

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

**CP-538/2016 in
OA-2441/2015**

Reserved on : 05.04.2017.

Pronounced on : 06.04.2017.

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

Mangal Singh Arya Vs. **J.S. Deepak**

Present : Sh. K.P. Gupta, counsel for petitioner.
Sh. VSR Krishna, counsel for respondents.

O R D E R

Mr. Shekhar Agarwal, Member (A)

This Contempt Petition has been filed for alleged non-compliance of our order dated 03.06.2016, the operative part of which reads as follows:-

“4. I have heard both sides and have perused the material on record. In my opinion, the stand taken by the respondents is unsustainable. They have applied the rule, which is applicable to employees, who were working with the Government and were dismissed or removed from service of the Government. However, for employees, such as, the applicant, who was initially working in the Government and later on got absorbed in MTNL, the applicable Rule would be sub-rule-25(c) of Rule-37(A) of CCS (Pension) Rules, 1972, Swamy's Pension Compilation Edition-2013.

5. In the instant case, it is not disputed by the respondents that the applicant was initially an employee of Department of Telecommunication where he had joined on 26.07.1976. He got absorbed in MTNL w.e.f. 01.10.2000. Thus, he had served in

the Government during the period 26.07.1976 to 30.09.2000. He had also exercised his option for grant of pro-rata pension. His case was thus squarely covered by sub-rule-25(c) of Rule-37(A). The respondents have, therefore, erred by applying the wrong rule in his case.

6. I, therefore, allow this O.A. and set aside the impugned order dated 19.05.2015. I further direct the respondents to reconsider grant of retiral benefits to the applicant in the light of observations made above. In case pensionary benefits are granted to him then he would also be entitled interest at GPF rate computed from the date of retirement of the applicant till the date of payment. The aforesaid payment shall be made to him within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs."

2. In compliance thereof, the respondents have filed an affidavit on 07.03.2017. Along with this affidavit is attached a copy of their order dated 02.08.2016. The respondents have submitted that with the passing of this order, the order of the Tribunal stands complied with. The aforesaid contention was disputed by learned counsel for the petitioner Sh. K.P. Gupta. He argued that this Tribunal had directed that the case of the applicant be dealt with under sub-rule-24(c) of Rule-37(A) of CCS (Pension) Rules, 1972. The aforesaid Rule reads as follows:-

"The dismissal or removal from service of the Public Sector Undertaking of Autonomous Body of any employee after his absorption in such undertaking or body for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the service rendered under the Government and in the event of his dismissal or removal or retrenchment, the decisions of the undertaking or body shall be subject to (confirmation) by the Ministry Administratively concerned with the undertaking or body."

3. Sh. K.P. Gupta argued that the respondents were deliberately misinterpreting this Rule to mean that when the Department of Telecommunications has ratified the punishment imposed on the applicant, his service rendered under the Government prior to his absorption in MTNL stood forfeited. Sh. Gupta further argued that a mere reading of this Rule would make it clear that the service rendered under the Government cannot be forfeited on account of punishment of dismissal or removal meted out to a person for a misconduct committed subsequent to his absorption in the Public Sector Undertaking. A further protection has been provided to such employees that even for imposing a punishment of dismissal/removal, ratification from the Ministry, was required.

4. Sh. VSR Krishna appearing for the respondents, however, argued that since MTNL had sought ratification of the punishment imposed on the applicant from the Department of Telecommunication, and such ratification had been granted, sub-rule-24(c) of Rule-37(A) of the said Rules stood complied with. Thus, the order of the Tribunal also stands complied with. For any surviving grievance, the applicant must file a substantive petition before the Tribunal. This Tribunal cannot adjudicate whether this order is correct or not in contempt jurisdiction.

5. We have heard both sides and have perused the material placed on record. A perusal of our order dated 03.06.2016 reveals that directions were issued to reconsider grant of retiral benefits to the applicant after applying sub-rule-24(c) of Rule-37(A) of CCS (Pension) Rules, 1972. The aforesaid Rule has been extracted above. After reading the same, we are inclined to agree with learned counsel for the petitioner that this Rule does not empower the respondents to forfeit the service rendered by an employee under the Government prior to his absorption when punishment of dismissal/removal is meted out to him for misconduct committed subsequent to his absorption. In fact, it only gives extra protection to such an employee inasmuch as even the punishment of dismissal/removal, which is proposed to be imposed upon him by the Public Sector Undertaking, is to be ratified by the Administrative Ministry. An analogous provision exists in Rule-31(A) of MTNL CDA Rules, 1998. This Rule reads as follows:-

“SPECIAL PROVISIONS IN RESPECT OF DOT STAFF ON PERMANENT ABSORPTION IN MTNL CONFERRING SAFEGUARDS RELATING TO SECURITY OF SERVICE ON DISMISSAL/REMOVAL (IN TERMS OF PARA 5 OF DOPT OM NO. 4/18/87-P&PW(D) DATED 5TH JULY 1989).

The DOT employees on absorption in MTNL are governed by these rules (i.e. MTNL Conduct, Discipline & Appeal Rules) from the date of their absorption in the Company. However, dismissal/removal from the service of MTNL after absorption, for any subsequent misconduct shall not amount to forfeiture of his retirement benefits for the service rendered in the Central Govt. Also, in the event of dismissal/removal of such an employee from MTN (i.e, DOT staff permanently absorbed in MTNL), the

employees concerned will be allowed protection to the extent that DOT will review such order before final decision is taken by MTNL."

Further, we notice from order dated 16.09.2013 (pages-21 & 22) by which punishment was imposed on the applicant that while passing this order, ratification from the Ministry was sought and granted only for the proposed penalty and not for forfeiture of past service. This is evident from para-7 of the order, which reads as follows:-

"AND WHEREAS, before issue of final decision, the case was sent to Department Of Telecommunications (DOT) for ratification of proposed penalty of "Removal from Service" as required under Rule 31-A of MTNL CDA Rule, 1998. The DOT has ratified the said proposed penalty and communicated to MTNL vide their correspondence No. 68-49/2013-Vig.II dated 16-8-2013."

6. Thus, the interpretation of sub-rule-24(c) of Rule-37(A) of CCS (Pension) Rules, 1972 of the respondents is not acceptable. Consequently, it cannot be said that by passing order dated 02.08.2016, order of this Tribunal has been complied with. We, therefore, direct that the respondents pass a fresh order in compliance of our order. We grant them further four weeks to do so, failing which we will be constrained to take coercive action against the alleged contemnors.

7. List again on 15.05.2017.

(Raj Vir Sharma)
Member (J)

/Vinita/

(Shekhar Agarwal)
Member (A)