

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.775/2013
M.A.No.291/00277/2014
M.A.No.291/00102/2015

Jaipur, this the 24th day of March 2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

Dinesh Kumar Sharma
son of Mr. Gopal Lal Sharma
Aged about 48 years
Resident of 119/245, Agrawal Farm,
Mansarovar, Jaipur and presently working as
Assistant Regional Office,
Kendriya Vidyalaya Sangathan, 92
Gandhi Nagar Marg, Bajaj Nagar,
Jaipur

(Mr. C B Sharma, Advocate)

..Applicant

Versus

1. Kendriya Vidyalaya Sangathan through its Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg New Delhi-16
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur 302015
3. Ms. Neelam Assistant Commissioner (Admn.) (Estt.I) 18, Institutional Area, Shaheed Jeet Singh Marg New Delhi-16

..Respondents

(Mr. R N Singh, Mr. Hawa Singh and Mr. Satyendra Singh, Advocates along with Mr. V K Singh, Assistant Commissioner (Vigilance), KVS (Hqrs.), New Delhi and Mr. J M Rawat, Deputy Commissioner, KVS Regional Office, Jaipur)

ORDER (ORAL)**Mr. A.K. Bhardwaj:****M.A.No.291/00277/2014**

For the reasons stated therein, M.A. is allowed and the Order passed by the Hon'ble High Court of Judicature for Rajasthan on 16.6.2014 in Civil Writ Petition No.13664/2013 is taken on record.

M.A.No.291/00102/2015

For the reasons stated therein, M.A. is allowed and the documents enclosed therewith are taken on record.

O.A.No.775/2013

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 praying therein:-

“(i) That respondents may be directed to produce entire record relating to the matter and after perusing the same, respondents be directed to allow the applicant to hold the post of Assistant in Regional Office, Jaipur by quashing order dated 08/11/2013 (Annexure-A/1) with all consequential benefits.

(ii) That the respondents be further directed to act as per guidelines and norms for displacement and not to disturbed the applicant from present place of posting and also not to harass without any base.

(iii) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.

(iv) That the costs of this application may be awarded.”

2. On 22.1.2014, the learned Single Member directed the respondents to produce the original file wherein the order of transfer of the applicant had been processed and issued. On the next date of hearing. The record was produced by Mr. R.L. Meena, Administrative Officer, K.V.S. (RO), Jaipur

on 28.2.2014. Nevertheless, since the Advocates had abstained from work, he was directed to produce the same on the next date of hearing. Thereafter, the matter was adjourned from time to time and finally on 28.4.2014, after hearing the counsels for the parties, learned Single Member directed disposal of the Original Application by a separate Order. Nevertheless, while passing the separate Order, the learned Member (A) recused himself from hearing the matter. Paragraph 22 of the said Order reads thus:-

“22. Moreover, from the perusal of the concerned file, it appears that the respondent no. 3 has bias not only against the applicant but also against the Tribunal, particularly the Administrative Member (Mr. Anil Kumar). Part of note dated 30.05.2013 written by AC (Adm) E-I, on note-sheet page 26, is quoted below: -

“It is submitted that this order has been passed by the single Hon’ble Mr. Anil Kumar, Administrative Member, whereas it should be ordered by the double Bench CAT, Jaipur. Secondly the single Administrative Member have mentioned in the order that the respondents appear to have acted with ill will and personal malice towards the applicant which is not in order..... as the order given by the single Hon’ble Administrative Member has given undue favour to the applicant by keeping count of law also to a aside which is not in order.....”

3. On 29.5.2014, the learned Single Member (J) could take a serious view of the note dated 30.5.2013 and passed a detailed Order, relevant excerpt of which reads thus:-

“8. No doubt a number of authorities of the Hon’ble Supreme Court have laid down the principle that caution and circumspection should be had in launching contempt proceedings. Further, the contempt proceedings are not intended to safeguard the personality of a Presiding Officer of a Court, but as a matter of fact, such proceedings are generally in the interest of public and the litigants who must have faith and confidence in the integrity of the Courts as well as Administration. For, if unbridled criticisms are suffered far less licensed, faith in the judiciary may receive a serious jolt. In view of this position and under the facts and circumstances, in exercise of

power conferred upon the Tribunal under Section 17 of the Administrative Tribunals Act, it is necessary to initiate suo moto contempt proceedings against the respondent no. 3 and the Commissioner, Kendriya Vidyalaya Sangathan and accordingly, when I proceeded to initiate suo moto contempt proceedings against the said respondent no.3 and the Commissioner, Kendriya Vidyalaya Sangathan, I find that Rule-6 of the CAT (Contempt of Courts) Rules, 1992 requires that every proceedings for contempt shall be dealt with by a Bench of not less than two Members. As such I refrain from taking cognizance and initiate suo moto contempt proceedings against respondent No. 3 and Commissioner, Kendriya Vidyalaya Sangathan.

9. The learned counsel for the applicant Shri C.B. Sharma submitted that applicant wishes that this O.A. may be heard by a Bench consisting of two Members. On this submission made by the said learned counsel for the applicant, I put a query to him as to why the matter could not be heard by a Single Member of this Bench. Shri C.B. Sharma, the learned counsel for the applicant, replied that the applicant is entitled to claim that his grievance be heard by a Bench of two Members, if he makes a request to that effect at the time of the matter being taken up for hearing. I am in full agreement with this submission of the learned counsel for the applicant Shri C.B. Sharma.

10. Learned Administrative Member Shri Anil Kumar is permanently posted at Jaipur Bench of this Tribunal and in view of the fact that he has excluded himself from deciding the claim of the applicant in this OA, in the near future it may not be possible that the OA may be heard by a Bench of two Members in which Learned Administrative Member Shri Anil Kumar cannot be a constituent, it is necessary that this OA is required to be heard by a Bench of two Members in which the said Learned Administrative Member, Shri Anil Kumar cannot be a constituent. Under the circumstances, it is just and necessary that the file be placed before the Hon'ble Chairman for appropriate orders for constitution of a Bench for initiation of contempt proceedings against the respondent no. 3 and the Commissioner, Kendriya Vidyalaya Sangathan and for hearing of this OA. Accordingly, the Registry is directed to lace the file before the Hon'ble Chairman for appropriate order.

List the matter on 22-7-2014. Interim order to continue only till then."

4. In the wake of the aforementioned Order, particularly the observations made in paragraph 8 of the Order, Hon'ble Chairman constituted the present Bench to hear the Original Application. However, Mr. C.B. Sharma, learned counsel for applicant submitted at the outset that

this Bench can only hear the Contempt Petition and not the Original Application, as the same need to be heard by the Single Member Bench.

5. Confronted with the aforementioned stand put-forth by learned counsel for applicant, Mr. R.N. Singh, learned counsel for respondents produced a copy of Order dated 13.9.2014 passed by the Hon'ble Chairman in P.T. No.124/2014 and submitted that when the respondents had moved the aforementioned P.T. before the Hon'ble Chairman for transfer of the present Original Application, the Hon'ble Chairman had taken a specific view that the Bench was constituted to hear the Original Application and rejected the P.T., thus there is no substance in the arguments put-forth by learned counsel for applicant that this Bench is not competent to hear the Original Application.

6. On merits, learned counsel for respondents submitted that since by now the applicant has been promoted as Section Officer and posted on the promotional post, the present Original Application filed against the transfer order has become infructuous and is liable to be dismissed. Regarding the ramification of the Order dated 29.5.2014, he expressed his regret for the language used in the note dated 30.5.2013 and Mr. V K Singh, Assistant Commissioner (Vigilance), K.V.S. (Hqrs.), New Delhi and Mr. J M Rawat, Deputy Commissioner, K.V.S. Regional Office, Jaipur, present in the Court, joined him in doing so. In the wake, they were directed to file separate affidavits during the course of the day. Having expressed his regret, learned counsel for respondents made reference to catena of judgments of Hon'ble Supreme Court and submitted that the officers of the Government are oftentimes confronted with orders of courts, impossible of immediate

compliance for various reasons and in such situation they need to note in the files the reasons for non-compliance of the orders as also to indicate that the Court should not have passed the orders, and the expression and opinion of the officers in the internal files are for use of the Department and not for outside exposure or for publicity. According to him, the notings do not become effective orders liable for public knowledge and are only oral discussions. The judgments relied upon by him read thus:-

- (i) **State of Bihar & others v. Kripalu Shankar & others,**
(1987) 3 SCC 34,
- (ii) **M/s. Sethi Auto Service Station & another v. Delhi Development Authority & others, JT 2008 (11) SC 520,**
- (iii) **Shanti Sports Club & another v. Union of India & others, AIR 2010 SC 433,**
- (iv) **Mrityunjoy Das & another v. Sayed Hasibur Rahaman & others, (2001) 3 SCC 739,**
- (v) **All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi & others, (2009) 5 SCC 417,**
- (vi) **Dinesh Kumar Gupta v. United India Insurance Company Limited & others, (2010) 12 SCC 770, and**
- (vii) **Sandeep v. D. Laxmi & another, (2003) 10 SCC 294**

7. Re-joining the submissions, learned counsel for applicant submitted that even after the promotion of the applicant the order of transfer stands and the validity of the same need to be examined.

8. We heard the learned counsel for the parties and perused the record.

A

9. As far as the plea of the applicant that the present Original Application need to be heard by a learned Single Member Bench and not by a Division Bench is concerned, in terms of the provisions of Rule 154 of the Central Administrative Tribunal Rules of Practice, 1993, the scrutiny branch of the Registry should, at the time of scrutiny, make classification of the cases; (i) department-wise, (ii) subject-wise; and (iii) cases which can be heard by a Single Member Bench, which should be made in accordance with the Appendix VI, VII and VIII. For easy reference, Rule 154 is reproduced thus:-

“154. Classification of cases subjectwise/departmentwise – (a) The scrutiny branch of the Registry shall at the time of scrutiny make classification of the cases as follows :-

- (i) Departmentwise
- (ii) Subjectwise
- (iii) Cases which can be heard by a Single Member Bench

(b) The departmentwise classification shall be made in accordance with Appendix VI, as may be modified by the Chairman from time to time.

(c) Subjectwise classification shall be make in accordance with Appendix VII, as may be modified by the Chairman from time to time.

(d) Single member Bench cases shall be classified in accordance with Appendix VII as may be modified by the Chairman from time to time.

(e) The classification as above shall be entered in the relevant columns in the report of scrutiny in Form No. 2/Form No.3, Order Sheet in Form No.4 and Facing Sheet of the final cover in Form No.5, referred to in rules 11 to 13 of these Rules.”

10. Appendixes VII and VIII (ibid) contain the lists of subject-wise classification of cases to be listed before the Division Bench and Single Bench. The aforementioned Appendixes read thus:-

"ANNEXURE VII

[See rule 154 (c)]

SUBJECT-WISE CLASSIFICATION OF CASES**DIVISION BENCH CASES**

1. Absorption in Public Sector/Autonomous Bodies/Other Departments
2. Adhoc appointments/Regularisation
3. All India Services
4. Allotment/Vacation/Eviction of Quarters
5. Civil Services Examination
6. Creation and Abolition of Post
7. Daily Wages/Casual/Regularisation
8. Deputation/Regularisation
9. Disciplinary-Cases
 - (a) Major Punishment – Dismissal/Removal/Compulsory Retirement/Reduction in Rank
 - (b) Minor Punishment – Other Punishment
 - (c) Suspension
10. Extra Departmental Staff
11. Leave Rules – Break in Services/Dies non
12. Lien
13. Medical Facilities
14. Probation
15. Recruitment & Appointment
16. Reservation for SC/ST/ Ex-servicemen/ Physically Handicapped
17. Reversion
18. Retirement under FR 56(J)
19. Scale of Pay

20. Selection/Promotion
21. Seniority/Confirmation
22. Surplus Staff-Redeployment of
23. T.A.
24. Temporary Service, Rules/Termination of Service
25. Training
26. Uniform and Washing Allowance
27. Voluntary, Resignation/Retirement
28. All Single, Bench Cases Classified, under the Head (A) to (M) in Appendix VIII.

APPENDIX VIII

(a) to (k)	xx	xx	xx	xx
(l)	Postings/Transfers."			

11. As can be seen from the entry at Sl. No.28 of the list of cases to be listed before the Division Bench, all Single Bench cases classified under the Heads (A) to (M) in Appendix VIII can be heard by the Division Bench. The transfer matters are entered in column (l) of Appendix VIII, thus in terms of the provisions of Central Administrative Tribunal Rules of Practice 1993, there cannot be any objection to hearing of transfer matters by a Division Bench. Besides, in terms of the provisions of Section 5 (4) (c) of Administrative Tribunals Act, 1985, the Hon'ble Chairman of the Tribunal may authorize the Judicial Member of the Administrative Tribunal appointed to one Bench to discharge also the functions of [the Judicial Member or the Administrative Member, as the case may be], of another Bench. Section 5 (4) (c) reads thus:-



“(c) may authorize the Judicial Member or the Administrative Member appointed to one Bench to discharge also the functions of the [Judicial Member or the Administrative Member, as the case may be,] of another Bench; and’;”

12. Learned counsel for applicant could raise a specific plea that this Bench could be constituted only to hear the Contempt Petition and not the Original Application. At the first place, we find that there is no Contempt Petition pending before this Tribunal and in view of the Order dated 29.5.2014, this Division Bench had to take a view, “whether the contempt proceedings should be initiated against the respondents or not”. In paragraph 8 of the aforementioned Order itself, the learned Single Member Bench could make an observation that the proceedings for contempt should be dealt with by a Bench of not less than two Members and had directed the matter to be placed before the Hon’ble Chairman for constituting the Bench, thus it is for this Bench to take or not to take any action against the respondents for committing civil / criminal contempt. Moreover, as can be seen from the communication dated 11.8.2014 addressed by the Principal Registrar, Principal Bench of the Tribunal to the Joint Registrar, Jaipur Bench, this Division Bench was constituted by the Hon’ble Chairman to hear and dispose of the present Original Application with Miscellaneous Applications. The letter reads thus:-

**“CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

61/35, Copernicus Marg, New Delhi 110 001

Date: 11.08.2014

To

The Joint Registrar,
Central Administrative Tribunal,
Jaipur Bench,
Jaipur

Subject: Constitution of Division Bench to hear and dispose of OA 775/2013 with MA 291/00277/2014 titled Dinesh Kumar Sharma vs. K.V.S. from Central Administrative Tribunal, Jaipur – reg.

Sir,

I am directed to refer to your letter No. 21/16/2006/Judl/621 dated 11.07.2014 on the subject mentioned above and to say that the matter was placed before Hon'ble Chairman on administrative side. His Lordship has directed that the O.A. may please be placed before Division Bench comprising of Hon'ble Shri A.K. Bhardwaj, Member (J), Principal Bench, New Delhi and Hon'ble Shri B.K. Sinha, Member (A) of Principal Bench, New Delhi, who will be available at Jaipur Bench of Central Administrative Tribunal during 11.09.2014 and 12.09.2014 in connection with hearing of Full Bench Case.

You are, therefore, requested to make necessary arrangement for listing of the case as per Rules under intimation to both the parties/counsels.

Yours faithfully,

Encl.: A part of OA 775/2013

(P.Ulaganathan)
Principal Registrar"

13. Above all, when in the P.T. No.124/2014 moved by the respondents before the Hon'ble Chairman a view could be taken that to hear the matter (O.A. No.775/2013) the Bench had already been notified for sitting on 11.9.2014 and 12.9.2014 at Jaipur, it cannot be said that this Bench should not hear the Original Application. The Order passed in P.T. reads thus:-

"This is an application under Section 25 of the Administrative Tribunals Act, 1985 seeking transfer of the OA No. 775/2013, pending before the Jaipur Bench to Principal Bench of the Tribunal.

2. I have heard the learned counsel for the parties. I do not find any good reason to transfer the matter from Jaipur Bench to PB.

3. Shri R.N. Singh, learned counsel for respondent- applicant sought to argue that since the Hon'ble Members available at Jaipur Bench recused themselves from the matter, it would be in the interest of justice if it is transferred to PB. He further sought to argue that the

records are in Delhi and most of the respondents are also located in Delhi. I do not find any force in the submission for the reason that it is not in dispute that Jaipur Bench has also jurisdiction over the matter and it is the choice of the applicant to file an application before the Bench having jurisdiction. It has further been brought to my notice that to hear this matter a Bench has already been notified by me for sitting on 11.09.2014 & 12.09.2014 at Jaipur Bench. I have no manner of doubt that the matter would be disposed of expeditiously.

4. I, therefore, in the absence of any good ground or reason reject the application.”

In view of the aforementioned, we do not find any substance in the plea of learned counsel for applicant that this Bench is meant to hear the contempt proceedings alone and not the Original Application, and nix the same.

15. As far as the merits of the Original Application are concerned, the applicant has challenged the transfer order dated 8.11.2013 (Annexure A/1) whereby he was transferred to Kendriya Vidyalaya No.1 Rewa. On 19.11.2013 when the Original Application came up for admission, the operation of the impugned transfer order was stayed. Paragraph 8 of the interim Order reads thus:-

“8. Put up the matter on 04.12.2013. Meanwhile, in the interest of justice, the effect and operation of the impugned transfer order dated 08.11.2013 (Annexure A/1) vide which he has been transferred from KVS, RO, Jaipur to KV No.1, Rewa shall remain stayed till the next date.”

16. Subsequently, in terms of the memorandum dated 25.2.2015, the applicant was promoted as Section Officer through Limited Departmental Examination for the year 2013-14 in the pay band of Rs.9300-34800. In the said memorandum, the applicant was shown posted at Regional Office, Jaipur only. Vide communication dated 27.2.2015, the applicant accepted the promotion offered to him vide aforementioned memorandum. In the

said communication, he has shown himself posted at K.V.S., Regional Office, Jaipur. In the representation dated 3.3.2015, addressed to the Deputy Commissioner, K.V.S., Regional Office, Jaipur, the applicant himself made a request to relieve him on 13.3.2015 (A/N) to enable him to join as Section Officer at K.V.S., Regional Office, Ranchi.

17. In the wake, the K.V.S. issued office order dated 13.3.2015 relieving the applicant from K.V.S. Jaipur to enable him to join at the promotional post at K.V.S. Ranchi immediately. On 16.3.2015, K.V.S. Regional Office, Ranchi issued letter informing the Assistant Commissioner (Est. I), K.V.S. (Headquarters), New Delhi regarding appointment of the applicant as Section Officer at K.V.S. Ranchi. In the said letter, the name of the office from where the applicant was transferred is shown as K.V.S., Regional Office, Jaipur.

18. In view of the aforementioned missive/orders/communications, the impugned order of transfer has become non-est and the Original Application has become infructuous and is disposed of accordingly.

19. As far as the issue of initiation of contempt proceedings against the respondent Nos. 1 and 3 is concerned, as has been noticed hereinabove, Mr. V K Singh, Assistant Commissioner (Vigilance), K.V.S. (Hqrs.), New Delhi and Mr. J M Rawat, Deputy Commissioner, K.V.S. Regional Office, Jaipur expressed their regret regarding the language used in the note sheet dated 30.5.2013 and were directed to file separate affidavits indicating their such regret. They have filed the separate affidavits as directed. The affidavit filed by Mr. V.K. Singh, Assistant Commissioner, reads thus:

“Affidavit

I, V.K. Singh presently working as Assistant Commissioner (Admn) (Estt.I), Kendriya Vidyalaya Sangathan, HQrs, 18, Institutional Area, Shaheed Jeet Singh, Marg, New Delhi – 110016, do hereby take oath and state as under:-

1. That this affidavit is being filed in the aforesaid matter in view of order/ liberty/ observation made by the Hon'ble Tribunal in its Order dated 23.03.2015 in the above matter.
2. That department deeply regrets and tender unconditional apology in the unsavoury remarks/words used in the noting dated 30/05/2013 by the Assistant Commissioner (Admn), Estt.I, Kendriya Vidyalaya Sangathan (HQrs), New Delhi or any other unpleasant remark made by any other officer of the respondents in the relevant file, dealing with the matter, subject matter of the above Original Application.
3. That the Officer who has made the noting has made that out of inexperience and not deliberately or intentionally to tarnish the image of the Hon'ble Tribunal or its Hon'ble Member(s).

Sd/-”

20. Besides, as has been ruled by the Hon'ble Supreme Court in **Kripalu Shankar's** case (supra), it would be dangerous to find an action for contempt, for the views expressed in the notes file, on the discovery of unpleasant or unsavory notes, on a perusal of the notes file by the Court, after getting them summoned, as this would impair the independent functioning of the civil service essential to democracy. In the said case, their Lordships ruled that to rely upon the notings in a file for the purpose of initiating contempt would be to put the functioning of the Government out of gear. Relevant excerpt of the said judgment reads thus:-

“12. It cannot be disputed that the appeal raises an important question of law bearing upon the proper functioning of a democratic Government. A Government functions by taking decisions on the strength of views and suggestions expressed by the various officers at different levels, ultimately getting finality at the hands of the Minister concerned. Till then, conflicting opinions, views and suggestions would have emanated from various officers at the lower level. There

should not be any fetter on the fearless and independent expression of opinions by officers on matters coming before them through the files. This is so even when they consider orders of courts. Officers of the Government are often times confronted with orders of courts, impossible of immediate compliance for various reasons. They may find it difficult to meekly submit to such orders. On such occasions they will necessarily have to note in the files, the reasons why the orders cannot be complied with and also indicate that the courts would not have passed these orders if full facts were placed before them. The expression of opinion by the officers in the internal files are for the use of the department and not for outside exposure or for publicity. To find the officers guilty for expressing their independent opinion, even against orders of courts in deserving cases, would cause impediments in the smooth working and functioning of the Government. These internal notings, in fact, are privileged documents. Notings made by the officers in the files cannot, in our view, be made the basis of contempt action against each such officer who makes the notings. If the ultimate action does not constitute contempt, the intermediary suggestions and views expressed in the notings, which may sometimes even amount ex-facie disobedience of the courts orders, will nor amount to contempt of court. These notings are not meant for publication.

13. In our considered view the internal notes file of the Government, maintained according to the vales of business, is a privilege document. if the Government claims privilege or quasi-privilege regarding the notes file we will not be justified in rejecting the claim outright. In this case, the notes file was brought to the Court not voluntarily by the Government. It was summoned for by the Court. The Court can always look into it. The right of the Court to look into any files, can never be denied. The contents of the notes file brought to Court got communicated to the Court because the Court looks into it. It would be dangerous to find an action for contempt, for the views expressed in the notes file, on the discovery of unpleasant or unsavory notes, on a perusal of the notes file by the Court, after getting them summoned. This would impair the independent functioning of the civil service essential to democracy. This would cause impediments in the fearless expression of opinion by the officers of the Government. The notings on files differ from officer to officer. It may well be that the notes made by a particular officer, in some cases, technically speaking is in disobedience in an order of the Court or may be in violation of such order but a more experienced officer sitting above him can always correct him. To rely upon the notings in a file for the purpose of initiating contempt, in our view, therefore, would be to put the functioning of the Government out of gear. We must guard against being over sensitive, when we come

across, objectionable notings made by officers, sometimes out of inexperience, sometimes out of over zealousness and sometimes out of ignorance of the nuances of the question of law involved.

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16. Viewed in this light, can it be said that what is contained in a notes file can ever be made the basis of an action either in contempt or in defamation. The notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the concerned officer on the subject under review. To examine whether contempt is committed or not, what has to be looked into is the ultimate order. A mere expression of a view in notes file cannot be the sole basis for action in contempt. Business of a State is not done by a single officer. It involves a complicated process. In a democratic set up it is conducted through the agency of a large number of officers. That being so, the noting by one officer, will not afford a valid ground to initiate action in contempt. We have thus no hesitation to hold that the expression of opinion in notes file at different levels by concerned officers will not constitute criminal contempt. It would not, in our view, constitute civil contempt either for the same reason as above since mere expression of a view or suggestion will not bring it within the vice of sub-section (c) of Section 2 of the Contempt of Courts Act, 1971, which defines civil contempt. Expression of a view is only a part of the thinking process preceding Government action.

17. In the case of Bachhittar Singh v. The State of Punjab, [1962] Suppl. 3 SCR 713 a Constitution Bench of this Court had to consider the effect of an order passed by a Minister on a file. which order was not communicated. This Court, relying upon Article 166(1) of the Constitution, held that the order of the Revenue Minister, PEPSU could not amount to an order by the State Government unless it was expressed in the name of Rajpramukh as required by the said Article and was then communicated to the party concerned. This is how this Court dealt with the effect of the noting by a Minister on the file:

"The question, therefore, is whether he did in fact make such an order. Merely writing some- thing on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then if has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as

bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones."

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26. With respect to the learned Judges, we find it difficult to agree wholly with them regarding the finding that the appellant was guilty of contempt. We do not have sufficient materials before us to conclude that the appellant exercised political clout to further his interest in utter disregard of the orders of the Court. Although it may be said that the conduct of the appellant is in some measure suspect, we do not find sufficient justification to enter a finding that he is guilty of contempt and that he acted in utter disregard of the High Court's order. It is useful to remember that apart from the notes file, there is no independent material before us to held that the appellant had committed contempt. The Government pleader and the Advocate General had clearly advised the Government to act in accordance with the directions given by the High Court. The Minister who is the ultimate authority also acted in obedience to the orders of the High Court. That being so, we find it difficult to agree with the finding that he is guilty of criminal contempt. The High Court felt that his was not a fit case to accept the unqualified apology tendered. However, we find, that on materials placed before us, it is not proved beyond doubt that he had committed contempt. We would, therefore, give him benefit of doubt and purge him of the contempt found against him.

27. We would like to outline the general principle on which confidentiality of State documents should be protected. The general principle is that if a person is involved in litigation, the Courts can order him to produce all the documents he has which relate to the issues in the case. Even if they are confidential, the Court can direct them to be produced when the party in possession does not produce them, for the other side to see or at any rate for the Court to see. When the Court directs production of those documents there is an implied understanding that they will not be used for any other purpose. The production of these documents in ordinary cases is imposed with a limitation that the side for whose purpose documents are summoned by the Court cannot use them for any purpose other than the one relating to the case involved.

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30. Before parting with this case we would like to observe the need for restraint and care in dealing with the internal files of the Government. We have already indicated its privileged position and limited areas where exposure is permissible of the notings in the file. This is not to say that absolute privilege can be claimed of its exposure and protection from the view of Courts. But what is to be borne in mind is that the notings in the departmental files by the hierarchy of officials are meant for the independent discharge of official duties and not for exposure outside. In a democracy, it is absolutely necessary that its steel frame in the form of civil service is permitted to express itself freely uninfluenced by extraneous considerations. It might well be that even orders of Court come in for adverse re- marks by officers dealing with them, confronted with difficult situations to straight away obey such orders. Notings made on such occasions are only for the benefit of the officers concerned. When a subordinate official commits a mistake higher official will always correct it. It is necessary for Courts also to view such notings in the proper perspective. In this case, the Court, after looking into the notes file could have passed appropriate orders giving relief to the affected party and expressing its displeasure at the manner in which its order was implemented instead of initiating action on the notings made in the file. That way the Court would have enhanced its prestige."

21. In the wake of the regret expressed by the aforementioned officers of the K.V.S. present in the Court, affidavits filed by them and the judgments relied upon by learned counsel for respondents, we refrain from issuing contempt notice to the respondents in the present case and expect them to act with responsibility in future. File be consigned to record room.

No costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

March 24, 2015
/sunil/