

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

HYDERABAD

C.P.No.116/1999 in O.A.No.1106/1999.

Date of Decision: 13/7/01

Between:

- | | |
|-----------------------|----------------------|
| 1. B.Ismail. | 12. P.Balanarasimha |
| 2.T.Subramani Chetty. | 13. S.K.Basheer. |
| 3. K.Ranganathan. | 14. A.Edward. |
| 4. P.Razzakvalli. | 15. K.Kumara Swamy. |
| 5. N.Nanappan. | 16. M.Subramanyam. |
| 6. V.M.Ahamadulla. | 17. U.Suresh Kumar. |
| 7.N.D.Murthy. | 18.K.Venkataramana. |
| 8. V.Obulesu. | 19. M.Manoharan. |
| 9. D.Prabhaker. | 20. M.Thangaraj. |
| 10. P.Unnikrishnan. | 21. K.Changalrayudu. |
| 11. V.P.Marimutta. | |

...Applicants

a n d

1. N.C.Sinha, General Manager,
South Central Railway, Rail Nilayam
Secunderabad.
2. S.P.Chowdhary,
Chief Personnel Officer, South Central Rly,
Railnilayam, Secunderabad.
3. The Divisional Railway Manager,
(Personnel Branch), S.C.Railway,Guntakal.
4. Pennu Swamy,
Divisional Railway Manager
(Personnel Branch), S.C.Railway,
Sanchalanbhavan, Secunderabad.
5. The Sr.Divisional Railway Manager,
(Personnel Branch), S.C.Railway,
Guntakal.
6. Nanu Paithalin, Sr.Commercial Manager,
S.C.Railway, Railnilayam,
Secunderabad Hd.Qrts, Sec'bad.

..Respondents

COUNSEL FOR THE APPLICANTS : Mr.Krishna Devan

COUNSEL FOR THE RESPONDENTS : Mr.P.P.Vittal

CORAM:

THE HON'BLE SRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN

THE HON'BLE SRI M.V.NATARAJAN, MEMBER (ADMN.)

:O R D E R:

(PER HON'BLE SRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN)

The contempt petition is filed complaining that the directions issued by the Hon'ble Tribunal in its Order dated 25.8.99 in O.A.No.1106/1999 were deliberately disobeyed.

2. The facts, briefly stated, are as under:

Aggreived by the Order of transfer dated 18.2.1999 of the applicants, who are 21 in number, from Guntakal Division to Sec'bad Division, they filed the above OA assailing its validity. The case of the applicants was that the transfer was only a temporary measure and that they were entitled to be transferred back after the expiry of Six months. Inspite of the expiry of the said period, as they were not posted back to Guntakal Division, the learned Judge, considering the temporary nature of the order of transfer and the stand taken by the respondents' Counsel, issued the following direction while disposing of the OA by Order dated 25.8.1999:

"Keeping the above facts in view, I believe that the interests of justice will be served if the Respondent No.4 is directed to consider the case of the applicants to post them back to the original position and pass necessary orders within six months from the date of receipt of copy of this order."

Since no orders have been passed as directed, the applicants filed the contempt petition.

3. After hearing the learned Counsel for the parties and finding that the respondents have not properly explained how the above order was complied with, the following order was passed on 20-1-2000, which needs to be extracted in full, for proper adjudication of the case:

"Note: In response to the direction given by this Bench on 20.12.1999, the Respondent No.4 in OA.No.1106/99 and R-4 himself in CP are present before the Bench today.

1. Heard the learned Counsel for the applicant Mr.Krishna Devan and Mr.K.Siva Reddy, learned Standing Counsel for the respondents.

After hearing them at length, we are constrained to observe that the respondents have not rendered any satisfaction how the direction given by this Tribunal in OA.No.1106/99 dated 25.8.1999 was complied with.

In para-3 of the judgment in OA.No.1106/99 dated 25.8.99 the Bench observed that the learned counsel Mr.K.Siva Reddy does not dispute the fact that the transfer was temporary and it was to be enforced only for a period of six months. However, inspite of the fact that the said period had expired, the learned standing counsel did not throw any light whether any order has been passed for transferring the applicant back to the original position on account of the fact that the limited period for transfer was over.

It was submitted by Mr.K.Siva Reddy that the applicant's case was considered and the same was rejected by order passed on 27.10.1999.

However, no explanation emerges from the submissions made by him as to why the applicant was not transferred back to his original post inspite of the fact that six months' period had already expired and inspite of the fact that the learned counsel Mr.K.Siva Reddy did not dispute the fact that the transfer was temporary and it was to be enforced only for a period of six months, as stated in para-3 of the order in question. It is also not stated before us whether any review petition or appeal had been filed against the order in question in any higher forum challenging the directions given by the Tribunal. Prima facie, therefore, there is no ground for the respondents to deviate and abstain from complying with the



directions given by the Tribunal in the aforesaid OA.

In view of what is stated above and in the interest of justice, with a view to giving one more opportunity to the Respondent No.4 who is present before us today to comply with the direction within four weeks from the date of this order and report compliance that the directions of the Tribunal in OA.No.1106/99 are complied with, failing which we are afraid the Respondent No.4, shall expose himself to the charge of committing contempt of court and would be liable to suffer the consequences for committing contempt of court.

Post on 18-2-2000."

4. Aggrieved by the above order, the respondents carried the matter in W.P.No.2503/2000 before the Hon'ble High Court and by an interim order dated 22.2.2000, the Hon'ble High Court issued an exparte interim stay. Subsequently, the writ petition was disposed of by the Judgment dated 2.3.2001 directing the respondents to seek the remedy before the Tribunal as the contempt proceedings are pending before it.

5. The learned Counsel for the Applicant Mr.Krishna Devan submits that as the respondents themselves took the stand that the transfer was only for 6 months and the Hon'ble Tribunal having taken the view the applicants ^{entitled for} are/re-transfer, directed to consider posting them back, it is binding upon the respondents to comply with such direction. It is argued that once again the Hon'ble Tribunal directed the respondents in its order dated 20.1.2000 to comply with the directions within four weeks, clearly stating that failing which the respondents stand exposed themselves to the charge of committing contempt and would be liable to suffer the consequences for such violation. In spite of the said mandate, the respondents had not complied with the same. Hence, it is argued that the respondents are guilty of Contempt of Court.

6. In the reply filed to the contempt petition, it is

however, stated that in obedience to the directions dated 25.8.99 issued by the Tribunal, the respondents had carefully considered the matter and decided to continue to operate those posts at Secunderabad Division in public interest and the same were communicated to all the employees by individual letters, vide their proceedings dated 26/27.10.99 (Annexure.R-I). Hence, it was stated that the respondents had duly complied with the orders of the Hon'ble Tribunal. The learned Sr.Counsel Sri S.R.Ashok, appearing for the Railways, submitted that a conscious decision was taken by the Railways in pursuance of the directions issued by the Hon'ble Tribunal to keep the applicants in Secunderabad Division to meet the exigencies of administration and the additional requirement of staff in Secunderabad Division.

7. We have heard carefully the arguments advanced by the learned Counsel for the Applicants and the Respondents.

8. To appreciate the points advanced in this case, it is useful to notice the impugned order of transfer dated 18.2.99. (Annexure.I to the OA).
The operative portion of the said Order reads as under:-

The following posts of GTL Division are transferred to SC Division with immediate effect temporarily for a period of 6 months to meet the exigencies of Services/additional requirements in Pantry Car of AP Express and also Shatabdi Express scheduled to be introduced w.e.f. 19.2.99 between SC/RJY, where the catering services are to be manned departmentally."

9. The order itself shows that the transfer was temporary for a period of 6 months, to meet the additional requirement in Pantry Car of AP Express and Shatabdi Express. It is stated in the counter affidavit that in addition to the 21 applicants, about 70 other Class IV employees were transferred from Guntakal Division to Sec'bad Division .



10. Though the validity of this order was assailed, the OA was disposed of mainly keeping in mind that as the period of 6 months had expired, the applicants were entitled to be re-transferred. In that view of the matter, the learned Judge issued the direction to consider the case of the applicants for re-transfer by order dated 25.8.99.

11. In pursuance of the direction, the learned Counsel for the Respondents, submits that the competent authority issued the proceedings dated 26/27.10.99. These proceedings, in our view, is crucial in this case. A reading of the same, shows that respondent no.4 having carefully considered the above order passed by the Tribunal, the Railway Administration,-

"have decided to continue the posts transferred from Guntakal Division to Secunderabad Division."

12. Thus within two months from the date of the order, the Railway Administration did consider the direction and took a conscious decision for the reasons stated in the order, to keep the applicants at Secunderabad even after the expiry of 6 months.

13. The Hon'ble Tribunal, inspite of noticing the order dated 27-10-1999, directed in its order dated 20-1-2000, to comply with the directions within 4 weeks from the date of the order and report compliance. A careful reading of the order would at once indicate clearly that the learned Judges were of the view that no order was passed at all re-transferring the applicants inspite of the expiry of the period of 6 months. The learned Judges therefore took a serious ^{Views} of the matter and directed to pass the order within 4

weeks. Can it be said that the above order was passed, not satisfying with the order dated 27-10-1999 ? We do not think so. If that were so, the order should contain some discussion or reasons as to how the order passed by the respondents was not in compliance of their directions. They were under the impression, that no such order was passed. Infact the respondents had already passed the order dated 27-10-1999.

14. The learned Sr.Counsel for the Respondents submits that what was directed by the Hon'ble Tribunal was to consider the case of the applicants for posting them back to their original place and the respondents had accordingly considered the said direction and passed the order dated 27.10.99 and hence, they have not committed any disobedience of the orders.

15. We find merit in this contention. No doubt, the Court having come to the conclusion that the applicants were to be re-transferred. However, as the respondents were directed to consider the question of re-transfer, they did consider and took a conscious decision, keeping in mind the view expressed by the learned Judge in the order. A reading of the order dated 27.10.99 would clearly indicate that the respondents had carefully examined the issue and found that it was necessary to continue the applicants. The reasons given by the Railway Administration may be right or may not be. It is not for us in this contempt proceedings to go into the validity or adequacy of the reasons. The contempt jurisdiction being limited, what is required to be looked into is whether the alleged contemnors had wilfully disobeyed the orders of the Tribunal.

16. From the context, it appears that at the time of transferring the petitioners by the impugned order, the idea was to re-transfer after a period of 6 months. For that reason in the



impugned order it was stated that they would be transferred only for a period of 6 months. However, due to the exigencies of service and due to coming down of the work load on GTL Division and due to the additional requirement for catering the services on Sec'bad Division, the present decision was taken to continue them. It is, however, not the case of the respondents that they would be continued only in Secunderabad Division. Depending upon the requirement that may arise on GTL Division, the applicants would be re-transferred.

17. The offence of civil contempt has been defined as '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'. Hence mere disobedience to a Court's order would not constitute contempt unless it was clearly brought out that the disobedience was made wilfully. In our view, in this case it is not even shown that the respondents had committed any disobedience of the directions of the Court.

18. The CP therefore fails and is accordingly dismissed. In the circumstances, we do not order costs.

M. V. Natarajan
(M.V.NATARAJAN)
MEMBER (ADMN.)

V. Rajagopala Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN

DATED: this the 13 day of July, 2001.

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