

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

C.P.No.10/2001

Date of order: 1/5/2001

Bheru Lal, S/o Sh.Mangal Ram, Driver, O/o Supdt.
Engineer, Telecom Civil Circle, Lal Kothi, Jaipur.

...Petitioner.

Vs.

1. Sh.A.N.Prasad, Chief Engineer(Civil) Rajasthan Zone,
BSNL, Lal Kothi, Jaipur.

...Nonpetitioner/Respondents.

Mr.P.V.Calla : Counsel for applicant

Mr.Bhanwar Bagri : Counsel for respondent.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

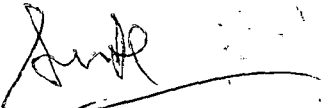
Hon'ble Mr.H.O.Gupta, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

This Contempt Petition has arisen out of an order dated 20.9.2000 passed in O.A No.430/2000. Vide order dated 20.9.2000, this Tribunal held as under:

"We direct respondent No.3 to decide/dispose of the appeal dated 21/24.8.99 (Ann.A6), filed by the applicant within a period of two months from the date of receipt of a copy of this order, by a reasoned and speaking order. The applicant will be at liberty to approach the appropriate forum if he is aggrieved by the order passed by the disciplinary /appellate authority"

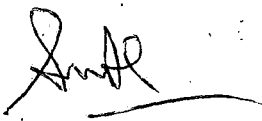
2. The case of the petitioner in brief is that he filed appeal dated 21/24.8.99 to the appellate authority against the order of penalty dated 9.7.99 but the same was not decided, therefore, the applicant filed O.A No.430/2000. This Tribunal vide order dated 20.9.2000, directed



respondent No.3 to decide/dispose of the appeal within two months. It is stated that order dated 20.9.2000 was served upon the respondents through registered post dated 27.9.2000 but vide letter dated 20.11.2000, Sh.A.N.Prasad, communicated to the petitioner that his appeal dated 13.11.99 has already been dismissed. Thereafter, the petitioner sent a notice dated 8.1.2001 which was replied that the order of the Tribunal has fully been complied with. It is stated that despite the position made clear to the respondents, the appeal filed by the petitioner was not decided, as per orders of this Tribunal in O.A No.430/2000, therefore, this contempt petition was filed.

3. Show cause was given to the opposite party who filed reply. The opposite party in the reply has stated that no such appeal dated 21/24.8.99, was received by the answering respondent. It is also stated that the appeal dated 13.11.99 filed by the applicant has already been decided vide order dated 20.11.2000. It is also stated that the notice dated 8.1.2001 was replied by the opposite party vide communication dated 15.1.2001, stating that compliance of the order has already been made.

4. On 11.4.2001, the counsel for the petitioner submitted before this Tribunal that an advance copy of the appeal was sent to the Chief Engineer, directly through courier and on this submission, Sh.A.N.Prasad, Chief Engineer, was directed to file an affidavit whether a copy of appeal as alleged by the petitioner was received by him or any other person on the post. In the additional affidavit Sh.A.N.Prasad, admitted that due to confusion this was stated in the reply erroneously that the appeal filed by the petitioner dated 13.11.99 has already been decided vide

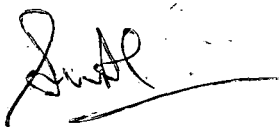


order dated 20.11.2000, thus the order of the Tribunal has fully been complied with. It is further stated in the affidavit that the appeal dated 21/24.8.99 was not properly placed for disposal and on a enquiry it was revealed that the appeal filed by the petitioner was entered in the office of Supdt.Engineer on 24.8.99 and the appeal sent through courier was received by the Sr.P.A to the then Chief Engineer, Sh.S.K.Dutta. When Sh.Dutta was contacted on telephone at Patna, he could not give a definite reply but accepted the receipt of the appeal. It is also stated that the appeal dated 21/24.8.99 has been decided by the present Chief Engineer vide order dated 30.4.2001. Thus, it is stated that there was nothing wilful and deliberate disobedience on the part of the opposite party not to decide the appeal. Hence, it is stated that the opposite party has not committed any contempt.

5. Heard the learned counsel for the parties and also perused the whole record.

6. Disobedience of Court's order amounts to contempt only when it is wilful or deliberate. It is the duty of the applicant to prove that the action of the alleged contemner to disobey the orders of the Tribunal was intentional. Mere delay in compliance of the directions/orders of the Tribunal does not constitute contempt unless it is wilful.

7. In Indian Airport Employees Union Vs. Rajan Chatterjee, 1999(1) SLR SC 612, it was held that in order to prove civil contempt, there must be wilful disobedience. If there is no proof of flouting the orders of the Court deliberately, there would not be a case of contempt. Mere misrepresentation of executive instructions will not be sufficient to held guilty for civil contempt.



8. In L Chandra Kumar Vs. UOI & Ors, (1997) 3 SCC 261, Hon'ble Supreme Court was of the view that the Tribunal should be slow to proceed against the party in contempt action.

9. In Suresh Chandra Poddar Vs. Dhani Ram & Ors, SC SLJ 2002(1) 150, it was held by the Hon'ble Supreme Court that contempt jurisdiction is to be exercised sparingly in very deserving cases only and not casually.

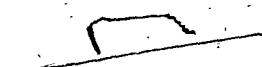
10. In the instant case, the petitioner has failed to establish that there was a wilful and deliberate disobedience on the part of the opposite party.

11. However, it appears that the opposite party even on notice of contempt was not ready to admit that the appeal dated 21/24.8.99 has been filed and the same is pending. It was only on 11.4.2001 that the counsel for the petitioner submitted that an advance copy of the appeal addressed to the Chief Engineer was sent directly through courier and he obtained a receipt to this effect. There upon Sh.A.N.Prasad, Chief Engineer, was directed to file an affidavit to the effect that whether a copy of the appeal as alleged by the petitioner, has been received by him or any other person on the post. In pursuance of this order, Sh.A.N.Prasad, filed an affidavit and admitted the fact that the earlier statement in the reply was erroneous and was made due to confusion and he admitted to have received the appeal dated 21/24.8.99 and the same was decided by the present Chief Engineer vide order dated 30.4.2001. After perusal of over all situation, it can be safely said that although the petitioner has failed to establish deliberate and wilful disobedience against the opposite party but it does appear that due to negligence on the part of the official

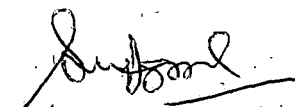
Sh. A. N. Prasad

respondents' department, the applicant was dragged in unnecessary litigation causing him mental and financial loss.

12. We, therefore, do not find the opposite party guilty of contempt, therefore, this contempt petition fails and notices issued to the alleged contemner are hereby discharged. The petitioner shall be entitled to a cost of Rs.4000/- from the respondents' department. However, the respondent department shall recover the cost so imposed from the official, who is found responsible for not placing the appeal dated 21/24.8.99 before the concerned authority, which caused delay in the disposal of the appeal.


(H.O. Gupta)

Member (A).


(S.K. Agarwal)

Member (J).