also to see that the applicant has infact received the said amount or not. The applicant has also filed Rejoinder affidavit today in the Court itself wherein in para 7, it is categorically stated that the cost of Rs.1500/- has not been paid till date, quite possible that the cheque has been mis-placed in the transit itself. Therefore, respondents are directed to check their records and see whether the cheque dated 26.7.2002 has been encashed by the applicant or not ? Incase it has not been encashed



by the applicant, the respondents are under ~~the~~ duty to pay the said amount to the applicant within six weeks from the date of communication of this order. Incase, it is found from the record that the cheque had already been encashed by the applicant, we are inclined to impose the cost of Rs.1500/- on the applicant to pay to the department for making a wrong statement on affidavit. We are not happy for passing this kind of order, but ultimately we have to balance the equities between both the parties and to ~~see~~ ^{allow to B} that no one is ^{allowed to B} taken advantage from others un-necessarily by making a wrong statement.

4. Inview of the above discussions, this contempt petition is dismissed. Notices issued to the respondents are discharged. The applicant would however at liberty to challenge the order passed by the respondents, if so advised in accordance with law.


MEMBER (A)


MEMBER (J)

CIRISH/-