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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

MA NO. 776/2003 IN
RA NO. 199/2002
OA NO. 1600/1996

This the 6th day of January 2004

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.K. NAIK, MEMBER (A)

Sh. Mohinder Kumar

(By Advocate: Sh. B.S. Mainee)

Versus

Sh. V.K. Gandhi and others

(By Advocate: Sh. V.S.R. Krishna for official respondents
Sh. Yogesh Sharma for private respondents)

O R D E R O N M A

By Sh. Kuldip Singh, Member (J)

By this order we dispose of MA-776/2003 whereby the original applicant has prayed for recalling of the order passed on 5.3.2003 in RA because the review petition had been filed by the review petitioners without any jurisdiction knowing fully well that the judgment of this Hon'ble Tribunal dated 17.2.2000 has already been confirmed by the Hon'ble Delhi High Court on 20.9.2000 when the Civil Writ Petition No.5504/2000 filed by the official respondents had been dismissed by the Hon'ble High Court by passing a speaking order.

2. Facts in brief are that one OA No.1600/96 had been allowed by this Tribunal in terms of which official respondents have been directed to assign proper seniority to the petitioners after counting their service in the ad hoc appointment of Stenographers from the date they were appointed and grant of consequential benefits. Official respondents filed a writ petition before the Hon'ble High Court which was dismissed.

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3. However, ~~one~~ another affected person filed a review petition on 25.11.2002 which was contested by the applicant. Applicant did plead that the judgment given by the Tribunal was challenged by the official respondents in Civil Writ Petition which was dismissed by the Hon'ble High Court. Thus, the judgment of the Tribunal had been upheld. So review petition filed by Mohinder Kumar was misplaced so that should not have been entertained as Tribunal has no jurisdiction to review the judgment which has been upheld by the superior Court. Thus, it is prayed that order passed in review should be recalled.

4. Application is opposed by the official respondents as well as by the review applicant Mohinder Kumar and they have seriously challenged the maintainability of the present MA.

5. We have heard the learned counsel for the parties and gone through the record.

6. Facts are not in dispute that the applicant had filed an OA which was allowed and a writ petition filed by the official respondents was dismissed. It is also not in dispute that when a review application was filed the Hon'ble High Court had already dismissed the writ petition. Now the question arises whether the MA which has been filed under Rule 24 to recall the order passed in review application can be entertained or not. Rule 24 of CAT (Procedure) Rules, 1987 is reproduced herein for easy reference:

"Order an direction in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

7. Sh. Mainee appearing for the applicant submitted that it has been held in various judgments that once the appeal or a writ petition had been filed against the order passed by the Court, the order passed by the Court of first instance merges into the order passed by the superior Court where it has been challenged. So once the order stands merged with the order passed by the Hon'ble High court, review application cannot lie. Thus, the entertainment of review petition of this Tribunal was without jurisdiction, so same order is liable to be recalled.

8. Counsel for applicant has also referred to a judgment of Apex Court wherein in a similar situation Tribunal was reprimanded for entertaining the review application and submitted that since the order passed by the Tribunal in exercise of review jurisdiction is without jurisdiction, the same should be set aside and Tribunal should exercise its inherent powers or in any case power under Rule 24 whereby the Tribunal can pass any such order or give directions to give effect to that order or to prevent abuse of its process or to secure ends of justice. It was also submitted that filing of review petition was itself an abuse of process and despite the fact that applicant in his reply to the review application had pleaded that the order of Tribunal had been merged with the order of Hon'ble High Court but still the Court allowed the review application. This Tribunal should not fail to exercise power under Rule 24 to prevent abuse of its process and ends of justice must be secured and the order of the Tribunal as upheld by the Hon'ble High Court should be maintained.

9. Opposing this application counsel for respondents submitted that the application is in the nature of a review petition when the applicant has called upon the Court to recall its order passed on the review application. Counsel for respondents referred to Rule 17 which deals with the applications for review and submitted that Rule 17(4) specifically says when an application for review of judgment or order has been made and disposed of no further application for review shall be entertained in the same matter.

10. Counsel for respondents further submitted that the reading of the entire application would suggest that applicant is asking for the review of the order passed by Tribunal in a review petition though it is allegedly filed under Rule 24 of CAT (Procedure) Rules. As such it is submitted that the present application is itself not an abuse of process of the Court, so the same should be dismissed.

11. We have given our anxious thoughts to the rival contentions made by the parties and we are convinced that perusal of the MA filed under rule 24 goes to show that it is basically asking for recalling of the order passed on the review application and to review that order. This application cannot be said to seek any direction to give effect to the order passed by the Tribunal or to prevent abuse of its process but it is purely an application calling upon the Tribunal to review the order passed in the RA. The distinction between a review application and an application filed under Rule 24 is quite clear and in this case it is as distinguishable as chalk from cheese. Application is nothing but in the nature of review petition calling upon the Tribunal to review the order passed in RA. The perusal of the

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provisions of review as enshrined under Rule 17 go to show that no second review lies and legislature has specifically made so to put an end to the litigation by making only one review.

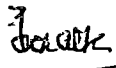
12. Counsel for applicant had also urged us to exercise the inherent powers since the order in the review application is stated to have been passed without jurisdiction as the order of the Tribunal had already stood merged with the order passed by the Hon'ble High Court. We have analysed that situation also and we find that inherent similar powers as available to a Civil Court under 151 CPC are not available to the Tribunal as there is no such type of rule. Section 151 of CPC provides as under:-

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

13. There is no analogous Section either under the AT Act or under CAT (Procedure) Rules. The perusal of Section 151 of CPC would show that it starts with a non-obstante clause and says that nothing in the code of CPC shall be deemed to limit or otherwise effect the inherent powers of the Court that give a very vast power to the Civil Court to exercise inherent powers. But whereas Rule 24 only says that Court may give directions as may be necessary or expedient to give effect to its order or to secure the ends of justice which power cannot be used to recall or review the order passed in a review application when there is a specific prohibition under sub Rule 4 of Rule 17 of the CAT (Procedure) Rules.

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14. In view of the discussion above, we find that MA is not maintainable and the same is dismissed.


(S.K. NAIR)
Member (A)


(KULDIP SINGH)
Member (J)

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