

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

C.P.NO.160 OF 2016
(In OA No.4119/15)

New Delhi, this the 26th day of April, 2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

Rakesh Kumar Mishra,
Aged about 50 years,
S/o Sh. Vijay Kumar Mishra,
R/o Qtr.No.95, Type III, NH 4, NIT,
Faridabad 121001 í í . Petitioner

(By Advocate: Mr.M.K.Bhardwaj)

Vs.

1. Sh.Balwinder Singh,
Secretary of Mines,
Shastri Bhawan,3rd Floor,
New Delhi
2. Sh.Harbans Singh, Director General,
GSI, 27, Jawahar Lal Nehru Road,
Kolkata
3. Sh. M.K.John, Dy.DirectorGeneral,
DGCO, GSI, A-II, Pushpa Bhawan,
New Delhi
4. Sh.C.S.Verma,Head of Office,
GCO, GSI, A-II,
Pushpa Bhawan, New Delhi

(By Advocate: Mr.Gyanendra Singh)

ORDER

Per Raj Vir Sharma, Member(J):

We have heard Mr.M.K.Bhardwaj, the learned counsel appearing for the petitioner, and Mr.Gyanendra Singh, the learned counsel appearing for respondent nos. 3 and 4.

2. While serving as UDC under the respondent-Department, the petitioner was transferred from the office of the Director General Camp Office (DGCO), Geological Survey of India(GSI), New Delhi, and posted to the State Unit: Jammu & Kashmir, GSI, Jammu, in the interest of public service, with immediate effect, vide office order dated 24.7.2015. He was relieved of his duties in the DGCO, GSI, New Delhi, with effect from 31.7.2015(afternoon), vide letter/order dated 31.7.2015. Being aggrieved thereby, the petitioner submitted representations dated 27.7.2015 and 6.8.2015 requesting the competent authority to cancel the order of his transfer on medical ground. There being no response to his representations, the petitioner filed OA No.060/00738/2015 before the Chandigarh Bench of the Tribunal, praying for quashing the transfer order dated 24.7.2015, *ibid*. On his prayer for interim relief, the Chandigarh Bench of the Tribunal, by its interim order dated 26.8.2015, stayed the operation of the transfer order dated 24.7.2015, *ibid*, while issuing notices to the respondent-Department on the question of admission of the O.A. Thereafter, the Chandigarh Bench dismissed the said O.A., by its order dated 5.10.2015, the operative part of which is reproduced below:

ð6. This O.A. is therefore dismissed for want of jurisdiction of the Chandigarh Bench of the C.A.T. However, since the operation of the impugned transfer order dated 24.07.2015 was stayed on 26.08.2015, keeping in view health condition of the applicant, the respondents are directed not to take any coercive action against the applicant for a period of three weeks from today so that the applicant may have the opportunity to approach appropriate forum regarding his transfer matter, if so advised. MA No.060/01042/2015 also stands disposed of accordingly.ö

2.1 Thus, the petitioner filed OA No.4119 of 2015 before the Principal Bench of the Tribunal, seeking the following reliefs:

- ði) To quash and set aside the impugned transfer order dated 24.07.2015.
- ii) To direct the respondents to allow the applicant to continue in Delhi to enable him to take treatment from Escort Hospital, Faridabad.
- iii) To allow the OA with costs.
- iv) Any other reliefs as this Honðble Tribunal may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.ö

The petitioner also prayed for the following interim relief:

ðThe applicant prays that pending disposal of the above application, respondent be restrained from implementing impugned transfer order dated 24.07.2015. In case, interim relief as prayed is not granted by this Honðble Tribunal, the applicant will suffer irreparable loss.ö

2.2 OA No.4119 of 2015 was taken up for preliminary hearing on the question of admission on 17.11.2015, when the Principal Bench passed the following order:

ðHeard the learned counsel for the applicant.
Issue notice to the respondents.

Mr.Gyanendra Singh enters appearance and accepts notice on behalf of the respondents. He seeks and is granted four weeks^Øtime to file counter reply. Rejoinder, if any, be filed within two weeks thereafter.

Learned counsel for the applicant presses for interim relief. He has drawn our attention to order passed in O.A.No.060/00738/2015 by the Chandigarh Bench of the Tribunal on 05.10.2015 which is opposed by the learned counsel for the respondents seeking short time to file counter reply on the question of Interim Relief. In view of the fact that this case has been filed in Principal Bench in view of liberty granted by the Chandigarh Bench, it will be proper that a short date should be fixed for hearing on the question of Interim Relief. Accordingly, this case is fixed for hearing on the question of Interim Relief on 24.11.2015. Till then, no coercive action shall be taken against the applicant. ö

2.3 The interim order dated 17.11.2015, *ibid*, still remains in force.

The respondents have filed their counter reply to the O.A. The petitioner has filed his rejoinder reply. Thus, the pleadings being complete, the O.A. was listed for hearing on 2.2.2016, 9.2.2016, 1.3.2016 and 17.3.2016. On all those dates, the O.A. was adjourned at the instance of the learned counsel appearing for the parties and/or due to paucity of time for the Bench to take up the O.A. for hearing. The O.A. is posted to 24.5.2016 for hearing.

2.4 While the matter stood thus, the petitioner filed the present Contempt Petition on 14.3.2016, with the following prayers:

- ñi) direct the respondents to not take any coercive action against the petitioner and allow him to continue working as Delhi office in compliance of the order dated 17.11.2015 in OA No.4119/2015.
- ii) Direct the respondents to release his eight month salary along with other dues,

- iii) Initiate contempt proceedings against the Respondents for their willful disobedience of order dated 17.11.2015 in OA No.4119 /2015.
- iv) To direct the respondents to compensate the petitioners by giving exemplary cost for causing mental harassment and agony.
- v) Such other and further order which their Lordships of this Hon'ble Tribunal deem fit and proper may please be passed.ö

2.4.1 In the Contempt Petition, the petitioner has averred that notwithstanding the interim order dated 17.11.2015 passed by the Principal Bench of the Tribunal in OA No. 4119 of 2015 directing the respondents not to take any coercive action against him, on 7.3.2016 respondent no.3 prevented him from marking his presence in the Attendance Register on the ground of his having already been released from the DGCO, GSI, New Delhi, although prior to the said date he had been continuously coming to the said office and marking his presence in the Attendance Register. It has also been averred by the petitioner that respondent no.3 threatened and told him that he would call the police and get him arrested in the event of his not leaving the DGCO, GSI, New Delhi. It has further been averred by the petitioner that he has not been paid salary for the last eight months. It is, thus, alleged by the petitioner that respondent no.3 and others have willfully and deliberately flouted the Tribunal's interim order dated 17.11.2015, *ibid*. It is the contention of the petitioner that the Tribunal's direction to the respondents not to take any coercive action against him implied that he should not be prohibited by the respondents from working at DGCO, GSI, New Delhi, till the OA is finally decided by the Tribunal. The petitioner,

therefore, submits that the respondents are liable to be proceeded against and punished under Section 12 of the Contempt of Courts Act, 1971, for having flouted the interim order dated 17.11.2015 passed by the Tribunal in OA No. 4119 of 2015, and that appropriate directions, as prayed for by him in the Contempt Petition, should be issued by the Tribunal to the respondents.

3. We have carefully perused the records of OA No. 4119 of 2015, and the orders dated 26.8.2015 and 17.11.2015 passed by the Chandigarh Bench, and Principal Bench of the Tribunal.

4. By the time the petitioner had approached the Chandigarh Bench of the Tribunal, the respondent-Department, vide its letter/order dated 31.7.2015, had already relieved the petitioner of his duties in the DGCO, GSI, New Delhi, with effect from 31.7.2015 (afternoon), pursuant to the transfer order dated 24.7.2015. Consequent upon dismissal of O.A. No.060/00738/2015 by the Chandigarh Bench, due to its lack of territorial jurisdiction, the interim order dated 26.8.2015, *ibid*, stood automatically vacated. However, keeping in view the petitioner's plea of his illness, the Chandigarh Bench directed the respondents not to take any coercive action against the petitioner for a period of three weeks from 5.10.2015. Taking into account the aforesaid direction issued by the Chandigarh Bench in favour of the petitioner, the Principal Bench, by its interim order dated 17.11.2015, *ibid*, while issuing notices to the respondents, directed that no coercive action should be taken against the petitioner. When the petitioner had admittedly been relieved of his duties in the DGCO, GSI, New Delhi,

with effect from 31.7.2015 (afternoon), when the operation of the relieving order dated 31.7.2015, *ibid*, had not been stayed by the Chandigarh Bench and Principal Bench of the Tribunal, and further when the orders dated 26.8.2015 and 17.11.2015 (*ibid*) did not contain specific directions that notwithstanding the transfer order dated 24.7.2015 and the relieving order dated 31.7.2015 (*ibid*), the respondent-Department should permit the petitioner to continue and work as UDC in DGCO, GSI, New Delhi, and that the respondent-Department shall pay salary and allowances to the petitioner till the O.A. is decided by the Tribunal, we do not find any substance in the petitioner's contentions that the direction of the Tribunal to the respondents not to take any coercive action against him has to be construed and/or implied as a direction of the Tribunal that he should not be prohibited from working at DGCO, GSI, New Delhi, New Delhi, till the O.A. is decided. By issuing the aforesaid direction, what the Tribunal intended was that the respondents should not take any action, which also includes disciplinary action, compelling the petitioner to join the place of his posting, i.e., Jammu, to which he was transferred by the impugned transfer order dated 24.7.2015. No one would believe the petitioner's statements that he had been continuously attending the office of DGCO, GSI, New Delhi, and marking his presence in the Attendance Register, and that only on 7.3.2016 respondent no.3 prevented him from marking his presence in the Attendance Register and also threatened him with any dire consequence in the event of his not leaving the said office on that day, more so when the Chandigarh

Bench had passed the interim order dated 26.8.2015, i.e., after 26 days of the issuance of the relieving order dated 31.7.2015, *ibid*. When in pursuance of the transfer order and the relieving order, the petitioner did not join and work at the place of his posting, the question of payment of salary and allowances to him does not arise.

5. In the light of our above discussions, we have no hesitation in holding that no case has been made out by the petitioner either for initiating contempt proceeding, or for issuing the directions, as prayed for in the Contempt Petition. Therefore, the Contempt Petition is dismissed. The notices issued against respondent nos. 3 and 4 are discharged. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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