

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

CAMP : GOA

C.P.NO. 8/96

in

O.A.NO. 23/96

4th this the July day of — 1996

CORAM: Hon'ble Shri B.S.Hegde, Member (J)

Hon'ble Shri M.R.Kolhatkar, Member (A)

N.Dilip Kumar

(By Advocate Shri G.R.Sharma)

... Applicant

V/S.

Union of India & Ors.

(By Advocate Shri R.K.Shetty)

... Respondents

O R D E R

(Per: Shri B.S.Hegde, Member (J))

Heard Shri G.R.Sharma for the applicant and Shri R.K.Shetty for the respondents. Applicant has filed C.P.NO. 8/96 in O.A.NO. 23/96. The main thrust of argument of learned counsel for the applicant is that the respondents have disobeyed the ex-parte order passed by the Tribunal vide ~~the~~ order dated 8.1.1996 which reads as follows :-

"Heard Shri G.R.Sharma, Counsel for the applicant.

In this OA. the applicant has come up against the transfer order issued by the Ministry of Home Affairs, transferring the applicant from Goa to Mizoram. The case of the applicant is that he was posted in the IPS Cadre only on 24.11.95, vide order of the Government of Goa (Exhibit-B) and within a period of 1-1/2 month he had been transferred from Goa to Mizoram. The learned counsel for the applicant further states that there are 3 posts of IPS cadre are available and he further states that Goa Police Officers have been accommodated in place of IPS Cadre.

In the circumstances transfer order dated 4.1.96 is stayed for a period of 14 days."

The learned counsel for the applicant submits that vide his letter dated 8.1.1996 addressed to the Chief Secretary, Govt. of Goa bringing to his notice the ex-parte order passed by the Tribunal on 8.1.1996 which was served on the respondents on 9.1.1996. Therefore, he prays that order issued by the respondents dated 5.1.1996 alleged to have served on the applicant on 10.1.1996 is contrary to the orders passed by the Tribunal.

2. The respondents in the reply to C.P. stated in the affidavit that the Government of Goa has issued an order dated 5.1.1996 purporting to convey the contents of Govt. of India order dated 4.1.1996 transferring the applicant from Goa to Mizoram. Further, the respondents were not at all aware of the ex-parte stay order dated 8.1.1996 passed by the Tribunal. The said ex-parte order dated 8.1.1996 was received in the afternoon on 9.1.1996 at Secretariat, Panaji, Goa. It is further stated that when the order dated 5.1.1996 was issued, the respondents could not have been aware of the ex-parte order dated 8.1.1996 to be passed by the Tribunal in O.A.No. 23/96. The order dated 5.1.1996 was put in transmission on 5.1.1996 itself. To prove this, the respondents showed the Peon Book which indicates that letter dated 5.1.1996 addressed to I.G.P. under whom the applicant is working. However, the applicant was on casual leave from 5.1.1996 to 8.1.1996. He reported for duty on 9.1.1996. It is an admitted fact, that ex-parte order was passed stating that transfer dated 4.1.1996 of Shri N.Dilip Kumar has been stayed for a period of 14 days, as such copy of his transfer order has not been served on him.



2. It is also an admitted fact that pursuant to the order in OA.NO. 857/95 the respondents posted the applicant in IPS Cadre post vide their order dated 24.11.1995 as SP-South Goa District at Margao. Thereafter, the Government of India transferred the applicant from Goa to Mizoram vide their order dated 4.1.1996 for which he filed an OA. and obtained an ex-parte order. The question to be seen here is whether the respondents have wilfully disobeyed the ex-parte order of the Tribunal vide dated 8.1.1996. On perusal of the records, we are satisfied, that the respondents had taken appropriate steps conveying the order passed by the Govt. of India on 4.1.1996 to the applicant earlier than the ex-parte order dated 8.1.1996 passed by the Tribunal. Since the applicant was on casual leave, the same could not be communicated to him. The learned counsel for the applicant during the course of hearing draws our attention that though the orders were passed on 5.1.1996 and put in transmission and the same was acknowledged only on 10.1.1996 after they come to know ex-parte order which is contrary to the direction of the Tribunal dated 8.1.1996. Therefore, the question for consideration is whether the respondents have wilfully disobeyed the order of the Tribunal in the case. However, on perusal of the record, we do not see any merit in the contention of the applicant that there is any such wilful disobedience on the part of the respondents. Though there is an acknowledgement dated 10.1.1996, the office of Superintendent of Police, Goa Margao received through post that does not amount to communication to the applicant in person after the ex-parte order issued by the Tribunal. The respondents have not relieved the applicant pursuant to the order of the Respondent No. 1 vide their order dated 4.1.1996

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and they relieved him only on 19.02.1996. In the circumstances, the question to be seen here is whether the order passed by the respondents vide their order dated 05.01.1996 was put in transmission prior to 8.1.1996 or not. There is no doubt that the letter of respondents was put in transmission on the same date addressed to the I.G. Office, the same could not be intimated to the applicant because he was on casual leave till 09.01.1996. In Law, question to be considered here is whether the respondents have communicated the decision of Government of India, Respondent No. 1 to the applicant by putting the letter into transmission on 05.01.1996 or not, the answer is in the affirmative. It is immaterial what date the applicant received the communication of the respondents. It is the case of the applicant that though the order was dated 05.01.1996, however, they could not issue the order till 10.01.1996. The said contention is not tenable for the reasons stated above.

3. Before we part with this case, we would like to mention that in the C.P. the applicant has impleaded the Chief Secretary of Goa, as second respondents besides Union of India through K. Padmanabhaiah, Secretary, Ministry of Home Affairs - Respondent No. 1. Under the rules, in C.P. matters, concerned officer is required to file an affidavit whereas, we find, the Joint Secretary (Personnel), Deptt. of Personnel, Govt. of Goa Secretariat, states that he has been authorised by the Home Secretary and the Chief Secretary of Goa to file this affidavit. It may be noted that an individual cannot authorise a particular officer to file an affidavit unless it is permitted under the rules. A particular officer authorised under the rules is permitted to file an affidavit on behalf of the Government and not on behalf of any individual. This aspect has been overlooked by the respondents while filing the affidavit. Further, the fact of communicating the order of transfer as on 10.01.1996 has not

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been denied. It is only stated that the transfer order passed on 05.01.1996 was put in transmission which was acknowledged only on 10.01.1996.

4. For the reasons stated above and in view of the conclusions arrived at by the Tribunal, We do not see any wilful disobedience on the part of the respondents to carry out the orders of the Tribunal except the discrepancy pointed out above. As stated earlier, the order dated 05.01.1996 passed prior to the interim order passed by the Tribunal on 08.01.1996 which has been communicated to the Competent Authority well within time, as such, no contempt is made out by the applicant. Accordingly, the contempt petition is discharged.

M R Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A).

B S Hegde

(B. S. HEGDE)
MEMBER (J).

mrj/es.

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