

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

**Contempt Petition No. 12 of 2018
in
Original Application No. 162 of 2008**

Reserved on 17.1.2019

Pronounced on 11th March, 2019

Hon'ble Ms. Jasmine Ahmed, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Romesh Kumar Sharma, aged about 75 years, S/o Sri Janak Raj Sharma, R/o 76 Samar Vihar Colony, Alambagh, Lucknow.

Applicant

By Advocate : Sri Dinesh Kumar Tandon

Versus.

1. Sri Prakash Javedkar, Hon'ble Human Resources Development Minister & Chairman, Kendriya Vidyalaya Sangathan, Disciplinary authority, Shastri Bhawan, New Delhi.
2. Ms. Rina Ray, Additional Secretary, MHRD & Vice Chairman, Kendriya Vidyalaya Sangathan, Shastri Bhawan, New Delhi.
3. Sri Santosh Kumar Mall, Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area Shaheed Jeet Singh Marg, New Delhi.
4. Sri Ajai Pant, Deputy Commissioner, Kendriya Vidyalaya Sangathan, Sector J, Aliganj, Lucknow.

Respondents.

By Advocate : Ms. Pushpila Bisht

ORDER

By Ms. Jasmine Ahmed, Member-J

The present Contempt Petition has been filed by the applicant for alleged non-compliance of judgment and order dated 17.9.2014 passed in O.A. No. 162 of 2008. The operative portion of the order reads as under:-

"Accordingly, the impugned order dated 9.7.2007 is quashed. The matter is remanded back to the disciplinary authority to initiate the proceedings afresh in accordance with Rule 9 of CCS (Pension) Rules, 1972 keeping in mind that the applicant superannuated on 31.5.2002 and pass the necessary orders within a period of six months from the date the certified copy of the order is produced."

2. Against the order of this Tribunal, the applicant filed Writ petition bearing Writ Petition No. 1766 (SB) of 2014 before the Hon'ble High Court and while entertaining the aforementioned Writ petition, the

Hon'ble High Court has been pleased to pass an interim order dated 16.12.2014 restraining the respondents not to undertake any further enquiry till the next date of listing pursuant to the order of the Tribunal. Ultimately, the aforesaid Writ petition was disposed of finally vide judgment and order dated 7.11.2016. The relevant portion of the order of Hon'ble High Court reads as under:-

"It is accordingly directed that the Opposite parties shall complete inquiry in this case expeditiously, say within a maximum period of two months from the date a certified copy of this order is placed before the authority concerned. Since the charge-sheet etc. in this case has already been filed, there will be no problem in expediting the matter on behalf of the Opposite parties. The petitioner is also directed to cooperate with the inquiry and will not take any unnecessary adjournment in the matter.

In case the inquiry is not completed within two months as provided above, the petitioner will have the right to approach this Court through an application in this petition.

This order has been passed in the peculiar facts and circumstances of the case.

With these observations, the Writ petition is disposed of".

3. Thereafter, the respondents moved an application for extension of time which came to be rejected vide order dated 31.7.2017. The order dated 31.7.2017 reads as under:-

"This is an application seeking further time for completing inquiry.

The application was filed on 3.2.2017 and six months have already passed. No reason has been given as to why inquiry could not be completed within time provided by this Court vide order dated 7.11.2016. Therefore, we find no reason to extend the time any more.

Rejected."

4. After dismissal of time extension application moved by the respondents, the applicant filed Contempt Petition No. 695 of 2017 before the Hon'ble High Court, which came to be dismissed as not pressed vide order dated 19.4.2017. Thereafter, the applicant filed the instant Contempt Petition before this Tribunal on 2.4.2018.

5. In compliance of the order of this Tribunal, the respondent no.3 has filed Counter Affidavit and Compliance Affidavit wherein he has stated that the order of this Tribunal has been merged in the order of

Hon'ble High Court dated 7.11.2016. It is also pleaded that the applicant did not attend the enquiry proceedings though he was summoned vide order dated 17.2.2017. The Inquiry Officer vide order dated 6.3.2017 directed the applicant to attend the hearing on 14.3.2017, but the applicant did not turn up nor he intimated about his absence. It is also averred that on account of non-cooperation of the applicant in the inquiry, the Inquiry Officer could not conclude the inquiry within the time and thereafter Inquiry officer submitted his ex-parte report on 12.9.2017, which was sent to the Chairman, KVS and Minister incharge on 27.11.2017. The competent authority passed an order dated 29.8.2018 for imposing penalty 20% cut in pension for a period of five years from the date of superannuation by treating the period from dismissal from service (25.1.1999) to the date of superannuation (31.5.2002) as non-duty requiring the applicant to submit his reply to which the applicant submitted his reply on 17.10.2018. The Disciplinary authority after considering the entire case has imposed the penalty of 20% cut in pension upon the applicant for a period of five years from the date of superannuation by treating the period from dismissal from service (25.1.1999) to the date of superannuation (31.5.2002) as non-duty vide order dated 11.12.2018. The said order has been duly communicated upon the applicant. The respondents have lastly stated that there is no disobedience on the part of the respondents and as such the Contempt petition may be dismissed and notices issued to the respondents may be discharged.

6. We have heard the learned counsel for the parties and have also perused the pleadings available on record.

7. From the facts stated hereinabove, it is clear that this Tribunal vide order dated 17.9.2014 had disposed of the O.A. No. 162 of 2008 filed by the applicant by quashing the order dated 9.7.2007 and by remanding the matter to the disciplinary authority to initiate the proceedings afresh in accordance with Rule 9 of CCS (Pension) Rules, 1972 keeping in mind that the applicant superannuated on 31.5.2002 and pass necessary orders within a period of six months from the date of certified copy of the order. Thereafter, the applicant filed Writ petition No.1766 (SB) of 2014 before the Hon'ble High Court assailing the order of this Tribunal and while entertaining the aforementioned Writ petition,

the Hon'ble High Court has stayed the operation of the order of this Tribunal dated 17.9.2014 vide interim order dated 16.12.2014. However, the Writ petition was disposed of finally vide judgment and order dated 7.11.2016 with a rider that in case the inquiry is not completed within two months as provided above, the petitioner will have the right to approach this Court through an application in this petition. Thereafter, the applicant moved Misc. Application No. 9446 of 2017 which came to be rejected vide order dated 31.7.2017. The respondents filed Misc. Application No. 3991 of 2016 for extension of time, which came to be rejected vide order dated 31.7.2017. It is also seen from the pleadings that the order of this Tribunal dated 17.9.2014 has been merged in the order of Hon'ble High Court dated 7.11.2016. The applicant filed Contempt Petition No.695 of 2017 before the Hon'ble High Court against the order dated 7.11.2016, but the same was dismissed as not pressed vide order dated 19.4.2017. Thereafter, the applicant filed the instant Contempt petition before this Tribunal after a period of about one year on 2.4.2018. It is also noteworthy to point out here that the applicant did not turn up in the inquiry though he was summoned vide order dated 17.2.2017. The Enquiry officer again vide letter dated 6.3.2017 required the applicant to be present before him on 14.3.2017, but this time too neither the applicant did not turn up nor given any information about his absence. Having no other option, the Inquiry officer concluded the inquiry ex-parte and submitted his report to the disciplinary authority who after considering the totality of the facts issued a show cause notice/letter dated 29.8.2018 for proposing punishment of 20% cut in pension for a period of five years requiring the applicant to submit his reply to which the applicant submitted his reply and after considering the reply of the applicant and also after considering the gravity of the charges leveled against the applicant, the disciplinary authority vide order dated 11.12.2018 has imposed the penalty of 20% cut in pension for a period of five years. It is also submitted that one of the argument of learned counsel for the applicant was that since the Hon'ble High Court had given two months time to complete the inquiry and that the inquiry could not be completed within the stipulated period of time, the applicant did not participate in the inquiry proceedings. This is not a good ground not to participate in the inquiry proceedings and further this ground does not give premium to the applicant not to

participate in the enquiry proceedings. It may also be stated here that the contempt is between the Court and Contemnor and the role of the applicant is only to assist the Court and not otherwise. The respondent no.3 after considering the reply of the applicant and also after considering the gravity of the charges leveled against the applicant passed an order by imposing 20% cut in pension for a period of five years vide order dated 11.12.2018, which has been duly communicated to the applicant. As already observed, the order of this Tribunal has been merged in the order of Hon'ble High Court dated 7.11.2016 and order of this Tribunal is no-where stand for the simple reason that the same has been merged in the order of Hon'ble High Court dated 7.11.2016 and as such the present Contempt petition is not maintainable before this Tribunal as the order of this Tribunal is no longer survives.

8. In view of the above, the present CCP is not maintainable before this Tribunal and accordingly the same is dismissed. Notices issued to the respondents are hereby discharged.

(Devendra Chaudhry)
Member-A

(Ms. Jasmine Ahmed)
Member-J

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