

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**CP NO.521/2014
IN
MA NO.3381/2013
IN
OA NO.1667/2013**

RESERVED ON 11.09.2015
PRONOUNCED ON 18.09.2015

HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)

Sheetal Singh Saini,
S/o Sh. Harbhajan Singh,
R/o Ward No.5, Ganesh Colony,
Tehsil & PO Jwalamukhi,
Distt. Kangra, Himachal Pradesh. ...Applicant

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

VERSUS

1. Sh. Anil Goswami,
Secretary,
Govt. of India,
Ministry of Home, North Block,
New Delhi.
2. Sh. B.D. Sharma
Director General,
Sashastra Seema Bal,
East Block-V,
R.K. Puram,
New Delhi-110066. ...Respondents

(By Advocate: Mr. D.S. Mahendru)

:ORDER:

HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J):

The petitioner has filed this Contempt Petition seeking initiation of the contempt proceedings against the respondents

alleging willful and deliberate violation of the directions contained in the order dated 23.12.2013 passed in MA No.3381/2013, arising out of OA No.1667/2013.

2. Learned counsel, Mr. M.K. Bhardwaj, appearing for the contempt petitioner, referring to the order dated 23.12.2013 passed in the aforesaid MA has submitted that though this Tribunal had directed the respondents to pay the petitioner pay and allowances, despite not passing any interim order in OA No.1667/2013, in view of the fact that this Tribunal vide order dated 06.07.2010 passed in OA No.652/2012 directed the respondents to allow the petitioner to complete his normal tenure of five years in Delhi, the respondents are bound to pay the petitioner pay and allowances for the period from 01.05.2013 to 03.03.2014, which having not been paid, the respondents have committed contempt of this Tribunal. It has also been submitted that in fact by the subsequent order dated 05.02.2014 the aforesaid OA No.1667/2013 has been allowed directing the respondents to allow the petitioner to complete his five years tenure in Delhi, keeping it open to pass fresh order of posting of the applicant thereafter. The learned counsel, therefore, submits that the contempt proceeding may be initiated against the respondents for non-payment of the salary for the aforesaid period and also for initiation of a departmental proceeding by

issuing the charge memos dated 03.04.2014 and 26.11.2014 for his alleged unauthorized absence from duty, for the aforesaid period, under Rule 14 of the CCS (CCA) Rules, 1965. Mr. Bhardwaj, in support of his submission has placed reliance on the judgments of the Apex Court in **Anil Ratan Sarkar and others Versus State of W.B. and others** (2001) 5 SCC 327, **Union of India and others Versus K.N. Shankarappa** (2001) 1 SCC 582, **Prakash Narayan Sharma Versus Burmah Shell Cooperation Housing Society Ltd.** (2002) 7 SCC 46 and **Maninderjit Singh Bitta Versus Union of India** (2012) 1 SCC 273.

3. Learned counsel, Mr. D.S. Mahendru, appearing for respondents, on the other hand, has submitted that it is apparent from the order dated 23.12.2013 passed in the aforesaid MA that no direction has been issued to the respondents to pay the salary to the applicant for the period of unauthorized absence. It has also been submitted that since the applicant, pursuant to the order of transfer did not join his transferred place of posting and has reported for duty only on 04.03.2014, a show cause notice dated 03.04.2014 was issued to him asking him to explain why the said period of absence should not be treated as unauthorized. It has been submitted that the Disciplinary Authority upon consideration of the reply submitted by the petitioner decided to

initiate a departmental proceeding, under Rule 14 of the CCS (CCA) Rules, 1965, and accordingly the charge memo dated 26.11.2014 has been issued to the applicant for his misconduct i.e. unauthorized absence from duty. The learned counsel, therefore, submitted that there is no violation of any directions issued by this Tribunal.

4. We have considered the submission advanced by the learned counsel appearing for the parties and also perused the pleadings.

5. Section 17 of the Administrative Tribunals Act, 1985, empowers this Tribunal to exercise the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971, shall have effect subject to the modifications mentioned therein. Section 2 (a) of the Contempt of Courts Act, 1971 define "Contempt of Court", which means Civil Contempt or Criminal Contempt. Section 2 (b) of the said Act define "Civil Contempt", which means 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. Section 13 of the said Act provides that notwithstanding anything contained in any law for the time being in force:-

- a. No court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially

interferes, or tends substantially to interfere with the due course of justice;

- b. The court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*.

6. In the case in hand, according to the applicant, there is willful and deliberate violation of the directions contained in the order dated 23.12.2013 passed in MA No.3381/2013. For better appreciation, the said order is reproduced below:-

“Heard the matter. Learned counsel for the respondents says that in this case no interim relief has been granted till date and he would like to file reply to the MA. However, learned counsel for the applicant submits that vide order dated 06.07.2010 the Tribunal had allowed OA 652/2012 directing the respondents to allow the applicant to complete his normal tenure of five years in Delhi but in the interregnum he has been transferred and his salary has also not been paid for the last six months. Therefore, they are violating Article 21 of the Constitution of India.

2. If the respondents have transferred a person to work outside at Delhi, his salary cannot be denied and must be paid. He is entitled to pay and allowances, if any, even if no interim relief has been given earlier since it is covered by the earlier orders of the Tribunal.

3. Post the matter for further consideration on 08.01.2014.”

7. It is evident from the aforesaid order that this Tribunal has found that the petitioner is entitled to pay and allowances, if any, even though no interim relief has been granted in the OA, since vide order dated 06.07.2010 passed by this Tribunal in OA

No.652/2012 the petitioner was allowed to complete his normal tenure of five years in Delhi. The same has to be as per the entitlement of the petitioner. The petitioner cannot claim payment of salary if he is not otherwise entitled to the same. It is evident from the pleadings in the contempt petition as well as in MA No.2422/2015 filed by the petitioner that a show cause notice was issued to the petitioner on 03.04.2014 asking him to show cause as to why his period of alleged absence w.e.f. 01.05.2013 to 03.03.2014 should not be treated as unauthorized, against which the petitioner filed his reply. The Competent Authority upon appreciation of the reply issued charge memo dated 26.11.2014 under Rule 14 of the CCS (CCA) Rules, 1965, alleging unauthorized absence from the duty w.e.f. 01.05.2013 to 03.03.2014, for which period the salary to the applicant has not been paid.

8. As noticed above, the violation of the direction issued by this Tribunal must be willful or deliberate so as to punish a person under the provisions of Contempt of Courts Act, 1971. If the interpretation of the order by the respondents is reasonable, it cannot be held that such action of such person is contemptuous within the meaning of the Contempt of Courts Act, 1971.

9. In the instant case, as discussed above, the payment of salary to the petitioner has to be as per his entitlement. A

departmental proceeding has been initiated against the petitioner by issuing the charge memo dated 26.11.2014 alleging unauthorized absence from duty for the period from 01.05.2013 to 03.03.2014, for which period admittedly the salary has not been paid to the petitioner. The question as to whether the petitioner is entitled to salary for the said period would depend upon the outcome of the said disciplinary proceeding. The understanding of the order dated 23.12.2013 passed by this Tribunal in MA No.3381/2013, by the respondents, therefore, cannot be held to be unreasonable and contemptuous. Hence non-payment of salary to the applicant by the respondents for the aforesaid period would not amount to civil contempt within the meaning of Section 2 (b) of the Contempt of Courts Act, 1971.

10. There is no dispute to the proposition of law enunciated by the Apex Court in **Anil Ratan Sarkar** (supra) that the administrative orders cannot infiltrate on to an area covered by the judicial orders. No executive decisions can also set at not a judicial order as held by the Apex Court in **K.N. Shankarappa's** case. The proposition of law laid down by the Apex Court in **Prakash Narayan Sharma** (supra) that no one can ignore court order assuming it to be nullity and coram non judice and order passed must be implemented unless the same is declared as void in a duly constituted judicial proceedings, is also not in dispute. It

is also not in dispute that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result and that disobedience of orders of the court strikes at the very root of the rule of law as opined by the Apex Court in **Maninderjit Singh Bitta** (supra). The aforesaid principles of law, however, are not applicable in the facts and circumstances of this proceeding in view of the aforesaid discussion.

11. In view of the aforesaid discussion, the Contempt Petition stands dismissed.

(K.N. Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

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