

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

CP No.47/2005 in OA No.448/2002.

Jaipur, this the 7th day of November, 2006.

CORAM : Hon'ble Mr. Kuldip Singh, Vice Chairman.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Ganpat Lal
S/o Shri Gulab Chand
Aged about 43 years,
R/o gulabbari, Naya Ghar,
Tejaji Ki haveli Ke pass,
Ajmer.

... Petitioner.

By Advocate : Shri Sunil Samdaria.

Vs.

1. S. B. Bhattacharya,
General Manager
O/o General Manager,
North West Railways, Jaipur.
2. Devendra Kumar,
Chief Works Manager (Carriage & Wagon)
North West Railways,
Ajmer.

... Respondents.

By Advocate : Shri Tej Prakash Sharma.

: O R D E R :

Per Mr. Kuldip singh, Vice Chairman.

The applicant has filed this CP with a prayer to pass appropriate order for punishing the contemners for not complying the judgment dated 15.7.2004 passed by this Tribunal in OA No.448/2002. The applicant was the petitioner in the said OA which was allowed by this Tribunal with the following directions:-

"12. In view of what has been stated and discussed above, the OA is partly allowed. The impugned removal order dated 10.10.1995 is modified to the extent that




penalty of removal from service is substituted by penalty of withholding of increments for a period of five years with cumulative effect. Subsequent orders passed by the Appellate Authority as well as Reviewing Authority also stand modified accordingly. The applicant shall be entitled to all consequential benefits on notional benefits but without any monetary effects. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. No order as to costs."

2. The OA was allowed on 15.07.2004 and three months time was granted to the respondents to comply with the order. The case of the applicant now is that after the OA was allowed, the applicant preferred a representation praying for implementation of the order of the Tribunal as the respondents were under obligation to obey the order passed by this Tribunal within three months but instead of complying with the orders, the respondents filed a DB Civil Writ Petition before the Hon'ble High Court of Judicature for Rajasthan at Jaipur Bench and though no stay was granted by the Hon'ble High Court, still the respondents preferred to remain in willful defiance of the orders passed by the Tribunal. The Writ Petition was dismissed on 16.2.2005 and after obtaining the copy of the order, the applicant made a representation for implementation of orders but his request was not acceded. Another representation was filed by him in which is still pending. Ultimately, the applicant filed the present CP on 3.6.2005 and even after the contempt notices were issued to the respondents, they did not comply the orders passed by the Tribunal. Thus, it is prayed that an action be taken against the respondents.



3. The respondents in their reply pleaded and admitted that the OA was allowed vide order dated 15.7.2004. They also stated that they are duty bound to obey the orders passed by this Tribunal. However, the respondents preferred a DB Civil Writ Petition before the Hon'ble High Court of Rajasthan, which was ultimately dismissed and against that order the respondents also preferred a SLP before the Hon'ble Supreme Court, which too was dismissed vide order dated 5.9.2005. Further the respondents after obtaining legal opinion, passed the order in compliance of the directions given by the Tribunal and the applicant has been reinstated in service with immediate effect vide order dated 22.12.2005 and in pursuance of the said order the applicant has resumed the duties on 23.12.2005. Hence, the order passed by the Tribunal has been fully complied with.

4. Learned Counsel for the applicant submits that the order issued by this Tribunal had not been complied with and no stay was granted by the superior courts, the respondents remained in defiance of the Tribunal's order and when no stay was granted by the superior Courts, it was the foremost duty of the respondents to obey the orders of this Tribunal and had the respondents obeyed the order very quickly than the applicant would have been reinstated in service much earlier and as such he has been caused economic loss. So an action is required to be taken for contempt of Court. It appears that after these arguments were advanced the respondents filed another application for taking the compliance order on record and submitted that




the applicant has been accorded all the consequential benefits. He had been given proforma promotion, given notional benefits and that actual payment has ordered to be made vide order dated 23.12.2005 and the pay of the applicant has also been refixed vide order dated 22.12.2005. Thus, the respondents submits that the order has been fully complied with.

5. However, Learned Counsel for the applicant referred to the judgment reported in JT 2001 (4) SC 405, in the case of Vidhya Dhar Sharma v. G. B. Patnaik & Ors. In the said case vide order dated 22.09.2000, the respondents were directed to appoint the petitioner to the post of Medical Officer to which he had been selected and it was further directed that the letter of appointment should be issued within six weeks from the date of passing of the order and when the letter of appointment was not issued, a Registered AD/Legal Notice dated 18.11.2000 was sent to the respondents. But no response for the same, then the petition for taking appropriate action against the respondents was filed wherein an unconditional apology is purported to be tendered and the contemners have pleaded that the order has been complied with inasmuch as the letter has been issued to the petitioner. The Court took the view that since ^{action} ~~action~~ had been taken after issuing the notice on contempt petition by the court but had this notice not been issued by the court nothing would have been done by the respondents and had the order of Hon'ble Supreme Court has been complied in true latter and spirit

then the letter of appointment should have been issued about 8.11.2000 and it is from that date the petitioner would have been entitled for seniority and salary in terms of the orders passed by the Hon'ble Supreme Court and the delay in issuing the order has caused prejudice to the petitioner so the Court directed that the petitioner therein shall be entitled to salary and seniority w.e.f. 8.11.2000 and further directed that arrears to be paid within 4 weeks.

6. Learned Counsel for the applicant submitted that a question which needs consideration is whether such type of an order can be issued and in order to show that when he has placed reliance on the judgment and on the same line he is asking if the order of the Tribunal had been complied with then and particularly when there is no stay from any superior court within three months from the date of issue of the order of the Tribunal, the applicant has to be reinstated in service. The applicant has submitted that if he has been reinstated in service w.e.f. 15.10.2004, the consequential benefits stood started from the beginning.



7. We have considered the rival contentions and gone through the judgment cited by the Learned Counsel for the applicant also. In the contempt proceedings, the most important point to be seen is whether the contemner has committed a willful defiance of the order passed by the Tribunal or the same was done unknowingly or not?

8. In the case cited by the Learned Counsel for the applicant, the decision had been taken by the Hon'ble Supreme Court and the CP was also filed before the Hon'ble Supreme Court so no forum had been left where the respondents could have made an appeal against the order passed by the Hon'ble Supreme Court. But in the case in hand, the original judgment was given in OA by this Tribunal on 15.7.2004. The respondents ^{well it} ~~did~~ not ~~fully~~ satisfied by the orders passed by this court, so they preferred a DB Civil writ Petition Before the Hon'ble High Court of Rajasthan, Jaipur Bench. So the question arise is whether the right to take up the matter to the High court can be stated to be a willful defiance of the orders passed by this Tribunal. We are of the considered opinion that the answer would be emphatic "no" because in a system of trial the litigant has a right to approach the superior court so far as the remedy is available before any superior court. The right of government cannot be jeopardized and action of contempt is to be initiated immediately if the stay order has not been granted by the superior court. There are various cases in which the Hon'ble Supreme Court, time and again, had ~~made~~ ^{made} impression upon the High Courts



and Tribunals who have got contempt powers to restrain themselves from taking any harsh action if the appeal is pending before the superior court, Assuming the applicant would have initiated the contempt proceedings in time then also probably because of the ~~petitioner of the~~ writ petition the court might have restrained itself to take drastic action in contempt proceedings. Moreover, it is also a fact that when DB civil Writ Petition was filed, the applicant was also well aware that no stay has been granted by the Hon'ble High Court of Rajasthan but the applicant himself did not prefer a contempt petition after the expiry of 3 months of the period which was granted by this Tribunal, seeking a direction in contempt petition to comply with the order passed by this Tribunal. Rather the applicant himself had preferred to wait for the decision over the writ petition and it is only after the decision in the writ petition by the Hon'ble High Court, the applicant approached this Tribunal for taking action in contempt proceedings and since the respondents have again approached the Hon'ble Supreme Court as well, where the SLP was also dismissed and immediately after the dismissal of the SLP within a period of three months, the respondents complied the orders passed by this Tribunal by granting all the consequential benefits to the applicant. So we do not find any grievance which is to be reckoned. Merely Had the applicant taken an appropriate action to take up the contempt proceedings after the order has been passed within a period of 3 months, undoubtedly may have given some extra economic benefits to the applicant but in the


contempt proceedings this Court cannot pass any order directing the respondents to reinstate the applicant w.e.f.

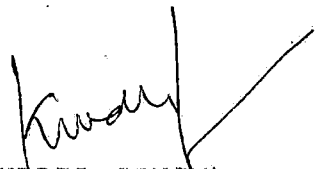
15.10.2004. However, we leave it open to the applicant

that if he still feels unsatisfied, he is at liberty to ^{Challenge the order passed in compliance of the directions of this Tribunal} file a fresh OA. No action in the contempt petition ^{is}

required since this court does not find any willful disobedience on the part of the respondents merely because they had gone before the superior courts to challenge the order passed by this Tribunal.

9. Accordingly, the CP stands dismissed. Notices issued to the respondents are hereby discharged.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER


(KULDIP SINGH)
VICE CHAIRMAN