

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

OA.No.448/1996

Mumbai this the 20th day of July, 2001

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)  
Hon'ble Smt.Shanta Shastry, Member(A)

Shri T.Mukundan,  
resident of Mumbai and last  
employed as Accounts Officer  
in the Office of the Accountant  
General Maharashtra (A & E)-I,  
Old C.G.O., 3rd Floor,  
M.K.Road, Mumbai - 400 020. .... Applicant

By Advocate Shri R.R.Dalvi

V/s.

(1) Accountant General (A&E)I,  
Maharashtra, Old C.G.O., 3rd Floor,  
M.K.Road, Churchgate,  
Mumbai - 400 020.

(2) Secretary to the Government  
of India,  
Ministry of Personnel, Public  
Grievances and Pensions, 3rd Floor,  
Loknayak Bhavan,  
New Delhi - 110 003. .... Respondents

By Advocate Shri P.M.Pradhan

(ORDER)(ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

In this application, the applicant's main grievance is that the respondents have failed to take a decision with regard to enhancement of his pension amount after granting him weightage in qualifying service.

2. We have heard Shri Dalvi, learned counsel for applicant and Shri P.M.Pradhan, learned counsel for respondents.

3. Shri R.R.Dalvi, learned counsel for applicant submits that this matter has been pending/ decision of the appropriate authority, namely, respondent no.2 for quite some time. He also

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states that he had accordingly sent a legal notice to the Ministry of Finance and respondent no.2 in the OA to which he has got a reply dated 22/5/2001, copy placed on record. In this reply, it has been stated that since the Department of Pension & Pensioners' Welfare is concerned with the subject matter, the letter has been forwarded to that Department for their consideration.

4. This O.A has been filed as far back as 15/4/96. The respondents in their reply have controverted the claims of the applicant stating that he is not entitled to the reliefs prayed for.

5. However, noting the contents of the letter dated 22/5/2001 referred to above, the OA is disposed of with the following directions:-

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Respondent No.2 shall consider the claims of the applicant in accordance with the relevant law, rules and instructions and pass a reasoned and speaking order with intimation to him. This shall be done within three months from the date of receipt of a copy of this order. No order as to costs.

*Shanta Shastray*

(SMT.SHANTA SHAstry)  
MEMBER(A)

*Lakshmi Swaminathan*

(SMT.LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN

abp

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Contempt Petition No.14/2002  
in  
Original Application No.448/96

Dated this Friday the 5th Day of April, 2002

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman  
Hon'ble Smt. Shanta Shastray, Member (A).

Shri T. Mukundan,  
resident of mumbai and  
last employed as Accounts Officer  
in the office of the Accountant  
General Maharashtra (A&E)-I,  
Mumbai. .... Petitioner.

( By Advocate Shri R.R. Dalvi )

Versus

1. Accountant General (A&E)-I,  
Maharashtra, M.K. Road,  
Churchgate, Mumbai-400020. .... Contemnor
2. Shri A.K. Aggrawal,  
Secretary to the Govt. of India,  
Ministry of Personnel, Public  
Grievances & Pensions, Department  
of Administrative Reforms & Public  
Grievances, 3rd Floor,  
Loknayak Bhavan, New Delhi-110003. .... Respondents

( By Advocate Shri P.M. Pradhan )

Order on Contempt Petition (Oral)  
{ Per : Justice Birendra Dikshit, Vice Chairman }

Respondents having failed to take decision with  
regard to enhancement of applicant's pension amount after  
granting him weightage in respect of qualifying service,  
applicant approached this Tribunal by filing  
O.A.No.448/96. This Tribunal after hearing the counsel  
P. Venk

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for parties considered the matter on merits and passed order disposing of the O.A. on 20.7.2001 with direction to Respondent No.2 of that O.A. namely, Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, 3rd Floor, Loknayak Bhavan, New Delhi, which is as under :-

"Respondent No.2 shall consider the claims of the applicant in accordance with the relevant law, rules and instructions and pass a reasoned and speaking order with intimation to him. This shall be done within three months from the date of receipt of a copy of this order. No order as to costs."

As the respondent No.2, who was directed to pass a reasoned order with intimation to applicant within 3 months from the date of receipt of copy of order, which he did not do, the applicant has filed this Contempt Petition on 18.1.2002. The averments made in the Contempt Petition are that the decision was not taken within 3 months from the date of receipt of copy of the order which has not been denied by Respondent No.2, A.K. Agarwal. According to Respondent No.2 the copy of order was received in his office from Applicant's Counsel on 25.10.2001. He further stated that the notices received earlier from the Central Administrative Tribunal, Mumbai Bench and later on from Applicant's Counsel were misplaced at Lok Nayak Bhavan's Office and could be traced only on 27.3.2002, after receipt of Contempt Petition. It is also stated that in the meantime on

25.1.2002, Under Secretary Shri K.V.B. Unny suddenly expired and the said papers were in his desk, which could not be fully sorted out by the officers concerned immediately and order has been passed by him on 2.4.2002. He has also submitted an unconditional apology for delay. While submitting the apology, he has explained as to why the order could not be complied within the stipulated period of 3 months from the date of receipt of copy of order. The passing of order on 2.4.2002 in compliance with order of this Tribunal is in dispute but as decision was not taken by respondent no.2 within period of three months, the applicant feels aggrieved and therefore Counsel for applicant has pressed the Contempt Petition for punishing respondent no.2.

2. Learned Counsel for the applicant has tried to make out a case by arguing that there is illegality in the order. He contends that as order passed stands vitiated for illegality committed therein, therefore, directions of this Court does not stand complied with. We are unable to accept the said contention. In this Contempt Petition we cannot go into the question of alleged illegality of the order. The only aspect which has to be examined in this Contempt Petition is if our directions has been carried out which was to the effect that a decision be taken by a reasoned order within 3 months from the date of receipt of copy of order. The

*B. Sivaji*

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contemner-respondent was directed to take a decision. He has taken decision. If applicant feels that the decision is erroneous or unsustainable under law then he can challenge it, if so legally advised, by a separate O.A. in respect of its legality but it cannot be a ground to penalise respondent for wilful dis-obedience of our order. The only aspect which can be taken into consideration in this Contempt Petition is if any action is required as respondent-contemner did not pass order within three months from the date of receipt of copy of order and did he wilfully did it with intention to dis-obey the order.

3. When we examine arguments of learned counsel of applicant in the light of test of "wilful disobedience" of order under Contempt of Courts Act then from reply submitted by Respondent No.2, we find, keeping in view the procedure in respect of working of office of the department, the Contemner Respondent's explanation for delay in complying with the order within three months is that papers were misplaced, therefore, the delay occurred. It is the misplacement of the papers by the department which necessitated filing of present Contempt Petition. The facts before us are such that though the order was not complied within time fixed but we are of the opinion that it is not a fit case where we should punish

*B. Srinivas*

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contemner-respondent. The Contemner-respondent has explained about mis-placement of papers which explanation is acceptable to us. If papers stood mis-placed, which explanation we accepted, in such circumstance there can be no wilful dis-obedience of this Tribunal's order thus, the notice against applicant is to be discharged.

4. In this case, though we hold that respondent is not to be penalised but we cannot also leave the matter at this. The applicant has been made to run to this Tribunal. The respondent's explanation for delay in taking decision is that papers were mis-placed which indicates that the officials of department did not take due care in maintaining papers. Had he not approached us then matter would have still be lingering. It is this Contempt Petition after which officials became active. Under such circumstances applicant is entitled to be compensated with cost which he had to bear to approach this Tribunal so that the order could be given effect. Thus, we fix the cost at Rs.3000/- to be paid to applicant.

5. For reasons aforesaid, we direct that the Ministry of Personnel and Public Grievances and Pensions of Government of India in the Department of Administrative Reforms, 3rd Floor, Loknayak Bhavan, New Delhi will pay Rs.3000/- as cost for proceeding and the Secretary of said Department will see that the cost is paid.

paid to applicant by an Account Payee Bank Draft of a Nationalised Bank or Pay Order within a period of one month from the date of receipt of copy of this Order. We keep it open to the Department concerned that in case it can fix the responsibility in respect of negligence on the part of officers or staff of the department concerned due to which the department has been made to part with Rs.3000/-, the department in its turn may recover the amount from the said official. Subject to directions aforesaid, the Contempt Petition is disposed of, the notice against Respondent-Contemner is discharged and proceedings are dropped keeping it open for applicant to challenge the decision of Respondent No.2 dated 2.4.2002 by a separate O.A.

*Shanta*  
( Smt. Shanta Shastry )  
Member (A)

*B. Dikshit*  
( Birendra Dikshit )  
Vice Chairman.

H.

*Recd. on 22/4  
Dated 22/4  
Mr. G.*  
*dt: 5.4.2002  
order/Judgment despatched  
to Appellant Respondent(s)  
on 26.4.2002*  
*RF  
29/4.*