

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. M.A. 169 of 2018
M.A. 170 of 2018
O.A. 1133 of 2014

Date of order : 12th October, 2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

In the matter of :

Aranya Basu Roy,

... Petitioner

Versus

Union of India & ors.

... Respondents

- AND -

In the matter of:

An application for recalling of the order and judgment dated 20.12.2016 passed by the Hon'ble Central Administrative Tribunal, Calcutta Bench, comprising the Hon'ble Justice Shri Vishnu Chandra Gupta and Hon'ble Ms. Jaya Dasgupta in Original Application being O.A. No. 350/01133 of 2014 (Aranya Basu Roy -Vs- Union of India & ors.)

- AND -

In the matter of:

1. National Institute of Technology (NIT),
Durgapur, represented through its Registrar,
Office of P.O. - Durgapur,
District - Burdwan West,
West Bengal - 713209.
2. The Registrar,
National Institute of Technology (NIT),
Durgapur, Office at Mahatma Gandhi Avenue,
P.O. - Durgapur, District - Burdwan West,
West Bengal - 713209.

- Versus -

1. Aranya Basu Roy,
Son of Late Subodh Basu Roy,
Residing at Devaranya, 201, Sub-Registrar
Office Road, P.O. & P.S. - Raghunathpur,
District - Purulia,
Pin Code - 723 133.

.. Respondent

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2. Union of India,
Service through the Secretary,
Ministry of Human Resource & Development
(MHRD), Department of Higher Education,
128 Wing, Shastri Bhawan,
New Delhi – 110 001.
3. Secretary,
Ministry of Human Resource & Development
(MHRD), Department of Higher Education,
128 Wing, Shastri Bhawan,
New Delhi – 110 001.
4. All India Council for Technical Education
(AICTE), represented by the Chairman,
Having its office at 7th Floor,
Chanderloke Building, Jhanpath,
New Delhi – 110 001.
5. The Advisor (RIFD),
All India Council for Technical Education,
4th Floor, East Tower, NBCC Place,
Bhisham Pitamaha Marg, Pragati Vihar,
Lodhi Road,
New Delhi – 110 003.
6. The Director,
Technical Education,
Government of India,
Ministry of Human Resource Development
(MHRD), Department of Higher Education,
Technical Section – II,
Shastri Bhawan,
New Delhi – 110 001.
7. The Director General,
Institute of Applied Manpower Research,
Sector : A-7, Plot No. 25,
Institutional Area, Narela,
New Delhi – 110 040.

.. Proforma Opposite Parties

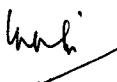
For NIT Durgapur, applicant : Mr. A. Chakraborty, Counsel
In M.A. No. 169/2018, 170/2018

For the Respondents : Mr. B. Bhushan, Counsel
Applicant in O.A. 1133 of 2014

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

M.A. No. 169 of 2018 has been filed in connection with O.A. No. 1133 of 2014 since disposed of on 20.12.2016 by this Tribunal. In the said M.A., the



applicant, NIT Durgapur, has prayed for recalling of the order and judgment dated 20.12.2016 of this Tribunal. M.A. No. 170 of 2018 has been filed praying for condonation of delay in filing the recall application No. 169 of 2018.

2. Heard Ld. Counsel for NIT Durgapur, applicant in M.A. No. 169 of 2018 and M.A. No. 170 of 2018 as well as respondents (applicants in O.A. No. 1133 of 2014).

3. At the outset, Ld. Counsel for the applicant for NIT Durgapur furnishes a copy of the orders of the Hon'ble Supreme Court of India in SLP (C) Diary No. 9899/2018 wherein the orders as mentioned below were issued:-

" The Central Administrative Tribunal had passed orders dated 20.12.2016 which the respondents alleged are not complied with by the petitioners. They filed contempt petition. In the contempt petition, the Tribunal has passed impugned order dated 27.2.2018 directing the petitioner to file compliance report. It is contended by Mr. Jayant Bhushan, Learned senior counsel appearing for the petitioners that insofar as orders dated 20.12.2016 are concerned, the petitioners have filed application for recall which fact is noted in the impugned order also but this application has not been decided. He submits that there would not be any question of compliance unless the application for recall is decided.

Having regard to the aforesaid statement and the facts appearing on record, we are of the opinion that the orders dated 27.2.2018 would not be given effect to till the time application for recall of orders dated 20.12.2016 filed by the petitioners is decided.

With these observations, this special leave petition is dismissed."

4. The applicant, NIT Durgapur, through its M.A. would submit as follows:-

That, an O.A. bearing No. 1133 of 2014 had been filed seeking the following relief:-

"(a) An order do issue directing the respondents, their agents and/or assigns more particularly the All India Council of Technical Education (a statutory body) (in short AICTE) and the Director, NIT, Durgapur to rescind, cancel and/or withdraw the memo bearing No. RIFD/NTMIS/2010-11 dated 11.3.2011, issued by the Director (RIFD), AICTE forthwith;

(b) An order do issue directing the respondents, their agents and/or assigns more particularly the All India Council of Technical Education (a statutory body) (in short AICTE) and the Director, NIT, Durgapur to act in terms of the recommendation of the Bhat Committee forthwith;

(c) An order do issue directing the respondents, their agents and/or assigns more particularly the Director, NIT, Durgapur to absorb the applicant in the regular role and in the post commensurate to the qualification and post of Computer Operator-cum-Programmer, forthwith;

(d) An order do issue directing the respondents, their agents and/or assigns more particularly the All India Council of Technical Education (a

statutory body)(in short AICTE) and the Director, NIT, Durgapur to release salary of the applicant month by month as per the recommendation of the 6th Central Pay Commission and arrear salary and other service benefits to the applicant forthwith;

(e) An order do issue directing the respondents, their agents and/or assigns more particularly the All India Council of Technical Education (a statutory body) (in short AICTE) and the Director, NIT, Durgapur to reckon the short fall of the qualifying service from the past service for the purpose of grant of pension."

And that, this Tribunal, upon hearing the Ld. Counsel, had passed an order dated 20.12.2016 whereby the respondent to the M.A./applicant to the O.A. was permitted to withdraw the application on the basis of concession given by the Ld. Counsel of NIT Durgapur.

Ld. Counsel for NIT Durgapur further submits that, in the year 1983, a Scheme for National Technical Manpower Information System (NTMIS) was set up to provide manpower information on a continuing basis to enable concerned authorities to suitably plan for technical manpower development. That, thereafter, certain selected Government Engineering Colleges including NIT Durgapur were established as nodal centres for NTMIS. The Scheme was later funded by All India Council for Technical Education (AICTE) and the respondent No. 1 (applicant to the O.A.) was engaged in August, 1989 in such Scheme and was posted as a Computer Programmer on temporary basis in the pay scale of 650-1200/-. That, the Scheme continued till 31.3.2013 but ceased to be operational thereafter as necessary funding was stopped by the AICTE.

5. Ld. Counsel for NIT Durgapur submits that the prayer for recall is being made on the following grounds:-

(a) That the Tribunal does not have any jurisdiction over NIT Durgapur and hence the order dated 20.12.2016 is a nullity due to inherent lack of jurisdiction of the Tribunal.

(b) That, as neither the Institution nor its authorities were made parties to the Original Application, the Original Application suffers from non-

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joinder of parties and that even though the Project Officer Nodal Centre and Dean Administration at NIT Durgapur were made parties as such posts were non-existent after March, 2013, the O.A. continues to suffer from non-joinder of parties.

(c) That, as certain important and relevant points were not placed before the Tribunal at the relevant point of time hence, the prayer for recall.

6.(I) As the order dated 20.12.2016 is the subject of the recall application, the extracts of the order dated 20.12.2016 with reference to O.A. No. 1133 of 2014 are reproduced below:-

"Nos. O.A. 350/01133/2014 & O.A. 350/01139/2014:

We have heard the Ld. Counsel for the parties and perused the records.

2. Ld. Counsel for AICTE has categorically admitted that these two posts on which the applicants, Shri Aranya Basu Roy and Shri Anupam Bageji, were recommended by the AICTE and have been allocated budget of payment of salary from time to time. The Ld. Counsel for NIT, Durgapur categorically stated before us that they have resolved to absorb the applicants by adopting resolution dated 8.7.2016 (a copy of which is extracted hereinabove, subject to withdrawal of the O.A.).
3. The Ld. Counsel for NIT, Durgapur also undertook that NIT, Durgapur shall pay the salary after absorption of these two applications from their own funds.
4. In view of the aforesaid undertaking, the Ld. Counsel for the applicant is permitted to withdraw the O.A. with the aforesaid observation."

Upon an examination of the said order, the following is inferred:-

- (i) That, the Ld. Counsel for AICTE had categorically submitted that the post occupied by the applicant had been recommended by the AICTE and the AICTE had allocated budget for payment of salary from time to time. It is important to note here that on 20.12.2016 when the order was passed, the Ld. Counsel for AICTE did not aver that there were no funds to pay the applicant in the O.A. which is contrary to the submission made in the recall application.
- (ii) That the Ld. Counsel for NIT Durgapur categorically stated before the BAR and the Bench that they have resolved to absorb the applicants by adopting a resolution dated 8.12.2016 subject to withdrawal of the O.A.

As extracted and quoted by the Tribunal, the said resolution dated 8.7.2016 is recorded below:-

Handwritten signature

NATIONAL INSTITUTE OF TECHNOLOGY, DURGAPUR
MAHATMA GANDHI AVENUE, DURGAPUR – 713 209, INDIA

No. NITD/Estt./Nodal Centre/2016

Date: July 8th, 2016

NOTE SHEET

Ref. No. 33-2/2013-TS-II, MHRD, GOI, dated 09.12.2013.

Sub: Absorption/adjustment/redeployment for the staff of
Nodal Centre.

Enclosed please find the letter No. 33-2/2013-TS-II dated 09.12.2013 issued by the Director (TE), MHRD, Govt. of India that in connection with an MoU as has been signed between All India Council for Technical Education (AICTE) and Institute of Applied Manpower Research (IAMR) for a new scheme namely National Information System on Technical Research (NISTECHR) with effect from 1st April, 2013 in place of existing Scheme of National Technical Manpower Information System (NTMIS).

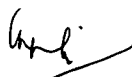
On the Basis of said MoU, the erstwhile NTMIS staff members have made several representations to MHRD with request to look into the matter of their continuation of the employment in the new scheme (NISTECHR).

A committee was constituted to look into the matter of the employees of Nodal Centres and on the basis of the recommendations of the said committee, MHRD, Govt. of India requested the Directors of the concerned institutions to assess the possibility of redeploying the erstwhile NTMIS staff members against existing vacancies of the Institute vide their letter No. 33-2/2013-TS-II dated 09.12.2013.

On the basis of the MHRD letter dated 9.12.2013, the Board of Governors in its 30th meeting held on 24.1.2014 vide item No. 30.11 had approved for redeployment/absorption of NTMIS staff members of NIT Durgapur.

An internal committee of the Institute vide order No. NITD/Estab/3718 dated 31.12.2013 had been constituted with four members to look into the details (name, designation, date of birth, date of joining, educational qualification & scale of pay) regarding redeployment / absorption of NTMIS staff members of NIT Durgapur. The Chairman of the said committee had submitted its assessment report on 23.1.2014 to the Registrar of the Institute.

In connection with relaxation of age for recruitment of certain categories of employees who are already engaged at the Institute through contract/NTMIS, the Board of Governors in its 42nd meeting held on 25.5.2016 vide item No. 42.06 has recommended that the individual of erstwhile NTMIS staff may be absorbed as per their qualification and subject to existing vacancies as has been done in other NITs.



Considering MHRD letter No. 33-2/2013-TS-II dated 09.12.2013, NIT Suranthal has adjusted/re-deployed two non-teaching staff in NITK, Suranthal w.e.f. 2.3.2014, NIT Srinagar has also made similar adjustment as per the instructions of Government of India vide MHRD letter No. ibid and thusque has also been approved by the Chairman BOG. In connection with absorption of NTMIS staff members to the host Institute, MHRD, Govt. of India vide Order No. 33-2/2013-TS-II dated 20.5.2016 placed the Order for absorption against suitable posts based on their educational qualification and experience as recommended by the Bhat Committee.

Considering letter No. 33-2/2013-TS-II dated 09.12.2013 issued by the MHRD, Govt. of India Order No. 33-2/2013-TS-II dated 20.5.2016 issued by the same Ministry that absorption be made against suitable post based on their educational qualification and experience as recommended by the Bhat Committee. Hence, copy of existing vacancies in post of Non-Teaching cadre is enclosed herewith.

However in regard to absorption of the employees of Nodal Centre to NIT Durgapur, a discussion between Prof. A. Gangopadhyay and Mr. Rajasekhar Mantha, the legal adviser of the Institute was held and as per legal opinion, three person of Nodal Centre of NIT, Durgapur have to withdraw their case from CAT to avoid AICTE from meddling in the matter any further.

On the basis of the fact cited above, it is recommended for the absorption of three staff member of Nodal Centre to suitable posts in existing vacancies of the Institute considering MHRD letter No. 33-2/2013-TS-II dated 9.12.2013 and Order No. 33-2/2013-TS-II dated 20.05.2016.

Submitted for kind perusal and consideration please.

(Junior Assistant)"

- (iii) Ld. Counsel for NIT Durgapur also undertook that NIT, Durgapur shall pay salary after absorption of the two applicants from their own funds.
- (iv) Hence, the Ld. Counsel for the applicant, in view of such aforesaid undertaking was permitted to withdraw the O.A. with the aforesaid observation.

Hence, the operational part of the order was to permit the Ld. Counsel for the applicant to withdraw the O.A. on the basis of the undertaking of NIT,

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Durgapur. It is noted here that the orders of the Tribunal are with reference to the applicant in the O.A. 1133 of 2014 and not upon NIT, Durgapur.

(II) In **R.S. Nayak v. A.R. Antulay (1982) 2 SCC 183** a Seven Member Constitutional Bench of the Hon'ble Apex Court reiterated its powers to recall judgments under certain circumstances:

"The injustice done should be corrected by applying the principle 'actus curiae reinem gravabit' namely, an act of the Court shall prejudice no one."

In **Sri Budhia Swain & ors. v. Gopinath Dev & ors. 1999 (4) SCC 396**, the Hon'ble Apex Court laid down that while an inherent power to recall is vested on Tribunal/Courts, the said power will be exercised in the following circumstances:-

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- (i) That the order was obtained by fraud practised upon Court;
 - (ii) When court is misled by the party;
 - (iii) When Court makes a mistake that prejudices a party.

In the matter of the order passed on 20.12.2016 in O.A. No. 1133 of 2014, each of the three situations are applied and we conclude as follows:-

- (i) The applicant did not obtain this order of withdrawal by practising any fraud upon the Court. Rather, the applicant withdrew the O.A. on the basis of an undertaking by NIT Durgapur averred before the BAR and the Bench at the time of hearing.
- (ii) The Tribunal was not misled by the applicant as there are no averments to the same. It would be a remarkable volte face of NIT to contend that they had consciously and deliberately misled the Tribunal.
- (iii) There is nothing to prove that the Tribunal had made a mistake which had prejudiced the applicant in withdrawing the application, as

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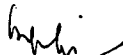
such withdrawal was conditional on the undertaking by NIT Durgapur.

Hence, applying the above ratio, we find that as the Court's orders were binding only on the applicant and as the applicant had not averred that any prejudice was caused to him by the said orders of the Tribunal, there is little scope for the Tribunal to exercise powers of recall in this case.

III. The applicant, NIT Durgapur had vociferously argued that the Tribunal had no jurisdiction over NIT Durgapur, that the Original Application suffered from non-joinder of parties and also that important and relevant points had not been advanced at the time of hearing the O.A.. If the proposition that the Tribunal had no jurisdiction over NIT Durgapur is accepted, any scope of further submission of points/documents/or joinder of parties does not arise. The recall petition accordingly is riddled with contradictions.

IV. It is reiterated that the Tribunal under no circumstances had passed any orders on NIT Durgapur and if NIT Durgapur represented itself through its Ld. Counsel and made certain averments which are denied, at a later stage, the Tribunal will not entertain a Recall Application to such effect.

7. The delay application reveals that although the order dated 20.12.2016 was proposed to be recalled, the recall application was filed on 27.2.2018 by which a delay of about 15 months is registered. The only explanation offered for condonation of delay was attributed to changes in the management of NIT Durgapur that reportedly precluded decision making. As a recall application is not based on decisions on finance or governance requiring consistent views of the management, the explanation offered in the delay application is not convincing. It is equally interesting to note that the recall application was filed on 27.2.2018, the very date on which the Tribunal had called for a compliance report in CPC No. 27 of 2017.



8. The Recall Application is hence dismissed. The prayer of condonation of delay is disposed of accordingly.

M.A. No. 169 of 2018 and M.A. No. 170 of 2018 being disposed of, CPC No. 27 of 2017 arising out of O.A. 1133 of 2014 be listed after 4 weeks.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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