

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Miscellaneous Application No.290/00013/2019
(In C.P. No. 290/00026/2016 filed in OA No. 290/00429/13)**

Reserved on : 10.04.2019

Date of Order: 15th April, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Fayaz Ali S/o Late Shri Anwar Ali, Aged about 68 years, b/c Muslim, R/o Vill. + PO – Ahore, District – Jalore. (Official Address:- Worked as SPM Post Office Jalore, under Postal Department).

.....Applicant

By Advocate : Mr S.P. Singh.

Versus

1. Kaveri Banerjee, Secretary, Govt. of India, Ministry of Communication, Deptt. of Posts, Dak Bhawan, New Delhi.
2. Lt. Col. DKS Chauhan, CPMG, Rajasthan Circle, Jaipur.
3. D.R. Suthar, SPO, Pali Division, Pali.

.....Respondents

ORDER

The present Miscellaneous Application has been filed for review of order dated 06.12.2018 passed in Contempt Petition No. 290/00026/16 for alleged non-compliance of order dated 05.11.2015 passed in OA No. 290/00429/2013 whereby the MA-applicant has sought following relief :

“It is, therefore, most respectfully prayed that the application for recalling order may kindly be allowed and order dated 06.12.2018 (Annex. MA/1) may kindly be amended. The filing fresh OA as directed, may kindly be amended and if fit and proper the contempt petition may kindly be re-considered.

Any other appropriate order which this Hon'ble Court deems fit in favour of the petitioner may also be passed.”

2. The present MA was listed before this Tribunal on 10.04.2019 for admission and issuance of notices, if any. However, the matter was heard on the said date and the same was reserved for orders. While going through the present MA, we find that the applicant is seeking review/recall of order dated 06.12.2018 passed by this Tribunal in Contempt Petition No. 290/00026/16 on merits which is also evident from the relief sought by the applicant in the MA under our consideration. Before going into the merits of the issue, it is worthwhile to examine whether any application for recalling of order is maintainable in contempt matters.

3. While going through the relevant Rules of Tribunal, we find that there is no such power to recall/review the order passed in contempt petition on merits. Since the contempt petition was dismissed on merits, neither it is the case of the applicant that his petition was not decided on merits nor he points out any clerical mistake in the order dated 06.12.2018 passed in C.P. No. 290/00026/2016. Further, we are fortified in our view that no review in contempt petition shall lie, under the relevant rules of the Tribunal when the same is recalled on merits, by the answer of Full Bench which was constituted at CAT Lucknow Bench, Lucknow in the Civil Misc. Recall Application No. 3242/2011 in Civil Misc. Contempt Petition No. 164/2007 in OA No. 1111/2000 (Satyapal Singh & Ors Vs. I.M.G. Khan & Ors), wherein a specific reference was made to the Full Bench that "Whether recall application is maintainable against the order passed in contempt case or not." after differencing views on the issue.

4. The Full Bench constituted in the said case taking into consideration Administrative Tribunals Act, 1985, CAT (Procedure) Rules, 1987 and Central Administrative Tribunal (Contempt of Courts) Rules, 1992, as well as the various judgments of Hon'ble Supreme Court, answered the question framed in following terms by order dated 11.06.2013:

22. It may be mentioned here that the Administrative Tribunal have been created by amending Constitution of India. By means of 42nd amendment Act, 1976, Articles 323-A and 323-B have been incorporated in the Constitution for the purpose of creation of Administrative Tribunal., The framers of the Administrative Tribunal Act and Rules provided for an express and specific power in the Act itself to ensure that no order passed by the Tribunal may go un-executed in letter and spirit. The relevant Section 27 of the Act, 1985 reads as under:-

27. Execution of Orders of a Tribunal 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) or 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.

For willful disobedience of an order passed by a Tribunal, the requisite power to punish for contempt have been separately provided under section 17 of the Act, 1985 as already discussed.

23. Finally, therefore, as discussed before, firstly a Tribunal should refrain itself from dismissing in default a contempt petition particularly after issuance of show cause notice as discussed in detail in para 19 of this order. However, if a contempt petition has been dismissed for default by a Tribunal, the absence of vesting /conferment of power of review /recall shall not come in the way of recalling such order because such an order is void ab-initio and nonest and the root from which the power flows is the anxiety to avoid injustice. The justice is a virtue which transcends all barriers. Even the law bends before justice and in such matters it becomes the constitutional and legal obligation of a Court/ Tribunal to do the needful as laid down in the case of S. Nagraj (supra).

24. In view of the discussions made in the foregoing paragraphs, it is our considered view that **recall application is not maintainable**

against an order passed in a contempt case decided on merits. We would like to add that Tribunal should refrain itself from dismissing a contempt case for default, particularly after issuance of show cause notice as discussed above. However, if such an order has been passed by a Tribunal, the absence of vesting /conferment of power of recall/ review shall not come in the way of recalling because of such order being ab-initio void and nonest and it would be constitutional and legal obligation of a Tribunal to recall such an order as discussed hereinbefore. Thus the matter in question which has been referred to this Full Bench, is answered accordingly. The Civil Misc. Recall Application dated 3242/2011 in Civil Contempt Petition No. 164/2007 pertaining to O.A. No. 1111/2000 will be placed before the appropriate bench for disposal in the light of this order/judgment.

5. As recorded in preceding paragraphs that present MA has been filed by the applicant seeking review/recall of order dated 06.12.2018 (Annex. MA/1) passed in C.P. No. 290/00026/2016 on merits and the same is not permissible as per law laid down by the Hon'ble Supreme Court and answered the same by the Full Bench of Central Administrative Tribunal in its judgment referred above. Accordingly, present MA is dismissed as not maintainable.

6. Registry shall keep such miscellaneous application filed for review/recalling of order passed in Contempt Petitions on defect side and shall not register the same. Rather, such miscellaneous applications shall be presented before the Court with defect for consideration of the Court, if insisted.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

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