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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BOMBAY-1.

CONTEMPT PETITION NO. 43/91

IN

O.A. NO. 500/90

Rajendra Rai

.. Applicant

V/s.

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| 1. | Mr. S P Jain
Member Staff
Railway Board
Rail Bhavan; New Delhi-11 | Proposed contemnners |
| 2. | Smt. Shrmila Sandhu
Deputy Chief Personnel
Officer (Gazetted)
Western Railway
Head Quarter Office
Churchgate, Bombay-20 | |
| 3. | Mr. R K Varma
Assistant Personnel Officer
(Gazetted), Western Railway
Head Qtr. Churchgate; Bombay | |

Coram: Hon. Shri M Y Priolkar, Member(A)
Hon. Shri S. Santhana Krishnan, Member(J)

APPEARANCE:

Mr. G S Walia
Advocate
for the applicant

Mr. M I Sethna
Counsel
for the respondents

TRIBUNAL'S ORDER:

DATED: 25-03-1992

(PER: S. Santhana Krishnan, Member(J))

The applicant has filed this Contempt Application No. 43 of 1991 to punish the respondents ~~as per~~ the provisions of Contempt of Courts Act on the ground that the Respondents wilfully disobeyed the order of this Tribunal dated 31.7.90 and 2.7.91.

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Respondents have filed detailed reply explaining the circumstances why the delay had happened and also tendered an unconditional apology for the delay in passing orders.

The applicant filed a rejoinder again ~~stating~~ stating that the respondents have committed contempt of the Tribunal.

Heard the counsels appearing for applicant and respondents and the necessary records perused.

This Tribunal by order dated 31.7.1990 in OA No.500/90 passed the following order :

"In view of this we direct that the applicant should submit his representation against this recovery to the General Manager within a week's time and the General Manager should decide this representation within two months thereafter. No further recovery should be made until the representation is finally decided by the General Manager".

The applicant had filed the above said OA against the recovery made from his salary regarding medical charges and this Tribunal after hearing parties passed the above said order. In pursuance to the above said order the applicant made his representation dated 7.8.90. In the meanwhile the respondents filed Miscellaneous Petition No. 694/90 requiring certain clarifications which was subsequently converted into a Review Petition on 31.08.90. It is the contention of the respondents in that Review Petition that the General Manager is not the competent authority to dispose the appeal and the competent authority is the Ministry of Railways/Railway Board and as such they wanted that in place of the word General Manager the words 'competent authority' i.e., Ministry of Railways/Railway Board be substituted. Ultimately, this Tribunal by order dated 20.11.1990 removed the word 'General Manager'

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and chosen to substitute the word 'competent authority'. However, the Tribunal further pointed out that this does not, however, mean that we endorse the stand of the petitioners that the competent authority for this purpose is not the General Manager but the Railway Ministry/Railway Board. It also gave the liberty to approach this Tribunal for the applicant, again in case his representation is decided by any other authority other than the competent authority. However, the time limit was extended by 4 months, by the Tribunal's order already passed on 25.9.1990. Hence it is seen that this order of the Tribunal in effect changed the original order and only after this order the competent authority is entitled to consider the representation of the applicant dated 7.8.90. Before this, in view of the pendency of the Miscellaneous Petition and thereafter the Review Petition, the General Manager is not able to consider the representation of the applicant. In fact the applicant made a further representation dated 11.12.1990 after the Review Application. Though the learned counsel for the applicant contended that this is only a formal representation, the applicant specifically states in this representation that he wants his representation made in the MP to be considered though he has not given the number of MP. Hence, apart from the contention that the General Manager is not the competent authority he must have made a further representation dated 11.12.1990. Thereafter, neither the applicant nor the respondents moved the court for any orders and as per the review petition the respondents ought to have passed an order after lapse of four months i.e., on or before 5.2.91. Obviously the respondents had not issued any orders nor filed any application before this Tribunal for extension of time. The respondents pointed out in their reply affidavit that they failed to approach the Tribunal

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after 5.2.91 and there is a delay in passing the orders and for that purpose they unconditionally tender their apology for not moving the Tribunal and getting suitable orders after 5.2.91.

It is significant to note that the applicant sent two letters dated 5.3.91 and 29.4.91 to the respondents but he has not chosen to move this court till the applicant filed another M.P. viz., M.P. No.452/91. The respondents who filed the above said application wanted further time (viz.) upto 4.8.91. This Tribunal ultimately passed orders on 2.7.91, which reads as under:

"The MP No.452/91 is filed by the petitioner. The prayer in the petition is for enlargement of the time limit prescribed for implementing of the final order. Even according to the petitioner, the period had expired by 5.2.1991. The present petition has been filed only in June 1991 and as such there is no scope for enlargement of time. Accordingly the petition is disposed."

In view of this order the Tribunal only pointed out that after the expiry of the time fixed by the ordinal order of 5.2.91 the respondents failed to comply with the orders till June 1991 and as such there is no justification to grant time. The Tribunal nowhere said that the respondents should not pass orders on the application. Learned counsel appearing for the applicant contends that the Tribunal by this order restrained them to decide the representation of the applicant beyond the time fixed for it. We are unable to accept the contention put up by the learned counsel for the applicant. If the contention of the applicant is accepted then the delay amounts to more serious contempt as the Tribunal directed the respondents to pass such orders and thereafter preventing them to.

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to pass any such further order thereby giving the applicant the scope to move an application for contempt of court ^{again} ^{that} and urging as the respondents failed to pass any order they have committed contempt of court.

In fact the purpose of the proceedings of the contempt is to see whether the respondents wilfully disobeyed the orders or whether they in effect flouted the orders of the Tribunal. A reading of the reply filed by the respondents and Annexure A.1, the dates given on which they considered the representation and efforts made to pass further orders show that there was some delay in passing the orders. Mere delay may not amount to wilful disobedience. On this aspect the learned counsel appearing for the applicant placed reliance on the judgment reported in AIR 1955 SC 19 (Vol.42, C.N.6) M Y SHAREEF AND ANOTHER V. HON. JUDGES OF NAGPUR HIGH COURT & OTHERS. The Hon. Supreme Court has pointed out in that judgment that there cannot be both justification and an apology. In fact in this case they tendered an apology but justified their act. The judges ^{out} pointed that their signing such applications and are firmly under the belief that their conduct in doing so is in accordance with professional ethics. Hence it is pointed out that the contemnors wanted to justify their act and tender a apology which cannot be accepted. Even then the Supreme Court accepted the unqualified apology given by the appellants both in the Supreme Court and the High Court and issued a strong admonition and warning to the two counsel, for their conduct.

Reliance was also placed on a decision reported in AIR 1974 CALCUTTA 69 (v. 61 C 13), S S ROY V. DAMODAR

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VALLEY CORPORATION & ORS. Even in this case the Hon. High Court has pointed out as follows at page 73 of the judgment:

"I am of opinion that the fact that a party to a cause has disobeyed an order of the Court is not of itself a bar to this being heard but if his disobedience is such that so long as it continues, it impedes the course of justice for the cause, by making it more difficult for the Court to ascertain the truth or to enforce the the orders which it may make then the Court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed."

The learned counsel for the applicant also placed reliance on the judgment of the Tribunal of Calcutta Bench, 1991(2) SLR 187, PANCHU GOPAL BANERJEE V. UNION OF INDIA & OTHERS, where in it has been pointed out ^{what} that [✓] the Inquiry Authority and the Disciplinary Authority failed to pass any order in spite of several directions issued to them and that the enquiry has not been concluded ^{held that they} thereafter and hence [✓] cannot pass further orders. It is seen from the facts that the disciplinary proceedings were initiated against the applicant and the High Court by its order dated 4.4.79 directed the Disciplinary Authority to complete the proceedings by 31.7.79 and communicate the decision to the applicant. The respondents neither concluded the said proceeding nor communicated their decision to the applicant till January 1983. Only in February 1983 the applicant was asked to appear before the Inquiry Officer and even thereafter the disciplinary proceedings were not concluded though the applicant retired on 30.4.87. As no orders were passed nearly for 11 years in spite of the directions, the Tribunal pointed out that the

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failure of the respondents in carrying out the orders is in effect has resulted that in effect the enquiry could not be continued thereafter and became invalid. The Tribunal further pointed out at page 191 as follows:

"Though the learned counsel for the respondents submitted during the hearing that the inquiry could not be completed within the stipulated date due to the non-cooperation of the applicant, he could not produce any document in support of this contention, nor could he explain as to why the High Court was not approached for further extension of time for the completion of the inquiry in view of the alleged non-cooperation of the applicant. Besides, even if the applicant did non-cooperate as alleged, the respondents could have completed the enquiry ex-parte, after observing the necessary formalities, within the stipulated period. However, this step was not taken either. Thus the enquiry came to an end after the expiry of the stipulated date i.e., 27.9.79 and has to be treated as abandoned thereafter."

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These observations apply to the facts and circumstances of this case. The analogy cannot be extended to all the cases. If the contention of the learned counsel for the applicant is to be accepted, then in a case where the applicant wanted some arrears to be paid and the Tribunal directs the respondents to pay the arrears within a stipulated time and if they fail^{ed} to pay and the extension application is dismissed, can we say that the applicant cannot recover the amounts from the respondents and the respondents are^{not} bound to pay the amount to the applicant.

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The order in MP 452/91 only states that the Tribunal is not inclined to grant any further time thereby informing the respondents that they will have to obey the orders passed on OA 500/91 without any delay. Thereafter the respondents have passed the orders on 2.7.91 and these orders were communicated to the applicant on 3.7.91. When the respondents have passed the order on 2.7.91 the applicant now claims that the order was passed hurriedly and goes to the extent of saying that the respondents knowing full well that there was no occasion or scope for such orders being passed and that they were precluded by an order of this Tribunal from passing any orders in view of orders on MP. Even if the order is invalid illegal or malafide, the applicant will have to agitate the same only before a competent forum by filing an appropriate petition and he cannot call upon through this petition to punish the respondents for wilful disobedience of the orders of Tribunal.

As already pointed out there is delay in passing the orders by the respondents and in fact they have failed to approach the Tribunal for extension of time after 5.2.91. For this the respondents have tendered an unconditional apology and the unconditional apology is accepted. We feel that the respondents have not committed any wilful disobedience of the Tribunal's and as such we find no force in the Contempt Petition that the respondents should be punished for the wilful disobedience.

In view of the above discussions, we dismiss the application without any order as to costs. Notice if any issued stands discharged.


(S. SANTHANA KRISHNAN)
MEMBER (J)


(M Y PRIOLKAR)
MEMBER (A)