

Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 29/2011 in Original Application No.491/2010

This the 5th day of September, 2011

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Hon'ble Shri S.P. Singh, Member (A)

Dukhanti Prasad aged about 70 years son of Sri Buddhi Prasad r/o
Nanpara Dehat, Shivala Bag, District _Bahraich.

Applicant

By Advocate: Sri P.K. Srivastava

Versus

1. Sri Jag Singh, Telecom Divisional Engineer, Bahriach
2. Sri Ved Prakash, Telecom District Manager, Bahraich.

Respondents

By Advocate: None

ORDER

BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This Civil Contempt Petition u/s 17 of the CAT Act, 1985 have been filed for alleged disobedience of order dated 3.12.2010 passed in O.A. No. 491/2010. The operative portion of the aforesaid order is as under:-

"8. In view of the aforesaid facts and circumstances, this O.A. is finally disposed of with a direction to the respondents to decide the representation of the applicant dated 5.5.2010 (Annexure-1) by means of a reasoned and speaking order within three months from the date a certified copy of this order is served upon the respondents. No order as to costs."

2. Heard the arguments and perused the material on record.
3. The learned counsel for applicant submits that in compliance of the aforesaid order, the respondents have passed an order on 4.3.2011 (Annexure-4). But it is not a reasoned and speaking order.
4. We have perused the aforesaid order dated 4.3.2011 thoroughly. On the face of it, this order appears to be a speaking and well reasoned order running into four paragraphs and two pages.
5. The background facts are that earlier this applicant had filed OA. No.292/2004 against the recovery of Rs. 268736/- from his salary @ Rs.5000/- per month. It was contested from the other side saying that

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neither any amount was sanctioned to the applicant for payment of casual labourers nor the applicant had demanded any advance for this purpose. Even then, he engaged some labours without taking approval and submitted vouchers which were not in accordance with the heads for which other advances were sanctioned and that there was complete ban on engagement of casual labourers w.e.f. 22.6.1989. After hearing the parties at length, this Tribunal found that the respondents have not passed any specific order for recovery and it was a matter of detailed enquiry and recovery could have been made only after an order was passed for the same consequent to the enquiry. The O.A. was, therefore, allowed saying that recovery could not be made without following the procedure laid down in the CCS (CCA) Rules. It was further observed that respondents can institute an enquiry as permissible under the law. In this O.A., several reliefs were sought. There was also a relief for directing the respondents to refund the amount illegally deducted from the salary of the applicant. But this relief was not granted.

6. Therefore, the applicant filed another O.A. No. 491/2010, mainly for issuance of a direction to the respondents to refund the recovered amount in question. As said above, this relief was one of the relief sought earlier in O.A. No.292/2004, which was not granted. Therefore, technically, this relief could not have been entertained in this subsequent O.A. In this subsequent O.A. No. 491/2010, a relief was also sought for directing the respondents to decide the pending representation by passing a reasoned and speaking order. As far as this relief was concerned, the learned counsel for other side did not have any substantial objection.

7. In view of the above, this subsequent O.A. was finally disposed of with a direction to the respondents to decide the representation dated 5.5.2010 by means of a reasoned and speaking order within stipulated period.


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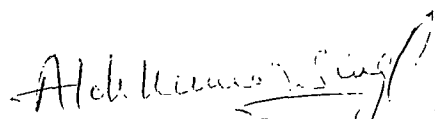
8. In compliance of the aforesaid order, the order dated 4.3.2011 has been passed. As already mentioned, it appears to be reasoned and speaking order. In para 3 of this order, it is mentioned that there was total ban for engagement of casual labourers in terms of D.O.T. letter. It was only permissible after the approval of DOT. Therefore, part of the imprest bill which was submitted by the applicant was disallowed and adjustment of advance was not permitted which was with respect to engagement and payment to casual labourers who were engaged without prior permission from DOT. No such permission was taken by the applicant who was posted at that time as Sub Divisional Engineer, Mihinpurwa, Bahraich. Even no oral permission was given for this purpose by any higher authority because it could not have been granted by any higher authority except DOT in view of the DOT letter dated 12.12.1999. Further, it is mentioned that this has been wrongly stated in the representations of the applicant dated 15.2.2010 and 5.5.2010 that oral permission was granted. Further, it is mentioned that as admitted in both the aforesaid representations, no appointment/ engagement letters were issued to any casual labourers. In its concluding paragraph, it is mentioned that the adjustment of outstanding advance against the applicant amounting to Rs. 267736.00 was made from his salary during December, 2001 to September, 2004 of Rs. 1,70,000/- . The applicant retired on 31.1.2005. Therefore, the balance of Rs. 97736.00 was adjusted from his leave encashment amount. It has been emphasized that thus the amount in question was an outstanding advance and not on account of misconduct. The applicant also did not submit any representation against disallowed part of imprest bill. The adjustment of outstanding advance on account of disallowed part of imprest bill is distinct from recovery of any pecuniary loss by negligence or breach of orders. Therefore, finally, both the representation noted above were rejected.



9. The learned counsel drew the attention of the Tribunal towards some observations made by the Tribunal in O.A. No. 292/2004, about which a mentioned has also been made in the final order of O.A. No. 491/2010. He submitted that in the aforesaid earlier O.A. No. 292/2004, it was observed that it was a matter of detailed enquiry and recovery could have been made only after an order was passed for the same, consequent upon an enquiry. On that ground, it was finally observed that recovery could not be made without following the procedure laid down in CCS (CCA) Rules and therefore, it was left open for the respondents to institute an enquiry in accordance with rules as permissible under the law. Learned counsel submitted that no such enquiry was conducted as is evident from the aforesaid order dated 4.3.2011.

10. In respect of non-compliance, if any, pertaining to the order passed in earlier O.A. No. 292/2004, no action can be taken under this contempt petition which is in respect of subsequent O.A. No. 491/2010, in which the only direction to the respondents was to decide the pending representation of the applicant by means of reasoned and speaking order. As far as this direction is concerned, it has been substantially complied with by passing a reasoned and speaking order as discussed above. Therefore, this contempt petition deserves dismissal in full and final satisfaction and accordingly it is so ordered. The notices stand discharged.


(S.P. Singh)
Member (A)


(Justice Alok Kumar Singh)
Member (J) 5-9-11

HLS/-