

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 05th day of October 2018.

PRESENT:

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

HON'BLE MR. MOHD. JAMSHED, MEMBER (A)

Civil Contempt Petition No. 330/00132 of 2015

In

Original Application No. 1323 of 2011

Onkar Nath Dubey S/o late Radhe Shyam Dubey, R/o House No. 135/D/2K Ward No. 3, New Beniganj, District Allahabad.

. . . Applicant

By Adv: Shri A.D. Singh

V E R S U S

1. Firoj Khan, Commissioner Income Tax Allahabad (Appellate Authority), 211001.
2. A.K Pandey, Additional Commissioner Income Tax, Range No. II, Disciplinary Authority, Allahabad 211001.
3. D.K. Singh, Income Tax Officer, Range No. 2 (4), Fatehpur-212601.

. . . Respondents

By Adv: Shri L.P Tiwari

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. The present application has been filed by applicant Onkar Nath Dubey seeking initiation of contempt proceedings under the Court of Contempt Act 1972 against the respondents for

disobeying order dated 6.8.2015 passed in OA No. 1323 of 2011 titled Onkar Nath Dubey Vs. Union of India.

2. The operative part of order dated 6.8.2015 in respect of which present application has been filed reads as under –

“8. In view of the above facts circumstances and legal position, we quash the order dated 29.7.2011 of the Appellate Authority as well as order dated 22.7.2011 issued by the Disciplinary Authority and remit back the case to disciplinary authority to consider all the mitigating factors in regard to the applicant and to award any other punishment except ‘dismissal and removal from service’ to the applicant. The applicant shall also be entitled to get all the consequential benefits including pension and pensionary benefits. The aforesaid direction shall be complied with within a period of one month from the date of receipt of a certified copy of this order”.

3. In the contempt application it has been averred that respondents have not complied with the directions given in the order dated 6.8.2015 aforementioned which were to be complied with within a period of one month from receipt of order of Tribunal. It may be observed that it has not been mentioned in the application as to the manner in which the respondents have not complied with the order.
4. In the compliance affidavit, it has been averred that applicant has been paid gratuity, arrear of pension and leave encashment as per directions of Tribunal.
5. In the rejoinder affidavit filed by applicant it has been mentioned that commutation of pension with interest, payment of arrears of D.A. on the pension under 6th Pay Commission, interest on

retiral benefits, benefit of M.A.C.P have not been paid to the applicant. He has also averred that respondents have imposed the major penalty of compulsory retirement instead of minor penalty which minor penalty the applicant is entitled to.

6. Supplementary counter affidavit by respondents, supplementary affidavit by applicant, supplementary affidavit by applicant and second supplementary affidavit has been filed by applicant.
7. Reference may be made to order dated 23.5.2017 which reads as under-

“It has been pointed out by the learned counsel for the applicant that the applicant has not yet received the amount of commutation of pension, interest on the delayed payment and benefit of M.A.C.P.

Learned counsel for the respondents submitted that no option was given by the applicant in respect of commutation of pension and there is no order of Court regarding payment of any interest. It has also been contended that the benefit of M.A.C.P is not provided against whom a disciplinary proceedings is pending. Thus, the respondents are not liable to pay any amount of commutation of pension, ay amount of interest and the benefit of M.A.C.P.

Learned counsel for the applicant is directed to produce the option furnish by the applicant in respect of commutation of pension and also produce the relevant G.O. regarding admissibility of MACP during the pendency of disciplinary proceedings by the next date. However, the applicant is not entitled to any interest on the said amount as no such order has been passed in the O.A.”.

8. We have heard counsel for the parties and considered the argument of counsels and gone through the material on record.

9. Applicant has neither produced the option regarding commutation of pension, nor the relevant G.O. regarding admissibility of M.A.C.P which he was directed to do as per order dated 23.5.2017.
10. As per the counter affidavit filed by the respondents, major penalty of retiring compulsorily has been awarded to the applicant w.e.f. 22.7.2011.
11. Looking to the compliance report, imposition of penalty w.e.f. 22.7.2011, non-compliance of order dated 23.5.2017 by applicant in not filing the option of commutation of pension and the relevant G.O. regarding admissibility of M.A.C.P during the pendency of disciplinary proceeding, it is clear that the applicant has not complied with the directions of the Tribunal moreso, when order dated 23.5.2017 reads that applicant is not entitled to any interest on the said amount as no such order has been passed in the O.A.
12. Learned counsel for applicant had relied upon citation Vidhya Dhar Sharma Vs. G.B. Patnaik, 2001 Lawsuit (SC) 369 and Er.Gurcharan Vs. Punjab State Electricity Board decided on 9.1.2009 in Civil Appeal No. 65-67 of 2009 by Hon'ble Apex Court. The facts of both the citations are different from the facts of present case and have no relevance to the present case.
13. In view of the facts of the case, no case for contempt is made out. Hence, contempt petition is dismissed. Notices are discharged.

(Mohd. Jamshed)

Member (A)

Manish/-

(Rakesh Sagar Jain)

Member (J)