

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**C.P. No.876/2010 In
O.A. No.3333/2009**

**Reserved On:11.07.2016
Pronounced On:13.07.2016**

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

Shri R.S. Mehta
S/o Shri N.C. Mehta
Aged about 63 years
R/o A-19/3, Rana Pratap Bagh,
Delhi.Petitioner

(Argued by: Shri S.S. Tiwari, Advocate)

Versus

Shri K.S. Mehra
(Respondent No.2 in OA)
Commissioner,
Municipal Corporation of Delhi,
Town Hall,
Delhi.Respondent

(By Advocate: Shri R.K. Jain)

ORDER

Justice M. S. Sullar, Member (J)

C.P. No.876/2010

The crux of the facts and material, which is relevant for the disposal of the instant Contempt Petition (CP), and emanating from the record is that, in pursuance of Departmental Enquiry (DE), petitioner, Shri R.S. Mehta, Assistant Engineer in Municipal Corporation of Delhi was dismissed from service vide order dated 20.07.2006 by the Disciplinary Authority (DA). However, the aforesaid penalty was reduced to that of reduction by 10 (ten) stages in the time

scale of pay till his date of superannuation by means of order dated 02.06.2008 by the Appellate Authority (AA). The Revision Petition filed by him on 25.08.2008, was also dismissed by means of order dated 11.12.2008, by the Revisional Authority.

2. Aggrieved thereby, Original Application (OA) bearing No.3333/2009 under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter to be referred as "Act") preferred by the petitioner, was partly allowed ex-parte by a Coordinate Bench of this Tribunal vide order dated 20.04.2010. The operative part of the order is as under:-

"5. Applicant was admittedly imposed a penalty of dismissal on 20.7.2006. In appeal, the penalty has been reduced to reduction by ten stages in the time scale of pay till his date of superannuation, i.e., 31.3.2007 without cumulative effect. As the increment earned by a person is yearly, after 20.7.2006 only one increment stage would arrive. As such, the penalty has been given effect to in the past, which cannot be countenanced in view of the decision in S.R. Hassan[†] s case (supra), which in all fours covers the present issue.

6. Resultantly, OA is allowed to the extent that the appellate order, insofar as penalty of reduction by ten stages in the time scale of pay till his date of superannuation, i.e., 31.3.2007 without cumulative effect is concerned, shall now be given effect to prospectively by withholding one stage of time scale of pay to the applicant's salary prior to the date of superannuation, i.e., 31.3.2007. Any consequences accrued due to the above shall be restored back to him within a period of two months from the date of receipt of a copy of this order. No costs".

3. According to the petitioner, the Respondent has not complied with the directions contained in the indicated order of this Tribunal despite repeated requests & representation dated 09.08.2010 (Annexure CCP-2) and had earlier filed Contempt Petition (CP) bearing No.876/2010. The CP came to be decided by a Coordinate Bench of this Tribunal. The operative part of the said order reads as under:-

“2. When the matter was called out today, counsel for the respondent has produced status report which reads as under:-

“It is submitted that the Commissioner, MCD vide his order dated 11.11.2010 has ordered to implement the penalty as modified by the Hon’ble CAT in respect of Shri R.S. Mehta, Assistant Engineer (Now retired). The Director Vigilance has already issued an office order in this regard vide bearing No.1/175/2006/Vig./P/GKG/2010/593 dated 20.12.2010.

So as to extend the necessary benefits accrued to the petitioner Shri R.S. Mehta on account of the same the necessary administrative approval has already been obtained vide dated 3.1.2011 so that the payment of leave Encashment (of 300 days), Commutation, Gratuity, Pension can be made. However, it is submitted that for necessary fixation, calculation and release of payment in this regard it will take one month more time”.

3. In view of above since respondents have decided to implement the order passed by this Tribunal and have sought one month’s time only for necessary fixation, calculation and release of the payment to the applicant. This CP is dropped with the hope that order would be fully complied with within one month. Notice is discharged. It is made clear that in case payments are not paid within one month, the applicant would be at liberty to revive the C.P.”

4. Thereafter, Miscellaneous Application (MA) bearing No.55/2012 filed by the petitioner was allowed and the CP was restored to its original number by way of order dated 10.11.2014 by this Tribunal.

5. The case set up by the petitioner, in the CP, in brief, in so far as relevant is that, as per order dated 20.04.2010, the respondent was directed to restore back all the consequences benefits accruing to the petitioner within a period of 2 months from the date of receipt of a copy of the order. The petitioner served copy of pointed order along with his representation dated 09.08.2010 (CCP-II), but the respondent has not taken any action to implement the judgment. In this manner, the respondent has deliberately violated the order of this Tribunal and rendered him liable for action under the Contempt of Courts Act, 1971.

6. On the basis of aforesaid grounds, petitioner prayed to initiate contempt of court proceedings against the respondent, so as to ensure compliance of the order dated 20.04.2010 of this Tribunal.

7. The respondent refuted the claim of the petitioner and filed the affidavit dated 30.11.2012 wherein it was depicted that in compliance of order of this Tribunal, the pay of the petitioner was fixed with the prior approval of CA-cum-FA and the arrears of pay w.e.f. 01.01.2006 to 31.03.2007 amounting to Rs.84494/- has already been paid to him vide Voucher No.2749 dated 21.09.2011 through RTGS/28.09.2011 (copy attached) and nothing is due to be paid to him by the respondent. The respondent has denied all other allegations contained in the CP and prayed for its dismissal. Further, he has reiterated the compliance of the order by way of subsequent additional affidavits dated 16.09.2013 and 30.10.2015.

8. After hearing the learned counsel for the parties and going through the record with their valuable help, we are of the firm view that there is no merit and the instant CP deserves to be dismissed.

9. Ex-facie, the main contention of the learned counsel for the petitioner that the respondent has not restored the pay scale by one increment on the date of his retirement, i.e. 31.03.2007 and his pension was wrongly fixed vide order dated 15.09.2011 (Annexure MA-I), which is contrary to the

order of this Tribunal, so the respondent deserves to be punished accordingly, is not tenable.

10. As is evident from the record that the respondent has complied with the directions of this Tribunal and has already paid the arrears of pay/pension amounting to Rs. Rs.84494/- vide Voucher No.2749 dated 21.09.2011 through RTGS/28.09.2011 in pursuance of order dated 15.09.2011 (Annexure MA-I), which reads as under:-

"MUNCIPAL CORPORATION OF DELHI
OFFICE OF PLANNING DEPTT.,
10TH FLOOR, DR. S.P. MUKHERJI CIVIC CENTRE,
JLN MARG, NEW DELHI-110002.

No.UDC(P)/AO(Engg.)/11-12/1758 Dated:15.09.2011

Office Order

DCA (Engg.) vide his orders dated 13.07.2011 is pleased to concur the pay fixation of Shri R.S. Mehta, retired AE (C) w.e.f 1.1.2006 as under:-

01.01.2006	22230+6600
01.07.2006	23100+6600
20.07.2006	22230+6600

Retired on 31.03.2007

Shri R.S. Mehta, Assistant Engineer (Retd.) be not paid any pay and allowances (sic) from the interregnum period i.e. from the date of dismissal upto reinstatement and the said period shall not be treated as period spent on duty for all purpose except for pensionary (sic) benefits. The above pay fixation is subject to final acceptance by audit and overpayment if any is recoverable".

11. Meaning thereby, since the respondent has substantially complied with the indicated direction of this Tribunal, so question of taking any action under the Contempt of Courts Act against the respondent did not arise at all, in the obtaining circumstances of the case.

12. Be that as it may, in any case, if the petitioner is in any manner aggrieved with the impugned order dated

15.09.2011 (Annexure MA-I) or method of calculation of the pensionary benefits, then he could challenge the validity or otherwise of the actions of the respondent in this direction by filing an independent Original Application and their validity cannot possibly be decided in the instant CP, as contrary urged on behalf of the petitioner.

13. In the light of the aforesaid reasons and without commenting further anything on merit, lest it may prejudice the case of either side during the course of any subsequent proceedings, the instant CP is hereby dismissed. However, the parties are left to bear their own costs.

Needless to mention, in case the petitioner is aggrieved by the method of calculation of pay and pensionary benefits, then he would be at liberty to file independent Original Application to challenge the action of the respondent in accordance with law.

(V.N. GAUR)
MEMBER (A)

Rakesh

(JUSTICE M.S. SULLAR)
MEMBER (J)