

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

CONTEMPT PETITION NO.07/2001
IN
ORIGINAL APPLICATION NO. 220/2000

Wednesday, this the 13th day of June, 2001.

Coram: Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

D.E.Vanarase. ... Applicant.

Vs.

Union of India & Ors. ... Respondents.

: ORDER ON CONTEMPT PETITION (ORAL) :

(Per Shri Justice Birendra Dikshit, Vice-Chairman)

~~Heard Learned Counsels for the parties Shri P.A.Prabhakaran~~
for the applicant and Shri V.S.Masurkar for the Respondents.

2. The applicant has filed this application for drawing
contempt against Respondents for wilful disobedience of the order
dt. 13.11.2000 :

"(a) The orders of repatriating the Applicant from
deputation in C.B.I. to his parent cadre are hereby
quashed and set aside. The Respondents are hereby
directed to take back the Applicant in their Organisation
forthwith, on receipt of a copy of this order (in no
case later than within fifteen days). The period from
the date of his release till the date of his being taken
back in C.B.I. as directed above, shall be treated as
leave/medical leave due and admissible as per rules. In
case the grant of extra-ordinary leave becomes necessary
it shall be without break in service.

(b) The Respondents are directed to consider the case of
the Applicant for permanent absorption on merits and in
accordance with the Rules, keeping in view the observa-
tions/discussions made above by us. The decision in
this regard shall be taken within a period of four
months from the date of receipt of a copy of this order.
If the applicant is aggrieved by the decision taken,
he shall be at liberty to take recourse to redress his
grievance, as per law.

(c) The prayer regarding the quarters occupied by
Applicant, a multiple relief, has not been pressed/
granted on either side and hence left open for both
sides.

(d) There will be no orders as to costs."

B.Dikshit

...2.

3. The applicant feels aggrieved for the reason that despite there being specific order by this Tribunal that though he was in Maharashtra cadre of Police, without following the relevant procedure permissible under law an order re-patriating him from deputation in C.B.I. to his parent cadre was quashed and the Respondents were directed to take the applicant back in their organisation forthwith, but they have not taken him back in accordance with the direction given by this Tribunal. He also complains that his case for permanent absorption on merits has not been considered in accordance with Rules keeping in view the observations/discussions made by this Tribunal.

4. The Learned Counsel for the applicant Shri P.A.Prabhakaran argued that despite the direction of this Court that applicant shall be taken back in Respondents Organisation forthwith, the order has not been complied with in letter and spirit. He further argued that in wilful disobedience of the said order, the Respondent No.1 vide order dt. 10.5.2001 has directed the applicant to join at Bhubneshwar (Orissa), though at the time when the order of repatriation was passed, the applicant was working at Mumbai (Maharashtra). He contended that under relevant departmental Rules and Instructions, the applicant could not be directed to join at Bhubneshwar, that is to say, outside the State of Maharashtra. In the alternative, he also argued that even if the power of transfer is there, then the compliance of the order of this Tribunal could be by allowing the applicant to join at Mumbai and then he could have been transferred to Bhubneshwar. The Learned Counsel for Respondents Shri V.S.Masurkar contended that it is not the case of wilful disobedience of the order of this Tribunal. He contended that

though the order of this Tribunal dt. 13.11.2000 did give directions mentioned above, but as at an earlier occasion, the Maharashtra Administrative Tribunal (MAT) by order dt. 19.7.2000 accepted the contention of repatriation of applicant from C.B.I. Department to his parent department, therefore there was reasonable basis for the department to have the matter adjudicated upon by a Writ Petition before the High Court. He contended that soon after passing of the order by this Tribunal, the Department preferred a Writ Petition before the High Court which was dismissed on 30.3.2001. He further contended that as the High Court granted six weeks time for considering the matter in respect of absorption of applicant while compliance of order was to be made by the appointing authority at Delhi, the Respondent No.1 passed an order on 10.5.2001 directing his taking back on duty in C.B.I. on deputation basis and posted him to C.B.I., A.C.B., Bhubneshwar. Thus, the order was complied with at the earliest.

5. We are of the opinion that, keeping in view the departmental procedure, there has been no wilful dis-obedience of the order. Whatever time was taken was procedural to give effect to the order of this Tribunal. Elaborate arguments have been advanced by Counsel for the applicant for making out a case of wilful dis-obedience of the order. Admittedly, before approaching this Tribunal, the applicant approached MAT by Original Application No.195/2000, where he failed and he was asked to join his parent department. It is then he approached this Tribunal under Administrative Tribunals Act, wherein one of the plea raised by the Respondents was that the applicant's claim is barred by
S. V. M. R.

res-judicata in view of the Judgment of MAT, which was turned down and the earlier mentioned directions were issued. It is contended by the Learned Counsel for the Respondents that the Department considered that the matter be decided in Writ Petition as one Department directed applicant to join his parent department, while this Tribunal accepted his right to continue with C.B.I., which was finally determined by the High Court in Writ Petition on 30.3.2001. The Respondent No.1 has taken about one month and ten days in complying with the order of this Court of which wilful disobedience is being alleged.

6. We are ^{also} _w of the opinion that, in this case, it is not such a delay which can be said to be to bring the case of the applicant within that ambit. For the period between 13th November, 2000 and 30th March, 2001, when the order was not given effect, there appears to be reasonable explanation to the effect that the Department considered it necessary that the matter was to be decided in Writ Petition in view of different orders of the two Tribunals. As, such, ^{The} _w explanation appears to be reasonable, the Respondents cannot be made liable for wilful disobedience in respect of implementation of the order, so far as this part is concerned.

7. Examining the next argument of the Learned Counsel for the applicant that Respondent No.1 did not have any power to transfer applicant, who belonged to Maharashtra Police Service, outside the State of Maharashtra is concerned, he tried to make out a case by referring to Rules and Instructions. In a case of wilful disobedience of the order, the Respondents cannot be held guilty as the aspect

placed is arguable. If an aspect, which is legally arguable, is placed before the Tribunal and as it itself required consideration on merits for determining the legal aspects as argued, the Respondents cannot be punished for wilful disobedience.

8. It is kept open for the applicant to raise the question of jurisdiction by taking recourse to a remedy, if legally advised in this respect, as we are not expressing any opinion over this aspect. The applicant can take up such a plea in any regular proceedings.

9. As in this matter the only aspect we have considered is that we have not held Respondents guilty for wilful disobedience of the order and we accepted the explanation of the Respondents that they wanted to have the matter adjudicated upon before the High Court of Judicature, Mumbai in view of the two orders passed by MAT and this Tribunal while respondents also delayed the decision, we grant indulgence to the applicant and direct Respondents to allow him to join at Bhubaneshwar ^{if he reports within 15 days} ~~forthwith~~ and Respondent will not consider that the applicant did not join in accordance with the direction given in the order of Respondent No.1 dt. 10.5.2001. The applicant shall also be considered for absorption as directed by this Tribunal in its operative portion forthwith and not later than two weeks.

10. Notice is discharged and the application stands disposed of.

B. Bahadur
(B.N.BAHADUR)
MEMBER(A)

B.

B. Dikshit
(BIRENDRA DIKSHIT)
VICE-CHAIRMAN