

C.P.No.....40..... of 1999. (O.A.33/97)

DATE OF DECISION..10.3.2000...

Shri Vim Kharkhonger

PETITIONER(S)

S/Sri J.L.Sarkar, M.Chanda.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Sri B.P.Srivastava & others.

RESPONDENT(S)

Sri A.Deb Roy,

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE MRS LAKSHMI SWAMINATHAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Judicial Member.

Lat. Swaminathan

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Contempt Petition No. 40 of 1999 (In O.A.33/97)

Date of Order : This the 10th day of March, 2000.

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

The Hon'ble Mrs Lakshmi Swaminathan, Judicial Member.

Shri Vim Kharkhonger,
Driver,

Office of the Commissioner,
Customs and Central Excise,
Shillong.

. . . petitioner

By Advocate S/Sri J.L.Sarkar, M.Chanda.

- Versus -

1. Shri B.P.Srivastava,
Chief Commissioner,
Customs and Central Excise,
15/1 Strand Road,
Calcutta-700001.

2. Sri Z. Tawchwang,
Commissioner,
central Excise,
Shillong.

. . . Contemners.

By Advocate Shri A.Deb Roy.

O R D E R

SMT. LAKSHMI SWAMINATHAN (J.M)

Contempt Petition 40/99 has been filed by the applicant in O.A.33/97 in which he has submitted that the respondents have wilfully disobeyed the Tribunal's order dated 20.8.1999.

2. The operative portion of the Tribunal's order dated 20.8.1999 is re-produced below :

"Under the circumstances the termination of the applicant without following the procedure prescribed under Article 311 is illegal and liable to be set aside. Accordingly we set aside the order of termination as well as the order passed by the appellate authority. The applicant shall be deemed to be in service with all consequential service benefits."

3. The respondents in their reply have submitted that they have implemented the aforesaid order of the Tribunal and they have accepted the joining report of the applicant.

They have also stated that the arrears salary from the date of joining consequent to the Tribunal's order has been paid to him and the period from the date of his termination till the date of his joining shall be regularised by way of granting extra ordinary leave. However, they have stated that no pay shall accrue to the applicant during the period of extra ordinary leave. The respondents have also stated that they had approached the Hon'ble Gauhati High Court against the Tribunal's order dated 20.8.1999 but as they had not obtained any stay order, they have implemented the same.

4. Shri J.L.Sarkar, learned counsel for the petitioner has submitted that placing the applicant on extra ordinary leave for the period from termination of his service till the date of his joining is contrary to the aforesaid order of the Tribunal. His contention is that the order clearly stated that the applicant shall be deemed to be in service with all consequential service benefits and, therefore, be entitled to all pay and allowances for the intervening period. This has, however, been disputed by Shri A.Deb Roy, learned counsel for the alleged contemnors who^{has} submitted that as there is no such order for payment of pay and allowances for the period from termination of service till the date of joining, the respondents have not committed any wilful disobedience of the Tribunal's order.

5. After careful consideration of the pleadings and submissions made by the learned counsel for the parties we are unable to agree with the contentions of Shri J.L. Sarkar, learned counsel for the petitioner, that the respondents have committed any wilful or contumacious disobedience of the Tribunal's order dated 20.8.1999. In J.S.Parihar vs. Ganpat Duggar and others (1996) 6 SCC 291 the Supreme

had held :


"Once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the 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, that cannot be considered to be the wilful violation of the order."


In another case, Indian Airports Employees Union vs. Ranjan Chatterjee & another (JT 1999(1) SC 213), the Apex Court had held, that:

"In order to amount to 'Civil Contempt' under section 2(b) of the Contempt of Courts Act, 1971 must be 'wilful' and proof of mere disobedience is not sufficient. Where there is no deliberate flouting of the orders of the Court but a mere misinterpretation of the executive instructions, it would not be a case of Civil Contempt."

6. In the facts and circumstances of the case and taking into account the judgments of the Supreme Court in the aforesaid cases, it cannot be held that the respondents have wilfully flouted the Tribunal's order in O.A.33/97. If the petitioner is aggrieved by the order passed by the respondents he may have a fresh cause of action but that cannot be considered on merits in the contempt proceedings.

7. In view of the above, C.P.40/99 is rejected. Notices to the alleged contemnors are discharged.


(SMT.LAKSHMI SWAMINATHAN)
JUDICIAL MEMBER


(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER