

**Central Administrative Tribunal
Principal Bench**

CP NO. 421/2015 in
OA NO. 462/2010
MA NO. 2789/2015

Order reserved on : 04.02.2016
Order Pronounced on : 10.03.2016

Hon'ble Mr. A.K.Bhardwaj , Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Satish Kumar
R/o M-56, Ramakrishna Vihar,
I.P.Extn., Delhi.

- Applicant

(By Advocate: Sh. U.Srivastava)

Versus

1. Sh. Satyanarayan Mohanty,
Secretary,
Ministry of Human Resource Development,
Department of Higher Education,
Shastri Bhawan, New Delhi.

- Respondent

(By Advocate: Sh. S.M.Arif)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The present contempt petition has been filed in OA No.462/2010 alleging disobedience of the order passed by this Tribunal in OA No.462/2010 on 29.07.2011 as well as the order passed while deciding the execution petition, MA No.1365/2013 on 16.12.2014. This petition was filed on 27.05.2015. Subsequently, the respondents have filed MA No.2789/2015 in OA No.462/2010 seeking extension of time up to 31.12.2015 for implementing the order dated 16.12.2014.

2. Brief history of the case is that the applicant had approached this Tribunal in OA No.462/2010 challenging the order passed by the disciplinary authority imposing the major penalty of “removal from service” which shall not be a disqualification for future employment vide order dated 13.03.2009. OA No.462/2010 was disposed of by this Tribunal on 29.07.2011 and the operating para of that order reads as follows:

“25. In view of the facts and circumstances of the case and the discussion in preceding paragraphs, we are of the considered view that this is a fit case to be remanded back to the competent authority to reconsider in respect of quantum of punishment in the light of observations made in this order and to pass a reasoned and speaking order within a period of two months from the receipt of a certified copy of this order. No orders as to costs.”

3. The disciplinary authority after reconsideration in consultation with the UPSC and DOP&T decided to modify the penalty to that of compulsory retirement vide order dated 17.04.2012. The present dispute now relates to the payment of consequential benefits and the treatment of the suspension period from 24.08.2004 to 30.03.2009 to be on duty or otherwise. Initially, the competent authority had ordered that the suspension period shall be treated as duty restricting pay and allowances during the period of suspension to the subsistence allowance already paid. Later, the competent authority vide order dated 27.09.2013 modified its earlier decision by ordering that the period of suspension will be treated as on duty. Regarding the

quantum of pension, the disciplinary authority has decided to pay 75% of the pension/gratuity due to the applicant. However, the same can be imposed only after obtaining the advice of UPSC in terms of Sub-Rule (2) of Rule 40 of CCS Pension Rules, 1972. From the details given in MA No. 2789/2015 it is observed that the respondents have not been able to come to a final decision in this regard due to difference of opinion between the competent authority and UPSC.

4. Learned counsel for the applicant submitted that during the hearing of the execution petition MA No.1365/2013 on 16.12.2014, a statement was made by the learned counsel for the respondents that the respondents had already reconsidered the matter and imposed the penalty of compulsory retirement upon the applicant, i.e., the penalty had been reduced. He further added that the matter regarding payment of consequential benefits to the applicant was in active consideration with the respondents and a final view would be taken within four weeks and whatever benefits admissible to the applicant would be released to him in the aforesaid period. The learned counsel for the applicant submitted having once made a commitment in the Court, the respondent is wilfully disregarding that commitment which is a part of the judicial proceeding. The applicant has neither been given any consequential benefit nor any order has been passed. According to the learned counsel this constituted a

wilful disobedience of the order of the Court and the respondent was liable to be punished for Contempt of Court.

5. Before we proceed further in the matter, it is important to note that in a contempt petition this Tribunal cannot issue any fresh direction. The power of the Tribunal in contempt petition is governed by Section 17 of the Administrative Tribunals Act, 1985 read with Section 12 of Contempt of Courts Act, 1971, which reads as under:

“17. Power to punish for contempt –

A Tribunal shall have, and 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 (70 of 1971) shall have effect subject to the modifications that –

(a) the reference therein to a High Court shall be construed as including a reference to such Tribunal;

(b) the reference to the Advocate-General in section 15 of the said Act shall be construed, -

(i) in relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General; and

(ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established.”

6. In a contempt petition the role of the Tribunal is limited to examining whether there is any wilful disobedience on the part of the respondent contemnor. In **Ashok Paper Kamgar Union vs. Dharam Godha & Ors.**, (2003) 11 SCC 1, the Hon’ble Supreme Court observed thus:

“17. Section 2(b) of the Contempt of Courts Act defines “civil contempt” and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful 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 extraordinary 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.....”

7. From the directions given by this Tribunal in OA No.462/2010 reproduced earlier in this order, it can be seen that this Tribunal had only remanded the matter back to the competent authority to reconsider in respect of quantum of punishment in the light of the observations made in that order and to pass a reasoned and speaking order within a period of two months. The respondents have already passed that order on 17.04.2012. We, therefore, do not find any wilful disobedience of the orders of this Tribunal in OA No.462/2010.

8. The question that arises is whether non-implementation of any statement made before the Court can be treated as a Contempt of Court.

9. In our view, the action of the respondents in passing the order revising the penalty imposed on the applicant was adequate compliance of the directions given by this Tribunal in the main OA. Any further information volunteered by the applicant, which is not in response to a direction given by this Tribunal, cannot be treated as a direction of the Court, non-compliance of which would amount to Contempt of Court. At no stage, the Tribunal had given any direction for payment of consequential benefits within a given time period. The respondents themselves have volunteered this information and from the correspondence placed on record, it seems that they are still working on the same. While payment of consequential benefits is a natural corollary of the imposition of the penalty of compulsory retirement, we cannot give any fresh direction to the respondents over and above what has already been given while disposing of the main OA. We are, therefore, convinced that there is no wilful disobedience of the orders passed by this Tribunal by the respondent, and therefore, the Contempt Petition No.421/2015 is closed. MA No.2789/2015 is also dismissed as infructuous. Noticees are discharged.

(V.N. Gaur)
Member (A)

(A.K.Bhardwaj)
Member (J)

March 10, 2016

'sd'