

Central Administrative Tribunal , Lucknow Bench, Lucknow

CCP No. 28/2006 in O.A. No. 154/2003

this the ^{6th} ^{December} day of November, 2006

Hon'ble Shri A.K. Singh, Member (A)

Hon'ble Shri M. Kanthaiah, Member (J)

Sudhir Sharma aged about 50 years son of late Shri R.K.Sharma R/o H.No. 432/16, Kala Kankar Housing Scheme, Lucknow.

..Petitioner

By Advocate: Shri Neerav Chitravanshi

Versus

1. Shri K.S. Sharma adult posted as Chief Executive Officer, Prasar Bharti , PTI Building, Parliament House, New Delhi-110001.
2. Navin Kumar adult posted as Director General, Doordardhan, Doordarshan Bhawan, Mandi House, Copernicus Marg, NewDelhi-110001.
3. Dr. Ashok Tripathi , adult posted as Director, Doordarshan Kendra, 24, Ashok Marg, Lucknow.
4. Mr. Grover adult posted as Director, Doordarshan Kendra, Patna (Bihar).

..Respondents

By Advocate: Shri G.S. Sikarwar

ORDER

By Hon'ble Shri A.K. Singh, Member (A)

This CCP has been filed by the applicant Sri Sudhir Sharma against Shri Ashok Tripathi , Director Doordarshan Kendra, Lucknow i.e. Respondent No. 3 for disobedience of the interim direction/ order of this Tribunal dated 26/9/2003 in O.A. No. 154/2003. The operative portion of the order reads as under:-

"I have considered all the fact and arguments of the parties. However, in the interest of justice keeping in view the decision of the Principal Bench, and Lucknow Bench (Full Bench) of the C.A.T., and the direction of the Hon'ble Allahabad High Court , Lucknow Bench, it is provided that the operation and implementation of the order dated 11.3.2003 in O.A. No.154/2003 and the order dated 5.3.2003 in O.A. No.155/2003 are stayed till the next date."

2. The grievance of the applicant is that he was not allowed to join his duties in Doordarshan Kendra, Lucknow as per aforesaid interim stay of the Tribunal.

3. On his representation, the respondents replied that his joining would not be accepted without the instructions of Doordarshan Directorate on the basis of Hon'ble Court's order.

4. The O.A. in question was finally dismissed by the Tribunal vide order dated 13.7.2005 as bereft of any merit, the interim order dated 26.9.2003 was also accordingly vacated. The operative portion of the order dated 13.7.2005 reads as under:-

"It has already been explained by the respondents that the posts in Lucknow Doordarshan Kendra were in excess of the sanctioned strength/ cadre. Such placement by the competent authority do not require any interference from the Tribunal. In view of the above discussion, O.As are found bereft of merit and are liable to be dismissed. It is accordingly dismissed."

5. The applicant filed a review application No. 51/2005 in O.A. No. 154/2005 against the judgment and order dated 13th July, 2005 of this Tribunal, which too was dismissed in the following words:-

"In compliance of the orders dated 26.9.2003 passed by this Tribunal in O.A. No. 154/2003, the relieving order dated 25.3.2003 was recalled and the applicant was directed to report for duty at DDK, Lucknow immediately by order dated 14.1.2005. In view of this order, the applicant would be entitled to pay and allowances after reporting to duty and also to the regularization of the period between 26.9.2003 and 01.09.2005 and admissible pay and allowances for that period as well. The respondents are directed to take necessary steps for the payment of pay and allowances admissible under Rules as observed above."

6. The applicant filed the present contempt petition No. 28/2006 against Shri Ashok Tripathi (Respondent No.3) for disobedience of the aforesaid order but after issue of the notice to Shri Tripathi, the applicant

filed an impleadment Application bearing M.P. No.2268/2006. He pleaded for impleadment of Shri S.K. Grover, as Sri Grover, by then had replaced Shri Ashok Tripathi as Director of Doordarshan Kendra, Lucknow. The impleadment application was accordingly allowed.

7. Respondent through his counter affidavit has submitted that the order of the Hon'ble Tribunal dated 1.9.2005 on the Review Application was absolutely clear and merited implementation. He submitted that applicant had earlier filed a contempt petition No. 26/2004 (Sudhir Sharma Vs. K.S. Sharma) against respondent Shri K.S. Sharma. On hearing the same, the contempt in question was dismissed by the Tribunal vide order dated 26.4.2005.

8. The Tribunal had also directed that applicant would be entitled to pay and allowance on reporting to his place of duty on transfer as well as regularization of his absence from duty for the period between 26.9.2003 and 01.09.2005 and pay and allowances etc. as per rules.

9. The applicant, however, submits that interim order staying the transfer order of the petitioner was also not complied with by the respondents. However, when he filed contempt petition No. 26/2004 charging them with deliberate disobedience of the order and thus Hon'ble Tribunal issued notice to them. They belatedly allowed him to join his duties. Even the salary paid to him on joining his duties on 14.1.2005 did not include regular increments etc. In view of this, he had no other option except to file this contempt petition No. 28/2006 against the respondent No. 3 namely Shri S.K. Grover. Respondents, were time and again insisting on him for furnishing leave application for regularization of leave. This was contrary to the orders passed by this Hon'ble Tribunal

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as discussed above. Respondents, thereafter, in gross disobedience of Tribunal order regularized his leave suo- moto without making any further reference to him. Hence by their conduct, they merit punishment U/s 12 of the Contempt of Court Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985.

10. Respondents on their part have denied these charges. They submit that the O.A. bearing No. 154/2003 (Sudhir Sharma Vs. Union of India and others) was dismissed by this Tribunal vide order dated 13.7.2005 as the same, in the opinion of the Court was bereft of merit. Learned Tribunal through order dated 1.9.2005 had no doubt directed them for regularizing the period of absence of the applicant w.e.f. 26.9.2003 to 1.9.2005. As the applicant had not performed any duties during the period, he was asked to submit his leave application for the said period, but despite repeated reminders, he did not submit any leave application and consequently hampered the compliance of learned Tribunal's order dated 1.9.2005.

11. As per rules of Office Procedure, when an incumbent is transferred to another station, his service records (service book duly completed in all respects) has to be sent to his transferred place. As the regularization of the applicant for the aforesaid period was pending for want of required leave applications etc., his service record could not be sent to his transferred place i.e. DDK, Patna (where the applicant was subsequently transferred). They also submit that O.A. bearing No. 154/2003 was dismissed by the Tribunal as bereft of merit as per order dated 13.7.2005. The interim order passed in the said O.A. was also vacated and hence the question of maintainability of any contempt petition in matter does not arise. In the absence of any communication from the applicant, they Suo-

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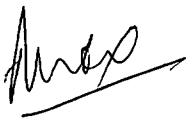
motto took steps to regularize the period of absence of the applicant from 26.9.2003 to 1.9.2005 by sanctioning him admissible leave vide Memo No. TV (LKO) 21 (350) 99-SP AV/1612 dated 4.7.2006 and also ordered payment of arrears of admissible pay and allowances. A draft No. 918802 dated 26.7.2006 for Rs. 2,04,236/- was sent to the applicant through Director, DDK Patna as per their letter No. TV (LKO) Lekha-10/2-2006-07/1904 dated 28.7.2006.

12. The applicant and the respondent /contemnor were heard through their respective counsel. The Learned counsels reiterated the points as above.

13. We have carefully considered the submissions made by the applicant as well as respondents in support of their respective case. We find that apex Court in **Indian Airports, Employees Union Vs. Ranjan Chatterjee and another** 2000(1) SLJ 265 (SC) have held that willful disobedience of the order will require to be proved on the part of the contemnor before holding him guilty of contempt of Court under the Contempt of Court Act, 1971. The relevant extract of the judgment is reproduced below:-

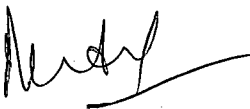
Held:- In order to amount to "Civil contempt" under Section 2(b) of the Contempt of Courts Act, 1971 (the disobedience of the order) must be 'willful' and proof of mere disobedience is not sufficient. Where there is no deliberate flouting of the orders of the Courts but a mere misinterpretation of the executive instructions, it would not be a case of Civil contempt."

The same principles were enunciated by the Apex Court in the case of **Dalip Mitra and Another Vs. Swadesh Chandra Bhadra and others** JT 2002 (Supple.) 1 SC 56 (3 JJ). The relevant extract of the judgment is reproduced below:-



"6.14 Unless there is willful disobedience to the order made by the Court, it is very difficult to conceive of the situation where the High Court could hold a party to be guilty of contempt. In the present case, the order made by the learned single judge in respect of which the complaint was made is that the authorities will have to act in terms of the statute and rules in regard to the employment on rotational basis and their continuance and absorption. That is the substance of the order dated 20.7.1988. Whether the statute and rules have been complied with or not, whether the concerned complaints fulfilled the necessary qualifications as prescribed in the statute or rules or not are all matters in respect of which there could be a serious dispute. In such matters, it could not be clearly stated that the concerned parties had acted willfully in contempt of the court."

14. From the compliance report dated 18.9.2006, we find that there is no deliberate disobedience of Tribunal's order dated 26.9.2003 on the part of the respondents in view of the following (1)) In the first place after dismissal of the Original Application by the Tribunal vide order dated 13.7.2005, the interim order dated 26.9.2003 was also vacated in the same order. Hence, if the order in question does not exist at this stage, the question of any contempt of the same does not arise. The interim order of stay in question has merged in the final orders of this Tribunal. In the second place, the respondents were directed to regularize the absence of the applicant and payment of salary and allowances as per rules. As the applicant has been continuously absent from duty for the period from 26.9.2003 to 1.9.2005 and the respondent could not have regularized this period of his absence from duty without sanction of leave as admissible to him under the rules, they asked the applicant to submit application for leave. When the applicant failed to comply with the aforesaid instruction, the respondent suo-motto complied with the direction of the Tribunal as per above mentioned order of this Tribunal by sanctioning the applicant necessary leave to his credit and paid him the salary and allowances as admissible to him under the rules. In the third place, CCP 28 of 2006 has been filed, on the same grounds i.e. of disobedience of interim order of this Tribunal dated 26.9.2003. The earlier



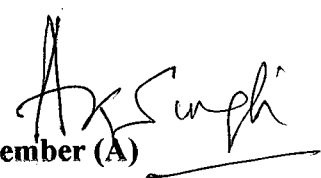
CCP bearing No. 26 of 2004 after hearing and on full consideration of the contents of the same was dismissed by the Tribunal and the notices issued to contemnors were discharged. Hence the second CCP bearing No. 28/2006 on the same grounds, which were considered earlier is not maintainable in law and accordingly merits dismissal. Last of all, the CCP No. 28 of 2006 is also time barred as per limitation of one year as provided under Section 20 of the Contempt of Court Act, 1971. The interim order of this Tribunal is dated 26.9.2003. The order in question should have been complied with within a period of six months as provided under instructions issued by the Central Government i.e. by 26.3.2004. The cause of action arose on the next date i.e. on 27.3.2004. If calculate the period of one year from the date of cause of action, the CCP in question should have been filed on or before 26.3.2005. The CCP 28/2006 has been filed on 21.3.2006. Hence, the same is clearly time barred under Section 20 of the Contempt of Courts Act, 1971. Accordingly, the same merits dismissal as time barred U/s 20 of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985.

15. In view of the above, the CCP 26/2006 filed by the applicant against respondent No. 3 namely Shri S.K. Grover does not survive as ~~there is~~ no deliberate disobedience of the order dated 26.9.2003 of the Tribunal is also established on record. The contempt petition is accordingly dismissed as non maintainable and the notices issued to contemnor is hereby discharged.


Member (J)

6-12-06

HLS/-


Member (A)