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contd'

In respect of this, no representation has been made by the applicants.

The applicants would be at liberty to make a representation to the respondents within two weeks and the respondents will take a decision on those representations by a speaking order within 8 weeks thereafter.

Liberty to the applicants to approach the Tribunal if they feel aggrieved by the decision taken by the respondents on the representations. With this the OA. is disposed of.

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MR. Kolhatkar ✓

(M.R. Kolhatkar) (M.S. Deshpande)
M(A) NC

Dated: 23/2/95. (Sl. No. 4)

~~Order/Judgement M.F. 9/2/95
to Appellant respondent(s)
on 13/2/95~~

Affidavit by Sh. D.V. Gangal.
Notice of Contempt Application
No. 35/95, as well as, M.P. No. 174/95
returnable on 31/3/95.

22/2/95

M.P. No. 174/95
In C.P.W. 35/95
Received on 23/2/95.

C.P.W. 35/95
Need to order
on 23/2/95.

① ✓

MR. Kolhatkar ✓

(M.R. Kolhatkar) (M.S. Deshpande)
M(A) NC

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

M.P. 174/95, MP 249/95 & C.P. 35/95

in

O.A. 178/95

S.S. Mate & 41 Ors. Applicants

v/s

General Manager, C.Rly Respondents
& Others

CORAM

- 1) Hon'ble Shri B.S. Hegde, Member (J)
- 2) Hon'ble Shri M.R. Kolhatkar, Member (A)

APPEARANCE

- 1) Shri D.V. Gangal, counsel for the Applicants
- 2) Shri V.S. Masurkar for Shri J.G. Sawant, counsel for the Respondents.

Tribunal's orders

Dated: 5/4/95

(Per: Hon'ble Shri B.S. Hegde, M(J)).

1. Heard the arguments of Shri Gangal, counsel for the Applicants and Shri Masurkar, counsel for the Respondents. The Applicants have filed contempt petition no. 35/95 and also filed an M.P. 174/95 seeking directions to Respondents to allot work to the Applicants pending the hearing and final disposal of contempt petition 35/95 filed by the Applicants. The Applicants have also filed another M.P. 249/95 for bringing documents on record.

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2. In this connection, it is relevant to refer to the observations made by the Tribunal vide its order dated 9-2-1995 while disposing of the O.A. 178/95 at the admission stage itself. It reads as follows -

"Later Shri Sawant appears and states that the applicants would be deployed to work at Bhiwandi. Shri Gangal for the applicants states that the applicants are willing to be deployed to work at Bhiwandi and that on the basis of the orders which are being issued by the Respondents, the applicants will be entitled to TA and DA as mentioned in the letter dated 18-1-95. The applicants state that they will collect the necessary papers from Respondent No. 4. In view of this no other order."

3. The main contention of the Applicants is that the Respondents did not send the Applicants on TA/DA to Bhiwandi on 10-2-1995 but issued order to go to Panvel on transfer and not on TA/DA as per Annexure A-1. The work at Panvel is on open line. The Applicants did not go to Panvel as they cannot be forced to go to open line except on TA/DA. Hence, the Respondents have committed contempt of Court. Though the Applicants presented letter dated 10-2-1995 before the 4th Respondent, they did not carry out the directions of the Tribunal and showed wilful conduct of deliberately disobeying the orders of the Tribunal by not carrying out the same.

4. The Respondents in their reply to C.P. have stated that they never disobeyed the orders of the Tribunal; on the contrary on 18-1-1995 itself, they

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directed the Applicants to join duty and it is on record that 3 or 4 persons have already joined the duty pursuant to the offer and still working, and other persons refused to join duty which is clear from the endorsement on the letter dated 18-1-1995 stating that they have refused to receive the note and not willing to go on line even on TA; therefore, the learned counsel for the Respondents Shri Masurkar draws our attention that there is no intention on the part of the Respondents to disobey the orders of the Tribunal. Eventhough the offer was made to the Applicants they have refused to go to work. The second contention of the Applicants was that the railway pass issued to them was forged. Initially, it was issued from Panvel to Bhiwandi; later on, the word 'and back' was added; it was contended by Respondents that there is no forgery involved and it was a clerical mistake. As railway passes are given free of cost, the question of any forgery does not arise. Thirdly, regarding drawing of TA/DA, the applicants are entitled to draw the same after completion of the work at Permanent Way Inspector (M) Panvel and they would report back to Headquarters i.e. the Permanent Way Inspector (Construction) Jasai. The Applicants, however, refused to accept the said order dated 10-2-1995. The fact of refusal has not been refuted by the Applicants. In the instant case, the Applicants wanted TA/DA before they start their work which is not permissible under the rules. Accordingly, he submits that the contentions raised in the C.P. are untenable and the same are liable to be dismissed in limini. The Respondents in their reply have clearly stated that the letter dated 10-2-95 itself is an ample proof that the Applicants were not

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acting in compliance of the orders dated 9-2-1995 under which they were required to be taken on duty under Permanent Way Inspector (Construction) - Jasai but they were required to collect necessary papers from him to enable them to report to the Permanent Way Inspector (M), Panvel, to go to work at Bhiwandi. Instead, the Applicants insisted on being taken on duty under Permanent Way Inspector (Construction) Jasai.

5. We have heard the learned counsel for both the parties and have gone through the record. On perusal of O.A. 178/95, the relief claimed is that a suitable direction be issued to Respondents to take them on duty forthwith etc. Therefore, the Applicants having stated before the Tribunal that they were willing to be deployed to work under Permanent Way Inspector (M) Panvel at Bhiwandi, they cannot at this stage go back to challenge the order dated 18-1-1995. It is an undisputed fact that the Original Application was disposed of at the admission stage itself by its order dated 9-2-1995. Therefore, it is clear that the Applicants pursuant to Tribunal's order have been allotted work vide order dated 18-1-1995 and deployed to work temporarily for railway work without effecting change in their Headquarters at Jasai under Permanent Way Inspector (M) Panvel and they are aware that they are entitled to claim TA/DA if the place of working is 8 KM from the Headquarters. Once the Original Application was disposed of on merits, any further M.Ps do not lie as per the provisions of the C.A.T. Act and Rules. Therefore, the crucial question for consideration is whether the Respondents have committed any contempt of the Court. According to the said orders, the Applicants

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would be deployed to work at Bhiwandi and the Applicants expressed their willingness to be so deployed and no transfer order was passed.

6. In view of the above, no case for contempt has been made out. The Applicants have through the present application raised a controversy which was not the subject matter even of the original Application. They have thus tried to obtain a relief which could not have been granted to them even in the Original Application which has given rise to the present proceedings. The relief claimed in the O.A. is to give directions to the Respondents to take them on duty forthwith and grant pay and allowances for the period 27-1-95 to 31-1-95 etc.

7. Under Section 2 (b) of the Contempt of Court Act, every disobedience is not a contempt; only wilful disobedience is contempt. The position of a Court dealing with a case of civil contempt is that of an executing court; just as an executing Court cannot go beyond the decree, the contempt Court cannot grant a relief which had not been granted in the original proceedings. Therefore, in view of what is stated above, there is no contempt on the part of the Respondents; on the contrary, the Respondents did act pursuant to the direction given by the Tribunal; however, the Applicants refused to go on duty, as such except mere allegation, there is nothing on record to show that the Respondents in any way disobeyed the orders of the Tribunal.

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9. In the result, we are of the firm view, that the C.P. filed by the Applicants does not survive and the same is dismissed. Similarly, after the disposal of the Original Application, the question of filing any M.Ps through which seeking relief is not warranted under the Act. Accordingly, both the M.Ps are dismissed as devoid of merits. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

ssp.