

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, 1

JAIPUR BENCH, JAIPUR.

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CONTEMPT PETITION NO. 67/2000  
IN  
ORIGINAL APPLICATION NO. 135/2000.

\*\*\*\* Date of decision : 30/12/2001

NAND KISHORE GUPTA, S/o Shri Ghanshyam Dutt,  
aged about 35 years, R/o 1/756, Malviya Nagar,  
Jaipur, working as Senior Clerk under Senior  
Divisional Mechanical Engineer, Jaipur, Divi-  
sional Railway Manager Office, Power House  
Road, Jaipur.

... Applicant.

Versus.

1. Shri Arimardhan Singh,  
Divisional Railway Manager,  
DRM Office, Power House Road,  
Jaipur.
2. Shri Anant Swaroop,  
Senior Divisional Personnel Officer,  
Western Railway, Jaipur Div., Jaipur.

Mr. S.K. Jain, Counsel for the petitioner. Respondents.  
Mr. Manish Bhandari, Counsel for the respondents.

CORAM :

THE HON'BLE MR. S.K. AGARWAL, JUDICIAL MEMBER.  
THE HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

PER THE HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER :

This petition has been filed with the  
prayer that the alleged contemnors Shri Arimardhan  
Singh, D.R.M., Jaipur and Shri Anant Swaroop,  
Sr.D.P.O., Western Railway, Jaipur be punished  
for committing contempt having disobeyed the

order passed by this Tribunal in CP 35/2000 in OA 135/2000, decided on 13.09.2000. Operative part of the order which is alleged to have been disobeyed is reproduced as under :-

"Contempt Petition is dismissed and the notices already issued are discharged. However, we think it appropriate to direct the respondents to take the applicant on duty, provided he reports for duty as per the prescribed roster in the office of CPCR."

2. The case of the petitioner is that in pursuance of the order passed by this Tribunal, he reported for duty on 29.02.2000 and filed his representation requesting the respondents in OA 135/2000 to take him on duty as per prescribed roster. It has been stated that he sent reminders on 3.10.2000, 4.10.2000, 5.10.2000 and 9.10.2000 but got no response. He claims having sent a number of letters to the respondents but without any effect and states that till date no roster has been given to the petitioner. He has filed this Contempt Petition with the prayer that respondents be punished for their deliberate act of disobedience of the order passed by this Tribunal, and that they be ordered to allow the petitioner to do his duty during 9.30Hrs to 18.00 Hrs. as is being done by other ministerial staff of D.R.M. Office.

3. The respondents in their reply have stated that the petitioner has not been reporting for duty despite having being advised through a number of letters. It has been stated that the

petitioner was deliberately avoiding to join his duty under the Chief Power Controller as he is insistent upon not to following the duty roster and wants to work only during 9.30Hrs. to 18.00Hrs. It has been submitted that the petitioner is only sending representations but is himself avoiding following the directions of the Tribunal as given in CP 35/2000 and has not been reporting for duty. The respondents have further stated that seeing the adamant attitude of petitioner to work only between 9.30Hrs to 18.00Hrs they issued an order on 12.1.2001, asking him to join his duties under the Station Superintendent, Phulera, where he is not required to work at night time. This order of the respondents has not been accepted by the petitioner. It has been further submitted that considering the circumstances, and the attitude of the petitioner, it is clear that he is not willing to abide by orders given by the respondents and also the directions of the Hon'ble Tribunal. Thus, the Contempt Petition deserves to be rejected.

4. In the rejoinder to the reply filed by the petitioner, he has denied that the order dated 12.1.2001 was ever served upon him and he also maintained that in any case this order is not in conformity with the directions of the Tribunal. He was required to be taken on duty as per prescribed roster and that he is not being given any such roster. The petitioner claims that he reported

observed that as per the directions in the O.A. the applicant in the O.A. was to be taken on the post which he was holding and according to the roster applicable to the post on the particular day. It was also noted by the Tribunal that applicant's grievance has been that his time should be only 9.30AM to 6.00 PM. The learned counsel mentioned that on this issue the petitioner has filed O.A. 135/2000 which was under consideration of the Tribunal wherein the petitioner has sought relief on this matter only that he can not be assigned any duty in other than the date 9.30AM to 6.00PM. He contended that till that controversy in OA 135/2000 was decided by the Tribunal the petitioner can have no right to insist that he should be made to work only from 9.30AM to 6.00PM. It was also held by the Tribunal that the petitioner belongs to clerical staff and like other clerical staff in the office of Chief Power Controller he was bound to follow the roster. In these circumstances, the learned counsel submitted that the petitioner is misusing the process of Court and filing repeated petitions to claim a relief not due to him and the petitioner has gone to the extent of filing yet another Contempt Petition after his earlier Contempt Petition was dismissed. Learned Counsel also produced before us a copy of the roster, as a sample, which was being followed in the office of Chief Power Controller to refute the stand of the opposite party that there was no roster prescribed.

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at 9.30Hrs on 12.1.2001, but was not taken on duty and he went back. It has been stated that no order has been passed by the respondents from 29.9.2000 till January, 2001. He is also stated to have represented to General Manager through D.R.M., but his representation was not forwarded. He claims that he was willing to join duty provided ~~to~~ a copy of roster is given to him. According to him there are specific orders in Railways providing working hours as between 9.30AM to 6.00PM in a day and that in the Railway Board's order dated 10.12.1986 it has been clearly stated that timings are same as per other Central Government Offices located at the one places and have given timings as 9.30AM to 6.00PM. A reference has been made by the petitioner to para 512 of Medical Manual wherein it has been provided that only the employees with the prescribed categories of A-1, A-2, A-3 and B-1 can be asked to work during night hours and if they fail in such medical standard, they should become unfit for duties in night. The clerical staff to which he belongs, comes under C-2 category. As such the petitioner contends that he could not be asked to work in the night.

5. We have heard the learned counsel for the parties and perused the written statements brought on record by either side.

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6. The learned counsel for the petitioner laid special emphasis on the term, 'As per prescribed roster' which appeared in the order of this Tribunal, the disobedience of which has been alleged in this Contempt Petition. He challenged that no roster was being maintained by the respondents and also submitted that the clerical staff can not be assigned duties other than from 9.30AM to 6.00PM. His contention was that the respondents have failed in their duty to draw up any roster and no copy of any such roster has been made available to the petitioner and thus he contended that the petitioner cannot be asked to work in shifts when no such roster has been prescribed.

7. The learned counsel for the respondents stated that the fact and circumstances of the case make it appearant that the petitioner was adamant in not following the duty roster as he wants to work only during 9.30AM to 6.00PM. He submitted that the petitioner had filed CP 35/2000 wherein the ground taken was that the respondents were not allowing him to discharge duties as per directions of the Tribunal. While going in to the facts, the Tribunal had taken Note of the fact that the applicant was asked to join duties and start working to the roster assigned to him which was 14.00Hrs to 22.00Hrs in the period from 30.5.2000 to 2.6.2000. In that order the Tribunal had also

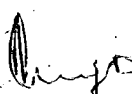


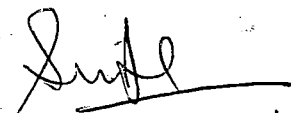
observed that as per the directions in the O.A. the applicant in the O.A. was to be taken on the post which he was holding and according to the roster applicable to the post on the particular day. It was also noted by the Tribunal that applicant's grievance has been that his time should be only 9.30AM to 6.00 PM. The learned counsel mentioned that on this issue the petitioner has filed O.A. 135/2000 which was under consideration of the Tribunal wherein the petitioner has sought relief on this matter only that he can not be assigned any duty in other than the date 9.30AM to 6.00PM. He contended that till that controversy in OA 135/2000 was decided by the Tribunal the petitioner can have no right to insist that he should be made to work only from 9.30AM to 6.00PM. It was also held by the Tribunal that the petitioner belongs to clerical staff and like other clerical staff in the office of Chief Power Controller he was bound to follow the roster. In these circumstances, the learned counsel submitted that the petitioner is misusing the process of Court and filing repeated petitions to claim a relief not due to him and the petitioner has gone to the extent of filing yet another Contempt Petition after his earlier Contempt Petition was dismissed. Learned Counsel also produced before us a copy of the roster, as a sample, which was being followed in the office of Chief Power Controller to refute the stand of the opposite party that there was no roster prescribed.

We have carefully gone through the order passed by this Tribunal in CP 35/2000 decided on 13.9.2000. We are not able to appreciate the rationale behind filing this petition when the similar allegation had been made in the earlier C.P. and matter decided. It had been observed by the Tribunal that no direction had been given in the O.A. to the respondents to take the applicant on duty only between 9.30AM to 6.00PM. Even in Contempt Petition the orders were to take the applicant on duty as per the prescribed roster. We can not appreciate the contention of the learned counsel for the petitioner that there is no roster prescribed. In fact in the order in CP 35/2000 the Tribunal had observed that according to the roster the employees of this office are discharging their duties in 3 shifts. It is also seen in that order that extract of the Attendance Register was also brought on record to show that other persons including the clerical staff in that office of the Chief Power Controller were discharging duties as per Roster. It was held that the applicant was bound to follow the roster. There was no direction to make a copy of the roster available individually to the petitioner. We have no doubt that this entire exercise on the part of the petitioner is only to avoid working in shifts and he is, in our opinion, misusing the process of Court by filing such Contempt Petition. The petitioner is well

advised not to waste resources and time in a totally avoidable litigation and should attend to his duties as required under the rules as per directions of this Tribunal. The C.P. filed by him has no legs to stand upon and liable to be dismissed. This is moreso when the matter whether he could be asked to work in other than 9.30AM to 6.00PM was a matter in dispute in the O.A. filed by him, and the O.A. is yet to be decided. We have heard that O.A. also alongwith the C.P. and are passing orders thereon separately. Till that decision petitioner was bound to follow the orders already giving. By committing a wrong himself by not obeying those orders he is trying to use that wrong in his favour.

In the facts and circumstances of the case we dismiss this contempt petition.

  
(A.P. NAGRATH)  
Member (Admn.)

  
(S.K. AGARWAL)  
Member (Judl.)

Shashi/