

SUPREME COURT OF INDIA

Ashok Kumar Aggarwal

Vs.

Sumit Bose & Another

(Dr.B.S.Chauhan and J.Chelameswar JJ.)

28.02.2014

JUDGMENT

CHELAMESWAR, J.

1. This contempt petition is filed complaining that the respondents have willfully disobeyed the order of this Court dated 22nd November, 2013 and, therefore, prayed that the respondents be punished for contempt and also direct the respondents to implement the judgment of this Court dated 22nd November, 2013 in Civil Appeal No. 9454 of 2013.

2. The brief factual background of the above Civil Appeal No. 9454 of 2013 is as follows:-

The applicant herein is an Officer of the Indian Revenue Service who was kept under suspension on certain allegations of misconduct on 28.12.1999. On the basis of the said allegations, criminal cases are also pending against the applicant. In view of the pendency of the criminal proceedings, the applicant's suspension continued for a long period. Eventually, the applicant challenged two orders dated 12.1.2012 and 3.2.2012 by which his suspension was continued in O.A. No. 495 of 2012 on the file of the Central Administrative Tribunal, Principal Bench, New Delhi. By its order dated 1.6.2012, the Tribunal allowed the above mentioned O.A.. The operative portion of the order reads as follows:-

"Considering the totality of the facts and circumstances of the case, we are of the considered opinion that (i) the directions of the Tribunal issued to the respondents in OA NO. 2842/2010 decided on 16.12.2011 have not been

complied with in both letter and spirit while passing the impugned orders dated 12.01.2012 and 03.02.2012; and (ii) the continuance of the applicants suspension is not tenable. In the result, the orders dated 12.01.2012 and 03.02.2012 are quashed and set aside with direction to the respondents to revoke his suspension and to reinstate him in service. The applicant would be entitled to legally admissible consequential benefits.

We make it very clear that taking note of the grave charges leveled against him, the applicant may be posted in a non-sensitive post where the Competent Authority considers that he would have neither access to the relevant records nor would have opportunity to influence the witnesses. We also further add that if at any point of time in future the criminal trial proceedings commence by the trial Court, the respondents would have the liberty to consider the possibility of keeping the officer under suspension at that point of time if the facts and circumstances so warrant."

Aggrieved by the said order, the respondent herein preferred the writ petition(c) no. 5247 of 2012 before the Delhi High Court which was dismissed in limine by a judgment dated 17.9.2012.

Not satisfied with the said judgment, the respondents approached this Court in SLP(C) No. 30368 of 2012 which eventually came to be numbered as Civil Appeal No. 9454 of 2013.

This Court by its judgment dated 22.11.2013 dismissed the said appeal.

3. The grievance of the petitioner in the contempt is that though he succeeded in O.A. No. 495 of 2012 which order was confirmed both by the High Court as well as by this Court, the respondents have not given him "legally admissible consequential benefits" as directed in the Order of the Administrative Tribunal.

4. According to the petitioner, the "legally admissible consequential benefits" are two - (1) in view of the fact that the Tribunal quashed the orders of extension of the suspension of the petitioner dated 12.1.2012 and 3.2.2012, the petitioner is entitled for the salary and other allowances applicable to his office with effect from 12.1.2012; (2) the petitioner is entitled to be considered for promotion to the next higher post in view of the fact that during the long pendency of his suspension, many officers junior to him in service had been promoted.

5. On the other hand, Ms. Indira Jaising, learned Additional Solicitor General submitted that the petitioner is not entitled for the full salary with effect from 12.1.2012. In view of certain departmental circulars, it is open to the Department to examine and decide what are the appropriate amounts which are required to be paid to the petitioner. Learned ASG further submitted that the right of the petitioner to considerations of the promotion of the next higher post cannot be the subject matter of this present contempt petition as it was not the subject matter of the original application no. 495 of 2012.

6. Thirdly, learned ASG submitted that pursuant to the directions of the Tribunal as confirmed up to this court, the petitioner was reinstated into service. He was relieved from his original posting at Delhi and was given a posting to West Bengal CCA by an Order dated 10th January, 2014. Consequent upon which, the petitioner was relieved from his earlier posting on 16th February, 2014. The order relieving him had been duly served on him on 16th January, 2014. Petitioner did not chose to report at the newly posted station instead chose to challenge the posting order in a fresh O.A. No. 178 of 2014 before the Central Administrative Tribunal, Delhi and obtained ex-parte orders of status quo on the misrepresentation that he had still not been relieved from Delhi CCA.

7. With regard to his submission pertaining to the entitlement of the petitioner for back wages, the Government of India in the Ministry of Finance by its order dated 6th January, 2014 held that the revocation of the suspension would not entitle the petitioner the claim of back wages. Learned ASG relied upon the departmental instructions contained in Fundamental Rule 54B in support of the decision of the Government. The relevant portion of the Fundamental Rules is as follows:-

Admissibility of pay and allowances and treatment of service on reinstatement after suspension. - 1. When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement(including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty."

8. We are not able to agree with the submission made by learned ASG as that the rule has no application to those cases where the suspension order is quashed by judicial or quasi-judicial body. Therefore, we are of the opinion that the petitioner is entitled for his pay and other allowances w.e.f. 12th January, 2012. However, in view of the fact that the petitioner did not report to service pursuant to the order dated 10th January, 2014 and obtained interim orders from the Administrative Tribunal, we are of the opinion that the entitlement for the receipt of the salary w.e.f. 10.1.2014 would depend upon the outcome of the O.A. We make it clear that as of now, he is entitled to salary and other allowances with effect from 12.1.2012 to 10.1.2014.

9. Coming to the question of entitlement of the petitioner's case for consideration for promotion to the next higher post, it has rightly been pointed out by learned ASG that the question cannot be properly the subject matter of the contempt petition. If the petitioner has any grievance, he is entitled to approach the appropriate forum seeking such relief as he is entitled in law.

10. With these observations, the contempt petition is disposed of. The respondents shall pay the above mentioned amounts to which the petitioner is entitled within a period of two months.