

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of decision: 7th April, 2004

CF No.69/2003 (OA No.92/1998)

S.K.Sharma s/o late Shri Jaish Raj Sharma aged about 66 years, r/o 57 Ghanshayam Vihar, Vaishali Marg, Post Office, Meenawala, Jaipur, retired from the post of Sr. Clerk, Office of the Regional Director, North-Western Region, Atomic Minerals Division, Jaipur.

.. Petitioner

Versus

Shri Anil Kakodkar, Secretary to the Government of India, Department of Atomic Energy, Anushakti Bhawan, C.S.M. Marg, Mumbai.

.. Respondent

Mr. C.B.Sharma, counsel for the petitioner

Mr. Tej Prakash Sharma, counsel for the respondent

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R (ORAL)

The petitioner has filed this Contempt Petition for the alleged violation of the order dated 28.7.2000 passed in OA No. 92/1998 whereby this Tribunal in para 8 has observed as under:-

8. We, therefore, allow the O.A. and direct the respondents:-

(i) to release 50% amount of gratuity, commuted value of pension, and leave encashment so withheld within a period of two months from the date of receipt of a copy of this order subject to the applicant executing an indemnity bond with two sureties to the effect that the applicant will refund the amount so

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released to the respondents in the event of recovery being ordered from him by the competent authority.

(ii) the respondents are also directed to complete the disciplinary proceedings pending against the applicant within six months from the date of receipt of a copy of this order and the applicant shall cooperate for this purpose.

(iii) in case the applicant is fully exonerated in the disciplinary proceedings, he will be entitled to receive the rest of the amount so withheld and he will be entitled to interest @ 12% per annum on the full amount of retiral benefits so withheld till he is not paid.

(iv) No order as to costs."

2. The grievance of the applicant is that though he has been fully exonerated vide order dated 19.8.2002 and thereafter the retiral benefits has been released vide order dated 16.9.2002, 24.9.2002 and 25.9.2002 by which interest on gratuity has been allowed only and no interest has been allowed on other retiral benefits i.e. commuted portion of pension and leave encashment. As such, the direction No. 8(iii) as reproduced above, has not been complied with despite the fact that the aforesaid order of the Tribunal has been confirmed by the Hon'ble High Court while dismissing the D.B. Writ Petition No.266/2001 filed by the respondents vide order dated 24.1.2001.

3. Notice of this ^{petition} was given to

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the respondents. The respondents have filed reply. In the reply, the facts as stated above, has not been disputed. Regarding the grievance of the applicant that directions were issued by the Tribunal vide order dated 28.7.2000 in OA No. 92/1998 has not been complied with, it has been stated that the applicant has also filed OA No. 443/2001 seeking quashing of the chargesheet dated 28.6.95 issued to him and to release remaining 50% of retiral benefits alongwith interest on full amount of retiral benefits till payment as allowed by the Hon'ble Tribunal vide order dated 28.7.2000 in OA No. 92/98. The Hon'ble Tribunal after going through the facts of the case read with the judgment pronounced by this Tribunal in earlier OA as well as the judgment rendered by the Hon'ble High Court of Rajasthan, allowed the said OA filed by the Petitioner/applicant vide order dated 28.3.2002. It is further stated that the Hon'ble Tribunal after going through the order passed in earlier OA No. 92/98 filed by the petitioner/applicant, vide order dated 28.3.2002 in operative portion has observed as under:-

"7. Accordingly, this OA is allowed. The chargesheet dated 28.6.95 is quashed. The respondents are directed to pay the applicant all retiral benefits within a period of six months from today, failing which the applicant shall be entitled to interest at the rate of 9.5% per annum till such benefits are actually paid."

Feeling aggrieved, by the order dated

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28.3.2002 passed in OA No. 443/2001, the respondents also filed Review Application No. 7/2002 in OA No. 443/2001 and the Tribunal vide order dated 3.6.2002 dismissed the Review Application at circulation stage itself. It is further stated that thereafter the matter was examined in the light of order dated 28.3.2002 passed in OA No. 443/2001 and ultimately decision was arrived at in consultation with the UPSC to exonerate the petitioner/applicant from the charges against him and to drop the disciplinary proceedings. Accordingly, an order dated 19.8.2002 was passed by the respondents thereby dropping the disciplinary proceedings against the applicant. In total compliance with the order dated 28.3.2002, the petitioner was released the balance retirement benefits by means of Demand Draft No. 653171 dated 25.9.2002 for Rs. 90,549 due to him vide sanction dated 16.9.2002 and 24.9.2002 i.e. within six months from the date of the order, which includes interest on gratuity as per CCS (Pension) Rules, 1972 as detailed in the letter dated 25.9.2002. Though the aforesaid order dated 28.3.2002 is specific to allow interest only in the event of failure to release balance amount of retiral benefits within six months, the respondents have allowed interest on retirement gratuity as per the interest rate of Provident Fund from time to time varying from 12 to 9 % in terms of Rule 68 of CCS (Pension) Rules, 1972. Therefore, the question of payment of interest @ 12% on retiral benefits does not

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arise. It is further stated that the earlier order dated 28.7.2000 in OA No. 92/98 was only stating a hypothetical case and was not the final order in the matter.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 As can be seen from the facts as stated above, the petitioner seeks implementation of the directions given in para 8(iii) of the order dated 28.7.2000 passed in OA No. 92/98 whereby this Tribunal has held that in case the applicant is fully exonerated in the disciplinary proceedings, he will be entitled to receive the rest of the amount so withheld and he will be entitled to interest @ 12% per annum on the full amount of retiral benefits so withheld till he is not paid. On the other hand, the stand taken by the respondents is that the petitioner/applicant has subsequently filed OA No. 443/2001 whereby he has prayed for quashing and setting aside the charge memo dated 28.6.95 (Ann.A3) with all consequential benefits and also that the respondents be further directed to release the remaining 50% retiral benefits with interest on full amount of retiral benefits till the payment as allowed by the Hon'ble Tribunal vide order dated 28.7.2000 (Ann.A1). The Hon'ble Tribunal after considering the matter has allowed this OA vide order dated 28.3.2002 thereby quashing the chargesheet dated 28.6.95. It was further

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directed that the respondents shall pay the applicant all retiral benefits within a period of six months from the date of passing of the order failing which the applicant shall be entitled to interest at the rate of 9.5% per annum till such benefits are actually paid. According to respondents, this order was passed taking into consideration the direction issued by this Tribunal in OA No.92/98 and the prayer of the applicant that the respondents be directed to release the remaining 50% of the retiral benefits. Interest on full amount of retiral benefits in terms of earlier order dated 28.7.2000 has been declined and this Tribunal has categorically held that the applicant be paid all retiral benefits within a period of six months from passing of the order i.e. 28.3.2002 and in case the payment is not made within a period of six months, the applicant shall be entitled to interest at the rate of 9.5% per annum till such benefits are actually paid. The respondents have further stated in the reply affidavit that though as per the order dated 28.3.2002 passed by this Tribunal in OA No.443/2001, since the payment was made within six months, the applicant was not entitled to interest at all on the retiral benefits, yet the respondents have given interest on gratuity at the rate of interest paid on Provident Fund from time to time varying from 12 to 9 % in terms of Rule 68 of the CCS (Pension) Rules, 1972. Thus, according to the respondents, in view of the order dated 28.3.2002 passed in OA

No. 443/01 which has also taken into consideration the order dated 28.7.2000 passed by this Tribunal in earlier OA against which the present Contempt Petition has been filed, no interest was required to be paid to the petitioner as all the payment was made within six months from the date of passing of the order dated 28.3.2002. The interest was required to be paid in case the payment of all retiral benefits was to be made after expiry of six months, still the petitioner was given interest as per Rule 68 of the CCS (Pension) Rules, 1972. We see considerable force in the submission made by the learned counsel for the respondents.

4.2 In order to constitute disobedience of the order of the Court and in order to establish civil contempt under Section 2(b) of the Contempt of Courts Act, 1971, it has to be established that disobedience of the order was 'wilful' and proof of mere disobedience is not sufficient. Where there is no deliberate floating of the order of the Court but the matter relates to realm of applicability/interpretation of the order passed by this Tribunal in two different OAs, it would not be a case of civil contempt. This is the view which has been taken by the Apex Court in the case of Indian Airports Employees' Union vs. Ranjan Chatterjee and anr., (1999) 2 SCC 537, whereby the Apex Court was concerned with floating of the order of the Court by misinterpreting the executive instructions. The Apex Court held that it would not be a case of civil

contempt.

4.3 At this stage it would also be useful to refer to the decision of the Apex Court in the case of J.S.Parihar vs. Ganpat Duggar and ors., (1996) 6 SCC 291, whereby the Apex Court has held that once there is an order passed by the Government on the basis of directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. In that case the dispute was regarding the publication of seniority list. The Apex Court observed that preparation of seniority list may be wrong or may be right or may or may not be in conformity with the directions but that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. However, this would not be wilful violation of the order.

4.4 Further the Apex Court in the case of Jhareswar Prasad Paul and anr. vs. Tarak Nath Ganguly and ors., (2002) 5 SCC 352, has held that court cannot in the guise of exercising jurisdiction grant substantive relief not covered by the order or judgment which is subject of the court proceedings. The court has to see whether there was disobedience of Court's judgment or order and not what the judgment or order should have contained. If there is any ambiguity therein, court should direct the parties to approach the court which had passed the same.

4.5 Viewing the matter from the ratio as laid down by the Apex Court in the aforesaid

cases, it cannot be said that the respondents are guilty of civil contempt. The petitioner is claiming the benefit of the order in OA No. 93/98 decided on 28.7.2000 whereas according to the respondents, the petitioner is not entitled to the benefit of this order in view of the subsequent order dated 28.3.2002 passed in OA No. 443/01 whereby the applicant has also claimed interest on remaining amount of retiral benefits in the light of the order dated 28.7.2000 which prayer of the applicant was declined, as can be seen from the operative part of the order dated 28.3.2002 which has been reproduced in the earlier part of the judgment. In that order, it has been specifically stated that the applicant will be entitled to interest at the rate of 9.5% per annum till such benefits are actually paid on all retiral benefits, in case the same is not paid within six months. It is admitted case between the parties that the payment of retiral benefits were made within six months from the date of the order dated 28.3.2002. As such, in terms of order dated 28.3.2002 the petitioner was not entitled to any interest at all, still the respondents have paid interest on gratuity amount as was admissible under Rule 68 of CCS (Pension) Rules, 1972. The argument of the learned counsel for the respondents that it is the judgment dated 28.3.2002 passed in OA No. 443/2001 which is of later date and was passed taking into consideration the earlier order of this Tribunal dated 28.7.2000, which is operative and

enforceable and the judgment dated 28.3.2002 cannot be brushed aside and in any case the same cannot be said to be a wilful disobedience of the order dated 28.7.2000 passed in the earlier OA so as to attract Section 2(b) of the Contempt of Courts Act. Thus, we are of the view that at the most, it may be a case of wrong interpretation of the order dated 28.7.2000 by making subsequent order dated 28.3.2002 applicable while releasing the retiral benefits and declining the interest to the petitioner. Certainly it cannot be a case of wilful disobedience so as to attract the provisions of Contempt of Court Act, 1971. For that purpose the ^{Separate} _A remedy is available to the applicant as per ratio laid down by the Apex Court and in case there was an ambiguity between the earlier order dated 28.7.2000 passed in OA No.92/98 thereby allowing 12% interest in case the applicant is exonerated and subsequent order dated 28.3.2002 passed in OA No. 443/2001 thereby declining the interest in case all retiral benefits are made within six months from passing of the order, It was open for the petitioner to institute appropriate proceedings before the Bench which has passed the orders. Having not done so, this Tribunal cannot in the guise of exercising jurisdiction under contempt proceedings grant interest to the petitioner which is admittedly not covered under the subsequent order of the Tribunal dated 28.3.2002 which has also taken into consideration the ^{earlier} order where such interst was granted.

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5. Accordingly, for the foregoing reasons,
the Contempt Petition is dismissed. Notice issued
to the respondent is discharged.


(A.K. BHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)