

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Contempt Petition No. 60/2003.

In
Original Application No. 39/1997.

Lucknow; this the day of 14 November, 2004.

HON'BLE SHRI SHANKER RAJU, MEMBER (J).

HON'BLE SHRI S.C. CHAUBE, MEMBER (A).

Madan Lal Bhardwaj, aged about 51 years, S/o Late Sita Ram Bhardwaj, R/o Qr. No.1 80-87 (Type-III), Akansha Parishar, Jankipuram, Lucknow.

...Applicant.

By Advocate: Shri R.C. Saxena.

Versus.

Dr. Tej Singh, Project Officer & Director Incharge, National Research Laboratory for Conservation of Cultural Property, Sector E/3, Aliganj Scheme, Lucknow-226020.

2. Shri Dhanendra Kumar, Secretary to the Govt. of India, Deptt. of Culture, Ministry of Tourism & Culture, Shastri Bhawan, New Delhi 110001.

... Respondent.

By Advocate: Shri A.K. Chaturvadi.

O R D E R

BY SHRI S.C. CHAUBE, MEMBER (A).

The present C.C.P. has been filed for non-compliance of the direction of this Central Administrative Tribunal in its order dated 22.11.2002 in O.A.NO.39/1997. Accordingly, the Tribunal had

quashed the order dated 12.9.1995 transferring the applicant to Mysore. Secondly, the official respondents were directed to arrange revival of the post of Office Superintendent at Mysore expeditiously and following such revival hold a DPC for promotion to the said post by considering all those eligible for such promotion. The Tribunal also directed the official respondents that the circumstances in which the applicant's promotion to the said post of Accountant had to be cancelled will not be taken into account by the respondents/DPC. However, the applicant, Shri M.L. Bhardwaj will be at liberty to agitate any other grievances which still remain without redressal, in accordance with law.

2. We have perused the pleadings and heard the counsel for the parties.

3. It has been pleaded by the learned counsel for the applicant that Respondent No.1 did not allow the applicant to join pursuant to his joining report dated 2.12.2002 nor passed any order with reference to his joining report, even though the applicant submitted representation dated 5.12.2002 to the Under Secretary, Department of Culture, Shastri Bhawan, New Delhi through proper channel. However in his representation dated 6.3.2002 the applicant stated that he was not paid salary since September, 1997 although it was drawn upto February, 1998. The applicant also brought to the notice of the Director (Culture), Deptt. of Culture, New Delhi about the malafide and revengeful attitude of Respondent No.1 causing undue harassment to the applicant. He also requested for personal hearing

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which was allowed on 22.2.2003 by Director (Culture) on behalf of Secretary to the Govt. of India, Respondent informed of No.2. During the course of personal hearing he ~~form~~ the undue harassment by Respondent No.1 to Director Culture including non payment of salary after September,1997. The applicant further referred to order dated 25.2.2003 of Under Secretary, Govt. of India, Department of Culture directing the Director Incharge, N.R.L.C., Lucknow to allow the applicant to join at N.R.L.C. immediately and further pay the pay and allowances to him. However, Respondent No.1 has not ensured the compliance of the direction of the Tribunal has wilfully and deliberately and / thus obstructed the implementation of the judgment of the Central Administrative Tribunal. Thus, both the respondents no.1 and 2 have committed wilful and deliberate contempt of this Hon'ble Tribunal.

4. The respondent/ on the other hand ^{no 1} has pleaded that O.A.No.39/1997 was partly allowed in terms of judgment dated 22.11.2002 of Central Administrative Tribunal. While the Tribunal set-aside the order dated 12.09.1995 transferring the applicant from Lucknow to Mysore, did not set-aside the order dated 18.3.1996, accordingly— the post of Accountant at Mysore was directed to be temporarily transferred to Lucknow so as to accommodate the applicant at Lucknow. However, the post of Office Superintendent at Mysore, which had lapsed, was directed to be revived expeditiously and following such revival, the selection was to be held for promotion to the post of Office Superintendent at Mysore by considering all those eligible for such promotion and in the event ^{the} applicant was found fit for the promotion to the post of Office Superintendent at Mysore, and he was placed at Serial No.1, the applicant could be posted at Mysore. According to

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respondents the applicant's cancellation of promotion to the post of Office Superintendent will not be taken into account while holding the D.P.C. after revival of the post in accordance with law.

5. It has been further stated by the respondents that the joining report dated 2.12.2002 and the Tribunal judgment dated 22.11.2002 were referred to the Department of Culture, Govt. of India. Vide letter dated 25.2.2003, ~~transferred~~ the post of Accountant of Regional Conservation Laboratory, Mysore ~~was~~ treated as temporarily transferred to N.R.L.C., Lucknow and the applicant's joining w.e.f. 2.12.2002 was accepted through Office Order dated 3.3.2003.

6. According to the respondents the applicant ~~was~~ paid salary w.e.f. 2.12.2003. Initially salary for the period from 2.12.2002 to 31.3.2003 was paid on 01st April, 2003 and thereafter paid regularly every month to him.

7. The respondents has further stated that after revival of the post of Office Superintendent at Mysore a D.P.C. met ~~on~~ in which the applicant and Shri Ramanand were considered. The D.P.C. recommended Shri Ramanand for promotion which was accepted by Shri Ramanand and assumed the charge of the post of Office Superintendent at Regional Conservation Laboratory, Mysore on 18.6.2003. According to the respondents the complete judgment in O.A.No.39/1995 has been complied with and no part of it remains to be complied with.

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8. We have perused the pleadings and heard the counsel for the parties.

9. It is observed from the Rejoinder Affidavit of the applicant that he has raised the issues like non intimation by Respondent 1 about the references made in his case to the Department of Culture, Govt. of India, that the Respondent No.1 had not allowed him to join duty, that he neither arranged for pay and allowance through Bill prepared at N.R.L.C., Lucknow, that on the posting of the applicant as an Accountant at Lucknow the respondent no.1 simultaneously promoted and posted to Shri Ramanand Rao as Accountant, N.R.L.C., Lucknow and finally respondent no.1 has not been allocating and assigning any work and duty to the applicant as Accountant, N.R.L.C., Lucknow.

10. In our considered opinion these aspects do not attract the elements of wilful and deliberate disobedience of the order of the Tribunal. The law on this point is well settled that the proceedings for contempt of court can be invoked as a step for ensuring compliance of the order of the Tribunal and punishing for the lapses in the matter of compliance. It is not enough that there should be some technical contempt of court but it must be shown that the act of contempt would be otherwise substantially interfere with the due course of justice which has been equated with " due administration of justice."

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11. After hearing counsel for the parties we are of the opinion that this is not a fit case where proceedings for contempt should be initiated. The grievance, if any, will fall within the scope of O.A. in the Tribunal instead of Contempt jurisdiction.

12. For aforesaid reasons the C.C.P. is dismissed. Notices are discharged.

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(S.C. CHAUBE)

MEMBER (A)

S. Raju

(SHANKER RAJU)
MEMBER (J)

Dated:- 17. 11. 2004.
Lucknow.
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