

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3986/2013

Reserved on:12.07.2016
Pronounced on: 23.07.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Mahjabeen Akhtar
d/o late Ranaq Ali Siddiqui
1478, Ajmal Khan Street,
Ballimaran, Delhi – 110 006.

...Applicant

(By Advocate: Ms. Harvinder Oberoi)

Versus

1. Union of India through Secretary,
Ministry of Human Resource Development,
'C' Wing, Shastri Bhawan,
New Delhi.
2. The Director,
National Council for Promotion of Urdu Language,
Ministry of Human Resource Development,
Department of Higher Education,
Frogh-e-Urdu Bhvan,
FC-33/9, Institutional Area, Jasola,
New Delhi – 110 025.

...Respondents

(By Advocate: Sh. L.R. Khatana and Dr.Ch. Shamsuddin
Khan)

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

The instant OA has been filed by the applicant under
Section 19 of the Administrative Tribunals Act, 1985
[hereinafter referred to as AT Act] praying for reimbursement
of an amount of Rs.1,14,910/- having been spent on
litigation against the respondents for redressal of her

grievances relating to service conditions in various courts,
details whereof, as given by the applicant, is as under:-

Sl. No.	Name of the Court	Case no.	Advocate Fee	Charges for photocopy/ transportation etc.	Total Amount	Remarks
1	Hon'ble CAT	OA 52 of 2000	Rs.20,000/-	Rs.2560/-	Rs.22,560/-	In favour of the applicant
2	Hon'ble High Court	CWP 3166 of 2001	Rs.35,000/-	Rs.2865/-	Rs.37,865/-	As above
3	Hon'ble CAT	CP(C) 190 of 2002	Rs.10,000/-	Rs.1540/-	Rs.11,540/-	As above
4	Hon'ble High Court	CMP 6390 of 2002	Rs.40,000/-	Rs.2945/-	Rs.42,945/-	As above
5	Hon'ble Supreme Court	SLP(C) 6635 of 2005	Nil	Nil	Nil	As above
GRANT TOTAL					Rs.1,14,910/-	

2. The applicant has contended that as her pay scale was not being revised as per the recommendations of the Fifth Central Pay Commission, she has to approach the Tribunal by filing OA No.52/2000 which was allowed vide order dated 11.09.2000. The matter had to be finally laid to rest before the Hon'ble Supreme Court vide order dated 01.11.2007 in Civil Appeal No.5087/2007 arising out of SLP (C) No.6635 of 2005. The applicant has submits that she has incurred a total sum of Rs. 1,14,910/- towards advocate's fee and charges for photocopy/transportation etc. which she seeks to be reimbursed along with interest @ 10% from the date of first occurrence i.e. 2000.

3. The respondents have filed a counter reply wherein they have rebutted the averments in the OA mainly on the

grounds of limitation, jurisdiction and maintainability. Learned counsel for the respondents submitted that the litigation had commenced in the year 2000 and had been laid to rest finally in the year 2007. The instant Original Application was filed on 16.10.2013 after an interval of more than 6 years and, as such, the application is hopelessly time barred. Moreover, learned counsel for the respondents questioned the jurisdiction of this Tribunal as the National Council for Promotion of Urdu Language [NCPUL]-respondent no.2, being a Society registered under the Societies Registration Act, 1860 is not amenable to the jurisdiction of this Tribunal. Further, there is no cause of action or infringement of rights for which the applicant seeks compensation. Learned counsel for the respondents further submitted that if the instant Original Application were to be allowed, the Tribunal would get overwhelmed by such applications seeking cost for every successful case. He, therefore, stoutly pleaded for dismissal of the OA.

4. We have carefully gone through the pleadings and have also patiently heard the oral submissions so advanced by the learned counsel for both the parties.

5. Insofar as the issue of limitation is concerned, it is an admitted case that the decision of the Hon'ble Supreme Court was given on 01.11.2007 i.e. more than 6 years ago

from the date of filing of the instant OA whereas Section 21 of the AT Act prescribes a period of one year during which a grievance could be adjudicated. Since this is a specialized legislation, it would have precedence over the general law of limitation, and each day's delay will have to be accounted for.

6. In this regard, we would like to place reliance on the decision of *Union of India Vs. M.K. Sarkar* [2010 (2) SCC 59] where the Hon'ble Supreme Court has clearly laid down as under:-

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115:

"The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner,

the bar of limitation or the laches gets obliterated or ignored."

15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

Besides, in an identically placed case in Mrs. Manorama Bhatnagar & Ors. V/s. Govt. of NCT of Delhi [OA No.3479/2011 decided on 21.03.2012, this Tribunal has held as under:-

"12. It is not the case of the applicant that they were promoted to the post of Principal or appointed on officiating basis to that post by the Appointing Authority and had the right to the higher pay scale on the basis of their promotion either on ad hoc or regular or officiating basis. Nor did the stop gap orders declaring them as Heads of School were made by the appointing authority, conferring on them the position of Principal. Neither is it their case that their juniors have been given this promotion to the exclusion of their rightful claim for the promotional post. They are seeking this benefit only on the strength of discharging the duty of the Head of the School/Head of the Office although their substantive capacity was that of Vice-

Principal. In the peculiar facts and circumstances of the case, if such claims will be maintained long after the original cause of action had arisen, it would open a Pandoras box for similar claims to be made by many others. Further, the possibility of seniors raising claim of equal pay cannot be ruled out if the claims of junior employees are allowed after lapse of so many years without examining the issue of limitation.

12. In view of the foregoing discussion, we feel that the claims suffer from delay and laches and the application for condonation of delay cannot be allowed in the absence of satisfactory explanation why the applicants did not raise the claim at the appropriate time. In the circumstances, the O.A. is dismissed on the ground of limitation. No costs.”

7. This is further backed by the decisions in *State of Punjab Vs. Gurdev Singh* [1991 (4) SCC 1]; *Union of India Vs. Ratan Chandra Samanta* [JT 1993 (3) SC 418]; *Harish Uppal Vs. Union of India* [JT 1994 (3) 126] and *Ajay Walia Vs. State of Haryana & Ors.* [JT 1997 (6) SC 592].

8. In *D.C.S. Negi Vs. Union of India & Ors.* [Civil Appeal No. CC 3709/2011 decided on 07.03.2011], the Hon’ble Supreme Court has put an embargo upon the Tribunals that no OA can be admitted unless the question of limitation is sorted out. The relevant portion of the decision is being extracted as under:-

“A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is in within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

In the present case, the Tribunal, entertained and decided the application without even adverting to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant.

A copy of this order be sent to the Registrar of the Principal Bench of the Tribunal, who shall place the same before the Chairman of the Tribunal for appropriate orders.”

9. There is another angle from which the entire case can be approached. Section 21 of the Administrative Tribunals Act, 1985 provides for limitation. It is an admitted position that the Act *ibid* is a specialized legislation meant for a particular purpose. It is also admitted position that where such provisions have been made, the applications will be governed by Section 21 of the Act and not by general provisions relating to limitation as has been held in [Ramesh Chand Sharma V/s. Udham Singh Mamal & Ors. [1999 (8) SCC 304] relevant portion whereof is being extracted hereunder:-

“6. Learned Counsel for the first respondent urged that after his representation was rejected by the Himachal Pradesh Government on 2nd July, 1991, he had made another representation pointing out the factual position and, therefore, the period of limitation needs to be counted not from 2nd July, 1991 but from the date of rejection of his second representation (no date mentioned). He also urged that the vacancy arose because one Shri Sita Ram Dholeta who was holding the post and working as Translator-cum-Legal Assistant went on deputation in March, 1990 by keeping a lien on the said post. This respondent was under a bona fide belief that until the lien comes to an end, there may not be a clear vacancy and, therefore, as and when such vacancy arises, his claim would be considered. It is in these circumstances, he did not file

O.A. at an early date. If there be any delay, the same may be condoned.

7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O. A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see Secretary to Government of India v. Shivram Mahadu Gaikwad, 1995 Supp (3) SCC 231.”

10. Insofar as issue of maintainability of the instant OA is concerned, the contention of the applicant was that she was working in the Department of Secondary and Higher Education, Min. of Human Resource Development. She had been declared surplus and remained attached to the Ministry itself. Therefore, she is not an employee of the respondent no.2. It appears from the perusal of the Hon'ble High Court's decision in WP(C) No.3719/2002 dated 19.08.2004 that the applicant had been appointed as Technical Assistant vide order dated 17.11.1978 in the Bureau of Promotion of Urdu in then pay scale of Rs.425-700. She was later promoted as Research Assistant in the pay scale of Rs.550-900 by order dated 27.01.1982 which pay scale was revised to Rs.1640-2900 on the recommendation of 4th Pay Commission from 01.01.1986. Later it was decided to create the autonomous Body for

Promotion of Urdu Language and the National Council for Promotion of Urdu Language was set up to replace the Bureau (respondent no.2). It was registered as a Society and it started functioning on 01.04.1996 and the Bureau consequentially ceased to exist from 14.09.1996. All employees of the Bureau including the applicant were transferred to NCPUL from that date on Foreign Service terms & conditions and were given an option either to revert to Government Service or to get absorbed in NCPUL. The applicant opted for the Government service vide her letter dated 10.06.1996 upon which she was served with notice dated 19.08.1997 informing her that the post of Research Assistant held by her stood abolished and that she was declared surplus and transferred to surplus staff establishment. On 28.10.1997, her pay was fixed in the revised scale of Rs.5500-9000 w.e.f. 01.01.1996 and she was redeployed as Librarian/Information Assistant in National Gallery of Modern Art in the pay scale of Rs.9500-10500 vide order dated 17.12.1999 passed by the Director, National Gallery of Modern Art. She claimed the pay scale of Rs.6500-10500 w.e.f. 01.01.1996 that had been given to other Research Assistants in the office of Director of Adult Education, Central Hindi Directorate, CSTT and CIII under the Department of Education. Ultimately, the matter was finally put to a quietus by the Hon'ble Supreme Court vide

its decision dated 01.11.2007 in Civil Appeal No.5087/2007 arising out of SLP (C) No.6635 of 2005.

11. We are also to consider additionally that in previous litigations, referred to above, the question of jurisdiction had not been raised. It clearly emerges from the aforesaid facts that the applicant is a Government employee and, therefore, amenable to the jurisdiction of this Tribunal.

12. Now, we come to the core of the issue. It is a matter of common knowledge that the Administrative Tribunals have been created by bestowing the power of Article 226 upon them strictly relating to service matters including the conditions of service, appointments and dismissal of central government employee of such departments which have been notified under the Act *ibid.* Para XIV-A of the Constitution was inserted through Section under Section 46 of the Constitution (42nd Amendment) Act) 1976 w.e.f. March 1, 1977 comprising two provisions i.e. Article 323-A and 323-B. For the sake of clarity, Article 323-A and 323-B are being extracted hereunder:-

“323A. Administrative tribunals.—(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may—

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

323B. Tribunals for other matters.— (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:—

(a) levy, assessment, collection and enforcement of any tax;

(b) foreign exchange, import and export across customs frontiers;

(c) industrial and labour disputes;

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;

(g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

(h) rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants;

(i) offences against laws with respect to any of the matters specified in sub-clauses (a) to (h) and fees in respect of any of those matters;

(j) any matter incidental to any of the matters specified in sub-clauses (a) to (i).

(3) A law made under clause (1) may—

(a) provide for the establishment of a hierarchy of tribunals;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force. Explanation.—In this article, “appropriate Legislature”, in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI.”

13. The powers of the Tribunal have been provided under Section 14 of the Administrative Tribunals Act, 1985 which are being extracted hereunder for the sake of greater clarity:-

“Section 14 in The Administrative Tribunals Act, 1985

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—

*(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court ³⁹ [***] in relation to—*

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation ⁴⁰ [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation ⁴⁰ [or society] or other body, at the disposal of the Central Government for such appointment. ⁴⁰ [Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations ⁴⁰ [or societies] owned or controlled by Government, not being a local or other authority or corporation ⁴⁰ [or society] controlled or owned by a State Government: Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations ⁴⁰ [or societies].

*(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation ⁴⁰ [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court ³⁹[**]) in relation to—*

(a) recruitment, and matters concerning recruitment, to any service or post in connection

with the affairs of such local or other authority or corporation ⁴⁰ [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation ⁴⁰ [or society] and pertaining to the service of such person in connection with such affairs.”

14. Under Section 17 of the Act, the Tribunal has the power to punish for contempt. The powers of the Tribunal under Section 28 include exclusion of powers of the High Courts and other Courts except the Supreme Court and any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any corresponding law for the time being in force. Therefore, the appeal from its decision lay to the Hon’ble Supreme Court.

15. However, there were several challenges to the constitutional validity of the AT Act, 1985. The principal violation being complained related to exclusion of the jurisdiction of the Hon’ble Supreme Court under Article 32 and High Courts under Article 226 of the Constitution. The matter was adjudicated in [1987 SCC (Suppl.) 734] and the Government had agreed incorporate some changes in the Act. The Hon’ble Supreme Court in Sampat’s case (supra) held that it was constitutionally valid to bestow such powers of alternative institutional mechanism till so long as it was ensured that such mechanism would be in effective or real

substitute to what had sought to replace. However, the matter came up in challenge in *L. Chandra's* case (supra) wherein 7th Judges Bench held as under:-

“94. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

However, the fact remains that the Tribunal had continued to exercise powers under Article 226 with a difference that its orders are subject to challenge under Article 226 before the Hon'ble High Courts as the Hon'ble Supreme Court held in *L. Chandra Kumar's* case (supra) that the powers of High

Courts being part of the basic feature of the Constitution were not subject to amendment.

16. We take note of the fact that costs are imposed by High Courts in exercise of inherent powers under Article 226 of the Constitution for abuse of process of law or in wanton harassment caused to the party on account of luxury or other forms of litigation as a part of the order in the same transactions.

17. Insofar as the Tribunal is concerned, it has already been recorded that its powers are akin to that of High Court. The powers of High Court, being a Court of Record, also armed with some additional powers, apart from the inherent powers, enshrined under Article 215 to punish for contempt of its orders. The Tribunal is also armed with the power under Section 226 which is a significant power. The orders passed by the Tribunal are, therefore, have the same force as the High Court. In terms of the corresponding Sections, though these are vested under Sections 17 & 22 of the A.T. Act, 1985, the Tribunal is undoubtedly in a position to exercise these powers but has to be moderated by Section 151 of CPC and principles of other law.

18. It is also to be noted here that courts are governed by the well established principle that every court has the power

to act *ex debito justitiae* to do real and substantial justice. It also has an inherent duty to prevent abuse of the process of court. This is contained in Section 151 of Code of Civil Procedure, 1908, which reads as under:-

“151. Saving of inherent powers of Court.

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

This Section does not confer any power but only indicates that there is a power to make such orders as may be necessary to achieve the ends of justice and also to prevent the abuse of the process of court. The Court is not powerless to grant relief when the ends of justice and equity so demand because the powers vested in the court are of wide range and ambit. The Hon'ble Supreme Court in *Manohar Lal Chopra Vs. Raj Bahadur Rao Raja Seth Hira Lal* [MANU/SC/0056/1961] observed that inherent power has not been conferred on the court; this power is vested in the court by virtue of its duty to do justice between the parties before it. It, however, cannot be exercised where it is inconsistent with or comes with conflict with any of the power expressly conferred upon the court. Further, the power under Section 151 of CPC cannot be exercised as an appellate power; nor can it be involved to pass any administrative and ministerial orders. The powers recognized

under Section 151 of CPC are to be exercised only for meeting the ends of justice and to prevent the abuse of process of the court. The abuse of the process of court is malicious and improper use of some regular legal proceedings to abuse and infer advantage over the opponent. Nothing sort of obvious fraud on part of a petitioner would amount using the process of court maliciously to injury of another person.

19. In the instant case, we do not feel that the process of court has been maliciously used. The applicant was locked with dispute with the respondent relating to applicant's case for promotion and grant of scale. It is true that the stand of the applicant was ultimately vindicated at the level of the Hon'ble Supreme Court but the stand of the respondents can also not be said to be malicious as they were representing as an alternative point of view. The applicant has preferred the claim under MHA OM dated 08.01.1959 read with C.L.313 to G.F.R. [G.I., M.F. file No.F.23(1)-E.II(A)/76]. For the sake of clarity, we quote the relevant extract from the above OM, which reads as under:-

“Subject: Government servants involved in legal proceedings – provision for legal and financial assistance.

1. The question has been raised whether, and if so under what circumstances, Government should provide legal and financial assistance to a Government servant for the conduct of legal proceedings by or against him. The following decisions which have been taken in

consultation with the Ministries of Law and Finance and the Comptroller and Auditor General are circulated for information and guidance.

2. (a) Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant.

Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal instituted against him by the State in respect of matters arising out of, or connected with, his official duties or his official position. Should, however, the proceedings conclude in favour of the Government servant, Government will entertain his claim for reimbursement of costs incurred by him for his defence, and if Government are satisfied from the facts and circumstance of the case that the Government servant was subjected to the strain of the proceedings without proper justification, they will consider whether the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence should be reimbursed to him.

(b) Proceedings in respect of matters not connected with official duties or position of the Government servant.

Government will not give any assistance to a Government servant or reimburse the expenditure incurred by him in the conduct of proceedings in respect of matters not arising out of or connected with, his official duties or his official position, irrespective of whether the proceedings were instituted by a private party against the Government servant or vice versa.

(c) Proceedings instituted by a private party against a Government servant in respect of matters connected with his official duties or position.

(i) If the Government on consideration of the facts and circumstances of the case, consider that it will be in the public interest that Government should themselves undertake the defence of the Government servant in such proceedings and if the Government servant agrees to such a course, the Government servant should be required to make a statement in writing as in Annexure 'A' and thereafter Government should make arrangements for the conduct of the proceedings as if the proceedings had been instituted against Government.

(ii) If the Government servant proposes to conduct his defence in such proceedings himself, the question of reimbursement of reasonable costs incurred by him for his defence may be considered in case the proceedings conclude in his favour. In determining the amount of costs to be so reimbursed, Government will consider how far the court has vindicated the acts of the

Government servant. The conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.”

However, even a plain reading indicates clearly that the purpose of legal assistance is confined to such cases where the act has been committed in due course of exercise of official duties. It is not to be given in such cases where a government employee files cases in personal capacity and seeks reimbursement of the cost of litigation or where he is required to vindicate his personal conduct. Hence, we are afraid that no benefit can accrue to the applicant in this regard.

20. Besides, the claim of the applicant is in form of compensation and cost of litigation not only before this Tribunal but before the Hon'ble High Court and Supreme Court as part of different transactions. The Administrative Tribunals Act, 1985 does not indicate vesting of such powers in this Tribunal. Hence, no such claim can be entered by this Tribunal.

21. We also take cognizance of the fact that if such prayers, as prayed by the applicant in this case, were to be allowed, there would be no end to litigation as each successful OA will be followed by one before this Tribunal praying for cost of litigation. The prayer for granting cost is normally included in the OA itself. Once it was not allowed, there is

end to it. In any case, we feel the Tribunal cannot grant cost for proceedings undertaken before the High Courts and the Supreme Court nor can this claim be claimed under Law of Torts as there can be no tort against the action of the Government. Moreover, this Tribunal does not exercise jurisdiction under Law of Torts.

22. To sum up, we have found that the case of the applicant is belatedly barred by limitation. It does not survive even on merit as the claim of cost already stood rejected in the OA, this Tribunal cannot sanction claims or proceeding initiated before the Hon'ble High Court and Hon'ble Supreme Court.

23. Finding no merit in the instant OA, the same is dismissed with no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(V.Ajay Kumar)
Member (J)

/AhujA/