

Central Administrative Tribunal
Jabalpur bench

CCP No.60/05
in OA No.650/04

Jabalpur, this the 27th day of June 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

Manohar Lal Khanna
Asstt.Central Intelligence Officer
Grade-I
Office of the Joint Director
Subsidiary Intelligence Bureau, MHA
Govt. of India, MP, Bhopal.

Petitioner

(Petitioner in person)

Versus

1. Union of India through
Shri V.K.Duggal
Secretary
Ministry of Home Affairs
Govt. of India
New Delhi.
2. Shri E.S.L.Narsimhan
The Disciplinary Authority
The Director
Intelligence Bureau
Ministry of Home Affairs
Govt. of India
New Delhi.
3. The Former Disciplinary Authority
The Joint Director
Subsidiary Intelligence Bureau
Ministry of Home Affairs
Govt. of India
Char Imli, Bhopal.
4. Shri Satinder Singh
Former & IST Disciplinary Authority
&

Joint Director
Subsidiary Intelligence Bureau
Ministry of Home Affairs
Govt. of India
Bhopal.

5. Shri P.P.Nautiyal
Former Asstt. Director
Subsidiary Intelligence Bureau
Ministry of Home Affairs
Govt. of India
Bhopal.

6. Pay & Accounts Officer
Intelligence Bureau
Ministry of Home Affairs
Govt. of India
AGCR Building
New Delhi.

Respondents.

(By advocate Shri M.Chaurasia on
behalf of Shri A.P.Khare)

ORDER

By A.K.Gaur. Judicial Member

The aforesaid contempt petition has been filed by the petitioner alleging that the order dated 18.3.2005 passed in OA No.650/04 is being wilfully disobeyed by the respondents. It is also alleged that the respondents are flouting the directions given in Para 6 of the said order dated 18.3.05 with impunity. For convenient perusal, the order and directions given in Para 6 are reproduced hereunder:

"6. Hence without going into the merits of the case, we are of the considered opinion that ends of justice would be met if we direct the applicant to file an appeal against the order of the D.A. within a period of one month from the date of receipt of a copy of this order. We do so accordingly. If the applicant complies with this, the appellate authority is directed to consider and decide the appeal of the applicant by passing a speaking, detailed and reasoned order within a period of two months from the date of receipt of the appeal. It is also directed to the appellate authority that while considering the appeal of the applicant, they will decide the same on merits and will not take the plea of limitation."

2. The petitioner had earlier sent his appeal dated 6.7.2000 (Annexure R-14 of OA 650/04) to ^{the} then appellate authority i.e. the Director, I.B., New Delhi requesting him to consider his appeal and pass a reasoned and speaking order as per rules, but since no speaking and reasoned order was passed by the appellate authority, the petitioner was forced to file OA No.475/2001 in June 2001 in this Tribunal. It is vehemently submitted by the applicants that during the pendency of the aforesaid OA, the then former Appellate authority vide his letter dated 29.10.2001 (Annexure P-2) assumed himself and lowered down his position as Disciplinary authority in a dramatic manner and against the rules passed the order dated 5.8.2003 (Annexure A-57 of OA 650/04) imposing a major penalty of compulsory retirement from service on the petitioner and the period of absence w.e.f. 12.10.92 onwards was treated as dies-non. It is alleged by the petitioner that he had already sent two appeals on 11 & 16th August 2003 respectively (Annexures P-4 & P-5) to the Hon'ble President of India, who became the new appellate authority of the petitioner. In the said appeal, the petitioner prayed for quashing the order of compulsory retirement and granting consequential benefits to him. The Hon'ble President of India vide letters dated 5.12.2003 and 14.7.2004 was kind enough to forward the petitioner's case to the Secretary, Ministry of Home Affairs, New Delhi with a direction to take appropriate action in the matter. But no action was taken by the Ministry of Home Affairs in the matter till the date. The petitioner, accordingly, filed OA No.650/04 before this Tribunal. This Tribunal, while disposing of the OA 650/04, directed the appellate authority to pass a speaking, detailed and reasoned order in the petitioner's case within 2 months after filing of the appeal to the appellate authority. It is alleged by the petitioner that he again sent an appeal to the Hon'ble President of India with a copy of the same to the former appellate authority i.e. the Director, IB on 6.4.2005 by registered A.D post (P-8) with proof of posting. The Hon'ble President of India was pleased to forward the petitioner's appeal to the

Secretary, Ministry of Home Affairs to take appropriate action in the matter. But no action was taken either by Secretary, Ministry of Home Affairs or by the Director, IB. It is clearly alleged by the petitioner that the respondents, from the very beginning, have been violating and willfully disobeying the directions of this Tribunal as well as the orders of the President of India. The petitioner has prayed that suitable action may be initiated against the respondents for willful disobedience of the order & directions of the Tribunal.

3. By means of filing a counter affidavit, the respondents have denied the allegations contained in the contempt petition. It was brought to the notice of the Tribunal that in the instant case Shri E.S.L.Narsimhan, Director, IB and others are not the competent authorities to decide the appeal of the applicant. The competent authority to decide ~~the~~ appeal is the Hon'ble President of India and the appeal preferred by the petitioner has been submitted through the Department and the Department in turn sent it to the Government for decision by the competent authority in consultation with the UPSC. The respondents have mentioned that the petitioner had preferred his appeal during April 2005. However, at the same time, he also filed a review petition in the Tribunal and this fact has been suppressed by the petitioner in the contempt petition. It is submitted on behalf of the respondents that there has been no intentional delay in seeking more time from the Tribunal for ensuring compliance of order by the competent authority. Shri R.N.Gupta, Joint Director, IB, New Delhi has passed an order No.1/Vig/97 (47)-2614 dated 5.12.2005 together with copy of advice of UPSC (Annexure P-1 & P2) in the name of the President of India, the appellate authority. In the said order, it has been mentioned that "after having carefully gone through the relevant papers on record, issues raised by Shri Khanna in his appeals dated 11.8.2003, and 16.8.2003, and advice of the UPSC has observed that Shri M.L.Khanna who is victim of Bhopal Gas Tragedy, which took place in December 1984, was continuously paid his monthly pay and allowance till 11.10.1992 as per order of the President, despite the fact

that he was not performing any duties and had continued to absent himself from office. In October 1992, he was declared fit to perform light duties by Dr.S.K.Tandon, Lecturer in Psychiatrist, Department of Medicine, G.M.C.Bhopal." The petitioner was directed on 28.10.92 by SIB, Bhopal to report for duty immediately. Dr.P.K.Purohit, Chief Medical & Health Officer, Bhopal also informed vide his letter dated 20.7.1993 that Shri Khanna appeared before the Medical Board on 17.7.93 who found him fit to perform official duty of milder nature. He was therefore again directed to report for duty vide memo dated 10.8.93. The petitioner, instead of reporting for duty approached the Tribunal praying for release of his pay and allowances. The Tribunal vide its order dated 5.10.1994 directed department to arrange medical examination of the petitioner by the State Medical Board. But he did not appear before the medical board. The President, therefore, agreed with the advice of the UPSC and considered that there was no merit in the appeal filed by petitioner and the penalty of compulsory retirement imposed on him was not excessive. Therefore his appeal was rejected.

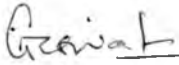
4. The petitioner appeared in person to argue the case and it was contended by him that his appeal has not been considered properly by the appellate authority taking into consideration all the grounds mentioned in the OA and the order of the appellate authority is not according to law. Shri M.Chaurasia, holding brief of Shri Khare, was also heard. He submitted that the contempt petition is misconceived in view of the fact that the order and directions passed by the Tribunal have fully been complied with by the respondents and this Tribunal may not sit as court of appeal over the findings recorded by the appellate authority.

5. We have seen several decisions of Hon'ble Supreme Court in this regard. The Hon'ble Supreme Court in - 2000 (10) SCC 285, Lalit Mathur case, and AIR 1996 SC 2758 V.Kanakrajan's case have clearly held that if the respondents have considered and decided the appeal or representation by passing a reasoned and speaking order in pursuance of the directions of the High court or Tribunal, it will be

sufficient and full compliance of the order and directions of the court. While exercising contempt jurisdiction, this Tribunal may not sit as a court of appeal over the same. The proper course for the applicant is to file a fresh OA if he is aggrieved by the said order.

6. In view of the aforesaid observations, the contempt petition has no merit and the same deserves to be dismissed and notices are to be discharged. We do so accordingly. It is, however open to the petitioner to approach this Tribunal by filing a fresh OA, if so advised.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

aa.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्पित:-

- (1) सचिव, उच्च न्यायालय दार एलेक्जिण्डन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यर्पी श्री/श्रीमती/कु.....के काउंसल
- (4) वंथनाल, सेंट्रल, जबलपुर जेलघर

सूचना एवं आवश्यक कार्यवाही हेतु

रजिस्ट्रार

Shri C.L. Khanna Bhopal
Shri AP Ichare HCB


3/7/06