

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 21st day of Oct 2005.

Contempt Petition No. 158 of 2003

In.

Original Application No. 670 of 2003

Hon'ble Mr. K.B.S. Rajan, J.M.

Hon'ble Mr. A.K. Singh, A.M.

Ranjeet Singh, S/o late Shov Nath Singh, Presently working as Head Clerk under Assistant Material Diesel East Central Railway, Mugal Sarai.

.....Applicant.

(By Advocate : Sri M.K. Upadhyay)

Versus.

1. A.K. Kansal, Additional Divisional Railway Manager, East Central Railway, Mugalsarai.
2. Prashant Chakarwari, Divisional Mechenical Engineer (Power) East Central Railway, Mugal Sarai.
3. J.P.N. Sharma, Divisional Mechanical Engineer, (Diesel), East Central Railway, Mugalsarai.
4. Gorakh Nath Dubey, Lock Inspector working under Divisional Mechanical Engineer, East Central Railway, Mugalsarai.
5. Major B.K. Singh, Divisional Mechanical Engineer (Power) East Central Railway, Mugalsarai.

.....Respondents.

(By Advocate : Sri : Anil Kumar)

O R D E R

By K.B.S. Rajan, J.M.

Certain occasions, the orders of the Tribunal become impossible of execution and this one belongs to that category. The Apex Court has in the case of

Mohd. Iqbal Khanday v. Abdul Majid Rather, (1994) 4

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"Normally speaking, it cannot be gainsaid that the order ought to have been obeyed but it appears that there are insuperable difficulties in implementing the order.....

16. From the above, it appears that the appellant was expressing his genuine difficulties with regard to the implementation of the order dated 21-9-1992. In such a situation the insistence of the courts on implementation may not square with realities of the situation and the practicability of implementation of the court's direction. In our considered view, hooking a party to contempt proceedings and enforcing obedience to such orders hardly lends credence to judicial process and authority; more so, in the peculiar facts and circumstances of the case. The court must always be zealous in preserving its authority and dignity but at the same time it will be inadvisable to require compliance of an order impossible of compliance at the instance of the person proceeding against for contempt. Practically, what the court by means of the contempt proceedings seeks is an execution which cannot meet with our approval."

2. The applicant was made entitled to a particular quarter 35 AB Type III, and the present allottee of the said quarter (Shri Dubey) was to be allotted another quarter 57 CD European Colony, where a another Railway official (one Shri Mukherjee) is continuing after superannuation. While the respondent in the contempt petition had assured that the moment the said Mukherjee vacates the accommodation, which was scheduled by June, 2005 when he was to superannuate the same would be handed over to Shri Dubey and in turn the accommodation presently under occupation of Shri Dubey would be handed over to the applicant, without any intimation to the said respondent, the DRM under his discretionary power had allowed extension upto 28th

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Febrary, 2006 to the said third person Shri Mukherjee whereby Shri Dubey could not move to that accommodation and as a chain reaction, the applicant could not be offered the desired accommodation.

This has resulted in the direction of this Tribunal non compliable. The respondent at more than one place in the affidavit expressed unconditional apology and submitted that the situation so occurred was beyond his control.

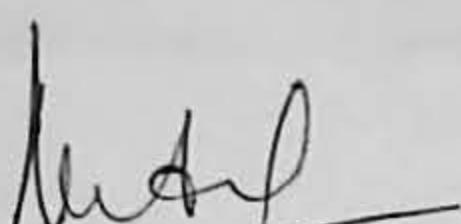
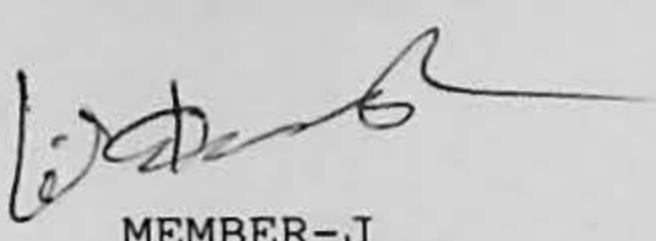
3. The situation is well appreciated. The respondent would not have anticipated that there would be a further extension for retention by Shri Mukherjee of the accommodation till 28th Feb. 2006. This extension is within the vested right of Shri Mukherjee and the DRM who granted the extension has full powers to grant such extension. The DRM is under no obligation to inform the respondent in the Contempt petition of his intention to grant the extension. Of course, the respondent could have endorsed a copy of the letter he addressed to the applicant and Shri Dubey, vide letter dated 13-01-2005, annexed to the affidavit dated 24th May, 2005.

4. Powers under the Contempt of court should be utilized as a safety valve and that too, only when the court is satisfied that there is disobedience and that disobedience is deliberate or willful. In other words, there must be a clear "willful disobedience" and here in the 'disobedience' of the respondent, the qualifying aspect "willful" is

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conspicuously absent. Hence, no contempt proceedings could be initiated against the said respondent. Of course, the respondent is under a legal obligation to watch the situation and see that the above confusion does not repeat and he shall ensure that immediately on vacation of Shri Mukherjee of his accommodation, the same would be handed over to Shri Dubey and in turn, the allotment at present in possession of Shri Dubey shall be handed over to the applicant.

5. A compliance report shall be filed by the respondent by 15th March, 2006. The Contempt petition is disposed of and the notice discharged.


MEMBER-A
MEMBER-J

GIRISH/-