

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 415/2000

DATE OF DECISION: 28/09/2000

Smt. N.P. Joshua

Applicant.

Shri S.V. Marne

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri S.C. Dhawan

Advocate for
Respondents.

CORAM:

Hon'ble Shri B.N. Bahadur, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.


(B. N. BAHADUR)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 415
ORIGINAL APPLICATION NO: 482/2000
DATED THE 28TH DAY OF SEPT. 2000

CORAM: HON'BLE SHRI B.N. BAHADUR, MEMBER(A)

Smt. Nalini Prabhakar Joshua
Rly. Q.No. 2/E, Rly Colony,
Jalna, Near Rly School,
Jalna.

... Applicant

By Advocate Shri S.V. Marne

V/s.

1. The Union of India
through
The General Manager,
SC, Rly. Secunderabad.
2. The Chief Personnel Officer,
SC. Rly., Secunderabad.
3. The Medical Superintendent
SC Rly Sub Divisional Hospital,
Purna, Dist. Parbhani.

... Respondents.

By Advocate Shri S.C. Dhawan

(ORAL) (ORDER)

Per Shri B.N. Bahadur, Member(A)

I have heard the Learned Counsel on both sides. The Applicant is also present in Court and Learned Counsel has taken instructions in Open Court.

2. Shri S.C. Dhawan informs us that the transfer orders of the applicant to Vijaywada have been modified since, and that the applicant is now posted nearby (which the applicant confirms in Open Court) i.e. to Jalna where she has taken over. Shri S.V. Marne, Counsel for Applicant, however, mentions the point that this is only a temporary transfer as can be seen from the

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copy handed over across the bar. Shri S.C.Dhawan informed that she will not be posted back to Vijaywada. However, we do hope that now that the Railway authorities have considered her difficulties and posted her nearby, this situation of a nearby posting will not be changed in reasonable time in future as apprehended by Applicant. Hence, there is no justification in keeping the application pending. If any further action taken by Railway Administration becomes a cause of grievance, it will be open to the applicant to come up to the Tribunal as per law.

3. Another point made by Shri Marne is regarding prayer clause (c) of para-8 for the claim of full salary and allowances with effect from 22/6/1999., viz. from the date from which the reinstatement was ordered by the Tribunal. Shri S.C.Dhawan has taken objection stating that this is a separate cause of action and hence cannot be agitated in the same OA.

4. In the interest of justice it is hereby ordered, the applicant may make a representation within a period of one month on this point to the Competent Authority in the Railway Administration. The Respondents shall dispose of this representation and intimate their decision to the applicant with reasons within a period of one month thereafter.

5. This OA is disposed of with the above directions/orders. No orders as to costs.

The Interim Orders made on 21/6/2000 and continued thereafter stands vacated.



(B.N. BAHADUR)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH CAMP AT AURANGABAD

CONTEMPT PETITION NO.43/2002
IN
ORIGINAL APPLICATION NO.415/2000

MONDAY, THE 15TH JULY, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Smt. Nalini Prabhakar Joshua
R/o Rly.Q.No.2/E, Rly Colony,
Jalna, near Rly School, Jalna.
(By Adv. Shri P.V.Daware)

.. APPLICANT.

V/s

1. The Union of India
through
The General Manager,
SC. Rly. Secunderabad
2. Shri Tamil Chole,
The Chief Personnel Officer,
SC. Rly. Secunderabad.
3. Shri Shriniwasan,
Dy. Medical Director,
Rail Nilayam Secunderabad.

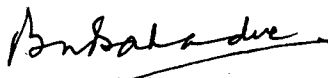
.. RESPONDENTS.

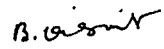
ORDER(Oral)
Hon'ble Shri Justice Birendra Dikshit, Vice Chairman.

This CP. has been filed for alleged wilful disobedience of order dated 28th September 2000. The order provided an opportunity of making a representation to applicant within a period of one month before Competent Authority in Railway Administration in respect of a grievance which was being raised in O.A. The representation was made on 19.10.2000. The CP. has been filed on 19.4.2002 which has given rise to question of limitation as Representation was to be decided within one month from the date of filing.

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2. It is not necessary to go into the question of limitation in this matter as the CP. fails for non-joinder of parties. The reason is that applicant made representation to General Manager, South Central Railway, Rail Nilayam, Secunderabad (A.P.) while he filed C.P. against Shri Tamil Chole, Chief Personnel Officer, South Central Railway, Secunderabad and Shri Srinivasan, Dy. Medical Director, Rail Nilayam, Secunderabad. She has not made General Manager by name as party. The contempt proceedings are drawn in respect of personal liability of contemner and as the General Manager is not a party in his personal capacity while the persons who have been arrayed as party namely, Tamil Chole and Srinivasan, were not approached for doing anything which could give rise to wilful disobedience of order of this Tribunal, the contempt petition fails on this ground alone. It is kept open to applicant to file CP. against General Manager in case so advised or applicant feels necessary. Subject to our above observations, the CP. is dismissed.


(B.N. Bahadur)
Member(A)


(Birendra Dikshit)
Vice Chairman

Gajan.



CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, CAMP: AT AURANGABAD

C.P.NO.1(A)/2003

IN

O.A.No.415/2000

CORAM: HON'BLE SHRI ANAND KUMAR BHATT, MEMBER (A)
HON'BLE SHRI S.G. DESHMUKH, MEMBER (J)

Smt. Nalini Prabhakar Joshua ... Applicant/
Petitioner
(Applicant by Shri P.V. Daware, Advocate)

vs/

Shri A.K.Jain,
Additional General Manager,
South Central Railway,
Secunderabad (AP),
and Ors. ... Respondents

(Respondents by Shri R.R.Shetty, Advocate)

ORDER IN C.P.NO.1(A)/2003 DATED 26.10.2004

The present C.P. is filed for non-compliance of the order dated 28th September, 2000 passed in O.A.No.415/2000 in which it was directed that the applicant may make a representation within a period of one month on this point to the Competent Authority in the Railway Administration. The respondents shall dispose of this representation and intimate their decision to the applicant with reasons within a period of one month thereafter.

2. It is the contention of the applicant that the applicant had submitted her representation for claiming her full salary w.e.f 22.6.1999 to 5.3.2000 as per order issued by the C.A.T. on 9.10.2000. It is also the contention of the applicant that she had approached the High Court of Bombay at Aurangabad in Writ Petition No. 1060/2001 requesting for granting relief to the

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applicant regarding the payment of the salary for back wages w.e.f. 22/6/99 to 5.3.2000. The said Writ Petition was allowed to be withdrawn with liberty to approach the appropriate forum. Thus this C.P.

3. It is contended that the present applicant had filed the earlier C.P. No. 43/2000 in O.A. No.415/2000 for wilful disobedience of the order dated 28th September, 2000. The application was dismissed with liberty to file Contempt Petition against General Manager, in case so advised or applicant feels necessary subject to above observations.

4. The respondents filed their counter reply and contended that the applicant had submitted a representation dated 19.10.2000 wherein she had requested for transfer from Purna to Jalna and she did not represent for the payment of salary from 22.06.1999. Her representation for transfer to Jalna has accordingly been disposed under order dated 27.09.2002. It is their contention that the applicant with a malafide intention has now created a representation dated 19.10.2000 purported to have been submitted to the Administration claiming back wages. It is contended that in the applicant's representation dated 19.10.2000 received by the Administration there is no mention about payment of backwages. It is further contended that the Tribunal while examining the O.A.No.425/1994 filed by the applicant and observed in para 17 of the judgement dated 22.06.1999 as under:

"irrespective of the nature of the order to be passed by the Appellate Authority, we make it clear that the applicant is not entitled to any backwages. However, we leave it to the Appellate

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Authority to indicate as to how and in what manner the period from 21.08.1993 till the date of new order to be order to be passed should be treated for the purpose of qualifying service leave etc."

5. It is also contended that para 16 of the judgement the applicant who was present at the time of hearing of the O.A. had submitted through her counsel that she would not press for back wages, if he was ordered to be reinstated. But after reinstatement, contrary to her averrment and against the orders of this Tribunal, the applicant is claiming wages from 22.06.1999 till her reinstatement into service for which she is not entitled. It is further contended that her representation has been disposed of under letter dated 21.4.2004 explaining her that she is not entitled for wages fromn 22.6.1999 to 7.3.2000. The respondent produced copies of repreentation dated 19.10.2002 and their reply dated 27.9.2002 and 21.04.2004.

6. The applicant filed rejionder and submitted that a copy of the Contempt Petition is served with respondent on 8.3.2004.

7. Heard the learned counsel Shri Daware for the Petitioner anmd Shri. R.R. Shetty for the respondents/Contemners.

8. The learned counsel Shri Shetty in addition to his written submiissions submitted that the C.P. is barred by limitation.

9. We have considered the rival submissions. It is apparent from the above that earlier C.P. No.43/2002 was filed on 19.4.2002 which was disposed of by order dated 15.7.2002. The

said C.P. failed for non joinder of the parties. The General Manager to whom representation was said to have been submitted was not made a party to the C.P. as the contempt proceedings are drawn in respect of personal capacity while the persons who have been arrayed as party. The General Manager was not made a party in the said C.P. The C.P. was dismissed. It is kept open to the applicant to file C.P. against General Manager in case so advised or so advised or applicant feels it necessary.

10. It is apparent from the counter affidavit filed by the respondents that so called representation in which the applicant is said to have demanded the arrears was not served with the respondents. The copy of the representation dated 19.10.2000 brought on record by the respondents is in respect of transfer only. There is no mention about the payment of backwages.

11. Even if it is presumed that the representation regarding the payment of backwages has been made by the applicant on 19.10.2000, the C.P. is barred by limitation. As per Sec.20 of the Contempt of Courts Act 1971. No court shall initiate any proceedings for contempt either on its own or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. As per order in the O.A. the respondents were to dispose of the representation and intimate the decision to the applicant with reasons within a period of one month thereafter. According to respondents applicant's representation was submitted to the respondents on 14.10.2000 and the respondents did not comply with the same. The respondents were to dispose of the representation within one month. If the respondents failed to comply with the direction,

the CP ought to have been filed within a period of one year after one month of receipt of representation. The C.P. No.1(A)/03 is filed on 24.11.2003. It also appears that the earlier C.P. had been filed on 19.4.2002 Representation was submitted on 19.10.2001 ;which had given rise to question of limitation as the as representation was to be decided within a period of one month from the date of submission. It is observed in the order of CP that it is not necessary to go into the limitation as the C.P. fails for non joinder of necessary parties. Thus, the point of limitation was kept open in the said C.P. The said C.P. was dismissed for want of necessary parties. We have mentioned that the present C.P. is filed on 24.11.2003 whereas the representation was alleged to have been served on 19.10.2000 which was to be disposed of within a month from the date of receipt of the same. Thus, the present C.P. is clearly barred by limitation.

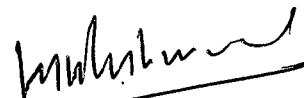
12. It also appears from the order passed by the respondents that so called representation which the respondents received along with copy of C.P. has been disposed of by the respondents vide order dated 21.4.2004.

13. In view of the above, the C.P. is rejected. No order as to costs.



(Anand Kumar Bhatt)

Member (A)



(S.G. Deshmukh)

Member (J)