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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Review Application No. : 290/00004/18 in OA No. 290/00047/17

Jodhpur, this the 19th September, 2018

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

**Jagdish Solanki S/o Shri Lal Chand, aged 43 years r/o 3rd Pole,
Mahamandir, Jodhpur (aggrieved party).**

.....Applicant

By Advocate : Mr T.C. Gupta.

Versus

- 1. Union of India through the Finance Secretary, Ministry of Finance,
Department of Revenue, Government of India, New Delhi-110001.**
- 2. Pr. Chief Commissioner of Income Tax, NCR Building, Statue Circle,
Jaipur-302005.**
- 3. Chief Commissioner of Income Tax, Paota C Road, Jodhpur –
342010.**

.....Respondents

ORDER (By circulation)

The present review application has been by Mr Jagdish Solanki seeking review of common order dated 24.08.2018 passed in Original Applications No. 290/00047/2017 and 290/00048/17 by this Tribunal on the issue of maintainability of these OAs.

2. OA No. 290/00047/17 was filed by an Association viz. 'Income-tax Contingent Employee's Union, Income-tax Office, Jodhpur' (Hereinafter referred to as 'Association') joined by one affected person namely Mr Mahendra Singh as per Rule 4 (5) (b) of CAT (Procedure) Rules, 1987. This Tribunal after hearing the present matter on the issue of maintainability dismissed the OA by an order dated 24.08.2018 passed in OA No. 290/00047/17 as well as 290/00048/17. Since facts mentioned and grounds relied upon on the issue of maintainability of Original Applications filed in the name of 'Association' were same, both the OAs were dismissed by a common order dated 24.08.2018. While dismissing the Original Applications on the issue of maintainability, this Tribunal has passed the following directions:

(i) This order shall not prejudice the right of the person(s) who wish to file application under Section 19 of the Administrative Tribunals Act, 1985 in individual capacity or joins together in Single Application as per rule 4(5)(a) of The Central Administrative Tribunal (Procedure) Rules, 1987.

(ii) Hereinafter, Registry shall carefully scrutinize the

applications filed under rule 4(5)(b) of 'The Central Administrative Tribunal (Procedure) Rules, 1987' readwith rule 7 of 'The Central Administrative Tribunal Rules of Practice, 1993'. A separate application seeking leave of the Tribunal for joining together to pursue the matters as per rule 4(5)(b) of 'The Central Administrative Tribunal (Procedure) Rules, 1987' shall be preferred alongwith OA for consideration of the Court. Registry shall issue order in this regard.

(iii) The cost of Rs 50,000/- imposed upon Mr Jagdish Solanki, President, Income-tax Contingent Employee's Union, Jodhpur shall be deposited by him in Rajasthan State Legal Services Authority within a period of 03 months from the date of receipt of a copy of this order. It is made clear that after producing receipt of aforesaid cost, he can approach this Tribunal.

(iv) Certified copy of this order be placed in all connected matters.

3. In the instant Review Application, the facts pleaded and grounds relied for review of the order dated 24.08.2018 are as follows:
Para 3,4,5 :

'Under any sections of the CAT Act the Bench has no power to impose such cost. Bench has passed combined order in OA No. 47/2017 and 48/2017 and has imposed cost. Thus the order passed is vague, uncertain, ambiguous, illegal and erroneous.

Para 6 : The Association is not required to consult every member, obtain signature and obtain consent of every member for filing the application.

Para 7 : No separate application seeking leave of the Tribunal for joining together to pursue the matter as per rule 4(5)(b) is required in view of Full Bench judgment of CAT dated 22.04.2009 in MA No. 11/2008 in OA No. 19/2008. Applicant further stated in the said para that : "It seems that the Bench/Member due to her experience in Mumbai Bench has passed such illegal and erroneous order as per illegal practice being followed there, ignoring the full Bench decision of Jodhpur Bench."

Para 8-9 : 'As per Union resolution, there is no bar or restriction on any member to file separate application or not'. The Registry did not point out any defect or shortcoming'.

Para repeat 9: 'Further, the Bench has travelled beyond its jurisdiction in the matter by considering the interest of the other members, most of whom also have signed the resolution passed by the association for filing the OA.'

Para 11 to 13: In these paras, the applicant has relied on Hon'ble Apex Court judgment in case of Ajit Kumar Rath Vs State of Orissa and stated that power of review available to Tribunal is same as Section 114 readwith Order 47 CPC and in view of the said judgment, patent error of act to be corrected by the Bench. He has also relied on Hon'ble Delhi High Court order, wherein it was held that action/order

based on factually erroneous premise, is not sustainable in law.

Para 14 : The applicant prayed for review of order dated 24.08.2018. Furthermore, it has also been prayed that matter may be heard in open court by Division Bench not consisting of myself as one of the Member.

4. I have considered the facts pleaded and grounds raised in the Review Application presented before me by circulation.

**5. Rule 24 of 'The Central Administrative Tribunal (Procedure) Rules, 1987' notified in exercise of the powers conferred by Clauses (d), (e) and (f) of sub-section (2) of Section 35 and Clause(c) of Section 36 of the 'Administrative Tribunals Act, 1985' provides that :
24. Order and directions in certain cases. - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.**

Therefore, to prevent abuse of the process of the Tribunal or otherwise to secure the ends of justice, this Tribunal is empowered to pass such order which may include order to pay costs. This power is not conditioned or controlled by any other rule/section nor is curtailed. No doubt, this jurisdiction is of exceptional nature and is to be exercised in exceptional cases for achieving the purposes stated in the rules. Original Application No. 47/2017 and 48/2017 have been filed by the same 'Association' and the same are found to be not maintainable. The review applicant has stated that Tribunal/Bench travelled beyond its jurisdiction by pleading the fact that there is no rule to file the names of the members of the association, which are neither required nor possible. If it is not possible for any 'Association' to know the names of its members, number of aggrieved persons then how come it is possible to pass resolution and therefore, the veracity of authorization of the President on behalf of all the members or aggrieved persons is questionable. The resolution of the Association, which is condition precedent for verification of the Original Application filed by the 'Association', was found to be wanted on various grounds. Rule 7 of 'The Central Administrative Tribunal Rules of Practice, 1993' provides that :

Production of authorisation for and on behalf of an Association.—Where an application/pleading or other proceeding purported to be filed is by an Association, the person or persons who sign(s)/verify(ies) the same shall produce along with such application, etc., for verification by the Registry, a true copy of the resolution of the Association empowering such person(s) to do so: Provided the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorisation.

The resolution placed on record by counsel appearing on behalf of the Association-applicant under his signature (which prayed to be treated part of these OA for verification purposes) contained indecent

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comments on the Tribunal. The other aggrieved members of the Association filed separate Original Applications for the same cause of action and this created multiplicity of applications and refuted to be part of any such Resolution. In these circumstances, the only identifiable person who claimed to be the President of the 'Association' and signed the authorization was Mr Jagdish Solanki, President, Income-tax Contingent Employee's Union, Income-tax Office, Jodhpur.

The relevant portion of the Resolution placed on record in OA No. 290/00329/15 (all the Original Applications filed by the 'Association' wherein preliminary objection of maintainability was raised by the respondents, were connected) is reproduced below :

vkt fnukad 11-04-2018 dks budeVSDI daVhtsaV ,EIykbt ;wfu;u ds lnL;ksa dh ehfVax gqbZA ftlesa fuEu eqn~nkSa ij fopkj foe''kZ fd;k x;k RkFkk vko''d fu.kZ; fy, x,A

1- ;wfu;u ds v/;{k egksn; Jh txnh''k lkSyadh us crk;k fd orZeku esa ;wfu;u ds uke ij fuEu dsl CAT] tks/kiqj esa py jgs gSa%&

1& 329@2015

jsX;wykbZts''kuA

2& 17@2017

dUVsEIV cksulA

3& 18@2017

dUVsEIV c<k gqvk osruA

4& 47@2017

01-01-2006 ls c<k gqvk osruA

5& 48@2017

01-01-2016 ls 18]000@& :i;s osruA

6& 131@2017

lIrk g esa ,d fnu dh loSrfud NqV~VhA

7& 368@2017

cksul ij C;ktA

8& 369@2017

c<s gq, osru ij C;ktA

fnukad 1-2-2018 dks CAT cSap esa dsoy ,d lnL; Jh lqjs''k dqekj eksaxk ekStwn FksA dSV ds fu;ekuqlkj jsX;wykbZts''ku ds dsl dsoy Mcy cSap lqu ldrh gSA flaxy cSap dks ;s dsl lquokbZ dk vf/kdkj ugha gSA fu;e fo:) fnukad 1-2-2018 dks ;g dsl Jh eksaxk dh flaxy cSap esa yxk;k x;kA Mcy cSap dk ;g dsl flaxy cSap esa D;ksa o fdlds dgus ls yxk bl ckjs esa la;qDr iath;d lesr CAT dk gj deZpkjh dqN Hkh crkus esa vleFkZ gSA ;wfu;u ds odhy Jh xqIrk ds fojks/k djus ij Hkh Jh eksaxk us fu;e fo:)] tcjnLrh bl Mcy cSap ds dsl dh lquokbZ dh o Jh xqIrk dks cksyus Hkh ugha fn;kA

fnukad 1-02-2018 ds vkns''k esa Jh eksaxk us ;wfu;u ds vf/koDrk dks ckj&ckj O;fDrxr :i ls ;wfu;u ds ckjs esa tkudkjh nsus o ''kiFk i= nsus dk vkns''k fn;k gS tks fd fu;e fo:)] xSj dkuwuh gS o gB/kfeZrk gSA ;g OA Jh xqIrk us ugha cfYd ;wfu;u us is''k dh gS o ;wfu;u@izkFkhZ gh dksbZ tkudkjh nsus esa l{ke gSA Jh ekasaxk ds vkns''k xSj dkuwuh o euekus gSa] fQj Hkh Tribunal dh e;kZnk dks ns[krs gq, ;wfu;u ds lafo/kku dh izfr CAT esa is''k dh tk;sxhA izkFkhZ ua 2 Jh deyiky dks odkyrukek lkbZu djus dk Authorization igys dh OA ds lkFk is''k fd;k x;k gSA bl laca/k esa izLrko dh izfr Hkh CAT esa is''k dj nh tkosxhA

OA ua 47@2017] 48@2017] 131@2017] 368@2017] 369@2017 o CP 17@2017 o 18@2017 ds fy, Hkh OA No. 329@2015 dk tokc ykxw gksrk

gSA

The other members of the Association had to deny that they had not been consented. The veracity of Resolution passed could not be ascertained as it was an unsigned document only bearing the signature of Mr T.C. Gupta, counsel for the applicant. Further, most of these persons filed separate original application for the same cause of action which 'Association' was also pursuing as per Rule 4 (5) (b) of CAT (Procedure) Rules, 1987 and indirectly filed pleadings on their behalf in certain way. This multiple litigation filed by so-called 'Association' for same cause of action without consulting (its so-called) members by way of passing any valid resolution was blatant misuse/abuse of Rule 4 (5) (b) of CAT (Procedure) Rules, 1987. Since all these issues have been considered by the Tribunal at the time of final hearing on the issue of maintainability, the same issues cannot be agitated by way of Review Application. Hence, cost imposed upon Mr Jagdish Solanki, in the capacity of President of 'Association' who not only did not make any prayer for joining together in Single Application orally nor in pleadings but signed the authorization on behalf of the Association without establishing the same by way of Resolution passed by the 'Association'. Furthermore, this so-called resolution filed by the counsel for the applicant under his signature on behalf of the President of the 'Association' contained indecent comments on the Hon'ble Member as well as functioning of the Tribunal, which is unwarranted and cannot be accepted.

6. As per Rule 7 of 'The Central Administrative Tribunal Rules of Practice, 1993', an 'Association' filing application before this Tribunal under Rule 4 (5) (b) of 'The Central Administrative Tribunal (Procedure) Rules, 1987' is enjoined upon to file a true copy of resolution of the Association empowering such person(s) to do so for verification. Although no reference was made during course of hearing in the OA regarding judgment of Full Bench but in review application, reference has been made by the review applicant to the judgment of Full Bench on the issue that 'Whether separate Misc. Application is required to seek 'permission' to join-together in on O.A.?' passed in MA No. 11/2008 in Original Application No. 19/2008 (Kishan Lal & Ors Versus I.C.A.R. & Ors) pronounced on 22nd April, 2009. While noticing Rule 7, Chapter-III of 'Central Administrative Tribunal Rules of practice 1993', the Full Bench held that :

"On the same analogy, no separate application is required for granting permission under Rule 4(5) (a) of CAT Procedure Rules."

It is clear that Full Bench in the peculiar facts and circumstances of that case confined itself to Rule 4(5) (a) of the CAT Procedure Rules wherein individual having common cause of action can agitate the same in Single Application without insisting separate application from such persons joining together in Single Application. The Full Bench further observed that :

..... As already held above, care can always be taken whether the joint application is maintainable or not at appropriate stage when the Tribunal proceeds to entertain the O.A. on merit after taking into consideration the objections, if any, raised by the respondents or in case the Bench is of the opinion that joint application on behalf of the persons is not maintainable.

Thereafter, the Full Bench answered the aforesaid issue in the following manner :

"There is no need to file separate Misc. Application to seek permission to join together in one Original Application, if necessary facts under the heading 'Facts of the case' are incorporated in terms of Rule 4(5) of CAT (Procedure) Rules."

After going through the judgment of Full Bench, it is evident that it was passed in different facts and circumstances from the present case.

Full Bench had taken into consideration Rule 4 (5) (a) of CAT (Procedure) Rules, 1987 and nowhere considered the issues of persons joining together in Single Application under the umbrella of 'Association' as per Rule 4 (5) (b) of CAT (Procedure) Rules, 1987. Hence, the judgment of Full Bench cited by the review applicant is not applicable in the facts and circumstances of the present case and as the same is based on completely different issue.

7. The Apex Court in the case of S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, reported in (2009) 10 SCC 464 in paragraphs 12 and 26 has held as under :-

"12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.

26. As held earlier, if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self-evident, review is permissible and in this case the High

Court has rightly applied the said principles as provided under Order 47 Rule 1 CPC. In view of the same, we are unable to accept the arguments of learned Senior Counsel appearing for the appellant, on the other hand, we are in entire agreement with the view expressed by the High Court."

The Apex Court in the aforesaid case has held that an error contemplated under Rule 1 Order 47 of Code of Civil Procedure, 1908 for permissibility of a review must be such, which is apparent on the face of the record and not an error which has to be fished out and searched and it has been further held that the error must be an error of an inadvertence. In view of settled position of law, order dated 24.08.2018 cannot be reviewed.

8. By way of instant review application, it has also been prayed that matter may be heard in Division Bench in open court not comprising the Member who passed the order dated 24.08.2018. Rule 17 of CAT (Procedure) Rules, 1987 provides procedure for review, the relevant portion is reproduced below :

17. Application for review.—

(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

(2) A review application shall ordinarily be heard by the same Bench which has passed the order, unless the Chairman may, for reasons to be recorded in writing, direct it to be heard by any other Bench.

(3) Unless otherwise ordered by the Bench concerned, a review application shall be disposed of by circulation and the Bench may either dismiss the application or direct notice to the opposite party.

It is evident that as per CAT (Procedure) Rules, 1987, the Review Application shall ordinarily be disposed of by circulation. There are no valid grounds made out by the applicant to hear the review application in open court. Furthermore, applicant has to learn to accept the verdict of the Court if he has chosen to move the court in a certain way. He can choose the forum of his choice but not the Judge. It is the duty of the counsel to take the burden of an Officer of the Court and protect the majesty of the Court. The review applicant has pleaded in the application that :

"It seems that the Bench/Member due to her experience in Mumbai Bench has passed such illegal and erroneous order as per illegal practice being followed there, ignoring the full Bench decision of Jodhpur Bench."

It can be seen that the applicant has repeated his indecent comments time and again. Indulging in making vague insinuations on the role of a Judge with a view to embarrass them warrant severest of the

reprimands. Applicant Association on the advice of his counsel is repeating itself again on this count. In Chetak Contruction Ltd. vs. Om Prakash & Ors., (1998) 4 SCC 577, the Hon'ble Apex Court deprecated the practice of making allegations against the Judges and observed as under:

"Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order." Any criticism of the judicial institution, couched in a language which is apparently contemptuous, ultimately results in undermining the credibility of the institution. The applicant does not deserve any leniency in the name of public interest and deserve severest reprimand to refrain from such acts.

9. In view of discussions hereinabove made, I do not find any error apparent on the face of record, in the order passed by the Bench dated 24th August, 2018. If the applicant has any grievance regarding the view taken by the Bench, he is at liberty to challenge the same at appropriate forum. He cannot be allowed to re-argue the case all over again, in the Review Application. The Original Application was filed under his authorization as President in the name of Association and now, he cannot seek review of order in personal capacity. Accordingly, instant review application is dismissed.

10. A copy of this order be made available to the respondents also..

**[Hina P. Shah]
Judicial Member**

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