

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 859 of 2002
Contempt Petition No. 59 of 2002

Jabalpur, this the 25th day of March 2003

Hon'ble Shri Shanker Raju -- Member (Judicial)
Hon'ble Shri R.K. Upadhyaya -- Member (Administrative).

1. OA No. 859 of 2002

K.K. Bajpai, son of Late J.P. Bajpai aged about 57 years, Resident of Asra Press near Dr. Roma Chatterji Hospital, Jai Nagar Colony, Jabalpur.

.. Applicant

(By Advocate - Shri Dharmendra Sharma)

V e r s u s

1. Union of India through the Secretary, Department of Post, Govt. of India, Dak Bhawan, New Delhi.

2. Chief Post Master General, Chattisgarh Circle, Raipur.

3. Director of Postal Services, Chattisgarh Circle, Raipur. .. Respondents

(By Advocate - Shri S.A. Dharmadhikari)

2. C.C.P. No. 59 of 2002

Shri K.K. Bajpai son of late J.P. Bajpai, aged about 57 years, Resident of Asra Press near Dr. Roma Chatterji, Jai Nagar Colony, Jabalpur.

.. Applicant

(By Advocate - Shri Dharmendra Sharma)

V e r s u s

1. Shri P.R. Kumar, Chief Post Master General, Chhattisgarh Circle, Raipur, Chhattisgarh.

2. Shri Niraj Kumar, Director, Postal Service, Chhattisgarh Circle, Raipur, Chhattisgarh. .. Respondents

(By Advocate - Shri S.A. Dharmadhikari for respondent/ Contemnor No. 2)

O R D E R

Mr. Shanker Raju, Member (J):

This common order disposes of OA-859/2002, CCP-79/96 and also MA-233/03 in OA-79/96 being inter-linked and having common questions of fact and law.

2. Applicant being aggrieved by an order passed by the respondents on 23.6.94 imposing upon him a penalty of compulsory retirement approached this court in OA-79/96. By an order dated 14.12.2001 as the learned counsel for applicant restricted his arguments to only one legal issue of not acceding to his request for change of Enquiry Officer the other merit contentions have not been dealt with. The penalty orders have been set aside with direction to respondents to re-instate applicant and with liberty to conduct further enquiry from the stage immediately after the issue of the charge-sheet with regard to the observations made therein. It was further directed that orders for conducting further proceeding should be issued within two months from the date of receipt of the copy of the order and proceedings thereafter be completed in about six months' time.
3. In this backdrop through Cp-59/2002 it is contended that as respondents have not completed the enquiry within the stipulated period they are liable to be dealt with in accordance with law.
4. In OA-859/2002 applicant restricted his claim for quashing of the chargesheet dated 13.2.92 on the ground that respondents have acted arbitrarily

and are pre-determined to punish applicant and having failed to complete the proceedings within six months from the date of issuance of their order of re-initiating the enquiry the respondents have no jurisdiction to proceed further and in absence of any permission by the Court or extension of time to complete the enquiry the chargesheet and the further proceedings are without jurisdiction and are liable to be set aside.

5. In MA-233/2003 respondents have sought grant of six months' more time to complete the proceedings and to comply with the directions contained in the order dated 14.12.2001. It is stated that although there are no positive directions to complete the enquiry within a period of six months, as the observation of the court is to complete the enquiry in about six months time and in absence of any observation as to abatement of the proceedings after afflux of six months' time the delay in completion of enquiry is attributable to applicant and is also in administrative exigencies, as applicant represented for change of enquiry officer on 13.2.2002 and it was accepted on 29.4.2002 whereby on 2.5.2002 disciplinary authority appointed Sh. B.D. Patel as E.O. The aforesaid enquiry officer was promoted on 12.6.02 and re-allocated to Chhattisgarh on 14.8.2002 and joined on 24.9.2002. About 28 prosecution witnesses and 5 defence witnesses are to be examined and as applicant has made another application for transfer of the second EO B.D.Patel the enquiry is installed for last 8 months. The same defence stand has been taken by respondents in reply to OA-859/2002.

6. Learned counsel for applicant vehemently contended that application for extension of time to comply with the direction having not filed within the maximum period accorded to them and in absence of any permission by this court to extend the time to complete the proceedings undertaken after 8 months are without jurisdiction and are liable to be set aside. By referring to various averments in the reply of respondents it is stated that respondents have no respect to the direction of this court which amounts to punish him and for this they are pre-determined.

7. On the other hand, respondents' counsel contended that they have sought extension of time with a view to complete the enquiry and they are very respectful towards this Tribunal and the directions issued and as a large number of witnesses are to be examined and a representation is pending against the second E.O. enquiry has not been completed.

8. We have carefully considered the rival contentions of the parties and perused the material on record. Earlier OA-79/96 has not dealt on merits except the contention regarding change of E.O. and in this conspectus the penalty orders have been set aside. Respondents within two months have issued the orders of resumption of the proceedings but the enquiry has been delayed due to representation of applicant for change of EO and ultimately the EO was appointed but later on promoted and allocated to Chhattisgarh and on assumption of duty another application is filed by applicant for change of EO. This has inordinately delayed the proceedings which cannot be attributed to respondents. In so far as contempt is concerned,

only a wilful disobedience of court's order constitutes a contempt but excludes any bonafide or unintended act or inability to comply with directions of court as held by the Apex Court in Kapil Dev Prasad v. State of Bihar (1999) 7 SCC 569. Moreover, in view of the decision of the Apex Court in Suresh Kumar Poddar v. Dhani Ram, 2002 (1) SCSLJ 150 though being vested with the power of contempt the same should be exercised sparingly in deserving cases by this Tribunal. Merely because the enquiry has been continued beyond six months would not be conclusive to establish any wilful disobedience on the part of respondents. The enquiry could not be completed because of applicant and the aforesaid act of respondents is unintended. As such, we have no hesitation to hold that respondents have not committed any wilful or contumacious disobedience of this court's directions to expose themselves for any action. Accordingly, CCP fails and is dismissed. Notices are discharged.

9. MA-233/2003 filed for extension of time though filed after the period of six months but having regard to the fact that the directions were to complete the enquiry in about six months' time cannot be construed to have a positive finding to conclude within a period of six months and if the enquiry is protracted even after this period would not be a defiance to the court's order. We have also perused the reasons recorded and the efforts made by respondents to comply with the directions and find that it is on the request of applicant that EO was changed but due to his posting he was made available only on 24.9.2002. Thereupon

applicant made another request for change of E.O. and as 28 prosecution and 5 defence witnesses are to be examined and the charge against applicant pertains to corruption and is grave having regard to the grounds adduced in MA, extension of time is allowed. Respondents are granted six months' more time to complete the disciplinary proceedings subject to full cooperation by applicant. Accordingly, MA is allowed to this extent.

10. In so far as OA-859/2002 is concerned, this court while disposing of OA-79/96 has not issued any positive direction that in case enquiry is not completed it shall abate. Moreover, the time limit assigned to complete the enquiry was tentative while it has been referred that the same would be completed in about six months' time, if the enquiry is protracted and gone beyond the period of six months would not have an automatic effect on its being dropped and exoneration of applicant thereof. The delay has occurred not on account of respondents' attribution but on account of acts of respondents where he persistently requested for change of E.O. As the charges are grave involving corruption and having regard to 28 prosecution and 5 defence witnesses which are yet to be examined the request of applicant to close the enquiry and quash the chargesheet is against the public policy and all canons of justice. We are afraid to advert to the contentions of applicant that after expiry of six months respondents in absence of any extension of time allowed by this court are without jurisdiction to complete the enquiry as we have already allowed the extension of time. Moreover, it would be in the interest of applicant himself to participate in the enquiry, which, we earnestly hope to be

conducted in accordance with fair play and natural justice by the respondents. Applicant shall have every right to prove his innocence and in that event law shall take its own course. The reference made from the reply of respondents cannot be of any help to applicant as these are answers in response to the contention of applicant and would not by no stretch of imagination show pre-determination of mind and bias on the part of respondents.

11. Accordingly for the reasons recorded above the OA is dismissed. No costs.

Ch. B. N. G. S. M.

(R.K. Upadhyaya)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

'San.'

पृष्ठांकन सं. ओ/न्या..... जबलपुर, दि.....
प्रतिविधि वाली रिपार्टरी:-

(1) सर्वेन राज्य विधान सभा वार उत्तर प्रदेश, जबलपुर
(2) आकाश विधान सभा, जबलपुर
(3) प्रस्तुति वाली विधान सभा, देव काउंसल
(4) वायापत्ति, देव काउंसल, जबलपुर व्यापारी देव
सूचना एवं आवश्यक कार्यवाही हेतु

Shankar Raju
उप रजिस्टर 26/3/03

Received
on 26.3.03
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