

2

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

P.T.No.92/2004 in
M.A.Nos.544/2004, 618/2004 and 656/2004 in
O.A.No.1714/2003

New Delhi, this the 16th day of July, 2004

Present: Applicant in person

Shri N.S. Tambekar, counsel for Respondent
No.2.

Applicant seeks transfer of his
M.A.Nos.544/2004, 618/2004 and 656/2004 to a different
Bench.

2. Some of the relevant facts are that the
applicant had filed OA 1714/2003 which had been
decided on 18.11.2003. He filed a Review Application
No.73/2004 and another Review Application 374/2003
which have been dismissed.

3. The applicant states that he has filed the
aforesaid MAs which are likely to be listed before the
same Bench. There are certain events which prompt him
to state that the above MAs should not be listed
before that Bench. Applicant states those events in
the following words in his Petition for Transfer:

"(1) That vide Order dated
18.11.03 (para 3), passed by, inter alia,
the said Hon'ble Member (J), the
applicant, it is submitted with utmost
restraint, respect and humility, has been
made a scapegoat for non-payment of an
amount of Rs.6,82,290/- to him, in the
following manner:

(a) That vide Order dated
29.9.03, this Hon'ble Tribunal was
pleased to observe that the applicant is
"willing" to accept the said amount,
without prejudice to his rights (Annexure
1).

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(b) That pursuant to the said Order dated 29.9.03, respondent no.2 did not tender the said amount to him, and, on the other hand, sent, on 14.11.03, through the employees of Maharashtra Sadan, New Delhi, a cheque/draft for an amount of Rs.2,72,577/-, on the alleged rationale that he is entitled to only 50% salary, in the name of subsistence allowance, for the period of 8 years, namely, 26.5.88 to 13.5.96. The said act was repeated on 18.11.03, by the learned counsel of respondent no.2, in the presence of the Hon'ble Members of this Hon'ble Tribunal, during the hearing of the above-noted O.A., in the presence of, inter alia, the said Hon'ble Member (J).

(c) That, however, vide the said Order dated 18.11.03, there is not even a whisper that pursuant to the said Order dated 29.9.03, respondent no.2 wanted to pay only the said amount of Rs.2,72,577/-, and, not the said amount of Rs.6,82,290/-.

(d) That, furthermore, vide the said Order dated 18.11.03 (para 3), it has been specifically and conspicuously observed that pursuant to the said Order dated 29.9.03, a cheque of Rs.6,82,290/-, though tendered, has not been accepted by the applicant.

(e) That, however, out of patience, good sense and moderation, the applicant felt inclined to treat the said inconsistency with the record of the case as an error apparent on the face of the record of the case, and, vide para 4A of his R.A. 374/03, he made a specific and categorical submission regarding the said error apparent on the face of the record of the case, as follows:

"4A. That vide the penultimate sentence in para 3 of the said Order of this Hon'ble Tribunal dated 18.11.2003, it is patently and manifestly wrong that pursuant to the Order of this Hon'ble Tribunal dated 29.9.03, a cheque of Rs.6,82,290/- was tendered to him. Mr. Tambevakar offered on 18.11.2003 in the presence of the Hon'ble Judges only an amount of Rs.2,72,577/- @ 50% of salary. These facts are conspicuous by their absence in the Order dt. 18.11.03".

(f) That, however, vide Order dated 7.1.04, the said Hon'ble Member (J) was pleased to dismiss the said R.A., in circulation, holding, inter alia, that the "review applicant seeks to re-argue the case, which is not permissible".

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(g) That it follows, therefore, that the totality of the said conduct and behaviour of the said Hon'ble Member (J) establishes, vide AIR 1998 SC 2050 (State of West Bengal versus Shivananda Pathak), para 26, "bias on account of judicial obstinacy".

4. Needless to state that the application is being contested.

5. In normal circumstances, when a Bench decides the OA, all connected MAs should be listed before the same Bench. Just exceptions would be where the Bench is not available or there are cogent circumstances to do so.

6. Applicant, who appeared in person, states that incorrect facts have been mentioned. There is a bias of the Members of the Bench and according to him, it shows judicial obstinacy because in his opinion in the order passed by the Bench of this Tribunal, not only incorrect facts were mentioned, but the Review Applications were also dismissed. There is an abuse of process of the Tribunal and ends of justice were not met.

7. The applicant relied upon the decision of the Apex Court in the case of O.P. GUPTA v. UNION OF INDIA & OTHERS, AIR 1987 SC 2257. He also relied upon the decision in the case of STATE OF WEST BENGAL AND OTHERS v. SHIVANANDA PATHAK AND OTHERS, AIR 1998 SC 2050 to support his plea that there is a judicial obstinacy and bias. In this regard, in paragraph 28, the Supreme Court had held:

"28. If a judgment is overruled by the higher court, the judicial discipline requires that the Judge whose

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-4-

judgment is overruled must submit to that judgement. He cannot, in the same proceedings or in collateral proceedings between the same parties, re-write the over-ruled judgement. Even if it was a decision on a pure question of law which came to be over-ruled, it cannot be reiterated in the same proceedings at the subsequent stage by reason of the fact that the judgment of the higher court which has overruled that judgement, not only binds the parties to the proceedings but also the Judge who had earlier rendered that decision. That Judge may have his occasion to reiterate his dogmatic views on a particular question of common law or constitutional law in some other case but not in the same case. If it is done, it would be exhibitivie of his bias in his own favour to satisfy his egoistic judicial obstinacy."

In the case of Shivananda Pathak (supra), directions had been given by the Judge in Writ Petition which had been over-ruled. The Supreme Court held that the same Judge sitting in the subsequent proceedings re-write the over-ruled directions that he has biased mind.

8. It is obvious that the said ratio of the decision has no application herein.

9. Every adverse order passed cannot be taken to be biased. It would be a sad day when on mere allegations, the matters are transferred. ⁹ We do not dispute that justice should be done and also shown to be done but when allegations as such are made, that by itself is not a ground.

10. The Bench of this Tribunal decided the OA and thereafter if some Miscellaneous Applications are filed, necessarily they have to be considered on their own merits. Keeping in view the totality of the

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-5- (11)

facts, mere assertions of close mind or judicial obstinacy will not be of any use. There is no ground to allow the transfer petition.

11. Resultantly, PT must fail and is dismissed.



(V.S. Aggarwal)
Chairman

/NSM/

MA-1553/2004
in PT for
recalling of
orders etc.
16-07-04