

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Contempt Petition (Civil)No.1 of 1989.

Date of decision : February 28,1989.

Shri K.D.Bajpai, s/o A.R.Bajpai,
Dy.Inspector General of Police and Principal,
Police Training College,At/P.O.Angul,
District-Dhenkanal.

Applicant.

Versus

Shri Vinod Jha, Secretary,
Home Department, Govt.of Orissa,
At/P.O.Bhubaneswar, Dist-Puri.

Respondent.

For the applicant : Mr.G.A.R.Dora,Advocate.

For the respondent: Mr.K.C.Mohanty,
Government Advocate(State)

C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER(JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *No*.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER(J) In this petition for contempt, the applicant Shri K.D.Bajpai prays to punish the respondent No.1, Shri Vinod Jha, I.A.S., Secretary to the Government of Orissa, Home Department for committing contempt of this court.

2. Shortly stated, the case of the applicant is that he is a member of the Indian Police Service and is in the cadre of Deputy Inspector General of Police posted as Principal, Police Training College, Angul. The applicant came up with an application under Section 19 of the Administrative Tribunals Act, 1985, forming subject matter of Original Application No.377 of 1988 to give a declaration that the Special Inspector General of Police, Training and Co-ordination and Director, State Police Academy could pass no orders exercising control and jurisdiction over the applicant and so also to restrain the Secretary to the Government of Orissa in Home Department and the Director General-cum-Inspector General of Police, Orissa from initiating any disciplinary proceeding or issuing any order of suspension against the applicant for the alleged violation of the orders contained in Annexures-A/3, A/4 & A/7. In the said application under section 19 of the Act forming subject matter of O.A.No.377 of 1988, the applicant Mr.K.D.Bajpai had also prayed to stay operation of the order in Annexure-A/7 and to injunct the respondents 1 and 2 namely the Secretary to the Government of Orissa in Home Department and the Director General of Police from taking any disciplinary action including suspension and drawing up of departmental proceeding against the applicant for violating the orders contained in Annexures-A/3 and A/4. In regard to the prayer for issuance

of interim orders to the above extent the Bench vide its order dated 14

21.11.1988 passed in O.A.No.377 of 1988 directed issuance of notice to the Respondents 1 to 4 to show cause as to why operation of the order contained in Annexure-A/7 should not be stayed and it was further directed that the show cause to the stay matter should be filed by 7.12.1988 and the stay matter should come up for hearing on 15.12.1988. While the matter stood thus, the Secretary to the Government of Orissa in Home Department vide Annexure-A/1 to the contempt application conveyed the orders of the Government that in exercise of powers conferred under clause(a) of Sub-Rule(l) of Rule 3 of the All India Services (Discipline & Appeal)Rules,1969 placing Shri K.D.Bajpai,I.P.S., Principal,Police Training College, Angul,under suspension with effect from the date of service of the order until termination of the contemplated proceeding. Before this order was served on the applicant, Mr.Bajpai filed the present application with the following averments in paragraph 8.

" That the O.P.No.1 has intentionally disregarded the direction of this Hon'ble Court which has affected the administration of justice and has lowered the authority and dignity of this Hon'ble Court for which the O.P.No.1 is liable for gross contempt of this Hon'ble Court. "

In the prayer portion it is prayed that the O.P.No.1 be punished for committing contempt.

3. In the said application an interim prayer was also made that pending final decision on the contempt matter, the suspension order be stayed. Since the Judicial Member was on leave on 5.1.1989, the case could not be put up for admission and the matter relating to issuance of interim orders for staying operation of the order contained in Annexure-A/1 came up before learned Single Judge(Vice-Chairman)who by his order dated 5.1.1989 directed stay of operation of Annexure-A/1

and it again came up before the Division Bench on 6.1.1989 for admission and further hearing on the stay matter. The Division Bench confirmed the stay order passed by learned Single Judge and directed that the order of suspension be stayed.

4. Notice was issued to the O.P.No.l.i.e. Shri Vinod Jha,Secretary to the Government of Orissa in Home Department on the question of admission and to show cause as to why proceeding for contempt shall not be initiated against him. Even though Shri Vinod Jha,I.A.S.,Secretary to the Government of Orissa in Home Department has not filed counter to the application for contempt due to his absence from headquarters, yet the Court has a responsibility to find out whether actually contempt of court has been committed by Shri Vinod Jha. It should also be mentioned that even though Shri Vinod Jha has not filed counter affidavit because of his absence from Headquarters, a counter has been filed by Shri R.N.Das,I.A.S.,Secretary to the Government of Orissa, Finance Department who is in charge of the Home Department as its Secretary (in addition to his own duties). In paragraph 10 of the counter filed in connection with the contempt application by Mr.R.N.Das, it is stated as follows :

" That in reply to paragraph 5 & 6 of the application, it is submitted that the Hon'ble Tribunal on admitting the application of Sri Bajpai on 21.II.1988 passed orders to show cause to the stay of operation of Annexure-7. The Hon'ble Tribunal had not passed any order of stay on that date. The Police department being a discipline department, any indisciplined act is to be taken cognizance for immediate necessary action for maintenance of discipline in the department. Since the applicant was not acting according to the instructions issued by the Government, D.G. and I.G.P.Orissa and also the 'Spl.I.G.P Training Co-ordination and Director, S.P.A. who was assigned with the powers of exercising administrative control over the Principal,P.T.C., the D.G.P. and I.G.P. Orissa, initiated proposal on 21.9.88 to take discipli-

nary action against the applicant. The above proposal of the D.G.P. and I.G.P., Orissa was processed at Government level for obtaining government orders on 10.11.88 and after approval of government was received, the suspension order was issued on 24.12.88. The above fact would show that disciplinary action against Sri Bajpai had long since been initiated before the application was filed on 21.11.88. Since no interim order were passed by the Hon'ble Tribunal on the stay matter, action taken by respondent No.1 was in course of normal procedure for disciplinary action without any impatience and vindictiveness."

The crux of the counter is that no restraint order having been passed by the Bench against respondent no.1 the said respondent has not committed any contempt of court and hence, the prayer for punishing respondent no.1 for contempt of court should be dismissed.

5. We have heard the applicant Mr.K.D.Bajpai in person and so also Mr.K.C.Mohanty, learned Government Advocate(State) at some length. Admittedly, no restraint ^{order} had been issued against O.P.No.1. In other words, the State Government has not been injunctioned by us, on the interim prayer made by the applicant in O.A.377 of 1988. While dealing with the prayer for issuance of interim orders in O.A.377 of 1988 the Bench by its order dated 21.11.1988 stated as follows :

" Issue notice to the respondents 1 to 4 on the question of stay of operation of Annexure-7 i.e. letter issued by the Special I.G. of Police(Admn.) bearing No.4113/Con dated 18.10.1988 on the subject "Inspection Note of Spl.I.G.P., Training Coordination & Director, S.P.A.Orissa, Cuttack of the Office of D.I.G. of Police and Principal, P.T.C., Angul held on 6/7.11.87". Show cause, if any, to the stay matter should be filed by 7.12.1988 and the stay matter may come up for further hearing on 15.12.1988."

Again this matter was adjourned to 20.12.1988 for orders and it was further ordered that in the meanwhile counter be filed by opposite parties as prayed for. Counter to the stay matter having been served

on the applicant's counsel on 20.12.1988, at the request of applicant's counsel the case was adjourned and on the request of counsel for both sides the whole case was fixed for hearing to 18.1.1989 and in the meanwhile Annexure-A/1 to the contempt application was issued and contempt application was filed on 5.1.1989.

6. Admittedly, no restraint order was passed against Respondents 3 and 4 in Original Application No.377 of 1988 staying operation of Annexure-A/7 in O.A.377 of 1988. Law is well settled that wilful disobedience of the orders of a court would amount to contempt and the authority wilfully disobeying the order of the Court shall be liable for punishment for contempt of court. In the present case, admittedly, no order staying operation of Annexure-A/7 in O.A.No.377 of 1988 having been passed the question of disobedience of any order far less to speak of wilful disobedience does not arise and therefore, Shri Vinod Jha, Secretary to the Government of Orissa in Home Department cannot be made liable for committing ~~any~~ contempt of the court. Hence, the application for initiating a proceeding for contempt and punishing Shri Vinod Jha, Secretary to the Government of Orissa in Home Department for committing contempt of Court is devoid of merit and therefore, it is not a fit case for admission and hence liable to be dismissed.

7. Even though we find that the case is devoid of merit we cannot refrain ourselves from observing that from the point of view of decency, decorum and propriety and due deference to the process of law, the stay matter in connection with staying operation of the order contained in Annexure-A/7 in O.A.377 of 1988 being subjudice and the matter having been fixed for hearing by this Court, it was within

the knowledge of learned Government Advocate(State)and eventually within the knowledge of respondents 3 and 4 in O.A.377 of 1988 on the principle ' notice to lawyer is notice to party', we would have appreciated if no further action would have been taken by the concerned authorities. The plea taken in the counter that the Director General of Police had initiated proposal on 21.9.1988 to take disciplinary action against the applicant and the proposal of the Director General of Police was processed at the Government level for obtaining government orders on 10.11.1988, could have been made to wait till the orders of the Court on the stay matter would have been finally passed. This would have been most appropriate/ on the part of the concerned authority. and magnanimous It is needless to state that confrontation between the Executive and the Judiciary should always be avoided in the interest of administration. We feel persuaded to quote the observations of the Hon'ble Supreme Court in a judgment reported in AIR 1988 SC 1025(Bigyan Kumar and others v.Union of India and others). Certain orders were passed by the Hon'ble Supreme Court in connection with writ petition No.591 of 1987 and those orders not having been carried out, notice was issued by the Hon'ble Supreme Court to Shri S.K.Bhatnagar, Defence Secretary and Shri K.P.S.Menon, Foreign Secretary to show cause as to why they should not be punished for contempt. At paragraph 7 of the judgment, my Lord Mr.Justice R.N.Misra speaking for the Court was pleased to observe as follows :

" We would part with the matter by recording our serious concern and disapproval of the growing conduct of parties and public officers in particular of ignoring the directions of the Courts and the multiplying instances of confrontation. The Court, including the apex one, is a part of the State and is a built-in mechanism of the Constitution to administer justice in accordance with law, for discharging

that duty, the Court has got to adopt an attitude of critical assessment of situations connected with litigation brought before it for adjudication. The manner of functioning of the Court in ~~accord~~with the Rule of Law has to be dispassionate, objective and analytical. The Judges who preside over these courts do not act with a sense of superiority; nor do they look down upon others in the community. In order that the system may efficiently work and the purpose for which the courts are established is duly served, it is necessary that everyone within the framework of the Rule of Law must accept the system, render due obedience to orders made and in the event of failure of compliance, the rod of justice must descend down to punish. We hope and trust that everyone within the system realises this situation and does not unnecessarily get into confrontation."

We also hope and trust that the observations of the Hon'ble Supreme Court which has a binding authority should be borne in mind by all concerned.

8. In conclusion, we would hold that the case is devoid of merit and is not fit for admission and hence the prayer for punishing Shri Vinod Jha, Secretary to the Government of Orissa in Home Department for contempt of Court stands rejected.

9. Before we part with this case we deem it appropriate to state that the Government would be well advised not to take any further action in respect of Annexure-A/1 suspending the applicant on a contemplated proceeding because we are of opinion that the applicant was under a bonafide belief that the Government had violated the provisions contained under Section 3 of the Police Act by delegating powers of control to the Special Inspector General of Police, Training and Co-ordination and Director, State Police Academy and therefore, the applicant prayed before us to quash Annexures-A/3 and A/4 filed in connection with O.A.No.377 of 1988. The bonafide belief of the applicant was based purely on the interpretation of the provisions contained in

Section 3 of the Police Act which is a substantial and important question of law. In such circumstances, we cannot persuade ourselves to come to a conclusion that there was any malafide on the part of the applicant. Having negatived the contention of the applicant on this question of law in our judgment passed in O.A.No.377 of 1988 we hope and trust that the applicant would not disobey the concerned authority any further. Therefore, in all fitness of things we deem it appropriate to make the aforesaid observations in regard to Annexure-A/1 i.e. the order passed by the Government suspending the applicant because of a contemplated proceeding and we hope and trust that the Government without taking any further action in regard to Annexure-A/1 would give another opportunity to the applicant to act in a manner which would not amount to insubordination or unbecoming of a Government servant. If another opportunity is given to the applicant, we think that may generate a better sense of discipline in the mind of the applicant. A very interesting judgement of the Calcutta High Court would apply to the present case. The said judgment is reported in 1980(I) SLR 611 (Pranab Prasanna Biswas v. State of West Bengal). In the said case the petitioner before the Hon'ble Calcutta High Court was also a member of the Indian Police Service posted as Superintendent of Police, Midnapore. Since he did not carry out the orders of the government to hand over charge of the Office of the Superintendent of Police, Midnapore, despite repeated directions having been given by the Government, Mr. Biswas, Superintendent of Police (the petitioner in the High Court) was placed under suspension. He invoked the powers of the High Court praying to quash the order of suspension and the departmental proceeding. Hon'ble Mr. Justice Sabyasachi Mukherji of the Calcutta High Court (as my Lord then was) at paragraph 20 of the judgment observed as follows :

" Discipline really generates from a sense of justice based on confidence. If a Government servant feels that before his case is heard he is put under suspension unnecessarily then, in my opinion, the morale is more shaken and indiscipline more engineered than by creating an atmosphere that the government servants are given to understand that while the Government will not permit insubordination and disobedience of the government order but the penalty will be visited only after due process of law and without victimisation. If that sense can be created and that confidence generated, in my opinion, then the true basis and foundation of discipline would be laid within the administration who will be in charge of maintenance of the law and order, therefore, the very fact that the petitioner was being charged with insubordination and yet allowed to continue in the ~~service~~ pending the enquiry in my opinion, would generate more confidence in the administration and create more sense of discipline among the police force who, as I said, must be maintained in a highly disciplined manner if law and order in this country has to be maintained. "

We hope we will not be understood to have said that there was any victimisation of the present applicant, Mr. Bajpai by the concerned authority. But the above observations of my Lord has been quoted to indicate the atmosphere to be created to generate confidence in the mind of an officer to work in a disciplined manner and after giving an opportunity, if an officer being a member of a disciplined force, does not lead a disciplined life, certainly the government would have and always has the right to proceed against such officer according to law especially when the officer has not availed the liberal view taken by the Government against him at the initial stage. Therefore, in all fairness to the applicant another opportunity should be given to him to act in a manner which is expected from a government servant failing which necessary action be taken against him according to law. Further, we may say that liberty is given to the State Government to take such action according to law as deemed fit and proper against the applicant if in future

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he violates the orders of the concerned authority.

10. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

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Member(Judicial)
28/2/89

B.R.PATEL, VICE-CHAIRMAN,

I agree.

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B.R.PATEL
28.2.89
Vice-Chairman



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
February 28, 1989/Sarangi.