M.A.Nos. 229, 488, 323, 329 and 135 of 2009 arising out of O.A.Nos. 210 of 2001, 106 of 2001, 80 of 2006, 176 of 2008 and 647 of 2005 disposed of on 17.7.2002, 3.1.2003, 30.1.2006, 13.2.2009 and 12.12.2008 respectively.

Order dated: 22/12/09.

Coram:

HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)

HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

All the above M.As. have been filed under Section 27 of the Administrative Tribunals Act, 1985 (herein after referred to as 'Act') for execution of the orders passed by this Tribunal in the above mentioned O.As. The said O.As. have been disposed of by this Tribunal on different dates, viz., on 17.7.2002, 3.1.2003, 30.1.2006, 13.2.2009 and 12.12.2008. Since the directions of this Tribunal have not been carried out or rather have not been implemented, these M.As. have been filed.

2. These M.As. were not mentioned as being filed under Section 27 of the Act. Each application was considered by us and in the course of hearing of these Misc. Applications, the following questions we had raised:

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1. Whether Section 27 of the A.T.Act, 1985, provides for any remedy to a party for non-implementation of an order passed by the Tribunal so as to file a Miscellaneous Application for that purpose;
2. If such a remedy is available, whether any period of limitation is applicable or not;
3. If such limitation can be condoned by the Tribunal under Section 21 of the A.T.Act on filing a separate petition for that with reasons;
4. What would be the normal period of limitation for filing such Miscellaneous Application;

(a) Whether the limitation period is one year, as prescribed in Section 21 of the A.T.Act, 1985, or

(b) Whether the limitation is one year after expiry of the period of six months from the date of making representation.

5. Whether a party can approach the Tribunal even after expiry of years without having regard to the general provisions of limitation contained in the Limitation Act since no period of limitation is prescribed for execution of the order of the Tribunal under Section 27 of the Act;
6. If a Miscellaneous Application is filed by a party under Section 27 of the A.T.Act,1985, and decided accordingly;
7. Whether suo moto action can be taken by the Tribunal for initiation of proceedings under the Contempt of Courts Act, 1971, read with CAT (Contempt of Courts) Rules, 1992, against the party who is found to have willfully and deliberately violated the order of the Tribunal and/or for not implementing the order of the Tribunal, without considering the period of limitation;
8. Whether the Tribunal can act as an executing court or authority."

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Above questions have to be discussed in the light of the orders issued by the Govt. of India, Department of Personnel and Training, as per O.M.No. A-11019/37-85-AT, dated 13.8.1985; O.M.No. A-11019/69/87-AT, dated 14.8.1987; O.M.No.F.11013/6/84-AT dated May, 1994; and Cabinet Secretary's D.L. letter No. P.26012/2/94, dated 19.1.1994 addressed to the Secretaries of all Departments of the Government of India.

3. On verifying the orders thus issued by the Govt. of India, we have informed the framing of the questions and answers to be given to the above questions to the respective counsels appearing for the parties in the cases and we sought the assistance of Shri U.B.Mohapatra, Ld. Sr. Standing Counsel, Shri Ganeswar Rath, Ld. Sr. Advocate, Shri A.K.Bose, Ld. Govt. Advocate for the State of Orissa and also we had issued notice to the Bar Association of the Central Administrative Tribunal, Cuttack Bench, on 25.10.2009 requesting the assistance of Ld. Lawyers appearing before the Bench on these questions. Accordingly, the matter was heard elaborately by us.

4. Before we consider the arguments of the respective counsels appearing for the applicants in the above Misc. Applications, we heard the above Sr. Counsels, whose assistance we had sought in the matter. We also heard the respective counsels appearing in the applications. Before we consider the questions raised, we have gone through Section 27 of the Act, which reads as follows:

> "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) of Section 20 (whether or not such final order had actually been made) in respect of the grievance to which the applicant relates would have been executed."

We have also gone through the orders issued by the Govt. of India, which have been narrated above and read as under:

> **"(1) Judgments of the CAT be final and to be complied with within the stipulated time-limit.**-1. This Department is getting a number of references regarding implementation of the judgments pronounced by the various Benches of the Central Administrative Tribunal. It may be mentioned that the

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Central Administrative Tribunal was established with effect from 1-11-1985, with a view to provide speedy and inexpensive relief to the Government servants in the matter of deciding their complaints and grievances on recruitment and conditions of service. With this end in view, it was, inter alia, mentioned in this Department's O.M.No. A-11019/37-85-AT, dated the 13th August, 1985, which is reproduced below-

"The orders of the Tribunal shall be final and binding on both the parties. The order of the Tribunal should be complied with within the time-limit prescribed in the order or within six months of the receipt of the order where no such time-limit is indicated in the order."

2. It is once again brought to the notice of Ministries/Departments of the Government of India that the judgments of the Central Administrative Tribunal should be complied with as promptly as possible within a minimum period of time. The orders of the Tribunal should be implemented within the time-limit prescribed by the Tribunal itself or within six months of the receipt of the order where no such time-limit is indicated by the Tribunal.

3. It is requested that the contents of this O.M. may kindly be brought to the notice of all concerned and compliance ensured.

(G.I., Dept. of Per. & Trg., O.M.No.A-11019/69/87-AT, dated the 14th August, 1987.)

(2) Timely redressal of the genuine grievances of the employees and streamlining/improving the Rules and Conditions of service matters.- While considering the demands for grants of this

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Ministry for the year 1998-99, the Parliamentary Standing Committee on Home Affairs in its 44th Report has, inter alia, stressed the need to act upon the pronouncements of CAT, High Courts and the Supreme Court in service matters and to streamline and improve the Service Rules and Conditions so as to reduce the litigation in service matters.

2. The above observations speak for themselves and are self-explanatory. It may be recalled that this Ministry has, from time to time, issued instructions impressing upon the Ministries and Departments of the Government of India and Union Territories the need for complying with and acting upon the judgments of the CAT, etc., for proper and effective handling of the service matter cases before the Tribunal and other legal forums and also for adherence to and implementation of the prescribed procedure, rules, order, etc., on service matters, so that litigation on such matters is considerably brought down. In this connection, your kind attention is invited to this Department's O.M.Nos. A-11019/37/85-AT, dated 13-8-1985, A-11019/69/87-AT, dated 14-8-1987, F. 11013/6/94-Estt.(A) dated 27-5-1994, and Cabinet Secretary's D.O. Letter No. F.26012/2/94-AT, dated 19-1.1994 (copy enclosed).

3. It is, however, found that the number of cases of the Central Government employees in the Courts, especially in the Central Administrative Tribunal, continue to increase from year to year. It is, therefore, requested that appropriate steps be taken by all the Ministries/Departments of the Government of India/Union Territories for timely redressal of the genuine grievances of

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the employees, so that minimum of these employees take recourse to CAT/Courts. It will also need to be ensured that matters relating to improvements in Service Rules and Conditions as may become necessary due to various pronouncements of Courts, where necessary, receive priority attention.

Enclosure:
D.O.Letter, dated 19.1.1994

CABINET SECRETARY
NEW DELHI
19th January, 1994

A combined reading of Section 27 and above quoted Govt. orders reveals that it is necessary to have a procedure to be followed in such Misc. Applications being filed under Section 27 of the Act. Regarding this point, Mr. G.Rath, Ld. Sr. Counsel of the Bar submitted that as per Section 27 of the Act, a remedy is available to a party for implementation of the order passed by this Tribunal by way of execution of the order. Ld. Counsel also submitted that such application shall be filed within the framework of Section 27 as if an O.A. is filed under Section 19 read with Section 20 of the Act. According to the Ld. Counsel, though Section 27 provides that this Tribunal can consider an application for execution subject to the other provisions of Act regarding limitation and the procedure to be adopted and especially it has to be concluded that such

application shall be considered in the manner in which any final order of nature referred to in clause (a) of sub-Section (2) of Section 20 of the Act. It means that such application shall be treated as an O.A. by following all procedures which could be followed for an O.A. filed under Section 19 of the Act. The ld. Counsel further submitted that when an application is filed under Section 27 of the Act for execution, this Tribunal has got the jurisdiction to consider the same as if it is an O.A. on adopting all the procedure to be followed for an O.A. being filed under Section 19 of the Act, which means with full cause title, prayer, relevant facts, etc. These things can also be considered by this Tribunal. The ld. Counsel further submitted that even though it should be treated as an O.A., the scrutiny of such application by this Tribunal is to the effect of executability of the same for which all the parties should be alerted by notice and called upon to file their reply, unless other restrictions are there to proceed with, such as, delay or non-joinder of parties, etc. A mere filing of an application for execution by itself may not be a ground to entertain the same under Section 27. The ld. Counsel also submitted that with regard to the jurisdiction of this Tribunal for ordering the execution of its order is as an

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Execution Court. Ld. Counsel relied on a judgment of the Apex Court pronounced in Civil Appeal No. 2237/97 (arising out of SLP(C) No. 18971/96 in Hukam Raj Khinvsara vs Union of India & Ors. The Counsel also relied on the Office Memorandum issued by the Govt. of India with regard to the binding nature of the orders passed by this Tribunal, especially, "the orders of the Tribunal shall be final and binding on both the parties. The order of the Tribunal should be complied with within the time limit prescribed in the order or within six months of the receipt of the order where no such time limit is indicated in the order". Ld. Counsel further submitted that with regard to the question of limitation applicable to such application, such application shall be filed within one year of the passing of the order or after expiry of the period whatever given by the Tribunal for compliance and, beyond the period of one year if it is filed, it should be supported by a petition for condonation of delay as contemplated under Section 21 of the Act with sufficient reasons supported by an affidavit to that effect. In Hukam Raj Khinvsara's case (cited supra) this position was taken into consideration. Mr. G.Rath, further submitted that if such a non-defective application is filed for

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execution of the order under Section 27, this Tribunal has got the power either to order execution or to take suo motu contempt against the party who disobeys, flouts, or even delays the compliance of the order, by invoking Section 17 and other procedures prescribed under the Act and Rules. Shri A.K.Bose and Shri U.B.Mohapatra also support all the contentions canvassed by Shri G.Rath. Shri Mohapatra further added that for condonation of delay in filing of such applications, the reasons should be convincing to this Tribunal and should be specific and should be supported by an affidavit by the party. We also heard Mr. A.K.Bose, who more or less supports the arguments of Mr. G.Rath. We also heard Mr. T.Rath, who had contended that further sufficient time may be granted to the Respondents on such applications to comply the order.

5. While considering the question of taking suo motu contempt against such contemnors, a further question has to be answered regarding limitation of such proceedings and the right of a third party to appear or argue in a contempt case. Yet another question to be considered by us is regarding limitation and taking action under Section 17 of the Act to proceed against the persons who are willfully flouting the orders of this

Tribunal. Mr. G.Rath also drew the attention of this Tribunal to various provisions of the Contempt of Courts Act, 1971 and the provisions of the AT Act and Rules framed thereunder. It was contended by Mr. G.Rath that unlike Section 27 of the Act, there is no limitation to take appropriate proceedings under Section 17 of the Act.

6. On the basis of the arguments of the Ld. Counsel appearing for the parties and the counsels appointed for the purpose by this Tribunal and on considering the questions, the following conclusions are arrived at:-

(a) If an order has been passed by this Tribunal in O.A. with a direction to the Respondents to carry it out within specified time, the party should do it. As per the orders issued by the Govt. of India to the effect that if the Department or other party is not in a position to carry out the order passed by this Tribunal, it may approach this Tribunal with reasons for non-implementation of the order within six months of the said order. Further, it is to be held that in the light of the Office Memorandum issued by the Govt. of India, Department of Personnel and Training, dated 13th

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August, 1985 and the letter of Cabinet Secretary dated 19.1.1994, the orders of the Tribunal shall be final and binding on both the parties and the order of the Tribunal should be complied with within the time limit prescribed in the order or within six months of the receipt of the order where no such time limit is indicated in the order.

(b) If the order of the Tribunal has not been complied with as stated above, within one year of the order the receiver of such order or the party interested in the implementation of the order can file an application under Section 27 of the Act to have a direction to the concerned Department or officer to comply with the order.

(c) If such an application is filed, it shall be treated in the same manner as an O.A. filed for consideration of this Tribunal. The consideration shall be to the extent of the executability of the order and if the order is found executable one, the said application shall be taken into consideration by this Tribunal for preliminary hearing and notice shall be issued to the Respondents

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to show cause as to why the order is not implemented hitherto. Sufficient time also should be given to comply with the order while issuing notice to the Respondents.

(d) If any application is filed beyond the period of one year, it shall be supported by a petition/application for condonation of delay with reasons and an affidavit. If such application for condonation of delay is filed, it has to be considered as an application filed under Section 21(3) of the Act, and this Tribunal shall consider the same to verify the reasons stated therein either to reject or allow it.

(e) The limitation in filing such application may run with the receipt of the copy of the order or the expiry of the period so ordered in the order to be implemented.

In this context, we feel that the dictum laid down by the Apex Court in Hukam Raj Khinvsara case (cited supra) has to be applied.

(f) If any application is filed for execution and while considering the said application, if this Tribunal feels that the Respondents or the persons, who are bound to

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comply ith the orders, are willfully flouting the order, this Tribunal can take suo motu proceeding under Section 17 by issuing required notice to the Respondents to appear and show cause. In such cases, the matter can be proceeded as if a contempt proceeding is taken out against the Respondents. Pendency of the application for execution may not be a bar for taking such action also.

(g) For taking suo motu contempt proceeding under Section 17 of the Act, there is no limitation and as and when it comes to the notice of the Tribunal that the order of this Tribunal is being flouted, it can initiate suo motu contempt proceeding against such defaulter.

(h) For taking a proceeding under Section 17, it may be on motion put by the Advocate General or the Sr. Standing Counsel or by a third party. Taking the civil contempt as contemplated under Section 17 of the Act, a private person can put a motion of the application for taking contempt, but that by itself gives no right for such person to continue to persist

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the matter to be heard by him unless the Tribunal wants the assistance of such private party. Such private party has also no right to file an appeal against order passed under Section 17 of the Act. To come to this conclusion, though we have not specifically framed any question, we are enlightened by the judgment of the Apex Court reported in AIR 2000 Supreme Court 1136 in Om Prakash Jaiswal vs D.K.Mittal and another. In the above case, the relevant paragraphs 15 and 17 of the judgment read as follows:

> "15. In the case contemplated by (i) or (ii) above, it cannot be said that any proceedings for contempt have been initiated. Filing of an application or petition for initiating proceedings for contempt or a mere receipt of such reference by the Court does not amount to initiation of the proceedings by Court. On receiving any such document, it is usual with the Courts to commence some proceedings by employing an expression such as 'admit', 'rule', 'issue notice' or 'issue notice to show cause why proceedings for contempt be not initiated'. In all such cases the notice is issued either in routine or because the Court has not yet felt satisfied that a case for initiating any proceedings for contempt has been

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made out and therefore the Court calls upon the opposite party to admit or deny the allegations made or to collect more facts so as to satisfy itself if a case for initiating the proceedings for contempt was made out. Such a notice is certainly anterior to initiation. The tenor of the notice is itself suggestive of the fact that in spite of having applied its mind to the allegations and material placed before it the Court was not satisfied of the need for initiating proceedings for contempt; it was still desirous of ascertaining facts or collecting further material whereon to formulate such opinion. It is only when the Court has formed an opinion that a prima facie case for initiating proceedings for contempt is made out and that the respondents or the alleged contemnors should be called upon to show cause why they should not be punished then the Court can be said to have initiated proceedings for contempt. It is the result of a conscious application of the mind of the Court to the facts and the material before it. Such initiation of proceedings for contempt based on application of mind by the Court to the facts of the case and the material before it must take place within a period of one year from the date on which the contempt is alleged to have been committed failing which the jurisdiction to initiate any proceedings for contempt is lost. The heading of Section 20 is 'limitation for actions for contempt'. Strictly speaking, this section does not provide limitation in the sense in which the term is understood in the Limitation Act.

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Section 5 of the Limitation Act also does not, therefore, apply. Section 20 strikes at the jurisdiction of the Court to initiate any proceedings for contempt.

17. The jurisdiction to punish for contempt is summary but the consequences are serious. That is why the jurisdiction to initiate proceedings in contempt as also the jurisdiction to punish for contempt in spite of a case of contempt having been made out are both discretionary with the Court. Contempt generally and criminal contempt certainly is a matter between the Court and the alleged contemnor. No one can compel or demand as of right initiation of proceedings for contempt. Certain principles have emerged. A jurisdiction in contempt shall be exercised only on a clear case having been made out. Mere technical contempt may not be taken note of. It is not personal glorification of a Judge in his office but an anxiety to maintain the efficacy of justice administration system effectively which dictates the conscience of a judge to move or not to move in contempt jurisdiction. Often an apology is accepted and the felony condoned if the Judge feels convinced of the genuineness of the apology and the prestige of the Court having been restored. Source of initiation of contempt proceedings may be suo motu, on a Reference being made by the Advocate General or any other person with the consent in writing of the Advocate General or on Reference made by a Subordinate Court in case

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of criminal contempt. A private party or a litigant may also invite the attention of the Court to such facts as may persuade the Court in initiating proceedings for contempt. However, such person filing an application or petition before the Court does not become a complainant or petitioner in the proceedings. He is just an informer or relator. His duty ends with the facts being brought to the notice of the Court. It is thereafter for the Court to act on such information or not to act though the private party or litigant moving the Court may at the discretion of the Court continue to render its assistance during the course of proceedings. That is why it has been held that an informant does not have a right of filing an appeal under Section 19 of the Act against an order refusing to initiate the contempt proceedings or disposing the application or petition filed for initiating such proceedings. He cannot be called an aggrieved party."

7. In the light of the above answers, we have to order that all these M.As. shall be reposted for fresh consideration after one month. Ordered accordingly.

Sd/-
MEMBER-(A)

Sd/-
MEMBER(J)

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