

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 03rd DAY OF DECEMBER 2009)

PRESENT

HON'BLE MR. JUSTICE A. K. YOG, MEMBER (J)

Hon'ble Mr. S.N. Shukla, Member (A)

Contempt Application No. 109 of 2007
IN

ORIGINAL APPLICATION No. 948 OF 2005.
(U/S 19, Administrative Tribunal Act, 1985)

Avinash Chandra Srivastava, S/o Sri L.N.
Srivastava, ~~On R/o L.N. Srivastava~~ R/o 860
Mutthiganj, Allahabad, posted as Carpet Training
Officer At Regional Carpet Store Lekhrajpur,
Allahabad.

.....Applicant.

By Advocate: Sri N.L. Srivastava

Versus

1. Shri Sanjay Agarwal, Development Commissioner
(Handicrafts) West Block No. 7, R.K. Puram,
New Delhi.
2. Shri R.K. Meena, Regional Director (Centre
Region) Office of the Development Commissioner
(Handicrafts), Kendriya Bhawan 7th Floor
Aliganj, Lucknow.
3. Shri V.D. Chatturvedi, Assistant Director (A
and C), Carpet Weaving Training Cum-Service
Centre, Allahabad, office of the Development
Commissioner (Handicrafts), 1A/3A Ram Priya
Road, Allahabad. At present working as Asst
Director, Service Centre D-57/58A-1 Kasturba
Nagar, Sagra, Varanasi.

..... Respondents.

By Advocate: Shri Amit Sthalekar

O R D E R

(DELIVERED BY: JUSTICE A. K. YOG, MEMBER-JUDICIAL)

Heard counsel for the parties.

[Signature]

2. Counsel for the Respondents informs that he has filed Supplementary Counter Affidavit (after service on counsel for the applicant). No request on behalf of the Applicant to file reply.

3. This contempt petition is to seek implementation of order dated 16.03.2007 passed by the Tribunal; relevant para 7 and 7 (renumbered) read as under:-

"7. The central point for consideration is as to whether punishment order dated 15.5.96 was implemented by the Asstt. Director (A&C) Gwalior Carpte Weaving Training Cum Service Centre vide order dated 1.8.96(A-3) by reducing the basis pay from Rs. 2300/- to Rs. 2250/- w.e.f. 1.5.90 to 30.4.91 if so can it be re-implemented in the manner it has been done vide order dated 11/12.4.2005 (A-10). Penalty order dated 15.5.96 (A-2) clearly provided that reduction from Rs. 2300/- to Rs. 2250/- in the time scale of Rs. 1600-50-2300-EB-60-2600) was for a period of one year, without debarring the applicant from earning increment during this period and without postponing his future increment. It is a fact that the applicant was at the stage of Rs. 2300/- as on 1.5.90. Since annual increments were not in fact given on 1.5.91, 1.5.92, 1.5.93, 1.5.94, 1.5.95 and 1.5.96 when the punishment of reduction to lower stage by one stage was imposed, the correct way was to first determine the basis pay as on 15.5.96, by adding increments that fell due in between 1.5.90 to 1.5.96 and then to pass the penalty order. But here we are not on the point as to what type of order should have been passed. The correctness of penalty order is not the subject matter of these proceedings. It is the implementation of that order, that has to be seen. The applicant appears to be correct, in saying that the penalty order was in fact implemented vide order dated 1.8.96, as shown in Annexure -3. There was therefore, no jurisdiction on the part of the respondents to implement it again, vide order 11/12.4.2005 (A-10), by reducing the pay from 2750/- to Rs. 2650/- w.e.f. 15.5.96. This has adversely affected his subsequent pay in the revised pay scales in different grades. So, the impugned order dated 11/12.4.2005 (A-10) has to be quashed and the respondents are to be directed to refix his pay in revised pay scales as shown therein, without reducing his pay from Rs. 2750/- to Rs. 2675/- w.e.f. 15.5.96 and to pay arrears, if any accordingly. The recovery order dated 28.7.2005 (A-12) based on order dated 11/12.4.2005 (A-10) is also liable to be quashed. In so far as the claim for interest on arrears is concerned, I think the same cannot be accepted.

7. In the result, the two orders dated 11/12.4.2005 (A-10) and 28.7.2005 (A-12) are quashed, with a direction to the respondents No. 2,3 and 4 to refix applicants pay in revised pay scales/different scales as indicated in Annexure 10, without reducing his pay from 2750/- to 2675/- w.e.f. 15.5.96 and pay arrears of pay, if any, within a period of four months from the date certified copy of this order is produced before them. The relief for interest is refused. No order as to costs."

(Photocopy of Tribunal order dated 16.03.2007 is Annexed to CCP)

Am

4. When this contempt petition was filed, the order of Tribunal (in question) dated 16.03.2007 (referred to above) was not complied. Said order of the Tribunal is complied vide order dated 23.01.2008 Annexure CA-1 to the counter-affidavit and making payment (as refund) through Bank draft dated 21.03.2008 for Rs. 46,584/- (Annexure CA-2).

5. Relevant pleadings, for deciding present contempt petition, are contained in para 19, 20, and 21, which read:-

"19. That, after hearing the parties the Hon'ble Tribunal allowed the abovesaid original application vide Judgment and order dated 16.03.2007 and quashed the impugned orders dated 11/12.05.2005 and 28.07.2005 and directed the opposite parties to refix the applicant's pay in revised pay scale/ different scales as indicated in annexure-10 now annexure No. 6 without reducing his pay from Rs. 2750/- to Rs. 2675/- w.e.f. 01.05.1996 and pay the arrears of pay, if any, within a period of four months from the date of production of the certified of this order before them.

20. That, after receiving the certified copy of the above said Judgment the applicant sent the same to the opposite party No. 1 and 2 by registered post on 21.03.2007 and gave the copy of the same by hand to hand to the opposite party no. 3 on same day i.e. on 21.03.2007, alongwith the covering letter dated 21.03.2007.

21. That although more than five months has been passed from the date of receiving the Judgment dated 16.03.2007 but the opposite parties did not complied with the Judgment and order dated 16.03.2007 passed by this Hon'ble Tribunal and he has not paid a single rupee to the applicant as directed by this Hon'ble Tribunal till now. And as such it is clear that the opposite parties have committed the contempt of this Hon'ble Tribunal wilfully and deliberately."

6. The aforesaid para 19, 20 and 21 of the counter affidavit have been replied vide para 5, 6, 7 and 9 of the CA which reads:-

"5. That, the facts stated in para nos. 18, 19, 20 of the affidavit need no reply being matter of record.



6. That, the allegation of para nos. 21 and 22 of the affidavit are baseless, incorrect and are denied. It is stated that in compliance of the order of this Hon'ble Court dated 16.3.2007 the department has refixed the pay of the petitioner at Rs. 2750.00/- w.e.f. 01.05.1996 (and in the revised pay scale 5500-175-9000 at Rs. 8300.00 w.e.f. 01.5.1997) and in the higher scales vide order dtd 23.1.08.
7. That, by a demand draft no. 077858 dated 17.3.2008 a sum of Rs. 46585.00 as arrears has also been paid to the petitioner as will be clear from the letter dated 21.3.2008.
9. That, the deponent on behalf of himself and other opposite parties however, submits that they have the highest regard and respect for any order which may be passed by this Hon'ble Court or by any other court of law and can never think of wilfully or deliberately, disobeying or flouting any of its orders and in case this Hon'ble Court is still of the view that the deponent and opposite parties have in any manner wilfully or deliberately, disobeyed or flouted any order of this Hon'ble Court the deponent on behalf of himself and other opposite parties offers unconditional and unqualified apology to this Hon'ble Court and undertakes to abide any order which this Hon'ble Court may be pleased to pass in the circumstances of the case."

7. The applicant has filed rejoinder affidavit and aforequoted paras of the counter affidavit have been replied vide para 4 of the rejoinder affidavit which reads:-

"That, the contents of paragraphs no. 4, 5, 6, 7, 8, 9 and 10 of the counter affidavit are absolutely incorrect and vehemently denied. From the Judgment Dated 16.03.2007 it is clear that the Hon'ble Tribunal had directed the opposite parties to refix the applicant's pay in revised pay scale / different scale as indicated in Annexure -10, without reducing his pay from Rs. 2750 to Rs. 2675 w.e.f. 15.05.1996 any pay the arrears of pay if any within a period of four months. From Annexure CA-1 it is clear that on 1.5.1996 that pay scale of the applicant was Rs. 2650/- but against the direction of this Hon'ble Tribunal dated 16.03.2007, the Opposite parties reduced the pay scale of the applicant as Rs. 2675/- from Rs. 2750/- w.e.f. 15.05.1996 for one year. And as such it is clear cut disobedience of the Judgment and Order Dated 16.03.2007 wilfully and deliberately and due to above said willful disobedience the applicant's financial loss is Rs. 7266/- which had been recovered from the applicant's salary vide order dated 28.07.2005 passed by the office of the opposite party no. 3, and the abovesaid order 28.07.2005 has already been quashed by this Hon'ble Tribunal vide Judgment and Order dated 16.03.2007 in Original application No. 948/2005. And as such it is clear that the opposite party no. 2 has not only filed wrong affidavit wilfully and deliberately before this Hon'ble Tribunal but he is trying to mislead the court wilfully and deliberately, therefore, the opposite parties are liable to be punished under the Contempt of Court's Act as well as he is also liable to be punished under the Indian Panel Code also."



8. As noted above Suppl. counter affidavit has been filed alongwith documents - showing calculation and compliance vide order dated 23.01.2008 (Annexure CA-1 to the counter affidavit) according to the Respondents they have complied with Tribunal order dated 16.03.2007.

9. Having heard learned counsel for the parties and on perusing the pleadings (including Suppl. counter affidavit) it cannot be said that respondents have deliberately or wilfully flouted order of Tribunal dated 16.03.2007.

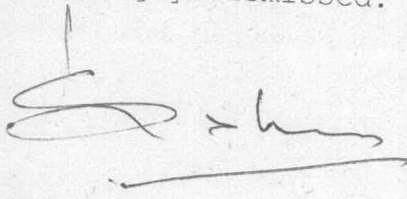
10. Further a statement is made by the learned counsel for the respondents that Writ Petition No. 29389/07 (Union of India and others Vs. Avinash Chandra) has been filed in Allahabad High Court wherein the applicant has filed counter affidavit. We further are informed that there is no interim order and said Writ Petition is pending before High Court.

11. In view of the above it cannot be said that respondents have deliberately, wilfully and knowingly flouted Tribunal order dated 16.03.2007. The respondents seem to have complied with Tribunal order - as per their understanding of 'Order in question'. It is open to the applicant to demonstrate that the order of Tribunal has not been complied with while contesting said Writ Petition in pending in High Court. Apart from what has

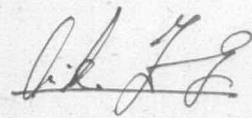
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been stated above, it is to be kept in mind that merit of order dated 23.01.2008 - cannot be assailed by involving Contempt Petition. We cannot go into merit of the order dated 23.01.2008 while exercising contempt jurisdiction.

12. In view of the above this contempt petition has no force and accordingly dismissed.



Member (A)



Member (J)

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