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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 10-4-97

1. Misc. Execution Petition No.494/95 (OA 314/87)

Ram Bharosi, Jagdish, Chamandi, Bhakra, Batta Ram, Roshan and Mohan Singh, all the petitioners were last employed on the post of Casual Labour under PWI (CTR), Western Railway, Bharatpur.

... Petitioners

Versus

1. Shri P. Ravindra, General Manager, Western Railway, Churchgate, Bombay.
2. Shri M. Sirazuddin Khan, Divisional Railway Manager, Western Railway, Kota.

... Respondents

For the Petitioners ... Mr. Shiv Kumar

For the Respondents ... Mr. Manish Bhandari

2. Misc. Execution Petition No.525/95 (TA 564/86)

Duaroo, Atma Ram, Sidkumar, Tikebudu, Anupani, Artho, Bal Kishan, Sahebo, Ghasi, Dutiya, Laloo, Madhav, Ratiya, Daya Ram, Dewar Chand, Kabee, Archhoo, Padulchhan, Sundar, Benudhar, Sudhir, Agasho, Pano, Lime, Phulee, Noora, Tule, Lalita, Banita, Shukrawari, Bilasho, Oilee, Balo, Purnami, Mala, Dropadi, Maina, Lalita, Udai, Chandra Dhan, Gariba, Akeel, Paletar, Chhabbi, Kyaphooli, Bedi, Visakha, Mukta, Ayano, Pano, Varuno and Mithala, all are employed as Casual Labour under Western Railway, Kota.

... Petitioners

Versus

1. Divisional Railway Manager, Western Railway, Kota Division, Kota.
2. Divisional Personnel Officer, Western Railway, Kota Division, Kota.

... Respondents

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER

For the Petitioners ... Mr. Shiv Kumar

For the Respondents ... Mr. Manish Bhandari

O R D E R

PER HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

Petitioners, Ram Bharosi and six others, as named above, have filed Misc. Execution Petition No.494/95 in Original Application No.314/87 and petitioners, Duaroo and 51 others, as named above, have filed Misc. Execution Petition No.525/95 in TA 564/86 respectively, praying therein that these may be allowed and the respondents, named in the aforesaid Misc. Execution Petitions, be directed to implement the judgement, rendered in the aforesaid ~~Original~~ ^{Case} Original Application/Transferred Application, failing which the properties

of the respondents may be ordered to be attached and the petitioners be given their due benefits with interest. These Misc. Execution Petitions involve common questions of law and facts and as such these are being disposed of by a common order.

2. The facts giving rise to Misc. Execution Petition No.494/95 in OA 314/87 may be stated as follows. Petitioners had filed Original Application No.314/87 before this Tribunal, challenging their illegal retrenchment from service. The Tribunal decided the same by an order dated 6.1.94, the Operative portion of which reads as follows :-

"We, therefore, direct the respondents to include the names of the applicants in the list/live register maintained by them for the purpose of re-engaging casual labour who had earlier worked under them. The respondents are directed to consider the applicants for re-engagement as per their seniority. The applicants shall however not be entitled to claim any back wages for the period for which they have not worked."

It is contended by the petitioners that the aforesaid directions of the Tribunal have not been carried out by the respondents and as such the properties of the respondents are required to be attached for execution of the judgement.

3. The facts giving rise to Misc. Execution Petition No.525/95 in TA 564/86 are as follows. The petitioners had filed a Writ Petition in Hon'ble the Rajasthan High Court against their termination of services. The petition was transferred to this Tribunal and registered as TA 564/86. This Tribunal had allowed the application vide judgement, at Ann.A-1, dated 15.3.93, the operative portion of which reads as follows :-

"In view of the above, we allow this application and direct that the applicants shall be paid wages due to them for the period from 21.1.85 till they were allowed to rejoin after the issue of letter dated 29th April, 85, within a period of 4 months from this order."

The contention of the petitioners is that four months' time was granted to the respondents to implement the judgement but since the judgement rendered in the aforesaid TA has not been implemented till date, the properties of the respondents are required to be attached in execution of the same.

4. We have heard the learned counsel for the parties and have carefully perused the records.

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5. The learned counsel for the petitioners urged that once the Tribunal had decided the matters vide judgements, referred to above, the Tribunal should now direct the respondents to implement their aforesaid judgements, failing which the properties of the respondents may be ordered to be attached in execution of the same. The learned counsel for the petitioners relied on 1992 (1) SLJ 190, Union of India and others v. Basant Lal and others, ATR 1990 (1) CAT 667, E.S. Rajabather v. the Secretary to the Government, Ministry of Transport, (1995) 31 ATC 590, Tarun Baran Choudhary and others v. Union of India and others, in support of his case. We are however of the view that since these decisions were rendered in the context of their own facts and circumstances and, therefore, these are not applicable to the controversy involved in the matters in hand.

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6. The learned counsel for the petitioners further relied on 1993 (1) SLJ (CAT) 289, Noor Mohd. v. Union of India and others, in which the Jodhpur Bench of the Tribunal laid down as follows :-

"4. It is true that the contempt petition also lies when the order of the Tribunal was not complied with. Execution of the order is the inherent power of the Tribunal. Section 20 clause (2) deals with alternative remedies. This does not deal with execution specifically. Under Section 27, it has been provided that subject to the other provisions of this Act, order of the Tribunal shall be executed in the same manner in which the final of the nature referred to in clause (a) of sub-section (2) of Section 20 is executed by the officers. Ordinarily, the execution is made by the subordinates of the decision passed by the competent authority. They cannot question the legality of the order once the order is passed unless they submit about the competence of the authority, who has passed the order. As far as the Act is concerned, it was anticipated that all orders of the Tribunal will be executed, unless reversed or modified by the Hon'ble Supreme Court. However, if the order is not implemented as in the present case, the Tribunal will have to get the order executed. It is relevant to mention that the provision of Section 27 is subject to other provisions of the Act. Under Section 14 of the Act, the Tribunal exercises all the jurisdiction, powers and the authority exercisable immediately before the constitution of the Tribunal by all Courts, except the Supreme Court, in relation to the matters specified therein. Under this provision, the Tribunal thus has also all the powers for execution of its orders which vest in the civil Courts under the Code of Civil Procedure. Under Section 22 of the Act, the Tribunal is not bound by the procedure laid down in the C.P.C., but this Section does not over-ride the provision of Section 14 and does not take away from the Tribunal the power of execution of its orders. The mode of

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execution has been provided in C.P.C. The Tribunal is not bound by the procedure for execution laid down in the Code. However, the principles of C.P.C. and the mode provided in the C.P.C. can be applied if the rules and the Act are silent, and directly or by implication, the procedure prescribed in C.P.C. is not inconsistent with the provisions of the Act and the rules. The Act is silent about the mode of execution and there is no specific provision also about the mode of execution under the rules. In such circumstances, the provisions of C.P.C. for the issuance of the warrant for execution may be adopted by the Tribunal and there is no prohibition against the same in the Act or the Rules.

5. The contempt proceeding is only punitive in nature and it does not lead to the execution of the order. For this reason also, the warrant will have to be issued for the execution of the decree. It will not be out of place to mention here that the decree has been passed by the Civil Court and the same has been transferred for final adjudication at the stage of appeal. In such circumstances, it will have to be executed also just like a decree of the Civil Court.

6. We accordingly direct that the execution warrant may be issued for the execution of the decree and if any part of the decree has been satisfied, it may be mentioned therein. Reference may be made to the learned Munsif to intimate whether any amount has been deposited with him or not and if not, then the execution warrant may be issued in terms of the claim filed by the petitioner as the respondents have not said a single word about the correctness of the claim. However, it will be the duty of the Registrar before issuing the execution warrant to calculate and ensure that the applicant has not committed any error of calculation or otherwise in the preparation of the claim."

7. On the basis of what has been held by the Jodhpur Bench of the Tribunal in the case cited supra, it has been urged on behalf of the petitioners that directions be issued to the respondents to implement the judgements in the connected Original Applications forthwith, failing which the properties of the respondents may be ordered to be attached. Now it has become necessary to advert to the provisions contained in the Administrative Tribunals Act, 1985 (for short, the Act), and the relevant Rules made thereunder. Section 22(3) of the Act provides that the Tribunal shall have, for the purpose of discharging its functions under the Act, the same powers as are vested in a civil court under the Code of Civil Procedure (for short, CPC) 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 on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any 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."

Section 22(3) of the Act vests in the Tribunal the powers of a civil court under the CPC only in respect of the matters specified therein. There is no reference anywhere in the Act to the manner in which the judgements and decrees passed by civil courts can be executed by the Tribunal after the same are received by it on transfer. The provisions contained in Order XXI CPC as to the execution of decrees and orders of civil courts in the absence of any authorisation in regard to them under the Act cannot be invoked by the Tribunal with a view to executing any judgement. The Tribunal has to function within the framework of the provisions contained in the Act and the rules made therein.

8. The learned counsel for the petitioners has drawn attention to Section 27 of the Act, which reads as follows :-

"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 application relates would have been executed."

This section refers to clause (a) of sub-section (2) of Section 20 regarding a final order made by the Government or other authority or officer or other person competent to pass such order under the relevant rules, rejecting any appeal preferred or representation made by a person in connection with his grievance. A perusal of Section 27 reveals that it is for the departmental

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authorities to implement its own decisions or the decisions of the Tribunal and take appropriate steps in that direction. There are no enabling provisions in the Act and the rules made thereunder to resort to the provisions contained in Order XXI CPC for executing the Tribunals' orders or the judgements and decrees passed by the civil courts. The only mode of enforcing implementation of Tribunals' directions and orders is by initiating contempt proceedings against the defaulting authorities. The provisions relating to the execution of decrees and orders, contained in Order XXI CPC, are excepted from the purview of the Act and the rules therein. There are also no provisions in the Act enabling execution of orders passed by the Tribunal by invoking powers available under Order XXI CPC. The orders passed by the Tribunal can only be executed in the manner in which orders referred to in Section 20(2)(a) can be executed and these orders are to be executed by the departmental authorities themselves. In other words, the Tribunals' orders have also to be executed by the departmental authorities as they execute their internal orders and if they failed to do so within the specified period, or at all, powers of punishment for contempt are available to the Tribunal as provided in Section 17 of the Act. There is no averment in Misc. (Execution) Petition No.525/95 to the effect that any action for contempt was initiated by the petitioners therein for enforcing the implementation of the order passed by the Tribunal in the connected OA. The Contempt Petition filed for disobedience on the part of the respondents for the directions issued in OA 314/27 dated 6.1.94 was dismissed as having been withdrawn by a Bench of this Tribunal on 9.8.95.

9. Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987, may be extracted below :-

"The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

The inherent powers referred to above do not include powers as are vested in a civil court under Order XXI CPC. The Tribunal can exercise only those powers which are specifically provided in the Act and the rules therein. So far as the direction for implementation of the orders passed by the Tribunal in the connected Original Applications is concerned, it had already been given while deciding them. Issuance of any warrant of attachment of the properties of the respondents in execution of the orders on the aforesaid Original Applications is not envisaged by the provisions of the Act and the rules made thereunder. We cannot travel beyond the scope of the Act and the Rules to issue an order for attachment of the properties of the respondents, as has ^{been} ~~been~~ prayed for by the petitioners, as the same is not provided for in the Act and the Rules referred to above. The fact that only some of the powers available under the CPC have

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been conferred on the Tribunal, as stated in para-7 above, and not others and that other powers under the CPC can be exercised by the Tribunal only if conferred on it by the Central Government has not been specifically dealt in the judgement reported at 1993 (1) SJJ (CAT) 299, Noor Mohd. v. Union of India and others. Therefore, we hold that these Misc.(Execution) Petitions are not maintainable.

10. These Misc. (Execution) Petitions are, therefore, dismissed.

(O.P.SHARMA)

ADMINISTRATIVE MEMBER

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Chikha
(GOPAL KRISHNA)

VICE CHAIRMAN