

FULL BENCH

Central Administrative Tribunal, Allahabad Bench, Allahabad

Civil Misc. Recall Application No. 3242/2011 in
Civil Misc. Contempt Petition No. 164 of 2007 in
Original Application No.1111 of 2000

This the 11th day of June 2013

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Hon'ble Mr. Justice S.S. Tiwari, Member (J)

Hon.ble Ms. Jayati Chandra, Member (A)

1. Satyapal Singh son of Sri Ganga Singh r/o Village and Post Mandure Aonla, District Bareilly (UP) presently working as Casual Personal C.P. Chowkidar with temporary status in Sub Post Office, Aonla, District Bareilly.
2. Sushil Kumar son of Sri Ram Bharosey r/o H.No. 910, Bakarganj, Balmiki Basti, Bareilly, presently working as a Safai wala in SSP Office, Head ost Office, Bareilly, U.P. with temporary status.
3. Madan Singh Bist son of late r/o 505, Marinath Bareilly U.P. presently working as Gateman in the office of the Superintendent of Post Stores Depot, Rampur Bagh, Bareilly, U.P. with temporary status.
4. Prabhu Dayal s/o Sri Bhoop Ram r/o Village Doharia P.O. B.K. University Bareilly presently working as Care Taker with temporary status.
5. PurkanAhmad son of late Sri Maula Bux r/o H.No. 268, Chare Sheikh Mitho Bareilly, presently working as Pump Operator Postal Colony, Bareilly with temporary status.
6. Chet Ram s/o Sri Bhurri Lal r/o Subhash Nagar, Bareilly presently working as Nigh Chowkidar in the CGHS Dispensary Chouputta Exchange, Bareilly with temporary status.
7. Daulat Ram son of Sri Tika Ram, r/o Q.No. 9, Second Floor, Type I, P&T Chupala Colony, Choupala, Bareilly presently working as a Plumber in the office of SSP Head Post Office, Bareilly Cantt.
8. Madan Singh s/o Sri Kharag Singh r/o P&T Colony, Q.No. 10, Second Floor Type I, Coupale, Bareilly presently working as a (Nigh) Chowkidar SSP Office Head Post Office Bareilly, U.P. with temporary status.
9. Rai Bahadur s/o Chhideo Singh c/o Sri Lakhan Ram (Lekhpal) Nekpar presently working as a (Farrash) in the office of the PMO Civil Lines, Bareilly U.P. with temporary status.
10. Subhash Singh s/o Sri Poom Singh r/o Village Banjaria P.O. Sheiat Khan Baren District Bareilly (U.P.) presently working as a Chowkidar, Post Office Baheri District Bareilly U.P. with temporary status.

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11. Hari Om son of Sri Raghunath Prasad Sharma r/o H.No. B-35, Ashok Veehar P.O. Izatnagar Chowkidar in Head Post Office Bareilly with temporary status.

Applicants

By Advocate:- Sri R.C.Pathak assisted by Sri S.K. Kushwaha and Sri M.K. ~~Raghuwansi~~ *Dhruvansi* . *J. Ch*

Versus

1. I.M.G. Khan, Director General, Directorate of Director General, Department of Post, Ministry of Communication, Govt. of India, Dak Bhawan, Sansad Marg, New Delhi.

2. Smt. Neelam Srivastava, Chief Post Master General, Department of Post, Govt. of India, U.P.Circle, Lucknow.

3. N.P. Yadav, Senior Superintendent of Post Offices Bareilly Division, Head Post Office, U.P.

Respondents

By Advocate: Sri Raghvendra Pratap Singh

(Reserved on 23.5.2013)

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Pursuant to an order dated 26.2.2013 passed by CAT, Allahabad the Division Bench, CAT, Allahabad Bench consisting of Hon'ble Mr. Shashi Prakash, Member (A) and Hon'ble Ms. Jasmine Ahmed, Member (J) in M.A No. 3242/2011 in Contempt Petition No. 164/2007 in O.A. No. 1111/2000 (Satya Pal Singh Vs. Union of India and others), referring the matter for decision by a larger bench, this case has been listed before us in furtherance of the order passed by Hon'ble Chairman, Central Administrative Tribunal as conveyed vide letters dated 15.4.2013 and 8.5.13 to decide the matter :- "Whether recall application is maintainable against the order passed in contempt case or not."

2. The background facts are that after hearing the learned counsel for the parties at length, the Central Administrative Tribunal, Allahabad Bench passed a detailed order dismissing the Civil Contempt Petition No.164/2007 on 21.10.2011 which is extracted herein-below:-

"Mr. M.K. Dhruvansi, Advocate appeared for the applicant and Sri S. Srivastava, Advocate for the respondents.

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2. The present contempt petition has been filed under Section 17 of the CAT Act read with Rule 5 of the CAT Contempt of Court Act, 1987 for not compliance of the order dated 21st March, 2001 passed in O.A. No.1111 of 2000.

3. Counsel for the applicants submitted that the direction contained in para 4 of the order passed by this Tribunal has not been complied with by the respondents. On the other hand, Sri S. Srivastava, Counsel for the respondents argued that in compliance of the order passed by this Tribunal respondents have filed detailed Affidavit on 24.04.2008 along with the letter dated 23.04.2008 (Annexure -1) whereby the applicant has been granted all benefits as permissible under the law. He further submitted that in terms of direction passed by this Tribunal, they are regularly paying the bonus to the applicant as per their entitlement.

4. Counsel for the applicant drew our attention to the letter dated 27.01.2009 and 27.12.2008 stating that the bonus was paid to Casual labour (Applicants) Rs. 12000 per year whereas regular employee has been paid Rs. 4276/-, therefore, the respondents have not complied with the direction. He further submitted that respondents himself have issued the letter dated 8.12.1992 in which it is clearly mentioned that casual labours shall be treated at par with temporary Group 'D' employees and would be entitled to such benefits as are admissible to Group 'D' employees on regular basis.

5. We have gone through the order passed by this Tribunal dated 21st March, 2001, which reads as under:-

"4. As the Hon'ble Supreme Court held that after rendering three years continuous service with temporary status casual labourers shall be treated at par with temporary Group 'D' employees in the Department of Posts and thereby entitled for such benefits as are admissible to Group 'D' employees on regular basis. The G.O. issued on 26.9.2000 cannot be justified. In our opinion the impugned order dated 19.9.2000 is illegal and void which directs payment of bonus at the lesser rate and direction for recovery is illegal and cannot be sustained. The O.A. is accordingly allowed. The

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order dated 19.9.2000 is quashed. The respondents are directed to continue to pay the bonus to the applicant at the rate specified in the order dated 8.12.1992, which was passed on the basis of the judgment of the Hon'ble Supreme Court. There shall be no order as to costs."

By the above order the respondents are directed to 'continue to pay the bonus to the applicant at the rate specified in the order dated 08.12.1992 which was passed on the basis of Hon'ble Supreme Court.

6. The contention raised by counsel for the applicant that they are not paid the same amount of bonus which has been given to the regular Group 'D' employees is not acceptable as this Tribunal directed the respondents to pay the bonus at the rate specified. It does not mean that the applicants become entitled for the same amount of bonus in term of money which is payable to regular employee. The intention of the order is clear that they are entitled for bonus as per the prescribed formula as admissible to regular employee, which among other factor also takes into account the average emoluments drawn by an employee. This contention has also been clarified by the respondents vide letter dated 25.09.2006.

7. In view of the above, we find that the order passed by this Tribunal has fully been complied with. Therefore, the instant Contempt Petition is dismissed. Notices issued to the respondents are discharged."

3. As against the above order, a Misc. Recall application No. 3242/2011 was moved on 22.11.2011 against which detailed objection was also filed. This application was taken up on 26.2.2013 and after hearing the learned counsel for the parties, the following order was passed by the Division Bench of CAT, Allahabad Bench:-

"26.2.2013

Hon'ble Mr. Shashi Prakash, A.M.
Hon'ble Ms. Jasmine Ahmed, JM

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Sri R.C. Pathak, Counsel for applicant and Sri Raghvendra Pratap Singh, counsel for respondents /contemnor.

Sri R.C. Pathak, counsel for applicant had been directed vide order dated 29.11.2012 to provide law or provision whether recall/ review application is permissible against the order passed in contempt petition. Sri R.C. Pathak drew our attention towards order dated 4.8.2011 passed by a Division Bench of this Tribunal comprising of Hon'ble Mr.D.C. Lakha, A.M. and Hon'ble Mr. A.K. Bharwaj, JM wherein the order passed in the contempt petition No. 113/2007 has been recalled.

Respectfully we find ourselves unable to agree with the above view taken by the coordinate bench on the ground that no such power has been vested in the Tribunal under the contempt of Courts Act (CAT Rules), 1992 formulated in exercise of power conferred by section 23 of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985. While Section 13 of the aforesaid Rule provides for hearing and trial of the contempt petition, there is no provision whatsoever in the Act for review/ recall of its order passed in a contempt petition. In absence of specific vesting of power in this regard, it is felt that no recall/ review application is maintainable against the order passed in contempt petition by this Tribunal.

As there is a differing view on the point of maintainability of the recall application against the contempt order, we feel that it would be appropriate that the case is referred to Larger Bench to decide the question. Accordingly, this case may be placed before the Hon'ble Chairman to constitute Larger Bench."

4. We have heard the arguments at length placed on behalf of both the sides. S/s Anil Kumar, Advocate, Shyam Narain, Advocate L.M.Singh, Advocate, Bashisht Tiwari Advocate and T.S. Pandey Advocates also enlightened us by making oral submissions on the legal point, in question. Besides, Sri A. Moin, Advocate and Sri Apoorva

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Tiwari, Advocate have also supplied some material/ case laws on the point in question in order to assist the Full Bench in response to the letter No.CAT/Alld. JA/21/CCP164-07/1111-2000/2013 dated 8.5.2013 issued by the Central Administrative Tribunal, Allahabad Bench.

5. The learned counsel for the applicant Sri R.C. Pathak placed his reliance on the following case laws:-

i). **S.P. Chengalvaraya Naidu(dead) by LRs Vs. Jagannath (dead) by LRs and others reported in JT 1993 (6) SC 331-** In this case pertaining to civil litiagatin a preliminary decree was obtained by playing fraud on the court by withholding a vital document in order to gain advantage on the other side. The Hon'ble Supreme Court therefore observed that a litigant who approaches the court, is bound to produce all documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. It was also observed that more often than not, process of the court is being abused and property-grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court- process a convenient lever to retain the illegal gains. The respondents of the case namely Jagannath was working as a Clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar and he had on his own volition, executed the registered release deed in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own and not on behalf of the Chunilal Sowcar. Non production and even non mentioning of the release deed at the trail was found to be playing fraud on the court. Finally, therefore, the appeal was allowed and the judgment of the High Court was set aside. But this case law has no application in the

present matter because facts and circumstances and nature of case are different. We have to decide the aforesaid legal question in respect of maintainability of the recall application in contempt matters. In the above case, it was a civil matter relating to a preliminary decree obtained by fraud on the court whereas the matter in hand pertains to alleged contempt of court which has already been finally decided on merit and it is now being sought to be recalled/ reviewed. Moreover, we could not find any specific allegation of fraud in the present matter.

ii) **Civil Appeal No. 4912-4913 of 2011- Rameshwari Devi and others Vs. Nirmala Devi and others decided on 4.7.2011** – This also relates to civil matter. The Hon'ble Supreme Court in this case observed that it is a classic example which depicts the picture of how the civil litigation moves in our courts and how unscrupulous litigants can harass the respondents and their children by abusing the judicial system. This litigation lingered for about 40 years. The Hon'ble Court laid down certain guidelines to curtail the preventive delay in civil litigation. The guidelines included resorting to discovery and production of documents and interrogatories at the earliest proceedings in civil litigations, imposition of actual, realistic or proper costs and ordering to control the tendency of introducing false proceedings and filing forged and fabricated documents, adopting realistic and pragmatic approach in granting mesne profits and being careful and cautious in granting ex-parte and interim injunctions or stay orders, etc. This case law has also no application in the present case for the same reasons as mentioned above.

iii) **Ram Prakash Agrawal & Anr. & Hari Prakash Agrawal & Anr. Vs. Gopi Krishan (Dead through L.Rs) & Ors. decided in Civil Appeal No. 2798/13 and Civil Appeal No. 2799/13 on 11.4.2013** "the court u/s 151 CPC may adopt any procedure to do justice, the same is expressly prohibited."

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But the Hon'ble Apex Court in the same sequence has further observed and clarified ***"Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity. The court can do justice between the parties before it. Similarly, inherent powers cannot be used to re-open settled matters"***.

Moreover, as would be evident from the perusal of Section 22 (3)(f) of the Administrative Tribunal Act, 1985, as already quoted herein before, the application of Civil Procedure Code in the Tribunal has been restricted to nine matters as contained in the aforesaid Section itself i.e. Section 22(3) from (a) to (i) and this list is exhaustive. In other words, Section 151 as contained in the Civil Procedure Code is an inherent power which has been specifically envisaged for the purpose of Civil matters which in the absence of such enabling provisions has no application in the service matters which are dealt with by a Tribunal in accordance with the relevant provisions contained in the relevant Act and Rules.

6. Sri R.C. Pathak, fairly conceded that no specific power has been conferred or vested either in the Administrative Tribunal Act, 1985 or the CAT (Procedure) Rules, 1987 or CAT Rules of Practice or the Contempt of Court Act or CAT (Contempt of Court) Rules, 1992 for recall / review of an order passed on merits in contempt matters. But at the same time, he submitted that there is no negation. Sri Pathak also referred to certain provisions contained in the AT Act, CAT (Contempt of Courts) Rules, 1992 and CAT (Procedure) Rules, 1987 under which recall application can be entertained, according to him. These provisions are being taken up in the following manner:-

"Section 22 of the Administrative Tribunal Act, 1985

22. Procedure and powers of Tribunals –

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(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and [after hearing such oral arguments as may be advanced].

(3) A Tribunal shall have, for the purposes of [discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence of affidavits;*
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning and public record or document or copy of such record or document from any office;*
- (e) issuing commissions for the examination of witnesses or documents;*
- (f) reviewing its decisions;*
- (g) dismissing a representation for default or deciding it ex-parte;*
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex-parte ; and*
- (i) any other matter which may be prescribed by the Central Government."*

Referring to aforesaid Section 22(3)(f), of the Administrative Tribunal Act, he submitted that the order passed by the Tribunal in contempt matter also can be reviewed. Bare reading of the above provision reveals that the provisions of Code of Civil Provisions have been applied only to a limited extent to the proceedings of Central Administrative Tribunal. Moreover, the aforesaid power of review is applicable only to final orders passed on merit in an Original Application (O.A.) filed under the Administrative Tribunal Act (in brief "Act") and not to the contempt petitions.. Section 3 of the Act, deals with definitions and an Original Application finds mention u/s 3(b) which means an application made u/s 19 of the Act pertaining to service matters. The Act further provides that every such original application

(O.A.) shall be in a particular form as contained in Appendix 'A' of CAT (Procedure) Rules, 1987. The above Section 3 of the Act does not make any mention about Contempt Petition. Therefore, the aforesaid submissions of the learned counsel for applicant cannot be accepted.

7. Sri R.C. Pathak, learned counsel for applicant then referred to Rule 22 of the Central Administrative Tribunal (Contempt of Courts) Rules, 1992 which is as under:-

"22. Application of other Rules of the Tribunal- In matters not specifically provided for in these rules, the procedure prescribed in the relevant rules of the Tribunal as amended from time to time shall mutatis mutandis apply to proceedings under these rules."

He submitted that since the power of recall/ review has not been specifically provided under these Rules, the procedure prescribed in the relevant rules of the Tribunal shall mutatis mutandis apply. We do not find any substance in this submission also. In any of the relevant Rules of Tribunal, no where such power to recall/ review has been provided. The power of review has been provided only under the Administrative Tribunal Act (not under any Rules of the Tribunal). Therefore, this point is also devoid of any substance.

8. Sri R.C. Pathak, lastly referred to Rule 24 of the CAT (Procedure) Rules, 1987 which provides as under:-

"24. Order and directions 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."

The aforesaid Rules 1987 have been framed in exercise of powers conferred by Section 35 and 36 of the Act. But these Rules do not deal with contempt matters for which there are separate rules namely CAT(Contempt of Courts) Rules, 1992. The above procedure Rules have been framed in respect of Administrative Tribunal Act and are

meant only for service cases/OAs which are filed before the Tribunal u/s 19 of the Act. This section cannot be also construed to be equivalent to the inherent powers conferred upon the Civil Courts u/s 151 of the Civil Procedure Code which are very wide in nature. On the contrary, the application of CPC in the Tribunal has been restricted to only nine matters as contained in Section 22 (3) from (a) to (i) and this list is exhaustive. We have also compared the language of Section 151 of CPC vis-à-vis the language of Section 24 of the CAT (Procedure) Rules, 1987. There is a vast difference between the two and therefore, it cannot be said to be a replica of the inherent powers contained in Section 151 CPC. This has been done by the legislature knowingly and cautiously lest the entire scheme to get the service matters decided by the Tribunal expeditiously would be frustrated. It would not be out of context to mention here that on the criminal side also, in Criminal Procedure Code, inherent powers of the Courts have been saved specifically u/s 482 Cr.PC but no such power has been saved either in the Contempt of Court Act 1971 or in the Central Administrative Tribunal (Contempt of Courts) Rules, 1992. Therefore, this submission also lacks merits..

9. Sri Raghvendra Pratap Singh, the learned counsel for the other side, opposed the aforesaid submissions made by Sri R.C. Pathak, by saying that there is no enabling provision for the Tribunal to recall/ review the orders passed on merits in a contempt case. It was also pointed out by some of the learned counsel mentioned in para 4 of this order/judgment that in the Act and the CAT Rules, the word "Application" has been used and therefore, any provision of the Act or CAT (Procedure) Rules cannot be made applicable in the matters pertaining to contempt "petition". On the other hand in the Central Administrative Tribunal (Contempt of Courts) Rules, 1992 the word "Petition" has been purposely used in Section 3 and 5 etc. and these Rules have been framed in exercise of powers conferred by Section 22(3) of the Contempt of Courts Act, 1971 read with Section 17 of the Act, 1985. It is also

noteworthy that against an order of punishment passed in contempt petition, remedy of appeal and not review or recall is provided to a contemnor. Then how (in the absence of specific enabling provisions), such a remedy can be said to be available to a petitioner against a final order of dismissal of the contempt petition passed on merit. As already discussed, we find substance in the above submissions made from the other side.

10. It is needless to say that recalling of final order passed on merits in contempt matters would amount to reviewing the earlier decision/order which had been rightly or wrongly passed on merits. The law is settled on the point that the recall/ review or appeal are the statutory remedies and unless those are specifically provided/conferred under any Act/ Rules, no such recall application is maintainable in contempt matters, particularly when the order has been passed on merits finally deciding the contempt petition. In this regard, certain propositions of law laid down by Hon'ble Apex Court as also by Hon'ble High Courts have also come to our notice which are being discussed herein below:-

11. In the case of **Harbhajan Singh Vs. Karma Singh and others reported in AIR 1966 Supreme Court page 641**, while dealing with East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, it was found that no such express power of review has been conferred on the State Govt. with regard to an order made u/s 42 of the act. In the absence of any such express power, it was decided by Hon'ble Supreme Court that the Director Consolidation of Holdings cannot review its previous order of dismissing the application of the petitioner u/s 42 of the Act. In this case, reference was also made to the case of **Anantharaju Shetty Vs. Appu Hegade reported in AIR 1919 Madras 244**, in which it was observed that "it is settled law that a case is not open to appeal unless the statute gives such a right. The power of review must also be given by the statute. Prima facie a party who has obtained a decision is entitled to keep it unassailed unless legislature

had indicated the mode by which it can be set aside. A review is practically hearing of an appeal by the same officer who decided the case. There is at least as good reason for saying that such power should not be exercised unless the statute gives it as for saying that another Tribunal should not hear an appeal from the Trial court unless such a power is given to it by statute."

12. Similarly, in the case of **Patel Nareshi Thakershi and others Vs. Shri Pradyuman Singhji Arjunsinghji** reported in (1971) 3 SCC 844- the Hon'ble Apex Court held that **it is well settled that power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication.** In the case of *Major Chandra Bhan Singh Vs. Latafat Ullah Khan and Ors.* AIR 1978 SUPREME COURT 1814 also the Hon'ble Apex Court has observed that **".....It is well settled that review is a creature of statute and cannot be entertained in the absence of a provision therefor".**

13. Similarly in the full bench decision of Hon'ble Allahabad High Court in the case of **Shivraji (dead) through LRs and others Vs. Dy. Director of Consolidation and others** reported in 1997 AWC (Supp.) 454 [1997 RD 562] (comprising Hon'ble Mr. Justice D.P. Mohapatra, Chief Justice, Hon'ble Mr. Justice R.A. Sharma and Hon'ble Mr. Justice R.R.K. Trivedi, JJ) also a question formulated by the Division Bench was referred to the full bench "as to whether it is open for the Consolidation authorities to review/ recall their final order exercising inherent powers even though the U.P. Consolidation of Holdings Act, 1953 does not vest them any review jurisdiction." The full bench of the Hon'ble High Court, after considering various decisions rendered by the Apex Court as well as single judge and Division Bench cases of own High Court answered the aforesaid question in negative. In respect of various single and Division Bench judgments of the Hon'ble High Court which were cited before the above full bench, it was observed that none of them support

the proposition of law that any Tribunal exercising judicial or quasi judicial power which is not vested with the power of review under the statute expressly or by necessary implication has an inherent power of review of its previous order in any circumstances. It was further observed by the above Full bench that those decisions only lay down the proposition that a Tribunal exercising judicial or quasi judicial power has the inherent power to correct a clerical mistake or arithmetical error in its order and has power to review an order which has been obtained by practicing fraud on the court provided that injustice has been perpetrated on a party by such order. But these decisions should not be construed as laying down any proposition of law contrary to the well settled principle of law that any order delivered and signed by a judicial or quasi judicial authority attains finality subject to appeal or revision as provided under the Act and if the authority passing the order is not specifically vested with power of review under the statute, it cannot reopen the proceeding and review / revise its previous order.

14. A Division Bench of Hon'ble High Court, Allahabad consisting of Hon'ble Binod Kumar Roy and Hon'ble P.K. Jain, JJ in the case of **New India Insurance Company Ltd. Vs. Smt. Bimla Devi and others** reported in 1998 (33) ALR page 456- while following the aforesaid full bench of Shivragi (supra), it was observed that it is a settled law that appeal/ revision/ review are creation of statute and no litigant has got an inherent right to prefer appeal/ revision or review. It also referred to the decision of Hon'ble Apex Court in Harbhajan Singh (supra), wherein it has been clearly laid down that in absence of any power, review is impermissible.

15. A Division Bench of Hon'ble High Court of Judicature at Allahabad, Lucknow Bench has recently (by its **order dated 17.1.2013** passed in **Writ Petition No.66/2013 Mahavir Prasad Vs. CAT Lucknow an Others**) upheld an order dated 13.9.2012 passed by CAT, Lucknow Bench in Civil Contempt Petition No. 22/2009 by observing that

recall/ review application is not maintainable. The Hon'ble High Court further observed that virtually recalling of the order dated 10.1.2012 passed by CAT, Lucknow Bench will amount to review its earlier decision which was passed with the findings on merit (as is the situation in the present case). Therefore, unless provided under the Act, no application for review/recall can be moved. It was also specifically observed by the Hon'ble High Court that the contempt of Court Act, 1971 does not contain any provision for review of a judgment.

16. In fact contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of court for contempt only brings to the notice of the Court certain facts constituting contempt of court. After furnishing such an information, he may still assist to the Court but it always be borne in the mind that in a contempt proceedings, there are only two parties namely court and the contemnor., It may be one of the reasons why the legislature did not confer any right of appeal on the petitioner for contempt. The aggrieved party u/s 19(1) of the Act, 1971 can only be the contemnor who has been punished for contempt of court. Thus the contempt of court is not in strict sense a cause or matter between the parties inter-se but the matter between the court and the contemnor and as such the same cannot be at the discretion or benefit of the parties.

17. It would not be out of context to mention here that once a final order has been passed and compliance has been made in furtherance of the order passed in an O.A., the correctness of such compliance cannot be examined under the contempt jurisdiction, though according to a petitioner, such an order or exercise may be legally or factually incorrect. In the case of **B.D. Tiwari Vs. Alok Tandon, District Magistrate, Allahabad reported in 2004 (1) AWC 543-** also it was held that it is well settled that the contempt court can neither sit in appeal nor examine the correctness of a resultant order. Similarly in the case of **Lalit Mathur Vs. L. Maheshwara Rao reported in (2000) 10 SCC**

285 and J..S. Parihar Vs. Ganpat Duggar reported in (1996) 6 SCC 29, it was held by the Hon'ble Supreme Court that correctness of an order passed by a statutory authority on the directions of the writ court cannot be examined under the contempt jurisdiction. No doubt the resultant order may give rise to a fresh cause of action. Similarly in the case of **Shall Raj Kishore, Secretary, Education Basic, U.P. Lucknow and others reported in 2004(3) AWC 2444-** the Hon'ble Allahabad High Court held that " if the applicants feel that the order passed by the opposite party is not in accordance to the intent or desire of the court or otherwise illegal and arbitrary, the same can only be challenged before the appropriate forum. In various cases, the Apex Court has held that "Contempt court cannot go into the merit of the order. Various grounds raised by the learned counsel for the applicant to submit that the order is bad in law required consideration and adjudication , which can only be done by the appropriate court and not by this Court. " Likewise in the case of **Anil Kumar Sahi(2) Vs. Prof Ram Sewak Yadav reported in (2008) 14 SCC 115**, the Hon'ble Apex Court held that " When the court direct the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding of an authority to whom direction is given, therefore, mere error of judgment with regard to legal position does not constitute contempt of court. There is no willful disobedience , if the best efforts are made to comply with the court order."

18. During the course of arguments, it was also brought to our notice, that at times, contempt petitions are dismissed for default and non-prosecution and in such matters , at least a recall application should be entertained in the interest of justice even in absence of any enabling provisions.

19. In this regard suffice is to mention here that when an alleged contempt is brought to the notice of the court/ Tribunal within limitation period, an order for issuance of show cause notice may or may not be

passed. Once notices are issued after due application of mind, it becomes a matter between the court/ Tribunal and the contemnor as already observed herein-before. Therefore, even if the petitioner or his counsel does not come up on a particular date or does not pursue it, the contempt petition should not and cannot be dismissed for default and non-prosecution. After issuance of notice, the contemnor(s) can not be deemed to have been discharged from the contempt proceedings unless he /she is held to be not guilty or otherwise discharged. Similar view was taken by the Division Bench of Hon'ble Allahabad High Court in the **Writ Petition No. 66/2003 in the case of Mahavir Prasad Vs. CAT, Lucknow Bench and another decided on 17.1.2013 (supra)..**

20. Therefore, no such order dismissing a contempt petition in default or non-prosecution should be passed particularly after issuance of show cause notices. Such an order would be nonest and void ab-initio which should not be permitted to continue. Such an order has to be recalled or set aside for which no enabling provisions / vesting of powers under an Act or Rules is required it being ab-initio void and nonest. We would also like to add that the final orders in a contempt case whether one of dismissal or punishment must be passed after exercising due diligence abundant caution and scrutiny. Such an order can be appealed against but cannot be revived through revival clause or review or recall.

21. In the case of **Raja Ram Waman Masurkar Vs. Lokmanya Shikshan Prasarak** reported in **2008(1) BOM CR 422[2007 (109) Bom L.R. 1488-** a specific question was decided by a Bench headed by Hon'ble Swatanter Kumar (C.J.) " whether the Hon'ble High Court has power to recall its own order and restore the impugned contempt petition which was dismissed for non appearance of the petitioner and his advocate." It was answered in affirmative keeping in view the scope of Contempt jurisdiction exercisable by the High Court in furtherance of the Constitutional mandate contained in Article 215 of the Constitution and the Contempt of Courts Act. It may be noted here that Hon'ble High

Court is a "Court of record" and an inherent power has been conferred upon it under Article 215 of the Constitution to deal with its own contempt which is not available to the Tribunals. Nevertheless, as far as the Contempt of Courts Act is concerned, the Central Administrative Tribunal has the same power which are exercised by Hon'ble High Court. The aforesaid answer rendered by the above Bench of Hon'ble High Court, Bombay has been based not only on the Constitutional mandate contained in Article 215 of the Constitution but also the Contempt of Courts Act. Therefore, in view of the above ratio contempt petition dismissed for default can be restored by a Tribunal for which no vesting or conferment of power is required. We are further fortified in our view by the case of *S.Nagaraj and others Vs.State of Karnataka* and another reported in 1993 Supp (4) Supreme Court Cases 595. The relevant para is as under:-

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. "

22. It may be mentioned here that the Administrative Tribunal have been created by amending Constitution of India. By means of 42nd

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amendment Act, 1976, Articles 323-A and 323-B have been incorporated in the Constitution for the purpose of creation of Administrative Tribunal. The framers of the Administrative Tribunal Act and Rules provided for an express and specific power in the Act itself to ensure that no order passed by the Tribunal may go un-executed in letter and spirit. The relevant Section 27 of the Act, 1985 reads as under:-

"27. Execution of Orders of a Tribunal – Subject to the other provisions of this Act and the rules, [the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any Court (including a High Court) and such order] shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub – section (2) or section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed".

For willful disobedience of an order passed by a Tribunal, the requisite power to punish for contempt have been separately provided under section 17 of the Act, 1985 as already discussed.

23. Finally, therefore, as discussed before, firstly a Tribunal should refrain itself from dismissing in default a contempt petition particularly after issuance of show cause notice as discussed in detail in para 19 of this order. However, if a contempt petition has been dismissed for default by a Tribunal, the absence of vesting /conferment of power of review /recall shall not come in the way of recalling such order because such an order is void ab-initio and nonest and the root from which the power flows is the anxiety to avoid injustice. The justice is a virtue which transcends all barriers. Even the law bends before justice and in such matters it becomes the constitutional and legal obligation of a Court/ Tribunal to do the needful as laid down in the case of **S. Nagraj (supra)**.

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24. In view of the discussions made in the foregoing paragraphs, it is our considered view that recall application is not maintainable against an order passed in a contempt case decided on merits. We would like to add that Tribunal should refrain itself from dismissing a contempt case for default, particularly after issuance of show cause notice as discussed above. However, if such an order has been passed by a Tribunal, the absence of vesting /conferment of power of recall/ review shall not come in the way of recalling because of such order being ab-initio void and nonest and it would be constitutional and legal obligation of a Tribunal to recall such an order as discussed hereinbefore. Thus the matter in question which has been referred to this Full Bench, is answered accordingly. The Civil Misc. Recall Application dated 3242/2011 in Civil Contempt Petition No. 164/2007 pertaining to O.A. No. 1111/2000 will be placed before the appropriate bench for disposal in the light of this order/judgment.

J. Chandra

(Jayati Chandra)
Member (A)

S.S. Tiwari
(Justice S.S. Tiwari)
Member (J)

Alok Kumar Singh
(Justice Alok Kumar Singh)
Member (J)

HLS/-