

Central Administrative Tribunal, Principal Bench

C.C.P. No. 371 of 2004 In

OA No. 1714/2003

New Delhi this the ^{1st} day of October, 2004

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN(A)

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN(J)

Shri Vijay Kumar Aggarwal, IAS
Age 50 years,
S/o Shri Prem Chand Aggarwal
R/o C-8-C, Pandav Nagar,
Delhi-110 092.

...Petitioner

(By Advocate: In person)

-Versus-

1. Mr. Ajit Nimbalkar, IAS
Chief Secretary, Government of Maharashtra,
Mantralaya, Mumbai-400032.
2. Ms. Seema Vyas
Deputy Secretary,
Government of Maharashtra,
Mantralaya,
Mumbai-400032.

...Respondents

ORDER (ORAL)

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The instant application is filed for initiating proceedings against the respondents Shri Ajit Nimbalkar, Chief Secretary, Government of Maharashtra and Ms. Seem Vyas, Deputy Secretary, Government of Maharashtra for punishing them under the Contempt of Courts Act for contumacious and willful violation of the order of this Tribunal dated 18.11.2003 made in OA 1714/2003.

2. The facts, leading to the present application briefly stated, are that the applicant Shri Vijay Kumar Aggarwal, is a Member of the Indian Administrative Service borne on Maharashtra Cadre. Disciplinary proceedings for major penalty under Rule 8 of AIS (Discipline & Appeal) Rules, 1969 (hereinafter referred to as the 'Rules') was initiated against

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him by an order of State of Maharashtra dated 6.7.1988. Applicant was placed under suspension and was ordered to be paid subsistence allowance vide order dated 2.11.1988. The departmental proceedings were stayed by the Hon'ble Supreme Court by an order dated 2.11.1988 made in IA No. 2-5 (Contempt Petition No.241/1997) but the stay order was subsequently vacated on 13.5.1996. The applicant was reinstated in service with effect from 13.5.1996. In compliance with the order of the Hon'ble Supreme Court dated 11.10.2001 the applicant had been paid the full salary as subsistence allowance for the period from 1.5.88 to 13.5.1996 without prejudice to the right of the parties. The applicant filed OA No.1714/2003 which was disposed off by the Tribunal on 18.11.2003 by following order:-

“ 27. In the result, as the applicant has prayed for multiple reliefs, which is barred under Rule 10 CAT (Procedure) Rules, 1987, the OA is partly allowed. Impugned order dated 13.5.1996 is quashed and set aside. Respondents are directed to pass a fresh order in so far as treatment of suspension period is concerned under Rule 5 (B) of the Rules ibid within a period of three months from the date of receipt of a copy of this order. Whatever is entitled in the shape of subsistence allowance or the pay and allowance as a consequence of revocation of suspension, shall be paid to the applicant within the aforesaid period. As regards disciplinary proceedings, in case any final order is passed, applicant shall be at liberty to take recourse in accordance with law. No costs.”

3. In compliance of this order, the respondents had passed the order on 29.7.2004, copy of which is AnnexureP-2.

4. The applicant has complained that the order is not in accordance with the provisions of Rule 5(B) of AIS (D&A) Rules, 1969 since the respondents have failed to consider and decide the question as to whether the suspension order 26.5.1988 was justified or not. The order dated 29.7.2004 undermines the authority of the Hon'ble Apex Court and tantamount to obstruction of orderly and effective administration of justice. It is also mala fide, vexatious, malicious and abuse of process of law. The impugned order dated 29.7.2004 is filed only to hoodwink the

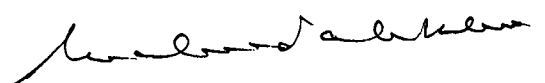
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Tribunal. For the reasons stated in the application, it is submitted that the respondents are in civil contempt and they should be dealt with a heavy hand and punished under the provisions of Contempt of Courts Act, 1971.

5. We have heard the applicant and have perused the record.

6. The applicant has raised two-fold contentions. Firstly it is submitted that the conditions precedent for the exercise of powers conferred by Rule 5(B) of the AIS (D&A) Rules, 1969 have not been satisfied as much as it has not decided whether there was justification for the applicant's suspension from service and there was also no decision on the question whether the period of suspension may be treated as period spent on duty and whether the payment of full salary and allowances for the said period could be made to the applicant, the order was an eye-wash and was made to hoodwink the court and it is no compliance of the order of this Tribunal in OA 1714/2003. Secondly it was contended that the Tribunal had directed the respondents on 18.11.2003 in OA No. 1714/2003 to pass fresh order in so far as treatment of suspension period was concerned, in accordance with Rule 5(B) of the aforementioned Rules within a period of 3 months from the date of receipt of a copy of this order. But the copy of the order dated 29.7.2004, Annexure P-2, was made long after the time stipulated by the Tribunal was over.

7. During the arguments, though the learned counsel for the applicant has not cited judgments at the bar, but he has referred to a number of judgments in his application which are: **Vasant Raghunath Gokhale v. State of Maharashtra**, AIR 1963 Bombay, 137; **Girja Prasad Nagardas Dave vs. State of Gujarat**, 1971 Lab. I.C. 921; **O.P. Gupta vs. Union of India**, 1981 Lab. I.C. 1202; **O.P. Gupta vs. Union of India**, AIR 1987 SC 2257; **Baradakanta Mishra vs. Bhimsen Dixit**, AIR 1972 SC 2466; **State of Gujarat vs. Secretary, Labour**, 1982 Crl. L.J. 2255 and **Government of A. P. vs. A. P. Jaiswal**, AIR 2001



SC 499 in support of the contention that the order dated 29.7.2004 is not in accordance with Rule 5(B) of the Rules.

8. As regards the contention of the applicant that the order dated 29.7.2004 does not satisfy the mandate of Rule 5(B) of the Rules as much as, it has not decided upon the justification of suspension and whether the suspension period can be treated as a period spent on duty and the applicant was entitled to full pay and allowances for the said period, we are afraid, this question cannot be entertained in the present proceedings. The court can adjudicate upon the legality and validity of this question when the order dated 29.7.2004 is challenged in appropriate proceedings before this Tribunal. Such questions can neither be raised nor can be decided in contempt proceedings.

9. With regard to treatment of suspension period being on duty or otherwise and the entitlement of the applicant to full pay and allowances for the suspension period consequent upon the revocation of the suspension order, suffice to mention that the respondents passed the order dated 29.7.2004, which is Annexure P-2, in compliance with this Tribunal's order dated 18.11.2003. Whether the order still suffers from illegality, infirmity and violates or is in transgression of the mandate of Rule 5(B) of the Rules are the question to be raised when the order is challenged in a substantive petition. Whether the order is legal or illegal, could be determined only when its validity is challenged in accordance with law. That challenge cannot be made or adjudicated upon in the present contempt proceedings.

10. The case law², which has been referred to in the application as would appear from the fact manifested in the quoted portion, are on distinguishable facts. The merit of the order itself was under challenge in those cases in substantive petition and not in contempt petition. Ex-facie the order dated 29.7.2004 is passed by the State of Maharashtra in exercise of the powers conferred by Rule 8(B) of the AIS (Discipline & Appeal) Rules, 1969. We refrain from expressing our view on the validity

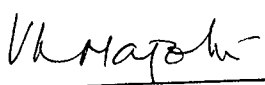
of the order in these proceedings and leave the question to be decided as and when it is raised in some other proceedings in accordance with law.

10. The next contention raised on behalf of the applicant is that the impugned order is passed beyond 3 months' period stipulated in the order. The applicant has not given the date on which the order dated 18.11.2003 was communicated to the respondents. But assuming that it was communicated in the month of November, 2003, some amount of delay is bound to occur when the decision making process in a Government is cumbersome and lengthy and the matter is to be considered by different authorities at different level. Moreover, unless the delay is wilful and contumacious, it could not be considered defiance or disobedience of the order. There is nothing on record, which may suggest that there is willful and contumacious disobedience of the order of the Tribunal by the respondents in not deciding the matter within a period of 3 months as stipulated in the order. In the totality of the circumstances we, therefore, do not find it a fit case to initiate proceedings under the Contempt of Courts Act against the respondents in this matter.

11. The result of the above discussion is that we do not find merit in the Contempt Petition. It is dismissed in limine.


(M.A. KHAN)
VICE CHAIRMAN(J)

Rakesh


(V.K. MAJOTRA)
VICE CHAIRMAN (A)