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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION No. 323 OF 1992
Cuttack the 4th day of October, 2001

Siba Senapati & Others ...

Applicants

-VERSUS-

Union of India & Others ...

Respondents

(FOR INSTRUCTIONS)

Whether it be referred to reporters or not ? 44.

Whether it be circulated to all the Benches of the
Central Administrative Tribunal ?



Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN
4.10.2001

4.10.01
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.323 OF 1999
Cuttack this the 4th day of October/2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

1. Shiba Senapati, aged about 28 years, S/o.Paramanda Senapati, At_Podadiha, PO-Hatiadiha, Via-Rupsa, Dist-Balasore (Orissa) PIN 756 028
2. Srikrishna Kar, aged about 39 years, S/o.Late Dhirendra Nath Kar, At/PO-Barabati, Via-Motiganj, Dist-Balasore (Orissa) PIN 756 003
3. Ganganath Kar, aged about 25 years, S/o.Batakrisna Kar, At/PO-Barabati, Via-Motiganj, Dist-Balasore (Orissa) PIN 756 003
4. Banithsh De, aged about 25 years, S/o.Late Kusemesh Chandra De At/PO-Barabati, Via-Motiganj, Dist-Balasore (Orissa) PIN 756003
5. Sambhunath Senapati, aged about 22 years, S/o.Paramananda Senapati, At-Podadiha, PO-Hatiadiha, Via-Rupsa, Dist-Balasore (Orissa) P I N - 756 028
6. Jayanti Rani Kar, aged about 23 years, D/o.Batakrisna Kar, At/PO-Barabati, Via-Motiganj, Dist-Balasore (Orissa) PIN-756003
7. Srinath Kar, aged about 18 years, S/o.Bijay Krishna Kar, At-Mansingh Bazar, PO-Motiganj, Dist-Balasore (Orissa) PIN 756 003
8. Uttam Kumar Bardhan, aged about 25 years, S/o.Late Dhananjay Bardhan, At/PO-Barabati, Via-Motiganj, Dist-Balasore (Orissa) PIN - 756 003
9. Uttam Kumar Day, aged about 25 years, At/PO-Barabati, Via-Motiganj, Dist: Balasore (Orissa) PIN 756 003
10. Deepak Kumar Kar, aged about 26 years, S/o.Ganapati Narayan Kar, At:Manikhamb, PO-Barabati, Via-Motiganj, Balasore (Orissa) PIN 756 003
11. Siba Sankar Kar, aged about 26 years, S/o.Suren Chandra Kar, At-Olandaj Sahi, PO-Barabati, Via-Motiganj, Dist-Balasore (Orissa), PIN 756 003
12. Kartik Chandra Nayak, aged about 19 years, S/o.Rabi Narayan Nayak, At:Gobinda, PO: Haldipada, Via-Haldipada, Dist-Balasore (Orissa)

...

Applicants

By the Advocates

Mr.N. Sahani

-VERSUS-

1. Union of India through its Secretary, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) North Block, New Delhi-110 001



2. Chief Personnel Officer (Administration), South Eastern Railway, 11, Garden Reach Road, Calcutta-700 043

By the Advocates

... Respondents

Mr.B.Pal
Mr.P.K.Mishra

O R D E R

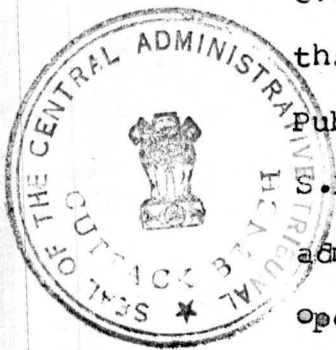
MR.G.NARASIMHAM, MEMBER (JUDICIAL): This voluminous Original Application contains several prayers of which prayer No.III is the main one. Other prayers centering round this prayer need determination only when this prayer is allowed. As we entertained doubt in regard to maintainability of this prayer even on the ground of limitation, we noticed the two respondents that is, Union of India represented through Ministry of Personnel, Public Grievances and Pensions, and Chief Personnel Officer (Admn) S.E.Railways, Calcutta for filing replies on the question of admission, keeping the point of maintainability and limitation open.

2. Respondent No.2, viz., Chief Personnel Officer (Admn) S.E.Railways filed counter opposing this Original Application. Applicants in turn filed rejoinder and even additional rejoinder annexing several more documents, besides filing some Misc. Applications calling for various documents, forming part of some case records of the Apex Court.

3. We may as well quote the main prayer as hereunder.

"(iii) After hearing the parties and perusal of the records, this Hon'ble Tribunal be graciously pleased to omit the 6th sentence of Para 3(d) of the order dated 16.4.1999 in O.A.537 of 1998 - which is affecting and disturbing the "specific findings" of the Hon'ble Supreme Court as contained in the first and second sentences of its order dated 2.4.1996 in Writ Petition (Civil) No.1081 of 1990 - which is as under:

We have gone through the petition as well as copies of certain orders made by this Court from time to time. We find that certain orders were made in individual cases by



different Division Benches of this Court referring to the Ministry of Home Affairs Notification dated 2.3.1965 (O.M. No.14-11/65-ESTT. (D))"

4. Applicants 12 in number claiming to be Cured Leprosy Patients want employment under S.E.Railways without facing any selection test on the basis of O.M. No.14-11/65 dated 2.3.1965 of the Ministry of Home Affairs said to have been issued in favour of Cured Leprosy Patients. In fact several Original Applications were filed by persons claiming to be cured leprosy patients seeking employment under S.E.Railways on the basis of that O.M. One such case is O.A.499/96. The Railways - respondents appearing in that case opposed the O.A. on the ground that the O.M. dated 2.3.1965 does not relate to cured leprosy patients but to employment preference to physically handicapped persons. The applicants during pendency of that Original Application filed C.P. 19/98 to prosecute the respondents therein after conducting inquiry under Section 340 Cr.P.C. This Bench, while dismissing that petition in elaborate order dated 24.4.1998 (Annexure-R/5) made the following observation, relevant for the purpose of the present case.

"Accordingly the Hon'ble Supreme Court in the above order (C.P.96/95 in SLP 5589 of 1988) declined to initiate Contempt proceedings. As earlier stated, O.A.499/96 is pending before the Tribunal and the petitioners would be free to argue at the time of hearing of the case, if there is a circular dated 2.3.1965 giving preference in employment to cured leprosy patients. It is only after this position is established that the question of initiating, if at all, any action for prosecution of the respondents for perjury under Section 340 Cr.P.C. read with Section 195 Cr.P.C. would arise".

Thereafter one Jayakrishna Rana, claiming to be a cured leprosy patient filed O.A.536/98 before this Bench praying for quashing the observation in C.P.19/98 to the



effect "if there is a circular dated 2.3.1965 giving preference in employment to cured leprosy patients" and for direction to the authorities of S.E.Railways to provide him employment in terms of orders passed by the Apex Court. This application was held to be not maintainable through our order dated 16.11.1998 as quoted in Para-3 of our final order in Aparesh Bhoi's case (Annexure-1). One Aparesh Bhoi also filed O.A.537/98 with identical prayer in O.A.536/98. Basing on our reasonings in O.A.536/98, we held that O.A. not maintainable in our order dated 16.4.1999 (Annexure-3).

5. Case of the applicants is that when they approached Respondent No.2 for employment, the later had drawn their attention to the observation of this Bench contained in the 6th sentence of Para 3 (d) of our order dated 16.4.1999 (Annexure-1) in O.A.537/98 which according to them is in conflict with some findings of the Apex Court in the 1st and 2nd sentences of its order dated 2.4.1996 in C.O.34/96 (Annexure-5) and which is creating impediments in their employment process in the Railways on the basis of O.M. dated 2.3.1965 said to be in their favour (Annexure-18 to the rejoinder).

6. Sixth sentence of Para 3 (d) of our order dated 16.4.1999 (Annexure-1) in O.A.537/98 filed by Aparesh Bhoi is as follows:

"From the order of the Hon'ble Supreme Court it is not clear whether the Hon'ble Supreme Court referred the circular dated 2.3.1965 dealing with giving preference to physically handicapped persons or the circular relied on by the applicants giving preference to cured leprosy patients".

The Apex Court order mentioned in this sentence refers to this order dated 17.8.1987 in Civil Appeal No.1749/87 (Annexure-15).



7. Heard Sri N.Sahani, the learned counsel for the applicants and Shri B.Pal, the learned senior counsel for Respondent No.2. During hearing, from the side of Respondents it was brought to our notice that existence or non-existence of any circular dated 2.3.1965 in favour of cured leprosy patients was already dealt by us in our final orders dated 16.11.1998 in O.A.560/96 (Annexure-R/1) and similar prayer for recalling our final order in O.A.560/96, O.A.536/98 and O.A.537/98 were made in O.A.447/2000 and such prayer was held to be not maintainable in our order dated 9.2.2001 disposing of that O.A. We, therefore, perused all those records, besides the records of O.A.489/96 (since disposed of) and C.P.19/98.

8. At this stage it should not be overlooked that the so called objectionable 6th sentence in para-3(d) of our final order in O.A.537/98 stood exactly quoted in the 8th sentence of our final order in O.A.536/98 and this very sentence is the main ground urged in O.A.447/2000 because this sentence was used because of the fraud practised by the Railway Department on this Bench.

9. It will thus be clear the genesis of this so called objectionable sentence is our observation in our order dated 24.4.1998 (Annexure-R/5) in C.P.19/98 to the effect "if there is a circular dated 2.3.1965 giving preference in employment to cured leprosy patients". Admittedly Criminal Appeal 104/98 was preferred before the High Court of Orissa against our order dated 24.4.1998 and the appeal was dismissed on merit in judgment dated 16.4.1999 (Annexure-R/2). Thus it is clear, a higher Judicial Forum like the High Court did not like to set aside our aforesaid observation. Despite this order of the



High Court, Misc. Application 628/99 was filed before this Bench for restoration of C.P.19/98 for rehearing. Through our elaborate order dated 28.10.1999, the M.A. was dismissed. This being the position we fail to understand how this O.A. is still maintainable.

10. Even otherwise O.A.447/2000 filed for recalling the final order in O.A.560/96 (Annexure-R/1), O.A.536/98 and O.A.537/98 were held to be not maintainable and that the so called objectional sentence occurring in our order in O.A.536/98 and O.A.537/98 is the main ground urged therein. Further our order in O.A.447/2000 reveals that our orders in these three O.As have not been challenged before the High Court.

11. Applicants contending in favour of maintainability rely on Annexure-12, that is, orders dated 19.11.1998 and 9.2.1999 of the High Court of Orissa passed in O.J.C.15144 of 1998 filed by one Subhas Das, who is not a petitioner in C.P.19/98, challenging the observation of this Bench to the effect "if there is a circular dated 2.3.1965 giving preference in employment to cured leprosy patients." In order dated 19.11.1998 the O.J.C. was disposed with direction to that petitioner if he so advised, file a review before this Tribunal giving all earlier orders of the Apex Court, which should be considered in accordance with law. Thereafter when Misc. Application was filed pointing out he being not a party to the C.P. cannot file review, by order dated 9.2.1999, clarified that the petitioner is at liberty to file any separate application before this Tribunal claiming benefit under the circular stated to have been issued on 2.3.1965 or to apply for getting himself impleaded as petitioner in O.A.499/96 pending before this Tribunal, if permissible in law.



Admittedly by then the Criminal Appeal 104/98 was subjudice before the High Court. Subhas Das also in turn is neither an applicant in the present O.A. nor in O.A.447/2000. It is thus clear that High Court permitted one Subhas Das to file any ~~separate~~ ^{and that too} application (meaning other than Review) before this Tribunal, if permissible under law and even a review petition direct in earlier order which was to have been considered in accordance with law.

12. Thus it is to be determined the present applicants, who are not parties in O.A.560/96, O.A.536/98 and O.A.537/98 can file this O.A. for recalling (omiting) a finding or observation in O.A.536/98 and O.A.537/98, moreso, when like Subhas Das have not ^{obtained} any order to that effect from the High Court. While considering this point it cannot be forgotten that O.A.447/2000 for recalling final order in these three O.As was held to be not maintainable.

13. The prayer for recalling the final order implies the persons making such prayer want to revive those cases which were disposed of finally, for the purpose of rehearing. Under the provisions of A.T.Act and C.A.T.(Procedure) Rules, 1987, only under three circumstances a final order disposing of an O.A. can be recalled. One is under Rule-15 of the C.A.T. (Procedure) Rules, 1987 - where an O.A. is dismissed for default. The second is under Rule-16 of the said Rules where a Respondent is set ex parte and order is passed in his absence. The third one is Rule-17 by way of Application for Review. There is no other provision where a final order passed disposing of an O.A. on merits can be recalled for re-hearing through another O.A. Under Section 19 of the A.T.Act, 1985, where the



applicants against whom order on merits was passed were not parties in the later O.A. As has been observed by the Full Bench of Bangalore C.A.T in John Lucas case reported in 1987 (3) A.T.C. 328 at Page-333 (Para-6) that procedure of the Tribunal is governed by the Act and Rules framed thereunder only.

14. At this stage it is worthwhile to refer to the decision of the Full Bench of C.A.T., Bangalore in John Lucas case (Supra) and also referred by the learned counsel for the applicants. At Para-5 of the judgment, the Full Bench made the following observations.

" In our opinion, if a person is adversely affected by any order of the Tribunal, he is certainly an aggrieved party and the principles of natural justice dictate that such a person cannot be left without a remedy. No order of a Court or Tribunal should be allowed to adversely affect the rights of persons who are not parties before it and if they do, such a person should not be left without any remedy and the Tribunal cannot be left powerless to undo the wrong done to him. Such an aggrieved person, in our view, may move the Tribunal on footing that he is bound by the judgment or order and, being aggrieved by the judgment or order may seek a review of that judgment or order, as the case may be. The review petition may be entertained and heard after notice to all concerned and the judgment or order may be affirmed or set aside by way of review. In that event, he cannot have a grievance that he was not heard. Otherwise, the only alternative left would be to move the Tribunal for redressal of his grievance by way of an Original Application under Section 19 on the footing that since he was not a party to the earlier application, he is not bound by the judgment therein and his grievance must be adjudged on that footing".



Thus it is clear, in view of the pronouncement of law by the Full Bench, there cannot be any prayer in a subsequent O.A. for setting aside the final order passed in a previous O.A. The prayer for recalling an order can only be made by filing an application for review. A prayer for review can^{also} be made by a person who is not a party to the original proceedings, but is affected by the decision of that proceeding. This is clear from

the discussion of the Full Bench in Para-6 of the decision in John Lucas case. This is also the view expressed by the Apex Court in K.Ajit Babu case reported in 1997 SCC(L&S) 1520 and also in Gopabandhu Biswal vs. Krishna Chandra Mohanty reported in 1998 SCC(L&S) 1147. Such review can be decided only within the scope of Order-47, Rule-1 C.P.C. However, in Page-4 of the decision in Ajit Babu case (Supra) the Apex Court made it clear that such a right of review is available to aggrieved person on restricted ground made under Order-47, Rule-1 CPC, if filed within the period of limitation (underlining ours).

In Para-12 of Gopabandhu Biswal case the Apex Court further observed that a review petition must be within the scope of Section 22(3)(f) of the A.T.Act read with Order-47, Rule-1 CPC and must comply with the rules framed under the Administrative Tribunals Act. Rule-17 of the C.A.T.(Procedure) Rules, 1987, prescribes that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of the order sought to be reviewed. In Para-12 of Gopabandhu Biswal case, the Apex Court observed that the review petition therein was filed one and half years after the main judgment was delivered without any explanation for the delay. In other words, the Apex Court held that the limitation period of 30 days as prescribed under Rule-17 has to be strictly followed while entertaining an application for review.

15. In view of our discussion we have no hesitation to hold that this O.A. is not maintainable. Since it is not maintainable, there is no necessity to discuss the point of limitation and enter into merits to consider the prayer of the applicants or to discuss the Misc.Applications on merits. The Misc.Applications



are accordingly disposed of.

16. In the result the O.A. being not maintainable is dismissed at the stage of admission. No costs.



Somnath Som
(SOMNATH SOM
VICE-CHAIRMAN) 20/

4.10.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//