

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 510/95

~~Transfer Application No:~~

DATE OF DECISION: 18-1-96

Shri C.M. Marcose Petitioner

Shri G.K. Masand Advocate for the Petitioners

Versus

Union of India & Anr. Respondent


Shri R.K. Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

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


(B.S. Hegde)
Member (J)

ssp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, GULESTAN BUILDING NO. 6
PRESCOT ROAD, BOMBAY - 1.

O.A. No. 510/95

Dated this 18th day of January 1996.

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

Shri C.M. Marcose

By Advocate Shri G.K.
Masand

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Applicant

v/s

Union of India & Anr.

By Advocate Shri R.K.
Shetty, Central Government
Standing Counsel

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Respondents

O R D E R

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

1. In this O.A. the Applicant prays for quashing the impugned charge sheet issued on 3-2-1995 under Rule 14 of the CCS (CCA) Rules in respect of the alleged incident which has occurred in the year 1987. At present, he is working as Assistant Engineer/Assistant Garrison Engineer, now posted at Bombay. He is due for promotion to the post of Executive Engineer and he states that DPC is likely to be convened in the month of December 1995.

2. The Applicant during the year 1986-87 worked at Gangtok, Sikkim as Assistant Engineer/Assistant Garrison

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Engineer. During the entire tenure, he has not received any chargesheet or admonishing letter by any authority. Therefore, he contends that the chargesheet deserves to be quashed on the ground of delay and laches and further the charges are vague.

3. Articles of charges framed against the Applicant are as follows -

ARTICLE - 1

Shri C.M. Markose, AE E/M while functioning as AGE E/M Gangtok during the period from 29 Aug. 86 to 3 Jun 89 had given the reasonability of rates for purchasing of the stores at higher rates, causing extra burden on exchequer by his inattentive and unjudicious functioning.

By the above acts, Shri C.M. Markose failed to maintain absolute integrity and devotion to duty thereby violating provisions of Rule 3 (1)(i) and (ii) of CCS (Conduct) Rules, 1964.

ARTICLE - II

Shri C.M. Markose, AE E/M while functioning as AGE E/M Gangtok during the period from 29 Aug 86 to 3 June 89 did not carry out any check on stores over-issued by his subordinates. The casual attitude on the part of Shri Markose caused mis-appropriation of Govt. stores by his subordinate staff.

By the above acts, Shri C.M. Markose failed to maintain absolute integrity and devotion to duty thereby

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thereby violating provisions of Rule 3(1)(i) and (ii) of CCS (Conduct) Rules, 1964.

ARTICLE - III

Shri C.M. Markose, AE E/M, while functioning as AGE E/M Gangtok during the period from 29 Aug 86 to 3 June 89 did not follow the MES Procedure laid down about the correct use of specification, execution of work and procurement of stores.

By the above acts, Shri C.M. Markose failed to maintain absolute integrity and devotion to duty thereby violating provisions of Rule 3(1)(i) and (ii) of CCS (Conduct) Rules, 1964.

ARTICLE - IV

Shri C.M. Markose, AE E/M, while functioning as AGE E/M Gangtok during the period from 29 Aug 86 to 3 June 89 did not exercise check on Baby indents made for MT Spares and its documentation. This caused excess issue of Spares than the actual requirement.

By the above acts, Shri C.M. Markose failed to maintain absolute integrity and devotion to duty thereby violating provisions of Rule 3(1)(i) and (ii) of CCS (Conduct) Rules, 1964.

4. In the light of the above, the Applicant has challenged the validity of the departmental enquiry initiated at him on more than one ground. Firstly, there is gross delay and laches in the issue of chargesheet, secondly, the chargesheet is vague and it contains vague

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allegations and it cannot be sustained, thirdly, the charges are framed with closed mind and without proper application of mind and no show cause notice has been issued to the Applicant in respect of the contents in the chargesheet. Lastly, the allegations as to lack of devotion to duty are vague and the allegations are not supported by any evidence. Further, the action to issue chargesheet on the eve of the Applicant being considered for promotion to the post of Garrison Engineer gives no explanation whatsoever in respect of the event which occurred in Gangtok hilly terrain in 1987 etc. The place in which he was placed is remote terrain operational area which is not a commercial centre to exactly assess the local market rate for each and every item. The reasonableness is assessed based on the justifiable overhead charges that the Trader could levy over and above manufacturer's price list. The price list has not been notified by the authorities. ~~In regard to~~ the chargesheet no. 2, no complaint is ever made for non-maintenance of or improper maintenance of the records/documents of the installations. Further, the procurement and utilisation of items procured is in the interest of troops/lives of the soldiers and it cannot be termed as uneconomical. During 1987, the struggle for separate Gurkha land started by Gurkha National Liberation Front headed by Shri Subhash Ghei Singh thereby causing continuous blockade

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of National Highway No. 31-A, the only road connecting Gangtok with rest of the country. The nearest suppliers were at Siliguri and on account of incessant rains from June to October resulting in land slides which would not allow the goods ~~and stores to~~ be brought to Gangtok and the procurement of various items and its incorporation in work, so as to obtain maximum efficiency and to give uninterrupted services to users, by way of replacement of worn out, and damaged items due to fair wear and tear, cannot be said to be lack of devotion to duty or conduct unbecoming of Government servant.

5. In so far as Article - III is concerned, under Indian Electricity Rule, it is laid down that "copper strips" for earthing with utter disregard to the site condition and the environment of the locality. Necessity to provide an item of particular specification takes precedence over the general policy of the department; that does not amount to violation of policy letter; that can be treated as guideline to obtain maximum economy and not as a complete ban. Likewise, in respect of Article - IV, ~~Baby~~ Indent, furnishing of the details after a lapse of 9 years ~~would~~ be difficult. It may be noted that in all the charges, the words used have been failing to maintain absolute integrity and devotion to duty thereby violating Rule 3 (1)(i)(ii) of the CCS Conduct Rules. If there ~~was any~~ lack of devotion to

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to duty, there would have been interruption in essential services which would have resulted in the army command/service and Station Commander complaining about inefficiency of electrical or mechanical services. That is not the issue in the present case. The issue of chargesheet is on account of malice on the part of some officers as the officer is due for promotion to the post of Executive Engineer; the DPC is likely to take place in the month of December 1995 and with a view to deprive the Applicant of the promotion, the present chargesheet has been issued. Since there has been inordinate delay in initiating disciplinary proceedings, the Tribunal by its order dated 19-6-1995 while admitting the O.A. granted interim stay of the enquiry till further orders.

6. The Respondents in their reply have not adduced for delay any convincing reasons/in initiating disciplinary proceedings against the Applicant. They only state that the Court of Enquiry appointed in 1989 has submitted its report in 1991. However, there is no specific the delay in reason given for/issuing the chargesheet against the Applicant. They state that there is some delay in initiating the proceedings against the Applicant. It is ^{an} admitted fact that the incident has taken place in a remote area - Sikkim, and that the local purchases were to be procured at Gangtok. They have refuted the contents of the Applicant that due to blockade of the

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the National Highway, local purchases could not be procured from Gangtok and they conceded that issue of chargesheet on account of irregularity having occurred in a very remote area and the Court of Enquiry having taken a considerable time in conducting the detailed investigation etc. has caused very much delay in issuing the chargesheet. The enquiry report published by the Respondent vis-a-vis the purchases made by the Applicant for the stores shows that since it is a remote area, procurement of stores required to be done is in the interest of troops which are to be procured from time to time without any interruption of supply and requirements of the Armed Forces could not be disturbed for want of stores. Admittedly, the chargesheet is issued after a lapse of 8 years. As stated earlier, the chargesheet issued is not only delayed but the contents are vague which cannot be confronted with. It is not the case of the Respondents that the Applicant has acted dishonestly. Taking a prompt decision is not bad in itself. Under any stretch of imagination, it can be said that the letter of the department is only an executive instruction which cannot prevail upon the statutory rule which if required under the Indian Electricity Act and the mere fact that installation of "copper strips" itself cannot be treated as an offence ~~at the~~ most, it may be uneconomical, but the use of the same by the Applicant, cannot be faulted. In fact, the Applicant has used the copper strips for ^{earthing and} /

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not aluminium items for earthing. In this connection, the learned counsel for the Applicant draws our attention to the various decisions of the Tribunal in support of his contention that the charges levelled against him are not only belated but are vague and which would not stand the scrutiny of law and the decisions of the Tribunal in similar circumstances. Firstly, the case of Arun Kumar Basu v/s Union of India and Another 1993 (1) All India Service Law Journal at page 510 wherein it is held as under -

"We have gone through the records of the case carefully and have heard the learned counsel for both the parties. In our opinion, the applicant is entitled to succeed on the short ground of inordinate delay in the initiation of departmental enquiry against him. There is no satisfactory explanation for the inordinate delay in issuing the charge memo, and it will be unfair to permit the departmental enquiry to be proceeded with at this stage. We are fortified in this conclusion by the decision of the Supreme Court in State of Madhya Pradesh vs. Bani Singh AIR 1990 SC 1308."

In the second case P.A. Natrajan v/s Government of India & Another (1992) 19 ATC 707, the Ernakulam Bench has held while quashing the chargesheet issued to the delinquent in 1990 while he was working at Calicut in respect of the incident which took place in 1982 at Ranchi. Similarly, the Jodhpur Bench in Lila Dhar

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Sharma v/s Union of India and Others, quashed the chargesheet issued in the year 1988 in respect of the incident which had taken place in 1978 only on account of delay and laches etc.

7. In the case of disciplinary actions when proceedings are taken against the delinquent officer, it is incumbent upon the administrative authority to initiate steps promptly without delay or laches so that it will be helpful both for the department to pursue the matter before the disappearance of the evidence and for the delinquent employee to defend the action with all contemporary materials. Delay and default on the part of the department give room for doubts and facilities for the escape of the culprit. The fate of the delinquent officer is the same in this case.

8. As stated earlier, the Respondents have not adduced any convincing reasons for the delay and laches in initiating disciplinary proceedings and it would cause prejudice and injustice to the Applicant are allowed to continue. As against this, the learned counsel for the Respondents relied upon the decision of the Supreme Court in the State of Punjab v/s Chaman Lal Goyal 1995 (2) All India Services Law Journal, wherein the Supreme Court has stated that disciplinary proceeding must be conducted without avoidable delay and in the

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case of delay the Court has to do a balancing process. Regarding delay, the Supreme Court has observed that if there is delay in serving the charges, the question is whether the said delay warranted the quashing charges in this case. It is trite to say that such disciplinary proceedings must be conducted soon after the irregularities have been committed or soon after discovering the irregularities. It cannot be held after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and also unexplained, the Court may interfere and quash the charges. But how long the delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted etc. Since the case relates to riot in the jail in the District jail-cum- security jail, Nabha, as the Applicant and Respondent in that case is working as Superintendent, Central Jail. In that connection, the Supreme Court has held that mere delay is no ground to quash the proceedings. From the cases cited by the counsel for the Applicant in support of his contention and in our view, the Supreme Court has clearly laid down that

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delay in initiating disciplinary proceedings would cause prejudice to the Applicant unless the delay is properly explained by the Respondents.

9. In a recent decision, the Supreme Court in B.C. Chaturvedi v/s Union of India and Others (1995) 6 SCC 749 has again reiterated ~~its~~ earlier stand that power of judicial review is meant to ensure that the individual receives fair treatment and not the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that fact must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceedings. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The question whether the delay in initiating disciplinary proceeding is unfair procedure depriving the livelihood of a public

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servant offending Article 14 or 21 of the Constitution would depend upon facts of each case, thereby the delay by itself cannot be regarded to have violated Article 14 of the Constitution. So far as the truth and correctness of the charges is concerned, it is not a matter for the Tribunal to go into, more particularly at a stage prior to the conclusion of the disciplinary inquiry except in a case where they are based on no evidence or where they are perverse.


10. In the light of the above, it is true in the present case that delay of 8 years in initiating disciplinary proceedings against the applicant, the Respondents had not adduced satisfactory explanation for delay in initiating the disciplinary proceedings, however, it is not the function of the Tribunal to withhold the enquiry proceedings; whatever plea taken by the applicant can be taken up before the Enquiry Officer who may consider the same and arrive at its conclusion within a shortest possible time. Since the applicant is due for promotion, in case of promotion, pending during the disciplinary proceedings, two courses are open to the competent authority - (1) sealed cover procedure; (2) ~~ad-hoc~~ ^{as per rules} promotion subject to the result of the disciplinary proceedings against the applicant. In the facts and circumstances of the case, since the applicant is due for promotion to the post of Executive

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Engineer, we are of considered view that the latter course should be adopted and give the benefit of promotion to the applicant. However, such an action would not stand as an impediment to take pending disciplinary action to its logical conclusion. The advantage of promotion gained by the delinquent officer would be no impediment to take appropriate decision and to pass an order consistent with the finding of proved misconduct. In the result, we are of the view, that the O.A. can be disposed of at the admission stage. Accordingly, the O.A. is admitted and disposed of the same by directing the Respondents that they should complete the pending inquiry in a period of four months from the date of receipt of the order keeping in view the observations made in this judgement while completing the inquiry proceedings. Should the Applicant be aggrieved by the final order passed by the competent authority, he is at liberty to approach the Tribunal if he so desires; secondly, as stated earlier, the applicant should be ~~considered for the post of Executive Engineer and the~~ ^{on ad-hoc basis} ~~was per rules~~ pending inquiry should not come in the way of his promotion in any way. The O.A. is disposed of with the above directions. No order as to costs.


(M.R. Kolhatkar)
Member (A)


(B.S. Hegde)
Member (J)

ssp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

C.P. 16/2000 in
ORIGINAL APPLICATION NO: 510/95

the 21st day of JUNE 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

C.M. Marcose ...Applicant.
By Advocate Shri G.K.Masand.
Union of India and others V/s ...Respondents.
By Advocate Shri R.K. Shetty.

O R D E R

{Per Shri S.L. Jain, Member (J)}

This is an application under Rule 4 of Central Administrative Tribunal (Contempt of Court) Rules 1986 for the following reliefs.

(a) That this Hon'ble Tribunal will be pleased to hold that Opponents herein have willfully and deliberately flouted the orders dated 3.6.1996, 29.10.1997 and 15.7.1998 in as much as they have continued to treat the Petitioner as facing the very same disciplinary proceedings even after the same have been quashed and set aside by this Hon'ble Tribunal vide dated 3.6.1996 and reaffirmed by its order dated 29.10.1997 and 15.7.1998 resulting in Petitioner being denied his rightful place in the Panel of Executive Engineers which was notified on 27.8.1999.

P.L. Jain

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(b) That this Hon'ble Tribunal, after holding the Opponents as guilty of contempt, will be pleased to award such punishment to the Opponents as may appear just and proper to this Hon'ble Tribunal to meet the ends of justice and to uphold the dignity and majesty of this Hon'ble Tribunal and the orders passed by this Hon'ble Tribunal.

(c) That this Hon'ble Tribunal will be pleased to direct the Respondents and the Opponents to purge themselves of the Contempt by promoting the Petitioner to the post of Executive Engineer with effect from 27th August 1999 when the Panel for the same was published and given effect to, with all consequential benefits arising from the said promotion.

(d) That costs of this Contempt Petition be awarded in favour of the Petitioner and

(e) That such other and further reliefs as are expedient be granted in favour of the Petitioner.

2. The applicant has filed OA 510/95 which was decided on 18.1.1996 and the following order was passed:-

Accordingly, the OA is admitted and disposed of the same by directing the Respondents that they should complete the pending inquiry in a period of four months from the date of receipt of the order keeping in view the observations made in this judgement while completing the inquiry proceedings. Should the Applicant be aggrieved by the final order passed by the competent authority, he is at liberty to approach the Tribunal if he so desires, secondly, as stated earlier, the applicant should be

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considered on ad-hoc basis for the post of Executive Engineer as per rules and the pending inquiry should not come in the way of his promotion in any way. The OA is disposed of with the above directions.

3. On perusal of the above order, we are of the considered opinion that the respondents were bound to comply two orders. Firstly, to complete the pending enquiry within a particular period. Secondly, the applicant should be considered on ad-hoc basis in the post of Executive Engineer as per Rule and the pending enquiry should not come in the way of his promotion in any way.

4. The respondents have filed M.P. 343/96 seeking extension of time for a period of six months from June 1996 to December 1996 which was decided on 3.6.1996. Three months time was granted. That was upto 30.9.1996 to complete the enquiry, failing which the proposed enquiry proceedings will have to be deemed to have been quashed. No further time will be granted under any circumstances.

5. The applicant filed an M.P.454/97 under Rule 24 of the CAT (Procedure) Rules 1987 which was ordered on 29.10.1997 but the M.P. was not disposed of and notice was ordered to issue as to why action should not be taken against the respondents under Contempt of Court proceedings. It is also observed that the final order on M.P. will be passed after deciding the Contempt Petition. The said M.P. was decided on 15.7.1998 and the following order was passed:~

In the result, both the M.Ps are disposed of as follows:

(i) The respondents cannot proceed with the departmental enquiry further against the applicant in

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view of the specific orders of the Tribunal dated 3.6.1996 and 29.10.1997 and in view of those orders, the departmental enquiry must be deemed to have been quashed. This finding of ours is of course without prejudice to the rights of the respondents to challenge the legality and correctness of the two orders dated 3.6.1996 and 29.10.1997 before an appropriate forum according to law.

(ii) The Contempt notice issued to the respondents for non-completion of the enquiry within time and not giving adhoc promotion to the applicant, is hereby discharged. However, this finding is without prejudice to the rights of the applicant to challenge his non-consideration for promotion by filing a fresh OA or otherwise, according to law.

(iii) In the circumstances of the case, there will be no order as to costs.

Alongwith the said M.P., M.P. 272/98 which was filed by the respondents for certain reliefs was also decided.

6. One Shri S.K.Misra and others filed an OA No. 465/99 against the respondents before CAT Allahabad Bench, Allahabad and an interim order dated 1.6.99 was passed to the following effect: "We provide that after D.P.C. has been held not more than 19 out of 58 vacancies to be filled by promotion of Asstt. Engineers to Executive Engineers till the interim relief asked for in 2339/99 is considered again after allowing two weeks time to the respondents to file objections."

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7. The grievance of the applicant is that the D.P.C. was convened for empanelled 19 Assistant Engineers for promotion to the post of Executive Engineer and the Petitioner's name would be the 19th name, the respondents deliberately and with a view to deny to the Petitioner his rightful claim for promotion to the post of Executive Engineer, notified the Panel only for 18 posts of Assistant Engineers and the said Panel included the name of Shri N.M. Kurian at Serial No.17 who has sought voluntary retirement and has stood retired on 27.2.1999 much prior to the meeting of the D.P.C. held in June/July 1999. The applicant represented the matter vide representation dated 27.9.1999 addressed to Respondent No.1. The second representation dated 18.10.1999 but no response to the same. It is learned that Headquarter was considering the applicant as involved in the disciplinary case whereas charge sheet stood quashed vide order dated 15.7.1998. It is on the analogy that an Appeal against the order of this Tribunal had been filed in November 1998 which is not admitted so far and no stay order has been granted. Hence this application. As Respondent No. 2, 3 and 4 are directly involved in the contumacious act to flout the Orders of this Tribunal and they have ~~been~~ willfully disobeyed the order passed by the Tribunal.

8. The respondents have not filed any written statement and argued the matter that there is no willfull disobeydance. It is for the respondents to decide whether the written statement to the Contempt Petition is to be filed or not.

9. The OA 510/95 was decided on 18.2.1996 and the naration of the above facts makes it clear that the only grievance the applicant can agitate now is second one, ^{that is} to say the

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applicant should be considered on adhoc basis in the post of Executive Engineer as per Rules and the pending enquiry should not come in the way of his promotion in any way.

10. It is suffice to say that the applicant is not seeking any relief for compliance of the order dated 18.1.1996 for his consideration on adhoc basis for the post of Executive Engineer as per Rules.

11. Now the grievance of the applicant is in respect of his consideration for regular vacancy for the year 1997-98 as stated above and he alleges malafides alongwith taking into consideration of the disciplinary proceedings which do not exists. It is suffice to state that none of the juniors to the applicant has been considered for promotion in regular vacancies arisen in the year 1997-98.

12. There is no order to be implemented in respect of regular vacancy arisen in the year 1997-98. Section 2(b) of the Contempt of Courts Act 1971 is as under:

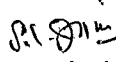
'Civil Contempt' means wilful disobedience to any Judgement, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court.

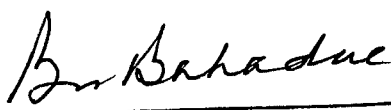
13. When there is no direction or order in respect of consideration for regular vacancy in the year 1997-98, in our considered opinion no wilful contempt been has made.

14. The applicant cannot have his every grievance decided in one OA just to say 510/95, the grievance which were not agitated.

15. The sword of Contempt cannot be kept hanging against the respondents for their every act which were neither the subject of OA nor order is passed in respect of the said subject. The applicant is not free to get every matter decided by contempt in his tenure of service which is an abuse of the process of the Court. In view of Rule 23 of CAT (Contempt of Courts) Rules 1986 the Tribunal is competent to decide the case regarding costs to be awarded as is deems fit, which shall be recovered in the same manner as a fine imposed under the code. In our considered opinion it is a fit case where this Tribunal can interfere. Even inspite of clear directions in the order on M.P. 454/97 the applicant has filed this C.P. which has no nexus with the order passed in OA 510/95 decided on 18.1.1996.

16. In the result Contempt Petition deserves to be dismissed and is dismissed accordingly. The notices issued to the respondents are discharged and the applicant is ordered to pay cost amounting to Rs. 650/(Legal practioners fee Rs. 500/- and Rs. 150/- other expenses.) to the respondents within a month failing which it shall be recovered as fine under the code.


(S.L.Jain)
Member(J)


(B.N.Bahadur)
Member(A)

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