

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CONTEMPT PETITION NO.29 of 2002
(In Original Application No.790 of 1998)

Dated this the 3rd day of May, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

M.G.Rahate
(By Advocate Shri V.S.Masurkar) - Applicant

Versus

1. Union of India
through the Chief Commissioner of
Customs, New Customs House,
Ballard Estate, Mumbai.
2. Dy.Commissioner of Customs House,
Vigilance Section,
New Customs House,
Ballard Estate, Mumbai.
3. Mr.S.K.Bharadwaj,
Chief Commissioner of Customs,
New Customs House,
Ballard Estate, Mumbai.
(By Advocate Shri M.I.Sethna) - Respondents

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Member (A) -

Contempt Petition No.29/2002 in OA 790/98 has been filed by Shri M.G.Rahate alleging that the alleged contemner is guilty of committing contempt against order of the Tribunal dated 22.12.1999 in OA 790/98. A notice was issued and reply has been filed by the alleged contemner. The operative portion of the order as recorded at Para 11 (a) & (b) of the Judgment dated 22.12.1999 reads as below:

- (a) The departmental enquiry against both the applicants is ordered to be expedited and should be completed by passing order by the Disciplinary Authority as expeditiously as possible and preferably within a period of 8 months from the date of receipt of a copy of this order. Needless to add that both the applicants should

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co-operate with the Inquiry Officer and the Disciplinary Authority in the expeditious completion of the disciplinary case.

- (b) In case the enquiry is not completed by passing final orders within a period of 8 months as directed, then M.G.Rahate's (applicant in OA No.790/98) claim for further promotion be considered, without following sealed cover procedure, provided he is otherwise eligible, fit and suitable for promotion and he comes within the zone of consideration for promotion.

2. Heard Shri M.I.Sethna for the alleged contemner. We have also been assisted by the learned counsel for petitioner, Shri V.S.Masurkar. The point made by Shri Masurkar is that while issuing the orders of promotion dated 19.3.2002 (Annexure- A- 2) the applicant's case for promotion had not been considered properly as required by the order of the Tribunal. Shri Masurkar further stated that the order were issued after the relevant MP was allowed, but even here the promotion given has been made notional. This point was discussed at some length making the point that it was deliberate in nature, and the fact of promotion being provided only notionally heightened the contempt.

3. The learned counsel for the respondents took us over the facts, especially the relevant dates of events. The main stand taken by the respondents is that when the DPC met on 18.3.2002 it was by mistake that applicant's case was taken up and considered under sealed cover procedure, and not under regular procedure as ordered by the Tribunal. It is further stated that on 19.3.2002 the order of promotion subsequent to the decision of DPC were issued; on 20.3.2002, the applicant, Shri Rahate, made a representation to the Commissioner (G), Customs, regarding his grievance of not getting the promotion. It is further stated that

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on 21.3.2002 stay on promotion from the post of UDC to Tax Assistant happened to be accorded in the case of Zemse (OA 251/2002). Because of this the respondents were put in a fix, and could not promote the applicant even though respondents consider the representation to be valid. 22.3.2002 to 25.3.2002 being holidays, the respondents moved the Tribunal through proper MPs on 27.3.2002 for permission for according promotion to Shri Rahate.

4. What was brought to be stressed by these dates was the fact and the contention that there was no wilful defiance of the orders of the Tribunal. The mistake had been committed and immediate action was taken to rectify the same. The delay occurred only because of the circumstances as recounted above. The learned counsel for the respondents also brought to our notice the notings made in this respect in the relevant file and the seriousness with which the matter was taken by the Chief Commissioner. We have carefully considered relevant notings on this file, although, for obvious reasons, we are not reproducing them here.

5. At the start of the argument today the learned counsel for the respondents had himself produced before us the order dated 2.5.2002 being E00 No.120/2002, whereby the applicant Shri M.G.Rahate, U.D.C. is ordered to be notionally promoted with effect from 19.3.2002 (copy was provided to Counsel for the applicant Shri Masurkar). The order dated 2.5.2002 was made



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subsequent upon allowing MP No.355/2002 in OA 251/2002, a day earlier. As discussed above the point about promotion being made notionally was strenuously objected to. The learned counsel for the alleged contemner/Department has taken instructions in this regard and after the case was taken up again in the afternoon today, we are provided with another order dated 3.5.2002 being EOO No.121/2002 whereby the earlier order has been superceded and promotion granted on regular basis to the applicant Shri M.G.Rahate.

6. From a careful consideration of the facts of the case, and after hearing learned counsel on both sides, and especially considering the notings on the file made by alleged contemner, it is clear that what had happened in the DPC cannot be termed as wilful disobedience, and appears to be a mistake. It is also equally clear that the Department has not taken up the matter with due care and caution. This is especially so because after the mistake at the DPC, later also, when the matter had come to the knowledge of the department, inasmuch as here was an MP moved and a CP on hand, the promotion was made notionally. It was later only on 3rd May that the Department got to see this and revise its orders. Thus while this lack of care was evident, it is to be concluded, nevertheless, that the action at the DPC being a mistake there was clearly no wilful act of defiance of the orders of the Tribunal, in so far as the alleged contemner is concerned. His notings on the file which we have referred to



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above, clearly shows that he has taken the matter with due seriousness and also enable us to come to the conclusion that there was no intention of any wilful defiance of the orders of the Tribunal on his part. We had hope that some kind of system will be ensured in future where such things are brought to the notice of senior officers at the appropriate time.

7. In view of the above, we do not find any case for proceeding further with CP. Nevertheless, the applicant was pushed to approach the Tribunal again in a manner where such litigation was evidently and clearly avoidable. He has been put to trouble and expense unnecessarily. In the peculiar circumstances discussed above, we do feel that this is a case where award of cost to the petitioner ^{Ans} Shri M.G.Rahate becomes justifiable. Shri Sethna opposes ^{of} ~~to~~ award cost since he states the respondents have taken all efforts as early as possible. Again, promotion was granted ^{only Ans} notionally in the first instance as discussed above. Awarding of cost is not only justifiable but essential, and that it cannot be a mere token cost. We hereby award cost of Rs.5000/- (Rupees Five thousand only) payable by the Department to the applicant. The cost shall be paid within two months.

8. CP is hereby rejected. Notices for contempt stand discharged. MP filed along with this CP also stands disposed of.

S.L. Jain
(S.L. Jain)
Member(J)

B.N. Bahadur
(B.N. Bahadur)
Member (A)

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dt: 3.5.2002
Order/Judgment despatched
to Applicant/Respondent(s)
on 31.5.2002
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