

Miscellaneous Petition No.544/2005  
in  
Contempt Petition No.110/2001  
in  
ORIGINAL APPLICATION NO.755/1998.

Dated : 5-1-2006.

Hon'ble Shri A.K.Agarwal, Vice-Chairman,  
Hon'ble Shri S.G.Deshmukh, Member (J).

J.P.Shoke. ...Applicant.  
(By Advocate Shri D.V.Gangal)

v.

Shri R.K.Singh & Ors. ...Respondents.  
(By Advocate Shri S.C.Dhawan)

: ORDER ON M.P. NO.544/2005 :

{A.K.Agarwal, Vice-Chairman}

This Miscellaneous Petition No.544/2005 has been filed by the applicant with following prayers :

"a) This hon'ble Tribunal may please be disallow the Railway advocate to appear in the matter.

b) Direct the alleged contemners to file proper Vakalatnama in this matter.

c) Cost may please be provided for this application.

d) Any other and further order as this Hon'ble Tribunal may deem fit, proper and necessary in the fact and circumstances of the case".

2. The learned counsel for the applicant submitted that while considering Contempt Petition No.110/2001 alleging non-compliance of the Tribunal's order given while disposing of OA No.755/1998 a notice was issued to alleged contemners. However, the reply on behalf of

contemners has been filed by the counsel for the respondents. The learned counsel stated that as per the existing provisions of law reply to a show cause notice for contempt proceedings has to be filed by the contemner in his individual capacity and he is precluded from taking any assistance from the government department or government advocate. He contended that even the Railway Board has issued very clear instructions in this regard, especially for the cases dealing with matters relating to seniority or promotion of SC/ST. The learned counsel brought to our notice a letter of the Railway Board dt. 4.4.1994 wherein it is stated as follows :

" It is further clarified that in such events Ministry of Railways will not act to the rescue of such erring officers/officials or render any legal assistance whatsoever as such prosecution becomes a state (Govt.) case against the employees impleaded therein is in his personnel capacity, therefore, Union of India, Ministry of Railway or Zonal Administration can share no responsibility".

3. The learned counsel for applicant continuing his submissions mentioned that the Railway Board vide another letter dt. 27.5.1998 have laid down guidelines that in the matters relating to policy for SC/ST replies to CAT/High Court, approval of the Railway Board should be obtained so that the Board is in a position to check and inspect the legal aspects. Such policy direction was issued by the Railway Board since it was noticed that cases filed in connection with reservation are not

contested properly. The Railway Board vide circular dt. 21.9.1987 had directed that whenever there is a judgment of a court striking down the reservation policy of the Government for SC/ST, the matter should be immediately reported to the Board and steps should be taken to file SLP before the Supreme Court. Similar court cases in the High Courts/Tribunal should also be processed with due care and sense of urgency.

4. The learned counsel for applicant argued that as Rule 701 and 702 of Indian Railway Establishment Code, Vol-I provide that "If on consideration of the facts of the case the government considers to undertake the defence of the Railway Servant in public interest and only thereafter the government should make arrangement for the conduct of the proceedings as if the proceedings had been instituted against the Government". The learned counsel for the applicant concluding his submissions stated that in the present case the alleged contemners have neither signed the written statement personally nor have authorised any Advocate on their behalf. Further, the reply filed by the respondents has not been approved by the Railway Board. In view of such obvious legal infirmities the reply filed by the respondents cannot be taken on record.

5. The learned counsel for respondents Shri S.C.Dhawan stated that the main prayer made in the

M.P. is to dis-allow the railway advocate to appear in the matter and to direct the alleged contemners to file a proper vakalatnama. He submitted that a Full Bench of the Tribunal in the case of D.P.Badhola v. Arvind Dave {ATFB 1991-93 127} has held that reply to the show cause notices issued under the Contempt of Courts Act may be filed by the contemners themselves or by any officers authorised by Union of India. He contended that in view of such ratio it is not mandatory that the reply filed to the C.P. must be signed by contemners only. It can be signed by any officer authorised by Union of India. Therefore the reply filed in the present case meets legal requirements and should be taken on record. The learned counsel for respondents further argued that the Full Bench in the cited Judgment have also held that the government counsel is entitled to appear on behalf of contemners without filing a vakalatnama executed by the alleged contemners, but on filing a memo of appearance. In view of this, it was not mandatory to get the vakalatnama signed by the alleged contemners.

6. The learned counsel for the respondents stated that the reliance placed by the applicant on the contents of a D.O. letter written by Shri Ram Prakash, Executive Director to CPO, Central Railway/Western Railway is mis-placed. This letter is with reference to the cases mentioned in opening

para of the letter which were pending in various Benches of the Central Administrative Tribunal and have been disposed of long time back. Further, the denial of legal assistance to erring railway servants is relevant only for the two instances mentioned in para 6 of the letter and these are a) where the case is filed against such erring officers before National Commission of SC/ST or b) the erring officer is impleaded in a criminal proceedings under the provision of SC/ST, Prevention of Atrocities Act 1989 by the aggrieved SC/ST employees. He contended that none of these two situations are relevant to the facts of the present case. The learned counsel for the respondents further stated that the present case does not involve any policy matters whatsoever, but simply relates to the compliance of an order of the Tribunal. Therefore, any reply in such cases is not required to be vetted by the Railway Board.

7. The learned counsel for the applicant in his reply stated that the reliance placed by the respondents on a Full Bench verdict in the case of D.P.Badhola (supra) is of no help to them. Firstly, the verdict was given on 12.8.1992 and thereafter in the year 1994 instructions have been issued by the Railway Board. Secondly, the verdict of the Full Bench is based upon the provisions contained in Order 27 Rule 1 of CPC and provisions of CPC are excluded by Section 22 of the A.T. Act.

The learned counsel contended that Section 22 (1) clearly lays down that :

"A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure 1908 (5 of 1908), what shall be guided by the principles of natural justice".

He contended that in view of such legal provisions the prayers made the M.P. deserve to be allowed.

8. We have heard both the learned counsel and have gone through the material placed on record. We are of the considered opinion that verdict of Full Bench given in the case of D.P.Badhola (supra) is relevant to the present case. We do not agree with the argument that A.T. Act precludes provisions of CPC. In fact, the intention of the provisions quoted by the learned counsel for the applicant is that principles of natural justice should be given precedence over undue legal technicalities. Further Section 22 (3) of the A.T. Act clearly mentions that :

"The Tribunal shall have for the purposes of discharging its functions under this act the same powers that are vested in a Civil Court under the Code of Civil Procedure".

9. The argument that the verdict of the Full Bench is not with regard to Railway Servants has also no force. The Judgment of the Full Bench is on the issues germane to the present case and the ratio laid down is as follows :

"(2) At the preliminary stage, the replies to the show cause notice may be filed by the contemners themselves or by any officer of the Union of India duly authorised in this behalf. The Tribunal may, however, direct any of the

alleged contemners to file their replies personally.

(3) At the preliminary stage, the Government Counsel who are duly authorised by general notification to appear on behalf of the Union of India are entitled to appear on behalf of the Government servants who are impleaded as contemners alleging that they have committed civil contempt impleaded as contemners alleging that they have committed civil contempt by wilfully disobeying the directions of the Tribunal, without filing Vakalatnama executed by the alleged contemners, but on filing a Memo of Appearance".

10. Thus, it is clear that at preliminary stage the reply to show cause notice can be filed either by any officer of Union of India duly authorised in this behalf. Secondly, the government counsel duly authorised by general notification to appear on behalf of government servants who are impleaded as contemners can appear without filing vakalatnama executed by alleged contemner. The Railway Board Circular dt. 27.5.1998 contemplates approval by the Railway Board of replies filed in the Courts essentially with a view to check the legal aspects on policy matters. It is not the intention of this circular to get even such replies vetted from the Railway Board which do not relate to any policy matter, but are filed with a purpose to explain the reasons for delay in compliance of the directions of the Tribunal.

11. Keeping in view the verdict of the Full Bench, as well as, other facts of the case, we are of the considered opinion that an officer authorised by the Union of India can file reply on behalf of alleged contemners and the government counsel can

also appear on their own behalf by filing a Memo of Appearance. We also hold that reply explaining the reasons for delay in the implementation of the direction given by Tribunal is not required to be vetted by the Railway Board. We therefore, hold that the prayers made in the M.P. are devoid of merit. The M.P. is therefore dismissed. The case may be listed on ~~14~~ 14-2-2006.

M.G.Deshmukh  
(S.G.DESHMUKH)  
MEMBER (J)

  
(A.K.AGARWAL)  
VICE-CHAIRMAN

B.