

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CP 96/96

OPEN COURT / PRE DELIVERY JUDGMENT IN/OA351/95

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

may kindly see the above Judgment for

approval / signature.



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

Hon'ble Vice-Chairman

Hon'ble Member (J)

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

g. que
2/2/99

20

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

Contempt Petition No.96/96 in
ORIGINAL APPLICATION NO: 351/95.

Date of Decision: 3-2-99

S.T.Mishra & Anr.

.. Applicant

Shri M.S.Ramamurthy

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K.Shetty.

.. Advocate for
Respondent(s)


CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not ? ~~~~~

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? ~~~~~


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

(24)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

CONTEMPT PETITION NO.96/96
IN
ORIGINAL APPLICATION NO.351/95

Proounced this the 3rd day of February 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.
Hon'ble Shri D.S.Baweja, Member(A).

1. S.T.Mishra,
2. Taraprasad Mishra,
Quarter No.T/43/E-2,
Type II, Agripada
Railway Colony,
Western Railway Colony,
Western Railway,
Mumbai Central,
Mumbai - 400 008.
(By Advocate Shri M.S.Ramamurthy)

... Applicant.

V/s.

1. The Union of India. through
the Secretary, Railway Board,
Rail Bhavan,
New Delhi - 110 001.
2. The General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400 020.
3. The Divisional Security
Commissioner, Railway Protection
Force, Office of the Divisional
Railway Manager, Mumbai Central,
Mumbai - 400 008.

... Original Respondents.

1. The Senior Divisional Security
Commissioner, Railway Protection
Force, Western Railway,
Mumbai Central,
Mumbai - 400 008.
2. Shri Jagir Singh,
The Senior Commandant,
Railway Protection Force,
Western Railway, Mumbai Central,
Mumbai - 400 008.
3. Shri S.S.Brar,
The Chief Security Commissioner,
Railway Protection Force,
Western Railway, Churchgate,
Mumbai - 400 020.

... Contemners.

...2.

for

: ORDER ON CONTEMPT PETITION :

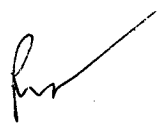
(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is a Contempt Petition filed by the Petitioners, the original applicants in the O.A., alleging that the respondents have committed contempt in not paying the D.C.R.G. amount due to him in pursuance of the final order of this Tribunal dt. 30.1.1996. The Respondents have filed reply opposing the Contempt Petition. We have heard the learned counsels appearing on both sides.

2. In the O.A., by order dt. 30.1.1996 this Tribunal directed the respondents to pay the petitioner (second applicant) DCRG amount within one month after he vacates the quarters and if the payment is delayed beyond one month then interest to be paid at 12%. The petitioners case is that the DCRG has not been paid till now.,

The respondents have raised two objections to the Contempt Petition. One is that though the second petitioner is entitled to the DCRG amount, he is liable to pay penal rent for not vacating the quarters within time as per rules and the respondents have adjusted the penal rent towards the DCRG amount and the second petitioner himself has to pay some more amount towards penal rent after adjustment of DCRG. The other objection is that the second petitioner was an officer in the RPF and this Tribunal has no jurisdiction to entertain any application on behalf of the RPF officials and therefore, the order passed by this Tribunal in granting some retirement benefits to second applicant was without jurisdiction and a nullity and hence not enforceable in law.

3. Admittedly, the second applicant was entitled to DCRG at the time of retirement. It is also not disputed before us that the administration can withhold DCRG till the official vacates the quarters. This point has been




upheld by the Tribunal in the final order and that is why payment of DCRG is ordered within one month after the second applicant vacates the quarters. The object of withholding the DCRG when an official is still continuing in the quarters is that the administration can use that amount to collect whatever dues are there from the retired official towards rent of the quarters. In fact, the learned counsel for the applicant submitted that he has no objection for the administration to deduct the normal rent due from the second applicant from DCRG till the date of vacating the quarters, but his argument is that they have no right to deduct penal rent from the said amount.

When the administration has a right to withhold DCRG till the vacation of the quarters, the object is that the administration must have some hold so that they can recover whatever dues that are due from a retired official towards quarters.

4. Then, it was argued on behalf of the applicants that the administration cannot itself decide as to what is penal rent and they must take action under Section 7 of the Public Premises Act. On the other hand, the learned counsel for the respondents submitted that under service rules the administration can itself determine as to what is penal rent and deduct it from the DCRG. Though it is not necessary at this stage to express any final view on this point, we can only mention that the Full Bench of this Tribunal in Ram Poojan's (Reported in Administrative Tribunal Full Bench Judgments 1994-1996 page 245) case has held that penal rent can be calculated under Service Rules without having recourse to the provisions of P.P. Act. Following that, we ourselves have taken similar view in another case viz. O.A. No. 1217/93 on 25.9.1998.

As already stated even the applicants counsel conceded that the administration can deduct normal rent out of DCRG and must pay the balance


...4.

27

-4-

amount to the applicant. Now, the respondents say that they can adjust the amount even towards penal rent. The stand of the administration is supported by the Full Bench decision. In these circumstances, if the administration bona fide believes and adjust the penal rent out of DCRG amount it cannot be said that the administration has committed contempt ~~of order~~ of this Court. We need not express any final opinion in this contempt petition whether the administration is entitled to claim penal rent under the service rules without having recourse to section 7 of the P.P.Act. But, it cannot be said that the action of the administration is illegal or it amounts to contempt.

To attract action for contempt, there must be willful disobedience of an order of the Court or Tribunal. Here, the respondents have a right to withhold DCRG till the official vacates the quarters. As already stated, the applicants' counsel himself admits that normal rent can be adjusted out of DCRG. But, the administration feels that whatever amount is due from the applicant can be adjusted. In these circumstances, if the administration has adjusted the DCRG amount towards the penal rent, it cannot amount to disobedience, much less willful disobedience of the order of the Tribunal.

5. The learned counsel for the respondents brought to our notice a decision of the Supreme Court reported in (1995) 29 ATC 540 (State of Haryana and Ors. Vs. K.N.Dutt), where also on an earlier writ petition filed by the official, the High Court allowed and directed the administration to pay all the retirement benefits to the official. Subsequently, since the full retirement benefits were not paid to the official, he filed a contempt petition in the High Court and the High Court observed that recovery of government dues from a retired official can be recovered from Gratuity and if the amount due from the official had been deducted and balance amount is paid



...5.

to him, then it does not amount to contempt of the order of the High Court. The Supreme Court has referred to this order and found that in view of that order there is no question of contempt and the official cannot file another writ petition claiming the same amount again.

In this case, the action of the administration cannot be said to be contempt of the order of the Tribunal. Under the Service Rules, the administration can withhold DCRG till the quarter is vacated and then recover whatever amount that is due from a retired official from the DCRG. As already stated we need not finally pronounce anything on the question whether administration can itself decide quantum of penal rent or it should approach the authority under the P.P. Act. If the claim of the penal rent is not permissible in law, the second applicant gets a fresh cause of action to challenge that decision of the ^{administration} Tribunal by approaching a proper forum. Therefore, on merits we do not find that any case is made out for initiating action for contempt.

6. Since we have held that on merits no case is made out for initiating action for contempt, it is not necessary to consider the legal argument about the in-executability of the order of this Tribunal for want of jurisdiction. However, we only mention the rival contentions briefly.

Admittedly, the second applicant was working in RPF, which is admittedly declared as an Armed Forces of the Union. It is also not disputed that this Tribunal has no jurisdiction over service disputes of RPF personnel. But the learned counsel for the applicants submitted that a retired RPF personnel can approach this Tribunal for getting some service benefits. In our view, when this Tribunal has no jurisdiction over an Armed Force of the Union, it makes no difference whether he is still in service or he is retired. Therefore, there is no difficulty to hold that second applicant could not have approached this Tribunal asking for any relief regarding the service benefits.

29

-6-

Hence, to that extent we can hold that this Tribunal has no jurisdiction to pass any order regarding the service disputes of the second applicant.

7. An Argument of the learned counsel for the respondents is that this Tribunal has no jurisdiction to grant any relief to RPF personnel. Then, he submitted that the order of the Tribunal dt. 30.1.1996 granting certain service benefits to second applicant is without jurisdiction and therefore a nullity and hence inexecutable. He placed strong reliance on the decision of the Apex Court reported in AIR 1954 SC340 (Kiran Singh Vs. Chaman Paswan & Ors.), where the Supreme Court has held that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced, even at the stage of execution and even in collateral proceedings. It is further pointed out that whenever there is such a ^{deficiency} ~~difficulty~~ of jurisdiction it cannot be cured even by consent of parties.

On the other hand, the learned counsel for the applicant contended that when rightly or wrongly the Tribunal has passed an order and it has become final, it is not open to the respondents at this stage to question the validity of the order and ^{their} ~~therefore~~ the remedy, if any, was to approach the High Court or Supreme Court to challenge it. It was further argued that the respondents are bound to obey the order of this Tribunal as long as it stands, unless it is set aside or modified by a higher forum.

After noticing the two rival contentions we do not want to go into the correctness of the submissions since on merits we have reached the conclusion that the respondents have not committed any contempt.

[Signature]

...7.

39

8. In the result, the C.P. is discharged. However, this order is without prejudice to the right of the second applicant to challenge the decision of the administration to adjust penal rent towards DCRG in an appropriate forum and in accordance with law. In the circumstances, there will be no orders as to costs.

D. S. Baweja
(D.S. BAWEJA)
MEMBER(A)

R. G. Vaidyanatha
(R.G. VAIDYANATHA) 3/2/99
VICE-CHAIRMAN

B. .

Order/Judgment despatched
to Applicant/Respondent(s)
on 3/2/99
9/2/99