

Central Administrative Tribunal Principal Bench

**CP No. 587/2015
OA No.3353/2013**

Order Reserved on: 09.05.2016
Order Pronounced on: 12.07.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

Smt. Saroj Aroa,
W/o Dr. OM Prakash Arora,
Retired Welfare Officer Grade-II,
Department of Social Welfare,
Govt. of NCT of Delhi, New Delhi
R/o H.No.C4-D/66 B, Janak Puri,
New Delhi-110058 - Applicant/Petitioner

(By Advocate: Shri Pradeep Kumar)

VERSUS

1. Shri Parimal Rai,
Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, IP Estate,
Players Building, New Delhi-110002
2. Shri Prithvi Raj Meena,
Director of Social Welfare,
Govt. of NCT of Delhi,
GLNS Complex, Delhi Gate,
New Delhi-110002
3. Ms. Saumya Gupta,
Head of Office,
Department of Women & Child Development,
1, Canning Road,
Kasturba Gandhi Marg,
New Delhi-110001
4. Ms. Promila Chhibber,
Superintendent,
Short Stay Home for Women in Distress
Nirmal Chhaya Complex, Jail Road,
New Delhi-110064

(By Advocate: Shri Vijay Pandita)

O R D E R**Dr. B.K. Sinha, Member (A)**

The instant Contempt Petition under Section 17 of Administrative Tribunals Act, 1985 read with Section 12 of the Contempt of Courts Act, 197 is filed by the petitioner for initiating contempt proceedings against the respondents for deliberate and willful disobedience of the directions of this Tribunal issued in OA No. 3353/2013 on 28.04.2014 as modified by the Hon'ble High Court of Delhi vide their order dated 02.12.2014 in WP(C) No.8849/2014 and order dated 20.02.2015 passed in R.P. No. 13/2015 and also for deliberate and willful disregard and non-compliance of the orders dated 05.05.2015 passed by this Tribunal in the said OA after remain of the matter by Hon'ble Delhi High Court.

2. It is the case of the petitioner that she had been working as Welfare Officer with the Department of Women and Welfare Development in the respondent department. She had been granted *in situ* promotion in the pay scale of Rs.1640-2900/- w.e.f. 1.1.1992 vide order dated 30.03.1993 along with 22 others, pursuance to which her pay was fixed accordingly. She had been further granted benefits of first and second ACP Scheme w.e.f. 09.08.1999 and her pay had been accordingly fixed in the higher pay

scales. She retired on 31.01.2009 as Welfare Officer Grade-II, Short Stay Home for Women in distress, Nirmal Chhaya Complex, Jail Road, New Delhi under Govt. of NCT of Delhi on 31.01.2009 on attaining the age of superannuation. Her grievance is that some of her retiral dues, namely, Pension, GPF, Commuted Value of Pension and CGEGIS were paid after a delay of 15 months, 9 months, 10 months and 15 months respectively. A portion of gratuity amounting to Rs.1,60,319/- was withheld and her pay was fixed at reduced pay scale of Rs.1640-2900 w.e.f. 1.1.1990 and accordingly subsequent scales granted in Sixth Pay Commission w.e.f. 1.1.2006. The first and second ACP were also accordingly reduced. The applicant/petitioner approached this Tribunal vide OA No. 3353/2013 seeking release of withheld gratuity of Rs.1,60,319/- and interest on delayed payment of retirement benefits @ 12% and restoration of the withheld increments as a result of audit objection and re-fixation of her pay w.e.f. 1.1.2006 along with interest of 12%. The OA was disposed of by the Tribunal vide order dated 28.04.2014 in the following terms:-

“6. In the circumstances, OA is disposed of with a direction to the respondents to release the part withheld amount of Gratuity of Rs.1,60,319/- (One Lakh Sixty Thousand Three Hundred and Nineteen only) to the applicant within eight weeks from the date of receipt of a certified copy of this order with interest

@8% per annum. They would also pay her interest on the amount of Rs.2,95,015/-, i.e., the part payment of the amount of Gratuity paid to her belatedly in September, 2010. /Since rules do not provide payment of interest on the amount of arrears of pension and commuted value of pension and CGEGIS, the prayer of interest on such terminal benefits is rejected. Nevertheless, the applicant would entitle to interest for the period of delay in payment of the amount of GPF if not already paid in accordance with rules.”

3. Further, in a Writ Petition (C) No. 8449/2014 filed by the petitioner against the afore order of the Tribunal, the Hon'ble High Court vide its order dated 02.12.2014 directed the respondents to pay interest @ 10% on the amounts of arrears of pension, commuted value of pension and amount payable on CGEGIS from the date they became due i.e. 1.4.2009 till date of payment. However, the Hon'ble Court left the issue as to pay fixation of the applicant in the scale of Rs.1640-2900 to which she had been granting *in situ* promotion, open to be determined by the Tribunal within a period of four months. After restoring the OA to its original number, i.e., OA No.3353/2013, the Tribunal vide the order dated 05.05.2015, disposed the OA in the following manner:-

“8. In the above circumstances, prayer clause of para 8(3) in the OA is disposed of with the direction to the respondents to re-fix the pay of applicant w.e.f. 01.01.2006 in pay scale of Rs.1640-2900 and pay her the arrears, difference of pay, difference of pension etc. will all consequential benefits within a period of 3

months from the date of receipt of a copy of this order. No costs.”

4. The petitioner has filed the instant Contempt Petitioner for non-implementation of the afore orders of the Tribunal as well as Hon’ble High Court after having filed several representation and having sought personal interview with the respondents.

5. The respondents have filed a counter affidavit stating that the order has been fully complied with and have also submitted the details of payments made. It is also to be noted that on 24.11.2015, the order-sheet recorded as hereunder:-

“The details of payments along with cheques have been handed over by the learned counsel for respondents to the learned counsel for applicant in the court itself.

Compliance report with breakup and calculation of the amount payable to applicant in implementation of the orders passed by this Tribunal and Hon’ble High Court to be filed within two weeks.

List on 18.12.2015.”

Subsequently, on 23.12.2015, Mr. Vijay Pandita, learned counsel for the respondents, submitted that the orders of this Tribunal have been fully complied with. He further handed over a cheque bearing No.257681 dated 17.12.2015 amounting to Rs.1,20,184/- to the learned counsel for the applicant. On 09.03.2016, the respondents

made further payment vide cheque nos.259292 and 258878 for amount of Rs.4977/- and Rs.1,71,747/- respectively. It was admitted by the respondents that though they had made compliance, there were yet to issue revised PPO and payment of pensionary benefits etc. The respondents have also filed the compliance affidavit on 07.03.2016.

6. The petitioner has filed a reply to the compliance affidavit stating that her pay fixation was made by the respondents six months later against requirement of three months and that too incorrectly. Neither pension has been fixed so far nor have any arrear been made to the applicant. The revised Pension Payment Order has not been issued to the petitioner as yet. Further the directions to re-fix her pay w.e.f. 1.1.2006 and pay her arrears, difference of pay, difference of pension etc. with all consequential benefits have not been complied with and no payment has been made towards these dues. The petitioner has also drawn a reference to Para (h) of the compliance affidavit stating that bill claiming the arrear is under submission to Pay & Account Office, this does not denote a full compliance.

7. We have considered the pleadings of rival parties as also the documents adduced and the citations relied upon

on either side and have patiently heard the arguments advanced by the learned counsels for the parties.

8. The issue for determination boils down to the simple fact that whether compliance has been made to the orders of this Tribunal and that of the Hon'ble High Court.

9. Before we take up this issue, we pre-qualify the statement by saying that the scope of the contempt is indeed limited. The Contempt is an affair between the alleged contemnor/respondent and the Court. No fresh directions can be issued in a Contempt Petition nor can the order be modified or curtailed to any extent. The objective of law of contempt is to uphold the dignity of the court and their majesty; and to establish confidence of the public in administration of justice. The scope of Contempt of Court has not been defined either in the Constitution or in any other statute. It is believed that the legislature has deliberately refrained from defining the scope of law of contempt in order to maintain the elasticity of law to reach wide sweep of diversity of situations that it has to meet

10. The second pre-qualification is that where a substantive compliance has been made leaving out some minor parts in dispute regarding compliance, the alleged contemnor may be discharged and the issue re-agitated in a fresh OA.

11. The third pre-qualification is that contemptuous conduct consists of willful connote, idea of deliberate and intentional as opposed to un-intentional or *bona fide* conduct. It is a fundamental requirement that in order to constitute contempt, there should be purposeful and clear intention to flout order, lack of proper care and caution is not sufficient to punish a person for contempt. In order to examine the state of compliance, we take note of the reply affidavit, which read as follows:-

“(a) Withheld amount of Gratuity amounting to Rs.1,60,319/- (Rs. One Lakh Sixty Thousand Three Hundred Nineteen only) as authorized by the Pay and Account Officer-XX, vide authorization letter dated 25.08.2014 was drawn vide cheque no.244777 dted 28.08.2014 of Pay & Account Office. The said cheque was revalidated and the amount was released in favour of Mrs. Saroj Arora vide Cheque No. 252031 dated 28.04.2015, which had been received by Sh. Pradeep Kumar, Advocate on behalf of Mrs. Saroj Arora on 05.05.2015.

(b) Rs.61,870/- (Rs. Sixty One Thousand Eight Hundred Seventy only) toward interest on delayed payment of GPF was released vide Cheque No. 246626 dated 17.11.2014 of Pay and Account Officer. The said cheque was revalidated and amount included in Cheque No.258878 dated 17.02.2016 for Rs.1,71,747/- (Rs. One Lakh Seventy One Thousand Seven Hundred only) (Rs.70-542/- + Rs.61870/- +Rs.39334/-)

(c) Rs.1,09,876/- (Rs. One Lakh Nine Thousand Eight Hundred Seventy only) was paid vide Cheque No.246559 dated 14.11.2014 toward interest (8%) on delayed payment of gratuity and withheld gratuity (Rs.39334/-+Rs.70542/-). The said cheque was revalidated and amount included in heque No. 258878 daetd 17.02.2016 for Rs.1,71,747/- (Rs. One Lakh Seventy One Thousand Seven Hundred only) (Rs.70542/-+Rs.61870/-+Rs.39334/-)

(d) Rs.9,835/- (Rs.Nine Thousand Eight Hundred Thirty Five only) was paid vide Cheque No. 256609 dated 03.11.2015 toward interest (2%) on delayed amount of gratuity.

(e) Rs.59,019/- (Rs. Fifty Nine Thousand Nineteen Only) toward interest on delayed payment of withheld Gratuity, Commutation value of pension and pension (Rs.17,628/-+Rs.37070/-+Rs.4321/-) was released vide Cheque No. 256481 dated 26.10.2015 of Pay & Account Officer.

(f) Rs.18,587/- (Rs.Eighteen Thousand Five Hundred Eight Seven Only) toward interest on delayed payment of GPF and UTGEIS (Rs.15467/-+Rs.3120/-) was released vide Cheque No. 256466 dated 23.10.2015 of Pay and Account Officer.

(g) Pay of Mrs. Saroj Arora was fixed in the revised pay scale w.e.f. 01.01.1999 as per order No.F.2(4)/PF/SSH/WCD/2009/2014-15/36734-739 dated 10.12.2015 and arrear of amount of Rs.1,20,185/- (Rs. One Lakh Twenty Thousand and One Hundred Eight Only) was paid to Mrs. Saroj Arora vide Cheque No. 257681 dated 17.12.2015.

(h) Subsequent on grant of the benefit of MACP Scheme vide order No.9(206)/Admn./WCD/MACP/2015/38297-303 dated 22.12.2015 pay of Mrs. Saroj Arora, Retired Welfare Officer, has been re-fixed as per order F.2(4)/PF/SSH/WCD/2009/2014-15 dated 31.01.2016 and bill claiming the arrear is under submission (Bill No. PBA-91 dated 04.02.2016) to Pay & Account Office.”

12. From the above, it is quite evident that a substantial compliance has been made to the orders of the Tribunal. However, if anything has been missing, the petitioner can file a fresh OA to that effect. Therefore, the Contempt Petition is closed with liberty to the petitioner that if anything has been left that can be brought vide means of

another OA. Notice issued to the respondents stands discharged. No costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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