

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN EA CP 03/97 in
1 O.A. 1354/95

Hon'ble Vice Chairman / Member (J) / Member (A)

may kindly see the above Judgment for
approval / signature.

M.R. Tolarkar

V.C. / Member (J) / Member (A) (K/S)

11/6/97

Hon'ble Vice Chairman

Hon'ble Member (J)

✓ Agarwal 6/6/97

Hon'ble Member (A) (K/S)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P.NO:03/97 IN O.A. 1354/95

CORAM: HON'BLE SHRI (B.S. HEGDE, MEMBER (J)) (A) P
HON'BLE SHRI M.R. KOLHATKAR, MEMBER (A)

V.R.Dhum,
Om Adhi Shakti Building
'B' Wing, Room No.18,
Vidyalaya Marg,
Mulund (E),
Mumbai - 400 081.

By Advocate Shri S.S. Karkera

.. Contempt Petitioner

-versus-

1. Shri Anil Gokak
Director General,
Deptt. of Telecommunication,
Sanchar Bhawan,
Ashoka Road,
New Delhi - 110 001.
2. Shri C.V. Rajan,
Chief General Manager,
Maharashtra Telecom Circle,
GPO Building, 2nd Floor,
Mumbai - 400 001.
3. Shri D.P. Chetal,
Chief Superintendent,
Central Telegraph Office,
Fountain,
Mumbai - 400 001.
4. Shri K.G. Ramayya,
Telecom District Engineer,
Mohata Market, 4th Floor,
Phaltan Road,
Mumbai - 400 001.

.. Respondents

By Counsel Shri V.S. Masurkar

Tribunal's Order:
(Per M.R. Kolhatkar, Member (A))

Date: 13/6/97

In this C.P. filed by the original applicant in O.A. 1354/95 decided on 9-8-96 it is contended that the original respondents have committed contempt of this Tribunal inasmuch as the Tribunal had directed the CGM to consider the application of the applicant and pass an order but the representation has been disposed of by Asstt. General Manager (TT) vide order dt. 6-12-96 and therefore original respondent No.2 has committed a contempt of this Tribunal. Secondly

this Tribunal had also directed the respondent No.2 to separately issue a circular seeking volunteers who may desire to have a transfer to Mahad but the respondents have not at all acted upon this direction and this failure to act on this specific direction also constitutes contempt.

2. The respondents have opposed the C.P. It is stated that the competent authority in the office of the CGM considered the same and issued a speaking order after due consideration of all the points raised by the applicant in his representation. Further on receipt of the copy of the proposed contempt petition, the case was reviewed by CGM personally and reply was also sent to the Advocate for the applicant on 7-2-1997 which is annexed as Ex. R-I to the reply to the CP. Secondly it is contended that so far as the circular regarding seeking volunteers among Telegraphist to work in Mahad Telegraph Office is concerned, respondent No.2 had called for volunteers for Mahad vide communication dt. 27-9-96 which is annexed at Ex. R-III to the reply to the CP. It is therefore contended that no contempt has been committed. Respondents have further stated in para-6 of the written statement to the CP that if any omission or lapse is noticed it may kindly be termed as unintentional, for which the respondents offered unconditional apology and seek further orders in the matter which will be implemented.

3. Counsel for the respondents also made available the connected file to us from which it was apparent that the speaking order was issued with the approval of the GM(O). It is also noticed that CGM has expressed unhappiness that the case

was not put up to him inspite of the clear orders of the court and the responsibility for the lapse has been since tend to be fixed up.

4. We are not required to go into the issue relating to the internal delegation of powers within the office of CGM. In para 22 of the written statement the respondents in the OA had taken the stand that CGM Maharashtra Circle Mumbai is the competent authority for consideration of transfer and it was in terms of this pleading that operative portion of the order in para-11 directed that respondent No.2 should consider the application. It is too late in the day to state that GM(O) is the competent authority as per the delegation of powers within the office. The speaking order ought to have been passed with the specific approval of the CGM and while the order need not have been under the signature of CGM there should have been a recital that the speaking order had the approval of the CGM(respondent No.2).

5. On a consideration of the material available before us we are of the view that the speaking order passed on 6-12-1996 did not in terms carry out the directions of the Tribunal and to that extent there is a failure of the respondents to comply with the order. At the same time the failure is curable and we are not inclined to take the view that respondent No.2 has deliberately and willfully committed contempt of this Tribunal. We are, however, constrained to observe that the respondents were not well advised to have addressed the letter dt. 7-2-97 to the advocate for the applicant because it is well settled that the

issue of contempt is a matter between the court/Tribunal and between alleged contemners and is not a matter between the parties.

6. There is another aspect of the reply to the CP which needs to be commented upon. This Tribunal's order dt. 9-8-96 had observed in para-8 that respondents do not appear to have taken note of the Department of Personnel Circular dt. 24-6-1985 which enjoins senior officials to keep a close watch to ensure that SC/ST officers are not transferred to far off places or are not transferred too frequently and that the contention of the respondents that they are not aware of any such instructions really cannot be accepted. The order dt. 6-12-1996 from AGM(TT) recites that ~~order in O.M.NO.~~ AB-14017/27/89-EST(RR) dt. 20-6-89 are given due consideration while examining the case of the official. In para 15 of the reply to the CP it is stated that guidelines of DOP state that all the officials belonging to scheduled tribe community may be posted nearer to their home town as far as possible. In this case the applicant's hometown is Virmal, P.O.Pachuchibari, Dist.Nashik as recorded in his service book and not Mumbai. Therefore the guidelines of Department of Personnel are not relevant to his claim in retransferring to Mumbai. This reply is clearly disingenuous. Of course, Mumbai is not the home town of the applicant but it is trite to observe that from the geographical point of view ~~Mumbai is~~ midway between Mahad & Nashik which is 182km northeast of Mumbai and Mahad is situated at 176km ~~to the~~ South of Mumbai. Mumbai is nearer to Nashik than Mahad, the distance between Nashik and Mahad being 358 km. The contention of the respondents that the guidelines are not relevant

to the case of the re-transfer of the applicant from Mahad to Mumbai is not clearly well taken. We direct the CGM(T) to take note of these observations.

7. Under the circumstance we dispose of the CP by passing the following order :

- : O R D E R :-

Original Respondent No.2 is directed to issue a fresh order after recalling the order dt. 6-12-1996 and after taking account of the observations made by us in the present order regarding applicability of the guidelines of the Department of Personnel. The draft of the fresh order should be personally approved by the respondent No.2 and should also recite that the same has been approved by respondent No.2

Action in this regard should be taken within two weeks of the communication of the order.

Subject to above CP is discharged.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

B.S.Hegde

(B.S.HEGDE)
Member(J)

M

4/13-697
order/Judgement despatched
to Applicant/Respondent (s)
on 15.6.97

8/6/97