

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

M.A.NO.200/05
IN
O.A.NO.743/91

Date: 18.06.2012

Present: Hon'ble Mr Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr Shankar Prasad, Administrative Member

HARIDAS CHAKRABORTY

VS.

UNION OF INDIA

For the Applicant: Party in person

For the Respondents: Mr P.B.Mukherjee, Counsel

ORDER (ORAL)

PER MR MUKESH KUMAR GUPTA, JM:

M.A.200/05 has been preferred by applicant under Section 27 of the Administrative Tribunals Act, 1985 read with Rule-24 of CAT (Procedure) Rules 1987 seeking implementation of a order dated 14.08.2001 in O.A.NO.743/91.

2. Said M.A. was preferred only on 08.04.2005. Vide order dated 14.08.2001, this Tribunal allowed afore noted OA with following observations/ directions and orders:

“11. For the reasons stated above, the application deserves to be allowed. Consequently, we allow the application and direct the respondents to make payment to the applicant salary for the period from 1.7.89 to 31.7.90.. The respondents shall be entitled to deduct the amount already paid to the applicant towards salary of that period. If the applicant was absent on any day without permissible rest and sanctioned sick leave or casual leave, the absence period may be adjusted towards the leave of any kind under the Rules available to his credit. If no leave was in his leave account, then the same may be treated as leave without pay. The applicant shall also be paid interest @ 10% per annum on the amount payable to him from 1.8.90 to the date of payment.

This exercise is directed to be completed within a period of three months from the date of the communication of this order".

3. Writ Petition was preferred against afore noted order vide WPCT No.1017/02. Same was disposed of vide order dated 01.10.2002. Complete text of said order reads as follows:

"The petitioner who is appearing in person after having obtained a No Objection Certificate from his learned Advocate, is aggrieved by the fact that the learned Central Administrative Tribunal, Calcutta Bench, while disposing of his application, did not go into and consider prayer (c) of his application regarding increments for the periods indicated therein. As will appear from the application before the learned Tribunal, a specific case had been made out by the petitioner in that regard and in the reply the respondents have also dealt with the said question, but unfortunately, the learned Tribunal has remained completely silent as far as the said prayer (c) is concerned.

In that view of the matter, we dispose of this application by remanding the matter back to the learned Tribunal for consideration of petitioner's prayer (c) in his application. It is hoped that such reconsideration will be made expeditiously, but positively within a period of three months from the date of communication of this order. The other portion of the order passed by the learned Tribunal, not having been challenged, will remain untouched. It has been submitted by the petitioner that the other directions given by the learned Tribunal have also not been complied with.

In the event the petitioner's submission is correct the respondents concerned are directed to see that the orders of the learned Tribunal, as contained in the order dated 14th August, 2001 are strictly complied with.

There will be no order as to costs."

4. Grievance of applicant is that order dated 30.04.2004 CP (C) No,174/2001, CP (C) No.59/2002, CP (C) No.15/2003 fails, M.A.175/03 in specific noted that the respondents have complied only part of the direction. Full salary for the leave period has not been paid. Thus his grievance is

Tribunal should direct the respondents to pay complete salary for the leave period. Reliance was placed on paras 18 and 19 thereof which reads as under:-

"18. We have given our thoughtful consideration to the contentions of both the parties including the written argument filed by the applicant, who has argued his case in person. It is no doubt true that the Tribunal by its order dated 14.8.01 directed the respondents to make payment to the applicant the salary for the period from 1.7.82 to 31.7.90 adjusting the payment already made during this period. It was also directed that if the applicant was absent on any date without permissible rest and sanctioned sick leave or casual leave, the absence period may be adjusted to leave of any kind towards the leave admissible under the rules. If no leave was in his leave account then the same may be treated as leave without pay. The respondents have paid certain amount which represents the leave salary for 53 days. It is the amount of leave salary for the period during which the applicant was on unauthorized sick leave or rest and the respondents have regularized this unauthorised leave or absence by making appropriate payment. Thus the respondents have complied with the order partly. But the fact remains that the respondents have not paid the amount of salary for the entire period which according to the applicant will be more than one lakh of rupees.

19. From the orders passed by this Tribunal on 18.5.90 and 13.3.90 in the earlier contempt petitions, we find that those contempt petitions also related to non-payment of salary for the period including the period of 1.7.89 to 31.7.90. Since a judicial order has already been passed by this Tribunal earlier which was not considered by another Division Bench even though brought to its notice and a different order was passed ignoring the earlier order. It can not be said that the respondents were lawfully obliged to carry out the order as any order passed by a subsequent Division Bench without considering the earlier order passed by another co-ordinate Division Bench should be held to be in per incurium"

5. Applicant appearing in person states that order passed in contempt can not adjudicate the right of the parties and therefore findings recorded therein can not defeat his claim.
6. It is further contended that present MA is within limitation period prescribed under Act and the Rules framed there under.

7. By filing supplementary reply, it has been contended that directions of this Tribunal in the concerned OA have been fully complied with. Present MA is abuse of process of law, contends Shri P.B.Mukherjee, counsel appearing for respondents. He invited our attention to the order dated 30.04.2004 in three Contempt Petitions by which a common order was passed and said Contempt Petitions were dismissed. It was also contended that said order was passed after considering all aspects of the matter including noticing findings in previous litigation on the subject, and precedence, considering the contentions raised by the parties. It is thus contended that having failed in all proceedings, applicant can not insist on continuing the said proceedings alive. We may note at this juncture that paragraph 26 to 28 reads as under:-

"26 In the result, all the three contempt petitions are rejected. However, M.A.174/03 is allowed and in view of disposal of the contempt petitions, no further order need be passed in the other MA 175/03.

27 Before we conclude, we would like to observe that the applicant even though cautioned on earlier occasions not to abuse the process of law by filling multiple applications for the same purpose, has again committed the same mischief. We hereby express our serious displeasure against such conduct of the applicant.

28 Let a copy of this order be kept in the file of OA.398/89, which is still pending." (emphasis supplied)

8. We have heard both sides at length, perused the pleadings and other material placed on record.

9. At the outset we ~~will~~ note that no M.A. seeking condonation of delay has been filed by this applicant. O.A. has been disposed of vide order dated 14.08.2001. Writ Petition was disposed of on 01.10.2002. Present M.A. was dated 08.04.2005. Hon'ble Supreme Court in HUKUM RAJ KHINVSARA vs. UNION OF INDIA AND OTHERS (1997) 4 SCC 284 observed that execution

application filed under Section 27 of the Administrative Tribunals Act , 1985 beyond one year is not maintainable.

It was held therein that

"In view of the provisions contained in Sections 27, 20(2) and 21(1)(a), final order passed by the Tribunal is executable within one year from the date of its becoming final"

If we take the said final order as either 14.08.2001 or 01.10.2002, applicant was required to file said execution application within one year unless the order of the Tribunal was suspended by the higher Court, it is not the case here.

10. Further more in (1997) 7 SCC 556 P.K.RAMACHANDRAN vs. STATE OF KERALA AND ANOTHER it was held that

"Law of limitation may harshly affect a particular party but it has to be applied with all its vigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds".

Ratio laid down in the aforesaid judgment is applicable to the facts of present case. We may also note that this Tribunal vide order dated 30.04.2004 in above noted contempt petition has cautioned the applicant not to abuse the process of law by filing multiple application for the same purpose, yet seeking the same remedy, which has not been allowed earlier, he has filed the present application beyond limitation period.

11. In this view of the matter we do not find any justification in the contention raised . M.A. is held to be not maintainable and accordingly dismissed.


 (SHANKAR PRASAD)
 MEMBER (A)

pm


 (MUKESH KUMAR GUPTA)
 MEMBER (J)