

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

CPC No. 39 of 2001
(OA 232 of 1996)

Present: Hon'ble Mr. Justice G. L. Gupta, Vice-Chairman
Hon'ble Mr. B. P. Singh, Administrative Member

1. Swadesh Ranjan Dhali,
S/o Late Jatindra Nath Dhali,
R/o A-10/417, Kalyani,
P.O. Kalyani, Nadia, 741 235
2. Sri Kh. Wamique Hossain,
S/o Late Kh. Akram Hossain,
R/o Dharampur, P.O. Mainan,
P.S. Khanakul, Dist. Hooghly
3. Smt. Keya Sarkar (Chandra)
W/o Sri Partha Chanda
R/o 35/13, Abhoy Bidyalankar Road,
Calcutta-60

VS

1. Shri P.C.Hembram,
Dy. Director General (PP &D),
All India Radio, Akashvani Bhwan,
Parliament Street,
New Delhi-110 001
2. Shri A.K.Biswas,
Station Director,
All India Radio, Eden Gardens,
Akashvani Bhawan, Kolkata-1

.. respondents

For the applicant : Mr. R.K.De, Counsel
Mr. C.N.Dey, Counsel

For the Respondents: Mrs. K.Banerjee, Counsel

: : Date of order: 17.5.02

O R D E R

Per Mr. Justice G. L. Gupta, VC

This is an application for punishing the respondents for committing contempt of the order of the Tribunal.

2. It is stated that the applicant, Swadesh Ranjan Dhali & 29 Ors. had filed O.A.No.232/1996, which was disposed of vide order dated 16th of January, 2000. The Tribunal had directed the respondents to re-examine/reassess the cases of 21 applicants who

could not participate in the enquiry conducted as per Annexure R-4. The exercise was directed to be completed within 4 months from the date of communication of the order.

The applicants' case is that on 25th of September, 2000, they were informed by the Programme Executive that their cases would be examined by the team visiting from Delhi to Calcutta and they should furnish all the documents on or before 27th of September, 2000. The applicants, however, could not appear before the team on that day because of the flood situation. It is averred that the contemners instructed them to submit the documents in the office of the Directorate, New Delhi and therefore, the applicants went to New Delhi alongwith the required documents and submitted the same in the office of the Deputy Director General (PP&D). It is stated that the Directorate examined the documents and on being satisfied, wrote the letter dated 15.12.2000, Annexure 'X-3' stating that the applicants would be given appointment and they should submit their willingness. A copy of the letter was sent to the Station Director, AIR, Calcutta with a direction to issue orders of appointment in respect of the applicants. As no orders of appointment were issued despite writing of letters by the applicants, a notice was sent by Sri Soumya Majumder advocate on behalf of the applicants on 25.1.2001. The applicants have prayed that the respondents/contemners should be issued notice as to why they should not be punished and a direction be given to the respondents for regularising and posting the applicants on the post of Transmission Executive, G&P.

9. 3. In the respdy dated 9.5.2001 to the contempt petition, the respondents pleaded that the applicants did not submit the documents in the stipulated time and that the documents filed by them were not genuine and were forged. The applicants were, therefore, asked ^{by} ~~requested~~ to produce all the documents in original in support of their claim on 18th of April, 2001. However, none of the applicants turned

up nor did they file the original documents, and hence the matter could not be considered and decided. It is further stated that the case of two applicants namely Sri Kh. Wamique Hossain and Smt. Keya Sarkar already stand disposed of by the judgment passed in the O.A. as they are among the persons whose cases had already been considered in the enquiry. It is prayed that the court may direct the applicants to produce all the original documents to enable the respondents to take appropriate action.

4. Since affidavit had not been filed by Sri P.C. Hembram, the court directed him to file an affidavit. Dr. P.C. Hembram filed his affidavit on 14.8.2001 wherein it was stated that the applicants had appeared before him, but they had submitted only xerox copies of the documents and as he was satisfied with the copies, he issued the order in favour of the applicants, but soon after that a letter was addressed to Calcutta office in continuation of the letter dated 15.12.2000 that the matter was to be considered subject to the fulfilment of conditions of appointment and verification of documents. It is further stated that on 11.4.2001 the deponent himself had handed over the material, supplied by the applicants, to the Station Director, AIR, Calcutta for necessary verification whereupon the Station Director, Calcutta showed him the original documents of the dates maintained in the office of the Station. On seeing the record he requested the Station Director to call the applicants to produce all the original documents in support of their claim on 18th of April, 2001 whereupon the Station Director issued a letter to the applicants, but the applicants did not turn up. It is stated that the documents produced before him by the applicants were manufactured and forged.

5. The applicant No.1 has filed supplementary affidavit on 11.9.2001 stating that he had submitted the original documents before Dr. P.C. Hembram.



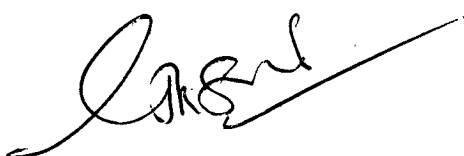
6. We have heard the ld. counsel for the parties and perused the documents placed on record. It may be pointed out that O.A.No.232/1996 was filed for direction to the respondent authorities to absorb the applicants on the vacant post on the ground that they had been working there since 1983. The Tribunal in its order dated 16th June, 2000 observed that on the basis of the Scheme formulated pursuant to the judgment of the C.A.T., Principal Bench New Delhi in O.A.No.822/1999 decided on 18th of September, 1992, the Casual Artist who had completed 72 days in a calendar year before 31st of December, 1991 were eligible to be considered for regularisation. It was observed at Para 6 of the order as follows:-

"We have very carefully perused the record, but to find that only nine cases had been scrutinised with the help of the concerned applicants. In view of some wanting papers like, Index Cards and payment vouchers; it was most certainly necessary for the respondents authority to have given an opportunity to all the applicants to place their own cards so as to satisfy the concerned authority whether, they had worked for the required number of days i.e. 72 days. We find that out of the present 30 applicants, only nine of these could actually participate in the enquiry and the remaining could not. That being the position, we have been convinced that the remaining applicants, being 21, should also be given such equal opportunity, as already availed by the other nine, to produce their papers to convince the authorities whether, they have completed 72 working days in order to derive the benefit of the Scheme."

At para 9 of the said order, it was further observed as follows:-

"For the reasons, aforesaid, this application is allowed in part. The respondents are called-upon to reexamine/re-assess the cases of the 21 applicants who could not participate in the detailed enquiry conducted as per Annexure-R/4. This exercise should be completed within four months from the date of communication of this order and, thereupon, an appropriate order, with reasoning, should be communicated to those applicants. There shall be, however, no order as to costs."

7. It is evident that the order of the Tribunal was only of reassessment of the cases of 21 applicants who could not participate in the detailed enquiry conducted as per Annexure R-4 and the exercise



was to be completed within four months from the date of communication of the order. It has to be accepted that the Tribunal had not passed any order directing the respondents to regularise the applicants as per the Scheme. As per the order the matter was required to be re-examined/reassessed by the respondents. The reexamination/reassessment could be done on the basis of office record as also the record to be submitted by the applicants. The applicants could submit Index Cards, Payment Vouchers etc. to satisfy that they had worked for 72 days in a calendar year.

8. Admittedly a notice was issued to the applicants by the Station Director that they could appear and submit the documents before the visiting team on or before 27th of September, 2000, but the applicants did not produce the documents before 27th of September, 2000 and also they did not appear on the said date. There could be flood situation on 27th of September, 2000, but there was no difficulty in producing the required documents before that date. It is, thus, obvious that the case of the applicants could not be considered in the stipulated period of four months because they had failed to produce the documents required from them within 27th of September, 2000.

9. The case for the applicants is that they had approached the Delhi office and submitted the documents there on the basis of the documents the order dated 15.12.2000 was issued by the Deputy Director(PP&D).

10. The order dated 15.12.2000 indicates that Dr. P.C. Hembram was satisfied with the documents produced by the applicants and he directed the applicants to submit their willingness if they accepted the appointment. The applicants, it appears, sent their willingness in the last week of December or in the first week of January.

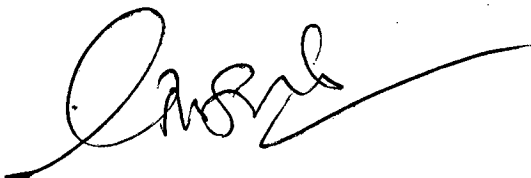
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11. We pause here to make it clear that the cases of Sri Kh.Wamique Hossain and Smt. Keya Sarkar were not required to be considered as their cases had already been considered.

12. Now we are concerned with the case of applicant, S. R. Dhali only. The respondents' case is that Dr. Hembram relied on the xerox copies of the documents and passed the order, but thereafter, it was intimated to the Station Director to implement the order of the Tribunal subject to the fulfilment of conditions of appointment and such verification of required documents as the Station Director deemed fit. The letter dated 16th of January, 2001 sent from the office of the Director General of AIR New Delhi to the Station Director, AIR Calcutta has been placed on record. The Station Director thereafter asked the applicant to file the original documents. He, however, failed to produce the documents

13. The question for consideration is whether the Director General's letter conferred a right of appointment on the applicant. It is obvious from the affidavit filed by Dr. P.C Hembram that Shri Dhali had not submitted the original documents before him and he had issued the order dated 15.12.2000 on the basis of the xerox copies. It is significant to point out that in the contempt petition the applicants nowhere stated that they had submitted the original documents before Dr. Hembram. In supplementary affidavit filed on 11.9.2001, the applicant has tried to improve his case by saying that he had filed the original documents in the office of Dr. P.C. Hembram. Since this averment was not made in the original document, it is to be held that the plea of filing of the original documents before Dr. Hembram is an afterthought.

14. The fact remains that the original documents had not been filed by the applicant to substantiate his claim of regularisation. The respondents are still ready to consider the case of the applicant



if the original documents are filed before them. In these proceedings it cannot be decided as to whether the applicant has a right of regularisation or not. It may be the subject matter of the fresh O.A. after the alleged contempts decide the matter.

15. What we have to see in these proceedings is that whether the respondent authorities have wilfully disobeyed the directions of the Tribunal given in O.A.No.232/1996. As already stated, the respondents were only required to reexamine the cases of the applicants. This reexamination could be conducted on the basis of the documents furnished by the applicant and also on the basis of the record maintained at the AIR station. Since the applicant did not produce the original documents and the record of AIR Station is not supporting the claims of the applicant, the matter could not be decided finally. It cannot be said to be a case of willful disobedience of the order of the Tribunal. As already stated, the respondents are still willing to reexamine the case of the applicant provided he files the original documents.

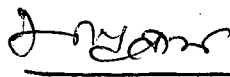
16. The trouble, as a matter of fact has started because of the irresponsible action on the part of Dr. P.C. Hembram. It is rather surprising that he held the high office of Deputy Director General, yet he did not care to see the original documents before issuing the order dated 15.12.2000. It seems, when the fact came to the notice of the Director General, the letter dated 16th of January, 2001 was issued to correct the mistake of Dr. Hembram. In our opinion, on the basis of the letter dated 15.12.2000, it cannot be said that the respondents have committed contempt when they did not issue the order of regularisation in favour of Swadesh Ranjan Dhali.

17. Consequently, no case of contempt is made out. The contempt petition is dismissed. The applicant can still approach the respondent authorities and file whatever material is available with

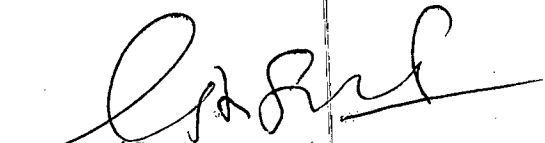


him within one month from the date of this order. If the applicant does not file the documents within the aforesaid period, the respondent authorities shall reexamine /reassess the case of the applicant, Swadesh Ranjan Dhali on the basis of the record of the AIR Station, Calcutta and pass appropriate order as directed in the order dated 16th of June, 2000 in O.A.No.232/1996 and communicateⁿ the same to the applicant.

18. No order as to costs.


(B. P. Singh) 170502

MEMBER(A)


(G. L. Gupta)

VICE-CHAIRMAN