

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL


10.07.2013

CP 50/2013 (OA No.448/1988)

Mr. C.B. Sharma, Counsel for applicant.

Heard learned counsel for the applicant.

The CP is disposed of by a separate order.


(S.K. Kaushik)
Member (J)

(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

CONTEMPT PETITION NO. 50/2013
IN
ORIGINAL APPLICATION No. 448/1988

Jaipur, the 10th day of July, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. S.K. KAUSHIK, JUDICIAL MEMBER

J.P. Sharma son of Shri Babu Lal Sharma, aged about 62 years, resident of 52, Subhash Nagar, Behind PRD Railway Colony, Sawaimadhopur. Last employed on the post of Chief Booking Clerk/ Supervisor, Sawaimadhopur, Kota Division, WC Railway.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Shri S.V. Arya, General Manager, West Central Railway, Jabalpur.
2. Shri Madhu Sudan Rao, Divisional Railway Manager, WCR, Station Road, Kota Junction, Kota.

... Respondents

(By Advocate: -----)

ORDER (ORAL)

The petitioner has filed this Contempt Petition on the ground that the order dated 05.11.1993 passed by this Tribunal in OA No. 448/88, J.P. Sharma vs. Union of India & Others has not been complied with by the respondents. Therefore, the respondents are liable to be punished for contempt of court. The learned counsel for the petitioner drew our attention to Para 5 of the order of this Tribunal, passed in the above OA, which is reproduced below:-

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"5. In the circumstances, we, therefore, set aside the order of penalty imposed on the applicant. Annexure A-2 and A-5 are quashed. The applicant shall be entitled to consequential benefits. The respondents are, however, not precluded from continuing the proceedings from the stage of giving an opportunity to the applicant to meet the grounds on which the Disciplinary Authority disagree with the Enquiry Officer. We, therefore, do not consider it necessary now to deal with other grounds raised by the applicant for assailing the order of the Disciplinary Authority and the Appellate Authority."

2. The learned counsel for the petitioner submitted that finally proceedings against the applicant were cancelled by the respondents vide order dated 15.02.1995 (Annexure CP/3). Once the proceedings against the applicant were cancelled, he was entitled for all consequential benefits but nothing has been done in the matter. The penalty imposed on him was not restored and he was made to suffer a recurring loss throughout his service and even after his retirement on 31.07.2011.

3. The petitioner has been consistently and persistently insisting the concerned authorities to release the due consequential benefits as per the order of the Tribunal but the respondents have been keeping pin drop silence on the matter. The cause of action gives rise to a recurring cause of action in as much as due to non release of the increment, his pension and retiral benefits have also been affected. The act on the part of the authority clearly falls in the category of contemptuous act since the order of the Tribunal has been deliberately and intentionally flouted.

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4. Learned counsel for the petitioner also drew our attention to notice for demand of justice issued through is counsel dated 20.08.2012 (Annexure CP/4) and since then six months have elapsed but no response has been received from the respondents. Thus the respondents are deliberately and intentionally flouting and disobeying the order of this Tribunal.

5. The learned counsel for the petitioner submitted that it is fairly settled that the period of one year in Section 20 of the Contempt of Courts Act is applicable only in respect of contempt of subordinate Courts. It has no application in cases of contempt of High Court where the power of contempt has been conferred under Article 215 of the Constitution of India, which is absolute and unfettered. To support his averments, he referred to the judgment of Full Bench of High Court of Karnataka in C.C.C. No. 364/1989 decided on 27.11.1990 in the case of **A.V. Kowdi vs. Co. R.V. Lakshmi Devamma**. He further submitted that as per Section 17 of the Administrative Tribunal's Act, the Tribunal shall have, and exercise, the same jurisdiction, power and authority in respect of contempt of itself as a High Court has and may exercise. Therefore, the Section 20 of the Contempt of Court Act, 1971 which provides for the limitation for action of contempt would not apply in this case.

6. To support his averments, learned counsel for the petitioner referred to the judgment of the Hon'ble Supreme

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Court of India in the case of **Firm Ganpat Ram Rajkumar vs. Kalu Ram & Others**, 1989 Supp. (2) SCC 418.

7. Heard the learned counsel for the petitioner, perused the documents on record and the case law referred to by the learned counsel for the petitioner.

8. From the perusal of the file, it is clear that this Bench of the Tribunal passed order in OA No. 448/88, J.P. Sharma vs. Union of India & Others, dated 05.11.1993. In Para No. 5 of the order, this Tribunal set side the order of the penalty imposed on the applicant. It further stated that the applicant shall be entitled to consequential benefits but at the same time, the respondents were not precluded from continuing proceedings from the stage of giving opportunity to the applicant to meet the grounds on which the Disciplinary Authority disagrees with the Inquiry Officer.

9 From the perusal of the letter dated 25.10.1994, issued by the DRM (Estt.), Kota (Annexure CP/2), it is clear that in compliance of the order passed by this Tribunal, the respondents had cancelled the I.P. of even no. dated 25.03.1988 and letter of even no. dated 15.06.1988 without prejudice and further necessary action for proceeding denovo. The same letter also states that all consequential benefits as admissible to him from time to time under the extent rules may be given.

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10. A letter has been issued by the office of the DRM Kota on 15.02.1995 (Annexure CP/3), which states that the order (SF/7) dated 23.12.94 for conducting de-novo enquiry was cancelled. Thereafter there is no correspondence on file which show that the applicant has approached the respondents for the implementation of the order of this Tribunal dated 05.11.1993 passed in OA No. 448/88 in J.P. Sharma vs. Union of India & Others (supra). The only record available is the notice for demand of justice sent by the petitioner through his counsel to the respondents dated 20.08.2012 that is 17 years after the cancellation of the denovo inquiry passed by the respondents (Annexure CP/3). The learned counsel for the petitioner could not explain as to why the applicant did not file a Contempt Petition within the period prescribed under the Contempt of Court Act, 1971. Section 20 of the Contempt of Court Act, 1971 is quota below:-

"20. Limitation for actions for contempt. – No Court shall initiate any proceedings of contempt, either on its own motion or otherwise, after a expiry of a period of one year from the date on which the contempt is alleged to have been committed."

11. We have carefully perused the order of the Full Bench of the High Court of Karnataka passed in C.C.C. No. 364 of 1989 decided on 27.11.1990 in the case of **A.V. Kowdi and Co. vs. R.V. Lakshmiddevamma**. In Para 15 of the judgment, the Court has held as under:

"15. We respectfully agree except that we are not called upon to decide the vires of Section 15 and 20, on that question we express no opinion. Therefore, our conclusion

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is that the period of one year in Section 20 of the Contempt of Courts Act is applicable only in respect of contempt of subordinate Courts. It has no application in cases of contempt of High Court; the power conferred under Article 215 of the Constitution of India is absolute and unfettered. It may be that in a given case Court may decline to take action due to delay but that is in exercise of its jurisdiction and 'just' discretion."

Thus the Hon'ble High Court of Karnataka has held that power conferred under Article 215 of the Constitution of India is absolute and unfettered but at the same time it also held that in a given case Court may decline to take action due to delay but that in exercise of its jurisdiction and just discretion.


12. Thus even following the ratio laid down by the Hon'ble High Court of Karnataka in the case of A.V. Kowdi vs. R.V. Lakshmi (supra), this Tribunal is not bound to initiate any proceeding of contempt after the period of 20 years. We have also carefully gone through the judgment of the Hon'ble Supreme Court in the case of **Firm Ganpat Ram Rajkumer vs. Kalu Ram & Others** (supra), we are of the view that it is not applicable under the facts & circumstances of the present case because in the case before the Hon'ble Supreme Court, the application was well within the period of one year.

13. It is well settled that the exercise of the contempt jurisdiction is a matter entirely between the Court and the alleged contemner. Though the Court is moved by a motion or a reference, it may decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a


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proceeding for contempt, that it assumes the jurisdiction to punish for contempt. In the present case, this Tribunal passed an order dated 05.11.1993. The petitioner was well aware of this order as it was passed on his application. It was the duty of the petitioner to have acted diligently and not slept over his right. Therefore, in view of the inordinate delay of 20 years, we are not inclined to initiate contempt proceedings against the respondents.

14. Consequently, the Contempt Petition filed by the petitioner is dismissed with no order as to costs.


(S.K. Kaushik)
Member (J)

AHQ


(Anil Kumar)
Member (A)