

Central Administrative Tribunal , Lucknow Bench, Lucknow

CCP No. 58/06 in O.A. No. 424/05

(11)
this the 8th day of February, 2007

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

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

Ajai Jauhari aged about 52 years son of late Shri V.S. Jauhari, r/o 2-/138, Indira Nagar , Lucknow posted as Inspector Central Excise Division, Sitapur.

..Petitioner

By Advocate: Shri R.C. Saxena

Versus

1. Shri C. Mathur, Commissioner , Central Excise Commissionerate, 7-A, Ashok Marg, Lucknow.

Respondents

By Advocate: Dr. Neelam Shukla

ORDER

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

CCP 58/2006 has been filed by the applicant Ajai Jauhari (addressed given in the O.A.) against Shri C. Mathur, Commissioner , Central Excise Commissionerate, 7-A, Ashok Marg, Lucknow on the ground of deliberate disobedience of order of this Tribunal dated 5.9.2005 in O.A. No. 424 of 2005. The applicant submits that as per order of punishment dated 29.3.2005 passed by Commissioner of Central Excise, Kanpur, the penalty of compulsory retirement under Sub Rule 7 of Rule 11 of CCS (CC&A) Rules , 1955 was imposed on him. The applicant further submits that he filed an O.A. No. 424 of 2005 wherein the Hon'ble Tribunal was pleased to pass an interim order dated 5.9.2005 to the effect that respondents may file reply within 4 weeks. It was further provided in the said order that "till then, if the impugned order is not given effect to, status quo as of date shall be maintained." A certified copy of the aforesaid order was sent to the Assistant Commissioner, Central Excise, Sitapur. That the

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applicant was on leave w.e.f. 18.8.2005, and also w.e.f. 29.3.2005 to 8.9.2005 i.e. before the date of service of the impugned order and hence he submitted his joining report on 9.9.2005, annexing therein his revised leave application for the period 18.8.2005 to 8.9.2005. The applicant had been regularly recording his attendance in the attendance register after submission of his joining report. The leave applied for by him was also recommended for sanction by the Superintendent (Adjudication) under whom he was working. That while on duty, he was also served with letter CNO II (25) Estt./C.R./AJ/05/2589 dated 2.9.2005 requiring him to submit his pension papers etc. with reference to the punishment order dated 29.3.2005. He was also required to handover his charge to Shri Pradeep Kumar, Inspector and to deposit the identity card with the office in which he was working. That even after continuously working and discharging his official duties, the applicant was not paid his salary w.e.f. 18.8.2005 onwards. That on being approached by Joint Commissioner (Legal), Central Excise, Lucknow, the Additional Standing Counsel to the Central Government advised for moving an application for vacation of stay order. Accordingly, an application for vacation of interim order was prepared and moved in the aforesaid O.A. on 16.1.2006. The stay order has not been vacated till date. That the applicant kept on reminding the respondents to make payment of his salary but even after a considerable period of 7 months of joining his duties, the applicant was not allowed to sign the attendance register and to perform his official duties after 2.5.2006. The Assistant Commissioner, Central Excise and Superintendent(Adjudication), Sitapur directed that no work be taken from the applicant and that the applicant should handover the charge of Adjudication Branch. This act of respondents in not allowing the applicant to work and to sign the attendance register after 3.5.2006 as well as non payment of salary from 18.8.2005 and onwards tantamounts to deliberate disobedience of order dated



5.9.2005 and 19.5.2006 for which the respondent Shri C. Mathur, Commissioner of Central Excise, Lucknow deserves to be punished under section 12 of the Contempt of Court Act, 1971 read with Rule 17 of the A.T. Act, 1985. Accordingly, the applicant prays for initiation of contempt proceedings against the respondent/ contemnor Shri C. Mathur, Commissioner, Central Excise, Lucknow.

2. The respondent /contemnor on his part has contested the say of the applicant. The respondent submits that the order of punishment of compulsory retirement of the applicant was duly served on the applicant on 22.8.2006. Since the order of compulsory retirement dated 29.3.2005 was in sealed cover the contents of the same were not known to respondent/ contemnor. This situation has been highly exploited by the applicant. The respondent submit that since the order of compulsory retirement was duly served on the applicant under a sealed cover on 22.8.2005, the question of any contempt on their part does not arise.

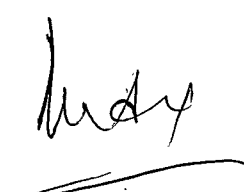
3. The applicant as well as respondent/ contemnor were heard on 9.1.2007. Shri R.C.Saxena appeared on behalf of the applicant and Dr. Neelam Shukla appeared on behalf of the respondents. At the time of personal hearing both sides reiterated their arguments, as above.

4. We have carefully considered the submissions made across the bar on behalf of the applicant as well as respondent. We find that the Tribunal as per their order dated 5.9.2005 in O.A. 424/2005, had issued the following directions:-

“Respondents to file reply within 4 weeks.

Till then if the impugned order is not given effect to, status quo as of date shall be maintained. List on 6.10.2005.”

And again this Tribunal vide their final order dated 19.5.2006 in O.A. No. 424/2005 passed the following orders:-



"So, this O.A. is finally disposed of with the provision that in case the applicant files statutory appeal against the said punishment within a period of 15 days from today, the appellate authority would decide the same by a reasoned and speaking order within a period of two months from the date such appeal is filed and communicate the result thereof to the applicant shortly thereafter. The applicant shall have liberty to approach the appropriate forum if his grievance still persists. In case the impugned order dated 29.3.2005 has not been given effect to, the same shall not be given effect to, till the disposal of appeal. No order as to costs."

5. We have considered the submissions made by the learned counsel for the applicant as well as respondent and have also perused the records.

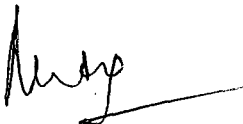
6. We find that even though the order of compulsory retirement was issued in respect of Sri Ajay Jauhari and Shri Yashoo Verma, the respondents have not furnished proof of service of the impugned punishment order along with their counter affidavit in support of their say in the case of Sri Ajay Jauhari, while in the case of Yashoo Verma, they have furnished an evidence in support of their say that the impugned order dated 29.3.2005 has been duly served upon the applicant on 22.8.2005. The case of Yashoo Verma has been dealt with in a separate CCP No.86/2005 in O.A. No.425/2005 which is also being decided simultaneously. In the 2nd place, the circumstantial evidence of the case lend strong support to the plea of the applicant that the order in question was never served upon him. It is on record that the applicant was on leave from 29.3.2005 to 8.9.2005 and was also on leave on 18.8.2005. That he has also submitted his revised leave application for the period from 18.8.2005 to 8.9.2005. It is on record that he has been regularly recording his attendance in the attendance register after submission of his joining report on return from leave. The leave applied for, has been recommended for sanction by the Superintendent (Adjudication) who was the Supervisory authority of the applicant. He was also served with a letter bearing No.C-NO II(25)Estt./CR/A.J./05-2589 dated 2.9.2005 requiring him to submit his pension papers etc. with reference to the punishment order dated

29.3.2005. All these circumstantial evidence of this case and non-submission of any proof of relief of the applicant from his duties in terms of the aforesaid order of compulsory retirement dated 29.3.2005 go to proof that the order in question was never served on the applicant, Sri Ajay Jauhari.

7. It is on record that the Joint Commissioner(Legal), Central Excise, Lucknow made a reference to the Additional Standing Counsel to the Central Government about the stay order in question and sought his advice. The Additional Standing Counsel to the Central Government advised him for move an application for vacation of the impugned stay order. Accordingly, an application for vacation of stay order was prepared and moved in the aforesaid O.A. on 16.1.2006. The stay order still continues and has not been vacated. The Joint Commissioner (Legal) directly functions under the Commissioner, Central Excise, Lucknow and advises the Commissioner on all legal matters. The circumstantial evidence of the case lend strong support to the version of the applicant that the order in question was never served on the applicant. It is therefore, impossible to accept that the said Commissioner was not aware about the facts involved in the case, including non-service of the aforesaid order to the applicant. Since the order in question provides "Respondent to file reply within 4 weeks. Till then, if the impugned order is not given effect to, status quo as of date, shall be maintained. List on 6.10.2005."

And again this Tribunal vide their final order dated 19.5.2006 in O.A. No. 424/2005 passed the following orders:-

"So, this O.A. is finally disposed of with the provision that in case the applicant files statutory appeal against the said punishment within a period of 15 days from today, the appellate authority would decide the same by a reasoned and speaking order within a period of two months from the date such appeal is filed and communicate the result thereof to the applicant shortly thereafter. The applicant shall have liberty to approach the appropriate forum if his grievance still persists. In case the impugned order dated 29.3.2005

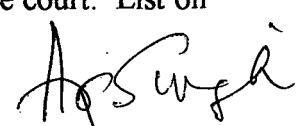


has not been given effect to, the same shall not be given effect to, till the disposal of appeal. No order as to costs."

8. All these circumstantial evidence go to prove that the order in question was never served on the applicant. Had the same been served on the applicant in terms of the aforesaid only, the applicant would have seized to be in service and in that eventuality, the question of allowing him to continue in service including allotment of duties to him would not have arisen.

9. In view of the above, the status quo should have continued till the finalization of the appeal but this was not allowed to be. The respondents, even without a formal service of the aforesaid order of punishment, did not allow applicant to continue with his work till the disposal of the appeal filed before the appellate authority. Hence, a case of contempt under Section 12 of the Contempt of Court Act, 1971 read with Section 17 of the Administrative Tribunal Act, 1985 is clearly established on record against the Respondent/ contemnor, namely Shri C. Mathur, Commissioner, Central Excise Commissionerate, 7-A, Ashok Marg, Lucknow for not allowing the applicant to perform his duties and in not paying his salary from 18.8.2005 onwards. The respondent/ contemnor is accordingly, summoned to appear in person on 15.2.2007 to explain the disobedience of the above mentioned order. In case, the respondent/contemnor Shri C. Mathur, Commissioner, Central Excise, Commissionerate, 7-A, Ashok Marg, Lucknow does not appear on the date, it will be considered to be another case of disobedience of the order of this Court and the court will be left no other option except to direct initiation of process of issue of warrant as stipulated in Rule 9 of Contempt of Court Rules, 1992 on a date to be fixed by the court. List on 15.2.2007.


Member (J)


Member (A)

HLS/-