

**CENTRAL ADMINISTRITIVE TRIBUNAL**

**LUCKNOW BENCH**

**C.C.P.No.5/2006**

**In**

**O.A.No.162/2005**

This the <sup>10</sup> day of April 2007

**HON'BLE SHRI A.K. SINGH, MEMBER (A)**

**HON'BLE SHRI M. KANTHAIAH, MEMBER (J)**

Ashok Kumar aged about 44 years s/O late Ram Kumar, r/o B-2311, Unira Nagar Lucknow working as Junior Engineer (Signal), North Eastern Railway, Maffani, District -Kheri.

... Applicant.

By Advocate:-Shri Y.S. Lohit.

**Versus.**

1. Sri Rajnish Kumar, Divisional Railway Manager (Signal & Telecom), Ashok Marg, Lucknow.

... Respondent.

By Advocate:-Shri Arvind Kumar.

**ORDER**

**BY SHRI M. KANTHAIAH, MEMBER (J)**

The petitioner who is applicant in OA 162 of 2005 has filed the petition under section 17 Administrative Tribunal Act, 1985 read with CAT(contempt of courts) rules 1992 to punish the respondent on the ground that he has willfully disobeyed the orders of the tribunal dated 26.04.2005 in OA 162 of 2005.

2. The contemner / respondent has filed counter affidavit denying the allegations of the petitioner and prayed for dismissal of present

petition.

3. Heard Both sides

4. The brief facts of the case are that the petitioner herein who has been working as Junior Engineer (Signal) North Eastern Railway filed OA 162 of 2005 against the present contemner and UOI through Secretary Ministry of Railways stating that he has been undergoing treatment and he should not be referred to periodical medical examination or to be forced to go to Secunderabad for refresher courses and the same was disposed after hearing both sides and the operative portion of the said order dated 26.04.2005 (Annexure 4) is as follows.

*"In view of the matter, after hearing both the learned counsel the OA stands disposal of with directions to the respondents not to force the applicant to be subjected to PME or to be sent for refresher course. As regards the promotion and plea taken by respondents of waiver and estoppel, law shall take its own course. No cost."*

5. It is the case of the applicant that on 04.05.2005 he served the copy of the order in the office of SSE Aishbagh, Lucknow where it was not received and also not permitted him to join the duty and when forced to PME and to proceed to Secunderabad for the said refresher course. After appraising the situation to the respondent herein, narrating all the circumstances he submitted a representation dated 11.05.2005 through SPEED POST. Annexure 5 is the copy of the representation. When the petitioner was served with a letter dated 25.11.2005 alleging baselessly as if he is not performing the duty and

asked to submit a joining report upon which he submitted joining report on 7.12.2005 when there was no receiving was given for his joining report, he was constrained to sent by fax informing that he has already reverted the allegations made against him in his joining report. Then afresh allegation is leveled against him that he himself did not receive the letter 7.12.2005 for PME alleging that he appeared after long absence of 7 months he is being sent for PME. Annexure 6 dated 7.12.2005 Annexure 7 dated 7.12.2005 & Annexure 8 by 9.12.2005 are the copies of the concerned correspondence as mentioned above.

6. The contention of the petitioner is that the letters dated 7.12.2005 (Annexure 7) & 8/9.12.2005 (Annexure 8) issued by the respondent are in willful disobedience, defiance and circumvention of the order of the Tribunal dated 26.04.2005 in OA 162 OF 2005 which are within the realm of contempt for which the respondent deserves to be summoned and punished.

7. The respondents contention is that in view of para 514 of Indian Railway Medical manual staff in category in A1, A2 & A3 ought to be sent for special medical examination since the applicant had not performed a duty for more than 90 days and belongs to safety (Annexure-3) cadre he was required to be sent for special medical examination as provided in para 514 F of Indian Railway Medical manual (IRMM). Annexure CR-1 is the copy of the relevant provision para 514 F IRMM. He categorically stated that the applicant is neither being sent for periodical medical examination (PME) nor for any refresher course as provided in the judgment dated 26.04.2005 in OA 162 of 2005. He further stated that sending the applicant for special medical examination is the different with the periodical medical examination as provided in the judgment of this tribunal. Thus

sending the applicant for special medical examination on account of his absence for more than 90 days as provided in the statute of the medical manual for a safety category, the same can not be termed as non-compliance or passed in violation of the tribunal direction. He further stated that public traveling in the railways can not be placed in danger by allowing safety staff to perform duty without proper special medical examination in resumption of duty to the applicant and thus states that the petition is liable for dismissal.

8. From the rival contention of both parties it is clear that the tribunal passed orders with a direction to the respondents not to force the applicant to be subjected to PME whereas the contemner by issuing letters Annexure 7 & 8 asked the petitioner for special medical examination as provided in Para 514 F of IRMM on the ground that he had not performed a duty more than 90 days and belongs to safety A3 cadre.

9. There is no dispute that the petitioner belongs to safety A3 cadre and from submission a fresh joining report on 7.12.2005 (Annexure 6) itself shows that he was joining a duty after more than 90 days. Admittedly special medical examination as provided in IRMM and periodical medical examination (PME) as provided IRMM are entirely a different and distinct. Further when there is a provision for safety staff who wants to resume duty after gap of more than 90days, it is required to be sent for special medical examination by taking the nature of their duty as safety staff. When the respondent asked the petitioner for a special medical examination as provided in para 514F IRMM when he resume duty after more than 90 days gap treating it as disobedience of the orders of the Tribunal is not at all correct as per the orders of the Tribunal the respondents are directed not to force the

applicant to be subjected to the periodical medical examination (PME) which is entirely a different medical examination under the provisions of IRMM.

10. The petitioner is justified to find fault with the respondent if he asked the petitioner to face periodical medical examination which was restricted by the tribunal in its order dated 26.04.2005, but a requirement for the petitioner for the special medical examination as provided in Para 514 F of IRMM was taken due to different circumstances when there was a gap of more than 90 days before resumption of duties by the petitioner. It is also not the case of the petitioner that there was no gap of more than 90 days in resumption of his duty and there was neither any finding of the Court nor admission of the respondents that there was continuation of service without any gap for more than 90 days.

11. In view of the above, discussion, we are of the considered opinion that the act of the respondent asking the petitioner to go for special medical examination as provided under para 514 F of IRMM, while resuming on duty after gap of more than 90 days is neither willful disobedience nor contravention of the orders of the tribunal dated 26.04.2005, to punish him under section 17 of administrative tribunal act, 1985 read with CAT (contempt of court) rules 1992. Thus there are no merits in the claim of the petitioner and as such that this petition CCP is liable for dismissal, hence dismissed. Notices discharged.

(M. KANTHAIAH)

MEMBER (J)

  
(A.K. SINGH)

MEMBER (A)