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Order dated 14.2.2001

On 29.8.2000, this Original Application was filed by 144 applicants ^{with various} among other, prayers of the main prayer No.1 being to recall the final orders dated 16.11.1998 vide Annexures-A/31 and A/31 and dated 16.4.1999 vide Annexure-A/33 passed by this Bench in Original Application Nos.560/96, 536/98 and 537/98, respectively. Since we entertained doubt with regard to maintainability of this Original Application, we heard Shri N.Sahani, the learned counsel for the applicants and Shri D.N. Mishra, the learned Standing Counsel for the Rlys. (Respondents 3, 4, 5 and 6). Since other prayers are consequential to Prayer No.1, we need not attach importance to those prayers for the purpose of maintainability. In case prayer No.1 is maintainable, then hearing on other prayers can be considered.

Prayer No.1 is as follows :

"(a) ... to exercise its inherent power to recall its order dated 16.11.1998 (Vide Annexure-A/31) in O.A.560/96 and order dated 16.11.1998 (Vide Annexure-A/32) in O.A.536/98 and order dated 16.4.1999 (Vide Annexure-A/33) in O.A.537 of 1998 - which had been obtained by practising fraud on this Hon'ble Tribunal by fraudulent misrepresentation vide O.M. dated 14.8.1996 of the Respondent No.1 and vacate the same".

2. The applicants belonging to Medinapur District of West Bengal and some belonging to various districts of Orissa as mentioned therein claimed to be indigent cured leprosy patients. Original Application No.560/98 was filed one of such indigent cured leprosy patients named Sanyasi Paramanik praying for issue of directions to the Union of India represented through its Secretary, Ministry of Welfare, Chief Personnel Officer, S.E.Railway, Calcutta, Chairman, Railway Recruitment Board, Bhubaneswar, with the following prayers.

" After hearing the parties and perusal of the records the Respondents be directed for enforcement of official memorandum dated 2.3.65, 25.12.71, 8.1.71, 25.6.80 and 5.10.81 and direction of Hon'ble Supreme Court by identifying

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a suitable job for the applicant in terms of the principle laid down in Para-394 of the judgment dated 16.11.92 in the Mandal Commission case in W.P.(C) Nos. 1081/90 and 111/92 of the Hon'ble Supreme Court as well as in terms of order dated 17.8.87 and 24.7.89 in C.A. No.1749/87, and order dated 12.8.91 in W.P.(C) Nos. 536, 734 of 1990, 237 of 1991, as a rehabilitation assistance to cured leprosy persons and pass such further and other order/orders as to this Hon'ble Tribunal deem fit and proper with cost of the application".

Circular dated 2.3.1965, i.e. Office Memorandum No.14/11/65-Estt.D, enclosed as Annexure-1 in that application, according to that applicant is a circular issued by the Ministry of Home Affairs, Govt. of India, formulating National Scheme for Cured Leprosy Patients for providing them employment in public service as well as for their admission in Educational Institutions, Medical, Engineering, Management and other professional courses. On the basis of this Annexure-1, the main argument was advanced.

Respondents in their counter denied the existence of such a circular like Annexure-1. But at the same time submitted that that particular circular deals with the cases of Rehabilitation of handicapped persons. Even in that O.A. applicant preferred Misc.Application 375/98 praying for initiation of action of perjury against one Braja Mohan, Chief Personnel Officer, S.E.Railway and Nepal Chandra Ray, Asst.Personnel Officer, S.E.Rly., Calcutta.

After hearing both sides, that Original Application as well as M.A.375/98 were rejected through an elaborate order dated 16.11.1998.

3. Original Application 536/98 was filed by one Jayakrushna Rana, a cured leprosy patient, impleading Union of India through its Secretary, Ministry of Personnel, Public Grievance and Pensions, New Delhi and Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta. The point raised in that O.A. was that this Bench in order dated 24.4.1998 in C.P. 19/98, arising out of O.A.499/96 had taken a view different from the view taken by the Hon'ble Supreme Court and reopened the points settled by

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the decision of the Hon'ble Supreme Court, by framing an issue in that contempt case "if there is a circular dated 2.3.1965 giving preference in employment to cured leprosy patients" and deciding the same against the petitioner in that case. Because of this observation of this Bench, Res. No.2 did not consider his case for employment under Rehabilitation Scheme saying that that O.A. was filed for recalling that order in the C.P. After hearing both sides at length, this Bench held that the O.A. in the present form was not maintainable and rejected the same on 16.11.1998 through an elaborate order.

4. O.A.537/98 was filed by one Aparash Bhoi claiming to be a cured leprosy patient with the identical prayer as made in O.A.536/98. At the stage of admission, after considering the points raised in the pleadings and other relevant papers therein and also relying on our decision in O.A.536/98, we, through an elaborate order passed on 16.4.1999 dismissed that application holding the same to be not maintainable.

5. The present application under Section 19 of the Administrative Tribunals Act consists of 141 typed sheets and various annexures from Page 142 to 464 and 26^(not past 144) more typed sheets as Annexures. These 144 applicants, who were not parties in the above three Original Applications, pray for recalling the three final orders passed in those three OAs (referred above) by exercising inherent powers of this Tribunal mainly on the ground **that these final orders were obtained from this Bench by practising fraudulent representation by the respondents, specifically, Respondent No.1, by withholding deliberately vital records of the Hon'ble Supreme Court in Contempt Petition no. 26/96 and several other I.S., as mentioned at Page-19 (Para-11) of the Application.**

b. During hearing on the question of maintainability we instructed Shri D.N.Mishra, the learned Standing Counsel for the Railways to ascertain whether our previous final orders passed in the aforementioned three O.A.s have since been challenged in the High Court under an assumption that OJCs, in normal course must have been filed. If indeed these

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orders have been challenged and pending in High Court, this Tribunal as well as the applicants will be bound by the orders that would be passed at that level. If, in case at the level of High Court those cases have since been disposed even then the applicants are bound by those decisions. In either case, this present application would be redundant. With this impression we so instructed Shri Mishra. However, in spite of several adjournments, Shri Mishra could not enlighten us as to whether those orders in the three O.A.s have since been challenged before the High Court. We, therefore, presume that no OJC/OJCs as against those orders have been filed.

7. Fraud is a criminal act. The person practising/committing fraud must have the intention to commit fraud without just cause or excuse or for want of reasonable or probable cause. This being so, the pleading in a case must be clear as to who actually committed fraud and how it was committed ?

8. In the main prayer portion of the O.A., as quoted above, there is an indication that Res. 1 apparently of the present Original Application was instrumental for committing fraud by issuing Office Memorandum dated 14.8.1996 (Annexure-21 of the present O.A.) This O.M. was issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, through its Director (E) and addressed to the Under Secretary Ministry of Welfare, New Delhi. It has been indicated in that Memorandum dated 2.3.1965 and other Office Memoranda relied on by the petitioner Shri Purma Chandra Panigrahi in O.A.499/96 before pending before this Bench are practically non existent orders and were not issued by the Department of Personnel and Training. Further this particular Office Memorandum dated 2.3.1965 as relied on as Annexure does not indicate the name and designation of the officer, who had signed the order. But Office Memorandum of that Number and date deals with grant of priority to physically handicapped persons. The final order dated 16.11.1998 in O.A.560/96 had taken a note of this Memorandum dated 14.8.1996. So it comes to this what the applicants meant by practising fraud on this Tribunal is that practice of fraud by Res.1 of these O.A.s as well as Res.1 of O.A. nos. 536 and 537 of 1998

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Incidentally it can be mentioned at this stage that this Department was not impleaded as Res. in O.A.536/96. This O.M. dated 14.8.1996 was not signed by the Director (E). Yet this Director (E) has not been impleaded as Respondent in this O.A. On the other hand Res.1, has been described as the concerned Ministry represented through its ~~g~~ Secretary(not the Director (E)). Thus, the actual authority, who is supposed to have practised fraud or committed fraud in issuing such memorandum dated 14.8.1996 is not a party to this O.A. Since the commission or practice of fraud is the foundation for filing this voluminous Original Application, the person, who actually committed such fraud would be a necessary party and in his absence the application would not be maintainable.

As earlier stated, commission of fraud being a criminal act ^{which} is related with the intention of the person committing such fraud and the person committing fraud is to be impleaded as respondent by name, because, commission of fraud is ~~the~~ personal responsibility and as such respondent not impleaded by name but by designation cannot have an opportunity to effectively defend himself to plead that he had never such an intention to commit fraud. In case of allegation of malice, the Apex Court in I.K.Mishra vs. Union of India reported in 1997 (6) SCC 228 (Para-8) have observed that the authority against whom malice is pleaded has to be impleaded by name, so that he will have an opportunity to defend himself. So is the case with the allegation of fraud. Viewed from this angle, this O.A. is not maintainable.

The prayer for recalling the final order implies the person 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

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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) 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. It is true that the learned counsel for the applicants referred to some decisions in support of his contention that like Civil Courts, even Tribunals have inherent powers. But no such decision cited dealt with a situation where an applicant, whose application under Section 19 of the Act has been dismissed on merits and he does not file any application for review, or challenge in higher forum, can such final order be recalled through another O.A. under Section 19 of the Act filed by someone else and that too after more than one year of the passing of that order, sought to be recalled. Hence the decisions, as cited by the learned counsel for the applicants need not be referred for discussion.

11. 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 dictates 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 to him would be to move

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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. Even a prayer for review can be made by a person who is not a party to the original proceeding, 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) 1143. 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 prescribed that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of copy 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 prescribed under Rule-17 has to be strictly followed while entertaining an application

for review.

12. Applicants before us, even if they come under the expression 'person aggrieved', under Section 19 of the A.T. Act, they could have availed the remedy of filing reviews against the orders sought to be recalled in the present O.A. within the time limit prescribed under Rule-17 of the C.A.T. (Procedure) Rules. This having not been done, they cannot approach the Tribunal in a separate Original Application, and that too with a prayer for recalling the final order passed by the Tribunal.

13. For the reasons discussed above, we are of the view that this O.A. is not maintainable. Accordingly the O.A. is dismissed at the stage of admission.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

14.2.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Free copies of
final order
H-92-2001 given
to both sides.

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14/2/01

ANM
S. C. T. M.