

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**CP-230/2016
MA-1823/2016
MA-3212/2016 in
OA-1228/2016**

Reserved on : 20.02.2017.

Pronounced on : 23.02.2017.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Mrs. Padma Jaiswal
(IAS : 2003 Batch)
R/o M-2799, Netaji Nagar,
New Delhi-110023.
(Aged about 40 years) Petitioner

(through Sh. Tarun Gupta, Advocate)
Versus

1. Sh. Rajiv Mehrishi
Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001.
2. Sh. Sanjay Kothari through
Its Secretary,
Ministry of Personnel, Public Grievances
And Pensions,
Department of Personnel and Training,
North Block, New Delhi. Respondents

(through Sh. Sanjay Jain, ASG with Sh. Gyanendra Singh, Sh. Vignaraj Posayat and Ms. Kanika Singh, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

CP-230/2016

This Contempt Petition has been filed for alleged disobedience

of our order dated 01.04.2016, which reads as follows:-

"Having heard the learned counsel for the applicant, having gone through the record with his valuable assistance, the main OA is disposed of with a direction to respondent No.2, to supply the copy of advice of UPSC to the applicant as per instructions of G.I., Dept. Of Per. & Trg., O.M. No. 11012/8/2011-Estt.(A), dated 5-3-2014 (Annexure-A/25) before passing the final order in disciplinary proceedings against her. No costs."

2. Learned counsel for the applicant argued that this Tribunal had given clear directions to the respondents to first supply a copy of advice of UPSC to the applicant as per DoP&T Instructions dated 05.03.2014 before passing the final order in disciplinary proceedings against the applicant. However, in complete defiance of these orders, the respondents had passed an order dated 27.04.2016 imposing penalty of removal from service on the petitioner. Learned counsel argued that this is evident from the affidavit filed by UPSC on 09.05.2016, in Para-9 of which the following is stated:-

"Since the direction given by the Hon'ble CAT in the order dated 01.04.2016 was for the concerned administrative Ministry and the Commission had no role in the implementation of the order, the Commission forwarded a copy of the Order to Department of Personnel & Training vide letter dated 21.04.2016 for taking necessary action. After that the Department of Personnel & Training vide their Order dated 27.04.2016 imposed the penalty of removal from service which shall not be a disqualification for future employment under Government on the Petitioner."

2.1 Learned counsel for the petitioner also drew our attention to page-473 of the paper-book wherein a letter written by the applicant to the Secretary, DoPT is available according to which the

Tribunal's judgment in question was communicated to the respondents. Learned counsel argued that as is evident from the perusal of the stamp on this document, this was received by the respondents on 05.04.2016. He further drew our attention to page-477 of the paper-book, which contains notings of File No. 106/5/2012-AVD.I. These notings reveal that receipt of the representation from the applicant along with an order of CAT for serving UPSC's advice on the officer has been acknowledged. Learned counsel further drew our attention to the affidavit filed by respondent No.2, in Para-3 of which the following is stated:-

"In reply to para 3 of the contempt petition, it is submitted that the order of penalty removing Smt. Padma Jaiswal from service was issued on 27.04.2016, whereas the copy of the order of Hon'ble CAT was received through UPSC only on 28.04.2016. The copy of OA filed by Smt. Jaiswal was sent by the charged officer bearing no number of the OA. The order of the CAT dated 01.04.2016 was also not enclosed with the OA. Hence, the order dated 01.04.2016 of the Hon'ble CAT could not be compiled with. However, on receipt of the Hon'ble Tribunal's order dated 01.04.2016 through UPSC, the matter was immediately taken cognizance of. It is also clarified that there was no intention of the respondents not to comply with the directions of the court, but it was the bonafide mistake on the part of the respondents, otherwise, the respondents have the highest respect to the orders passed by the Hon'ble Court."

Learned counsel for the petitioner argued that the respondents had filed a false affidavit before this Tribunal in which they stated that the order of penalty removing Smt. Padma Jaiswal from service was issued on 27.04.2016 much before receipt of copy of the order of this Tribunal by them through UPSC only on 28.04.2016. Sh. Gupta

submitted that as is evident from the document cited above, this order was served on the respondents on 05.04.2016 itself i.e. before issue of the penalty order. He argued that the order of Tribunal was within their knowledge but the respondents were determined to defy the orders of this Tribunal, otherwise, they would not have issued the order dated 27.04.2016. He submitted that he has filed MA-3212/2016 in this Contempt Petition praying for proceeding under Section 340 Cr.P.C. for punishing the respondents for committing offence u/s 193, 196, 199 & 200 IPC.

2.2 Learned counsel for the petitioner further argued that alleged contemnor (respondent No.1) Sh. Rajiv Mehrishi, Secretary of the Ministry of Home Affairs had not filed any affidavit himself contrary to the directions of Hon'ble Calcutta High Court in the case of **Samarendra Kumar Mukherjee Vs. K.M. Lal & Ors.**, (1991) 1 CALLT 8 HC, in para-8 of which the following has been held:-

"I, accordingly, hold that in a contempt proceeding each and every Contemnor shall have to file Affidavit—in-Opposition positively and no Contemner can delegate the power to any other Contemner or person to affirm the Affidavit-in-Opposition or any other application on his or her behalf. The order passed by me on 11th May, 1990 stands."

He further argued that Hon'ble High Court of Allahabad in **Writ Petition No. (M/S) of 2002** (Syed Nazim Husain Vs. The Additional Principal Judge Family Court & Another) on 09.01.2003 had held that if an application is moved in the pending case bringing to the notice

of the court that any false evidence has been filed before it, the Court should dispose of the said application first before proceeding any further or before recording of further evidence. However, we feel that this judgment will not apply in the present case. The observations made were in the context of the facts of that case wherein further evidence was to be recorded even when an application had been moved stating that evidence adduced till that time was fabricated or false.

3. In reply, learned ASG Sh. Sanjay Jain appearing for respondents stated that as soon as the order of this Tribunal was received by the respondents the matter was immediately taken cognizance of. There was no intention on the part of respondents not to comply with the directions of the Court. Respondent No.2 has also acknowledged that a bona fide mistake had occurred and submitted that the respondents have highest regard for the orders passed by the Hon'ble Tribunal. The respondents have further stated that following the judgment of Apex Court in the case of **UOI Vs. S.K. Kapoor** advice of UPSC was served on the charged officer through MHA vide O.M. dated 06.05.2014. The charged officer subsequently submitted a series of representations on the advice of UPSC claiming additional material in her favour. The matter was submitted to UPSC again for reconsideration. UPSC, however, reiterated their earlier

advice. Since nothing new was there in the fresh advice of UPSC, it was not served on the charged officer.

4. We have heard both sides and have perused the material placed on record. On our asking both sides admitted that the advice of UPSC as directed by us in our order has since been served on the charged officer on 06.06.2016. Both sides also admitted that the officer is still continuing in service and has not been removed from service pursuant to the order dated 27.04.2016. Thus, that order has not been given effect to. Learned counsel for the petitioner also admitted that a copy of order dated 27.04.2016 was not available with the petitioner as it had not been received by her.

4.1 Learned counsel for the petitioner had also argued that respondent No.1 Sh. Rajiv Mehrishi had not filed any affidavit himself contrary to the direction of the Hon'ble Calcutta High Court in the case of **Samarendra Kumar Mukherjee** (supra). We notice from our order dated 01.04.2016 that direction was given only to respondent No.2 in the O.A. i.e. Secretary, DoPT to communicate UPSC's advice to the applicant. Thus, it is evident that our order had to be complied with by Secretary, DoPT.

4.2 Learned ASG Sh. Jain argued that Hon'ble Supreme Court in Para-17 in the case of **Ashok Paper Kamgar Union Vs. Dharam Godha and Ors.**, (2003) 11 SCC 1 has defined civil contempt to

mean wilful disobedience of any judgment, decree, direction, order, writ or other process of a Court or wilful breach of undertaking given to the Court. Wilful disobedience has also been defined by the Hon'ble Supreme Court. The relevant Para-17 of the judgment reads as follows:-

“17. Section 2(b) of Contempt of Courts Act defines 'civil contempt' and it means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of undertaking given to a Court. 'Wilful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case.....”

4.3 Learned ASG has also cited the judgment of Hon'ble Supreme Court in the case of **All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi and Ors.**, (2009) 5 SCC 417 wherein wilful disobedience has again been defined, the relevant paras-54 to 57 read as follows:-

“54. An analysis of Section 2(b) shows that willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court constitutes civil contempt. If this definition is read with Article 129 of the Constitution of India, it becomes clear that being a Court of record, this Court can punish a person for civil contempt if it is found that he has willfully disobeyed any judgment etc. or violated undertaking given to the Court.

55. The term "wilful" (willfull) has not been defined in the 1971 Act. Therefore, it will be useful to notice dictionary meaning of the said term. As per The New Oxford Illustrated Dictionary (1980 Edition), the term "willful" means "asserting or disposed to assert one's own will against instruction, persuasion, etc. obstinately self-willed; deliberate, intentional, showing perversity or self-will".

56. According to Black's Law Dictionary, Vol.II (8th Edition) - Willful means "voluntary and intentional, but not necessarily malicious" and willfulness means

"1. The fact or quality of acting purposely or by design; deliberateness; intention; willfulness does not necessarily imply malice, but it involves more than just knowledge;

2. The voluntary, intentional violation or disregard of a known legal duty."

57. As per the Stroud's Judicial Dictionary, Vol.5 (4th Edition), wilful disobedience means:

"(1)The wilful disobedience of a SEAMAN or apprentice is 'wilfully disobeying any lawful command DURING the engagement': 'There may be many cases in which desertion or absence without leave, would not amount to willful disobedience, and in these cases the seaman would only be liable to the lesser penalty. Where, however, the seaman deserts or is intentionally absent without leave after the time at which he has been lawfully ordered to be on board, his desertion or absence may amount to 'wilful disobedience', and, consequently, that he would be liable to imprisonment. The words 'during the engagement' seem to suggest that the contract between the employer and the employed should be taken into account, and that if, having regard to that contract, the order was one which the employed was bound to obey, his disobedience might be dealt with under clause (d)".

58. In Shorter Oxford English Dictionary, the term "wilful" has been defined as:

"1. Asserting or disposed to assert one's own will against persuasion, instruction, or command; governed by will

without regard to reason; obstinately self-willed or perverse;

2. Willing; consenting; ready to comply with a request, desire, or requirement - 1598.

3. Proceeding from the will; done or suffered of one's own free will or choice; voluntary - 1687.

4. Done on purpose or wittingly; purposed, deliberate, intentional. (Chiefly, now always, in bad sense of a blameworthy action; freq. implying 'perverse, obstinate')."

4.4 Arguing further Learned ASG submitted that the order dated 27.04.2016 was never communicated to the petitioner. Thus, it cannot be construed to be a valid order. In this regard, he has relied on Para-12 of the Hon'ble Supreme Court judgment in the case of

M/s Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors., AIR 2009 SC 904, which reads as follows:-

"12. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned."

4.5 On the same issue, he has also relied on Apex Court's judgment in the case of **Bachhittar Singh Vs. State of Punjab and Anr.**, AIR 1963 SC 395, the relevant para reads as follows:-

"Thus it is of the essence that the order has to be communicated to the person who would be affected by that

order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

4.6 Learned ASG submitted that mere notings on the files do not constitute an order. Further, the order becomes valid only if it has been communicated to the affected party. In the instant case, the order dated 27.04.2016 was never communicated to the petitioner. Thus, it was not a valid order in the eyes of law. Hence, the respondents cannot be regarded as having acted against the orders of this Tribunal. Further, issue of order dated 27.04.2016 was a mistake and not intentional. Hence, there was no wilful disobedience of the Tribunal's order. No contempt is therefore made out and this Contempt Petition deserves to be dismissed.

4.7 From what is stated above, it is clear that our directions regarding communicating UPSC's advice to the petitioner have since been complied with. It is also admitted by the parties that the applicant still continues to be in service since no penalty order removing her from service has been served on her or given effect to. Since our direction was only to first communicate the advice of UPSC to the applicant and pass penalty order only thereafter, it is clear that our directions have been complied with.

4.8 We are satisfied by submissions made by the respondents that order dated 27.04.2016 was never served on the applicant and hence it was not a valid order. We also accept the submission of the respondents that issue of this order was bona fide mistake of the respondents and that they never had any intention to defy the orders of this Tribunal.

5. In view of the aforesaid, we are satisfied that nothing survives in this Contempt Petition. Accordingly, this Contempt Petition is closed. Notices issued to the alleged contemnors are discharged.

MA-3212/2016

6. This application has been filed by the petitioner praying that action be taken against the respondents under Section-340 Cr.PC. In the C.P., we have already arrived at a finding above that order of this Tribunal has been complied with. We have also accepted the submission of the respondents that they have complied with the order of this Tribunal as soon as it was received and that issue of order dated 27.04.2016 was only a bona fide mistake. We are, therefore, satisfied that the respondents have not intentionally tried to mislead this Court by making false submissions. In view of the same, we do not think it to be a fit case for proceeding under Section 340 Cr.PC. Accordingly, this MA is dismissed.

MA-1823/2016

7. This application was filed by the applicant on 25.05.2016 alleging that the respondents were determined to defy the orders of this Tribunal and passed orders in the disciplinary proceedings against the applicant without first communicating the advice of UPSC. While issuing notice in this MA, we had directed that meanwhile parties maintain status quo with regard to the service of the applicant.

8. Now that our directions have been complied with and CP is being dismissed by our orders above, this MA has been rendered infructuous and is disposed of as such. The interim order given on 26.05.2016 also stands vacated.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/