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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9033/2017

PADMA JAISWAL

..... Petitioner

Through: Mr. Nidhesh Gupta, Sr. Advocate
with Ms. Vriti Gujral, Advocate.

versus

RAJIV MEHRISHI & ORS

..... Respondents

Through: Mr. Jasmeet Singh, CGSC for
respondents.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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15.11.2018

The petitioner has preferred the present writ petition to assail the order dated 23.02.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('the Tribunal') in MA No.3212/2016 moved in OA No.1228/2016. The said MA No.3212/2016 was moved by the petitioner under Section 340 Cr.P.C. along with a contempt petition i.e. CP No.230/2016.

On 01.04.2016, the Tribunal passed an order disposing of the original application with a direction to the respondent No.2 i.e. Department of Personnel and Training (DoP&T) to supply to the petitioner the advice of UPSC as per the Government of India's instructions dated 05.03.2014, before passing of the final order in the disciplinary proceedings against her. It appears that the said order was served on the Ministry of Home Affairs as

well as on the DoP&T between 5th and 6th April, 2016. Mr. Gupta, learned counsel for the petitioner has shown to the Court file noting of DoP&T of 07.04.2016 which also reflects this position to be correct.

Admittedly, no final order was communicated to the petitioner. It appears that the petitioner was keeping a close track of the movements of the departmental file, and learnt that a final order had been prepared on 27.04.2016, in violation of the order dated 01.04.2016 passed by the Tribunal. At that stage, the petitioner preferred the aforesaid contempt petition. He also moved the application under Section 340 Cr.P.C., since the stand taken by the respondents before the Tribunal was that the order dated 01.04.2016 was received only on 28.04.2016, and the final order had been prepared on 27.04.2016.

The Tribunal while disposing of the contempt petition took note of the stand of the respondents that it was only on account of a *bona fide* mistake that the order dated 27.04.2016 came to be drafted and prepared. However, admittedly, that order was never served upon the petitioner and not implemented or given effect to. Since there was no communication of the said order, it had no effect-in view of the well settled position in law, taken note of by the Tribunal in its order dated 27.04.2016, that an order is no “order” unless communicated. In the light of the aforesaid position, the Tribunal dismissed the contempt petition and also held that the final order dated 27.04.2016, which was admittedly not served on the petitioner, was prepared under a *bona fide* mistake. It chose not to proceed against the respondents under Section 340 Cr.P.C.

The submission of Mr. Gupta, learned Sr. counsel for the petitioner is that the record shows that the stand taken by the respondents - that it was not served with the order dated 01.04.2016 passed by the Tribunal in the original application, before preparation of the order dated 27.04.2016, is

factually incorrect.

Be that as it may, we are of the view that since the final order dated 27.04.2016 was not served on the petitioner and has not been given effect to, the Tribunal was justified in not proceeding against the respondents under Section 340 Cr.P.C. It is well settled that matters of contempt and perjury are between the Court and the contemnor/person against whom perjury is alleged and in case the Tribunal has exercised its discretion not to proceed in the matter, which does not appear to be unjustified to us, we are not inclined to interfere with the same.

Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 15, 2018

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