

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 838 of 2003

Contempt Petition No. 89 of 2003

Jabalpur, this the 4th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

1. Original Application No. 838 of 2003 -

K.B. Mukundan, Son of Shri
Bhaskaran Pillai, Aged 49 years,
Resident of Type III-58, A.G.
Colony, Bhadbada Road,
Bhopal (M.P.).

... Applicant

(By Advocate - Smt. S. Menon)

V e r s u s

1. Union of India, Through :

Secretary, Ministry of
Finance, Department of Revenue,
New Delhi.

2. Comptroller and Auditor General
of India, 10, Bahadurshah Zafar
Marg, Indraprastha, New Delhi.

3. Principal Accountant General
(Audit)-I, Madhya Pradesh, Moti
Mahal, Gwalior (M.P.).

4. Accountant General (Audit)-II,
Madhya Pradesh, 53, Arera Hills,
Maida Mills, Bhopal (M.P.).

4.(A) Ms. Gargi Kaul, Accountant
General (Audit) II, Madhya
Pradesh, 53, Arera Hills, Maida
Mills, Bhopal (M.P.).

5. P.N. Shrivastava, Ex Audit
Officer, C/o. Accountant General
(Audit)-II Madhya Pradesh, 53,
Arera Hills, Maida Mills,
Bhopal (M.P.).

... Respondents

(By Advocate - Shri S.A. Dharmadhikari)

2. Contempt Petition No. 89 of 2003 -

Shri K.B. Mukundan, S/o Shri Bhaskaran
Pillai, Aged 49 years, R/o Type III-58,
A.G. Colony, Bhadbada Road,
Bhopal (M.P.).

... Applicant

(By Advocate - Smt. S. Menon)

V e r s u s

1. Shri V.N. Kaul, Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, Indraprastha, New Delhi.
2. Shri B.R. Khairnar, Principal Accountant General (Audit)-I, Madhya Pradesh, Moti Mahal, Gwalior (M.P.).
3. Smt. Gargi Kaul, Accountant General (Audit)-II, Madhya Pradesh, 53, Arera Hills, Maida Mills, Bhopal. (By Advocate: Shri S.A. Dharmadhikari) ... Respondents

O R D E R

By G. Shanthappa, Judicial Member -

The said O.A. is filed seeking the relief to set aside the order dated 28.10.2003 (Annexure A-17) and order dated 28.11.2003 (Annexure A-16) and hold that the orders are malafide and further relief to direct the respondents to pay the salary to the applicant for the month of November, 2003 with all service benefits.

2. The brief facts of the case are that the applicant has been working as Manager, Computer Cell under the 4th respondent. He was posted as Manager on 19.8.1998. On 15.09.2003, the Deputy Accountant General (Audit) vide his Memo dated 15.09.2003 informed the applicant that fifth respondent had submitted a written complaint dated 11.9.2003 wherein he has mentioned that the applicant misbehaved and used abusive and discourteous language with him. Through the said Memo, the applicant was asked to submit his explanation. The applicant submitted his representation on 15.09.2003 to the Accountant General, Audit II informing about an incident having taken place on 11.09.2003. The said representation clearly depicts that the 5th respondent was asking the applicant to do a job which he ought not to have said and, therefore, the applicant squarely followed the principle,



which he was required to perform. There was no latch on his part. He also made it clear that it is not a reply to the Memorandum dated 15.09.2003 but the complaint does not substantiate any proof or evidence and on the contrary it is motivated with malafide intentions. On 22.09.2003, applicant submitted his reply to the Deputy Accountant General (Works) wherein he has mentioned that 5th respondent had brought a Typist to the Computer Cell personally and asked the applicant to handover the record to the said Typist to which the applicant did not accede. The applicant has also submitted documents to reflect his innocence. Vide representation dated 24.09.2003 the applicant has requested the authorities that 5th respondent should not be entrusted with the record as he himself has submitted the complaint against the applicant.

3. The Deputy Accountant General (Audit), Bhopal vide his Memorandum dated 14.10.2003, again reiterated the allegations, in a different form while on 17.10.2003, the applicant was issued another Memorandum. To the said Memos, the applicant has submitted a detailed reply on 21.10.2003 explaining that 5th respondent has submitted the complaint against the office procedure wherein he requested that an impartial enquiry be ordered on the entire charge so that it could reach to its logical conclusion. Instead of considering the application in its proper perspective, the applicant was issued with relieving order dated 28.10.2003, delivered to the applicant on the same date, wherein reference has been made to an order dated 21.10.2003 posting the applicant as Stenographer Grade-I from Bhopal to Gwalior. Bare



....4....

perusal of the said relieving order indicates that the relieving order has been issued before the order of transfer and that has been transferred in a lower post i.e. Stenographer Grade.I. It is significant to mention that 5th respondent left no stone unturned to see that the applicant is humiliated and harassed and in all hastiness, the impugned order was passed. The 5th respondent has deliberately principally for the reason to teach a lesson to the applicant before he stood retired with effect from 31.10.2003.

4. The applicant submitted a detailed representation on 29.10.2003 to the Principal Accountant General (Audit) II, M.P. GWALIOR wherein he categorically submitted that the order of relieving was passed in a most humiliating manner. He had informed that his wife, who was working in Ernakulam in Kerala, was transferred to Bhopal after the Women Commissioner had interfered. Vide circular dated 8.10.1999, the post of Manager(Typing) stood abolished and normally the Stenographer Grade I is to be posted. He further reflected that he had been performing his function to the utmost satisfaction of his superiors unless and until the recent incident/allegations levelled by the 5th respondent against him. The respondents have permitted the applicant to function his duties at Bhopal. The respondents have issued the office order dated 29.10.2003, whereby the applicant was ordered to hand over the charge to Shri Sudhir Joshi, Stenographer Grade II. Aggrieved by the said order, the applicant preferred an O.A. No.776/03 before this Tribunal, which was disposed of on 7.11.2003 with a direction to the respondents to consider the representation of the application dated 29.10.2003 (Annexure A-10) by deciding the same by passing a detailed and reasoned order within four weeks from the date of receipt of copy of the said order. The applicant was also

Yours

directed to submit a fresh additional representation alongwith a copy of the said order within three days to the respondents which should also be considered by them alongwith the representation dated 29.10.2003(Annexure A-10). Till then the relieving order of the applicant will not be implemented by the respondent.

5. On 7.11.2003 itself the applicant informed the respondents no.3 and 4 about passing of the order and requested that he be permitted to function on the post of Manager. Since nothing was done, the applicant submitted another application on 10.11.2003 and 12.11.2003 requesting the respondents to permit him to function on the post of Manager in the Bhopal Office. Since no action has been taken by the respondents, a legal notice was issued to the respondents no. 3 and 4 on 15.11.2003 informing therein about passing of the order dated 7.11.2003 and to permit him to function at Bhopal. Despite the receipt of the same, respondents no. 3 and 4 failed to adhere to the request as also the direction of this Tribunal. Hence, the applicant filed a CCP No. 89/2003 before this Tribunal. The 4th respondent has rejected the representation vide his order dated 28.11.2003 in a most casual manner as per Annexure A-16. The impugned order of transfer dated 28.10.03 is at Annexure A-17, which is illegal and improper and the same is liable to be set aside. Since the applicant has urged mala fides against the concerned officers personally, who have been implemented as respondents no. 4 and 5, vide his representations dated 15.09.2003 (Annexure A-2) and dated 22.09.2003 (Annexure A-3), the applicant on the ground of mala fides seeks to set aside the impugned orders. The penultimate para of Annexure A-2 reads as under:-

"Later undersigned was shocked when Accountant General called me to her room on 11.9.2003 where Shri P.N.Shrivastava, A.O. and Shri R.C.Garg, A.A.O. were sitting there and Accountant General



asked me what is the problem. I told her (Accountant General) that these officers are misrepresenting the position and misreporting her magnifying petty issues and that I have no problem to receive any order but in fact they were not giving me the order. I have taken the photo copy order from the room of Accountant General (Audit) and put up the same to Audit Officer/OAD and got his orders in the file on 11.09.2003 only and handed over IRS to Nishikant Yemle, for typing. In the room of Accountant General no acknowledgement was either asked or given, but later no one asked me for any acknowledgement, neither my immediate officer A.O./O.A.D. or Group Officer asked me ever. My submission is that if Shri E.N.Shrivastava or Shri R.C. Garg had any complaint about my conduct or duty they best should have approached my Branch Officer or Group Officer and get the matter settled. The practice followed in the office is that an A.O. address orders/letters to A.O. and A.O. mark the same to his subordinate. On the contrary act of going to Accountant General directly ignoring immediate officers was done so with malafide and foul intentions of maligning the image of applicant."

6. Per contra, the respondents have filed a detailed reply denying the allegations and averments made and also the malafide urged against respondents no. 4 and 5. In their short reply, the respondents have taken the contention that the applicant has been working as Manager Typing under the 4th respondent w.e.f. 19.08.1998. Subsequently, after computerization he was looking after the typing work in Computer Cell. Subsequently, the designation of the Manager Typing Pool was redesignated as Stenographer Gr.I in compliance of Circular dated 8.10.1999. The applicant was transferred from Bhopal office to Gwalior by respondent no. 3 in the same capacity because the post of Stenographer Grade-I is attached to Group Officers (Sr. Deputy Accountants General/Deputy Accountants General). At Bhopal office, there is one Group officer working and three stenographers. Among the three, the applicant is the only Stenographer Grade-I and other two are Stenographer Gr.II.

YPS.

7. It is contended by the respondents that the representation submitted by the applicant on 29.10.2003 was sympathetically considered by respondent no. 4 and the applicant was allowed to retain the government quarter at Bhopal till the current academic session. Aggrieved by the action of the respondent, the applicant approached this Tribunal by filing an OA No. 776/2003 which was disposed of by this Tribunal on 7.11.2003. In compliance of the orders of the Tribunal, the respondents have passed a speaking order dated 28.11.2003. Since the respondent no. 3 is the controlling authority, the respondent no. 4 cannot intervene with the orders passed by the respondent no. 3. The impugned order dated 28.11.2003 was served on the applicant. In the meantime, the applicant came to know that he is being posted in Resident Audit Office at Bhopal under respondent no. 3 in the same capacity in view of the difficulties of the applicant ventilated in his representation dated 29.10.2003 and 14.11.2003 straight way approached this Tribunal in this O.A. and obtained an ex-parte stay order on 5.12.2003 to the effect that in the meantime the operation of the orders dated 28.10.2003 and 28.11.2003 is stayed. Before passing the orders by this Tribunal, the applicant had already been relieved on 6.11.2003 enabling him to join at Gwalior.

8. The applicant, therefore, suppressed the true and material fact of his relieving and obtained an ex-parte stay order on 5.11.2003. It is worth mentioning here that the representation submitted by the applicant has already been considered by the authorities concerned sympathetically and he has been allowed to retain the government quarter at Bhopal itself in view of his family difficulties and he has also been allowed to work in Resident Audit Office at



Bhopal till the last Group officer joins at Gwalior office. The official respondents have contended that since the order of transfer is an administrative order, no malafides can be said to have proved. This Tribunal should also not interfere in the impugned order of transfer. There is no illegality or irregularity and there is no error of jurisdiction by passing the order of transfer. The O.A. is, therefore, liable to be dismissed.

9. Subsequent to filing the reply, the applicant has filed an M.A. No. 1671/2003 for amendment of the facts as well as the prayer clause. The said amendment application is still pending adjudication. The respondents have, however, filed their objections to the said application.

10. After careful consideration of the arguments advanced by the learned counsel on either side and perusing the pleadings and other records available on court file, we decide the said O.A. finally.

11. The impugned order of transfer (Annexure A-17) dated 28.11.2003 is challenged by the applicant on malafide grounds. In respect of the malafides, the applicant has produced representations i.e. Annexures A-2, A-3, A-4 and A-7 in which he has alleged specific allegations against the respondents No. 4A and 5. Though the said representations were submitted by the applicant on 15.09.2003, 22.09.2003 and dated 21.10.2003, the respondents have issued the orders only to trouble the applicant. When the applicant has highlighted the mistake of the respondents no. 4 & 5, they have made use of the situation to keep away the applicant from the office by transferring him to the office of Principal Accountant General (Audit) M.P.Gwalior. The specific allegations against respondents no. 4A & 5 is that they want to give the typing work to one of the daughters on contract basis for which the applicant has



opposed. Number of times Shri P.N. Shrivastava and Shri R.C. Garg approached the applicant and said that they will bring a proposal for changing the rate of honorarium for typing from Rs. 3/- to Rs. 5/- per page and that the applicant should hand over Inspection Reports of good handwriting to Shri Garg or to a person they say and daughter of Shri Garg will type the IRs at her home in A.G. Colony, Bhopal, and that the applicant must keep an account of such IRs and work, for which the applicant declined to give any IR to them without proper authority from the office and proper acknowledgement.

12. Earlier the applicant has approached this Tribunal in OA No. 776/03 challenging the order of transfer from Bhopal to Gwalior in the same capacity and has been relieved vide order dated 28.10.2003. This Tribunal has entertained the O.A. and directed the applicant to submit a fresh representation alongwith a copy of the said order within three days to the respondent which should also be considered by the respondents alongwith the representation dated 29.10.2003. Till then the relieving order of the applicant will not be implemented by the respondents. The fifth respondent has become wild because he has been made a party in the said O.A. Accordingly he was behind it to pass the impugned order of transfer. Hence, the impugned order is not sustainable in the eyes of law. The respondents have defended the action taken by them and there is no illegality or irregularity, they have argued only on the basis of the impugned order that the same is an administrative in nature which is not punitive one and, therefore, this Tribunal shall not interfere to modify or cancel the impugned order of transfer. The respondents have not given proper reply to the alleged allegations made by the applicant against respondents no. 4th & 5. They have further stated that all



- 9 -

- 9 -

the allegations levelled by the applicant have been considered and issued suitable orders. When there is no illegality or irregularity committed by the respondents, the applicant has been rightly transferred under the impugned order. In view of this the question arises for adjudication whether the impugned order of transfer is sustainable in the eyes of law on malafide grounds? Hon'ble Supreme Court has held that any order passed with mala fide intention the same is not sustainable in the eyes of law. In respect of the malafides, the Hon'ble Supreme Court has held in the case of State of Punjab vs. Gurdyal Singh, reported in 2003(3)ATJ 36 relying upon the judgement reported in AIR 1990(SC)319, which reads as under:-

"The question then is what is malafides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and often time overlaps motives, passions and satisfactions - is the attainment offends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object, the actuation of catalysation by malice is not regicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad but irrelevant to the entrustment. When the coadjutor of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the courts calls it a colourable exercise and is undeceived by illusion.



...11..

In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated "I repeatthat all power is a trust - That we are accountable for its exercise - that, from the people and for the people all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power whether this be malice ladden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act".

13. Taking ^{over all} ~~oral~~ consideration from the facts of the case and documents available on record, it is a clear case of malafides against the ^{applicant} ~~respondents~~. The impugned order is passed only on the basis of the malafides though it is not mentioned in the impugned order. Normally, the judiciary shall not interfere in respect of the administrative matters. But when there is a mala fide urged and which is corroborated in the impugned order, certainly the judiciary can interfere in the order passed by the respondents. Under the said circumstances and for the reasons assigned above, the impugned order dated 28.11.2003 is not sustainable in the eyes of law and the same is liable to be quashed. Accordingly, we allow the present O.A. and quash the impugned order and the interim order passed earlier on 5.12.2003 ~~is made~~ absolute. There shall be no order as to the costs.

GP

CCP 89/2003

14. The above CCP is filed for non-compliance of the impugned order of this Tribunal passed on 5.12.2003 in OA No. 838/2003 vide which the Tribunal had granted the interim order which is extracted as under:-

"The applicant is a stenographer functioning as Manager Computer Cell. He has been transferred from Bhopal to Gwalior in the same capacity vide order dated 28.10.2003. Aggrieved by this order, he had earlier filed OA No. 876/2003 and this Tribunal vide order dated 7.11.2003 directed the applicant to submit a fresh representation to the respondents and the respondents were directed to consider the same as well as his earlier representation dated 29.10.2003. It was further directed that till then the relieving order of the applicant will not be implemented by the respondents.

The respondents have now issued the order dated 28.11.2003 whereby the applicant is relieved from his duties w.e.f. 28.11.2003 afternoon with instructions to report to Gwalior office after availing normal joining time and also the respondents have asked the applicant to apply for leave as due and admissible for the intervening period from 6.11.2003 to 27.11.2003.

The applicant has also made a prayer for staying the transfer order dated 28.10.2003 during the pendency of this case.

Issue notice to the respondents. Let reply be filed within a period of 4 weeks and rejoinder, if any, within a period of 2 weeks thereafter.

Shri S.A. Dharadhikari accepts notice on behalf of respondents Nos. 1 to 4. The learned counsel for the applicant undertakes to supply the notices to the private respondents by speed post.

As regards the interim relief, issue notice to the respondents to file a short reply within 10 days, to consider the interim relief.

In the meantime operation of the orders dated 28.10.2003 and 28.11.2003 is stayed.

List it for further orders on interim relief on 19.12.2003."

15. The applicant / petitioner has produced a copy of the said order to the respondents on 5.12.2003. Since the respondents did not implement the order, he has submitted one more representation dated 8.12.2003 at Annexure P-3. Thereafter he filed further representations dated 12.12.2003 (Annexure P-4) and dated 17.12.2003 (Annexure P5) requesting



the respondents to implement the orders of the Tribunal passed on 5.12.2003.

16. The respondents filed their short reply which came up for consideration on 19.12.2003 in which they have stated that on 6.11.2003 the applicant had already been relieved as such the Original Application of the applicant deserves to be dismissed. By the said act of the respondents it is a clear contempt of the directions of this Hon'ble Tribunal. The respondents have wilfully deliberately and intentionally committed the contempt of the orders of the Tribunal. It is also established that the respondents have not paid the salary to the applicant for the month of November, 2003 and also not permitted him to function his duties despite clear directions of the Tribunal contained in order dated 5.12.2003. On the other hand, the respondents in their reply submitted to the OA 838/2003 stated that the case of the applicant was sympathetically considered in pursuance of the aforesaid order of the Tribunal. However, the respondents have not bothered to file their affidavit to the CCP 89/2003. The submissions made by the petitioner has been recorded and the respondents have wilfully disobeyed the orders of this Tribunal by passing an order dated 3/7-12-2003. Since we have quashed the impugned order of transfer dated 28.12.2003, we have taken the lenient view against the respondents and have dropped the contempt proceedings. However, it is made clear that in case the orders of the Tribunal are disobeyed in future certainly a strict view will be taken against the contemnors for disobeying/flouting the orders of this Tribunal.

17. With the above observation, the present Contempt



petition no. 89/2003 is rejected with no order as to the costs and the notices in respect of the said contempt petition ^{against} ~~to~~ the respondents are discharged.

18. A copy of this order be sent to the Comptroller and Auditor General of India, who is the first respondent, for information and placing on record.

Günther Oppen

(G.Shanthappa)
Judicial Member

Wally

(M.P.Singh)
Vice-Chairman

/na/

प्राचीनकाल से ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि अवृत्ति/प्रतिक्रिया:-

प्रतिलिपि आव्याप्तिः—

(1) सरिय, राज्य उत्तराखण्ड के लाल एसेमिलियन, लखनऊ
 (2) आकेश्वरी विद्यालय, लखनऊ द्वे प्राप्तिकर्ता Smt - S. Manou
 (3) दर्शन विद्यालय, लखनऊ द्वे प्राप्तिकर्ता S/A Dharwadhi Kaur
 (4) दर्शन विद्यालय, लखनऊ द्वे प्राप्तिकर्ता Smt - D.

१३ वार्षिक रजिस्ट्रेशन १२/२/०६

Enclosed
on
12.2.01