

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

CP No.463/2015 in
OA No.1502/2015

Order Reserved on 07.10.2015
Order Pronounced on: 12.01.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sanjay Kumar Bansal
S/o Late Shri J.C. Bansal,
R/o F-5/22 Krishna Nagar,
Delhi-110051.

-Applicant

(By Advocate: Shri R.N. Singh)

Versus

1. Shri Bhanupratap Sharma
Secretary, Ministry of Health & Family Welfare
Govt. of India, Nirman Bhawan,
New Delhi-110011.
2. Dr. (Prof.) Jagdish Prasad
Director General of Health Services
Govt. of India
Ministry of Health & Family Welfare
Nirman Bhawan,
New Delhi-110011.
3. Dr. Atul Murari
The Director,
Lady Harding Medical College
And Smt. S.K. Hospital
Sahid Bhagat Singh Marg
New Delhi-110001.
4. Neeraj Sachdeva,
Deputy Director (Admn.)
Lady Harding Medical College
And Smt. S.K. Hospital
Sahid Bhagat Singh Marg
New Delhi-110001.

-Respondents

(By Advocate: Mrs. Sumedha Sharma)

O R D E R

Per Sudhir Kumar, Member (A):

This Contempt Petition has been filed by the petitioner alleging non-compliance of the orders of this Tribunal dated 21.05.2015 in OA No.1502/2015.

2. The reliefs sought for by the petitioner, as the applicant in that OA were, as follows:-

- “(a) Call for the original file(s)/record(s) of the respondent No.2 wherein a decision was taken to withhold the salary of the applicant from the month of November, 2014 onward and also wherein his various representations, as noted above, have been considered.
- (b) Issue appropriate writ, direction/declaration or order to hold and declare the action of the respondents in not paying the salary and allowance to the applicant from the month of November, 2014 till date as illegal and arbitrary.
- (c) Consequently direct the respondents to release applicant's salary and allowance from the month of November, 2014 onwards forthwith.
- (d) Also direct the respondents to pay interest as the rate of 15% per month on the amount due from the date the same became due till realization.
- (e) Award cost of the proceedings in favour of the applicant and against the respondents jointly or severally.
- (f) May also pass any order(s) as may be deemed just and proper by the Hon'ble Tribunal”.

3. The Tribunal, in its order dated 21.05.2015, ordered as follows:-

“We have heard the learned counsel for both parties.

2. The simple issue is whether or not the applicant has to be paid the salary for the period, for which the respondents say that he did not comply with the order of transfer from the

Stores Section to the Vigilance Section and against which the applicant says that he did not join because he was not relieved. It will be difficult to take a decision because of divergent views of either side. However, it is admitted or rather not denied that the applicant did work in the Stores Section and, thereafter in the other Sections. Having considered this, it has to be further admitted that **an employee who has discharged his duties is entitled to salary.**

3. **Once it is admitted that the applicant has discharged his duties, he is entitled to get salary and we accordingly direct the respondents to pay him whatever is due** within the period of four weeks from the date of receipt of a copy of this order.

4. Learned counsel for respondents submits that the **above direction should be without prejudice to their rights to exercise power under the relevant rules and instructions. So ordered.**

5. With the above direction, the OA stands allowed".

(Emphasis supplied).

4. Now the petitioner/applicant has filed this Contempt Petition taking the ground that the respondents/alleged contemnors have not released his pending salary since November 2014 onwards, in utter disregard of the directions of this Tribunal, wholly illegally, arbitrarily, and wilfully, which amounts to a contumacious act on the part of the respondents. He has also submitted that just because he had approached this Tribunal, the respondents have since served him a Charge Memo dated 25.06.2015 (Annexure A-2), and though they have issued a letter dated 25.06.2015 (Annexure A-3) purportedly ordering for releasing of salary due to him, on the same date, through an Office Order (Annexure A-4), they have also ordered for treating his service from 27.12.2013 to 09.02.2015 as '*dies non*'.

5. The petitioner/applicant has further alleged that the Respondents have issued another letter dated 29.06.2015 (Annexure A-5) ordering for recovery of overpayment, if any, from his salary as due. He has, therefore, alleged that since there was no reason or justification for the respondents not to comply with the order of this Tribunal dated 21.05.2015 (supra), and they have not complied with the order wilfully, they are liable for action in regard to the contempt of this Tribunal's orders. He has, therefore, prayed for taking cognizance of the said wilful and deliberate non-compliance of the order of this Tribunal in his OA (supra), and to punish the Respondents/alleged contemnors, and to ensure compliance of the orders of this Tribunal, and payment of his salary due from November 2014 onwards, till date, apart from awarding exemplary costs, and passing any further orders, as may be deemed just and proper to meet the ends of justice.

6. The Respondent/alleged Contemnor No.4 filed a detailed reply affidavit on 25.08.2015, running into 19 pages, with 20 Annexures thereto. Even though this is not an OA in which issues have to be decided afresh, and is only a contempt case, the affidavit of Respondent No.4 had contained the entire details concerning the periods both prior to and after passing of the above order of the Tribunal dated 21.05.2015 (supra). We need not deal with all the contentions and arguments advanced by Respondent No.4 in the said affidavit, as many of these points were not presented before the Bench which had passed the order on 21.05.2015, and have not yet been judicially adjudicated upon.

7. Heard. In the contempt proceedings, we are merely concerned with as to what was the order passed by the Coordinate Bench, and as to whether the actions of the respondents thereafter have been in compliance of that order, or in defiance of such order, and as to whether such defiance can be termed to be wilful defiance, amounting a contumacious act, or not.

8. The order of the Coordinate Bench dated 21.05.2015 has already been reproduced above. But portions of that may be reproduced by us again, for the purpose of understanding as to whether it has been complied with, or not, as follows:-

“->However,
 -> it is admitted
 -> or
 -> rather not denied
 -> that the applicant did work in the Stores Section
 -> and, thereafter in the other Sections.
 -> Having considered this, it has to be further admitted that **an employee who has discharged his duties is entitled to salary.**
 -> **Once it is admitted that the applicant has discharged his duties, he is entitled to get salary and we accordingly direct the respondents to pay him, whatever is due**
 -> within a period of four weeks from the date of receipt of a copy of this order.
 -> Learned counsel for respondents submits that **the above direction should be without prejudice**
 -> **to their rights to exercise power under the relevant rules and instructions.**
 -> **So ordered.**
 -> With the above direction, the OA stands allowed”.

9. The reply of the respondents is that the applicant was transferred thrice and assigned different duties from time to time as follows:-

- “a) From Vigilance Section to Store Section vide order dated 12.11.2012.
- b) From Store Section to Vigilance Section vide order dated 27.12.2013.
- c) Vigilance Section to Eye & ENT Department vide order dated 10.02.2015.”

10. But they have submitted that he did not obey the instructions regarding his transfer from the Stores Section to the Vigilance Section, as ordered on 27.12.2013, and did not perform the duties as had been assigned to him. They have also submitted that, therefore, in view of the liberty granted by the Bench that the direction for payment of petitioner/applicant's salary was without prejudice to the respondents' rights to exercise their powers under the relevant rules, since the Rules provide that when an official remains in office but refuses to perform that duty, which is assigned to him officially, and since for the period from 27.12.2013 to 09.03.2015, the petitioner/applicant had failed to perform his assigned duties in the Vigilance Section, where he was officially assigned duties, but had continued to work in the Store Section, where no duty had been assigned to him, they are fully justified in having treated his absence from his assigned duties as unauthorised absence, and having treated that period as '*dies non*'.

11. Through Annexure-I of the Additional Affidavit filed by the respondents on 30.09.2015, in the form of a due and drawn statement, after having treated the period of petitioner/applicant's working at a place where no duties had been assigned to him, it is seen that he has

been paid salary from 27.12.2013 onwards, upto October 2014, though, thereafter, the said period was declared to be '*dies non*'. As a result, the respondents have treated that salary to have been overdrawn, and have gone on to adjust the salary of the petitioner/applicant in respect of the months November 2014 to June 2015, and perhaps onwards also, against the alleged overpayment of salary, which had already been dismissed, in respect of the period which has now been declared to be '*dies non*'.

12. The contention of the respondents is that the order dated 25.06.2015 passed by them, and referred to by the petitioner/applicant in his grounds in the C.P., may have given rise to a fresh cause of action, but that it does not amount to a contempt of this Tribunal. During the course of the arguments, learned counsel for the respondents had submitted that in terms of the judgment of Hon'ble Apex Court in **J.S. Parihar vs. Ganpat Duggar and Ors. (1996) 6 SCC 291; AIR 1997 SC 113**, if a subsequent cause of action has arisen in the matter of implementation of a judgment, a fresh OA has to be filed.

13. Learned counsel for respondents had, therefore, argued that even though the Tribunal had directed in Para-3 of the Tribunal's order dated 21.05.2015 (supra) that the petitioner/applicant was entitled to get salary whatever is due, but since it was further ordered that such directions would be without prejudice to the respondents' rights to exercise their powers under the relevant rules and instructions, and, by

exercising their powers under the relevant rules and instructions, the respondents have subsequently ordered for the period from 27.12.2013 to 09.02.2015 (when the petitioner/applicant had not reported for duty at the assigned place at the Vigilance Section, and had continued to work on his own in the Store Section without any orders), they were fully competent and justified to take such an administrative action, and pass such administrative orders, in view of the rights which had been permitted to be exercised by the respondents by the Bench, even while passing orders for payment of petitioner/applicant's salary, whatever is due.

14. Learned counsel for the petitioner/applicant had argued vehemently that mere passing of such an order soon after the orders of the Tribunal dated 21.05.2015 (supra) was a contumacious act. He had also submitted that the respondents could not have withheld the payment of the salary of the petitioner/applicant when it had been so specifically ordered, in respect of the period when he had been working in one of the Sections, as his working had not been denied, and the Bench had held that an employee who has discharged his duties is entitled to salary.

15. However, we are bound by the law as laid down by the Supreme Court in **J.S. Parihar** (supra) as follows:-

“.....The question is : whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier

BENCHES. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned single judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act.....”.

16. When the Tribunal had specifically granted to the respondents liberty that the directions in respect of payment of petitioner/applicant's salary, whatever is due, would be without prejudice to the rights of the respondents to exercise their administrative powers under the relevant rules and instructions, and the respondents have thereafter resorted to such an exercise of their administrative powers under the relevant rules and instructions, and as the period concerned was treated by them as the petitioner/applicant having worked at a place where he was not assigned duty, and have held that he had not reported for duty and worked at the place of duty which had been assigned to him, the passing of the orders dated 25.06.2015 in this connection was certainly within the liberty granted to the respondents by this Tribunal in the order in OA itself.

17. Therefore, it is clear that when the petitioner/applicant's salary in respect of that period, when the petitioner/applicant had not obeyed his transfer orders, has been held to be not due and payable to him, and orders regarding treatment of that period to be a period of '*dies non*' have

given rise to a fresh cause of action in the hands of the petitioner/applicant, it cannot be said that the Tribunal's orders have been disobeyed, that too wilfully, amounting to a contumacious act.

18. As a result, we cannot hold that the respondents have wilfully disobeyed the order of this Tribunal, and have committed any contumacious act. Therefore, the Contempt Petition does not lie. But, as per **J.S. Parihar** (supra), the petitioner/applicant would be at liberty to challenge the orders now passed by the respondents, subsequent to the Tribunal's order dated 21.05.2015, treating his period of absence from the assigned Section, and working in another Section, to have given rise to a fresh cause of action to him, to agitate the matter before this Tribunal.

19. Therefore, the Contempt Petition is dismissed and notices issued to the respondents are discharged.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.