

15.2.2005

MA-544/2004, 618/2004, 656/2004,
1456/2004, 1457/2004, 1458/2004,
1458/2004, 2566/2004, 11/2005, 12/2005
OA-1714/2004

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Present: Applicant in person.

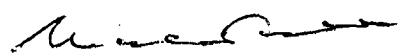
Sh. R.K.Adsuri along with
Sh. Gautam Godara and Sh. Pravin Satali,
Counsel for respondents.

MA-544/2004

Applicant has filed the MA for making certain correction in the order dated 18.11.2003 passed in MA-2202/2003. MA was disposed of by the Tribunal by the following order:

“3. In so far as MA-2202/2003 is concerned, prayer has been made for grant of subsistence allowance from 1.5.1988 to 13.5.1996. Though an amount of Rs.6,82,290/- was offered to the applicant before the Apex Court but he refused to avail the same. However by way of indulgence by an order dated 29.9.2003, it has been observed that the applicant is not precluded from claiming the said amount. However, it is stated by the learned counsel for the respondents Shri Tambevakar that a cheque pertaining to the aforesaid amount, though tendered, has not been accepted by the applicant. In this view of the matter, as the main relief pertains to one of the prayers for grant of subsistence allowance in the O.A., this MA is rendered infructuous and the relief prayed herein would be considered in the order to be passed in the OA.”

The grievance of the applicant is that Shri Tambevakar, counsel for respondents has made a misstatement that the cheque pertaining to the amount of Rs.6,82,290/- was tendered and the same was not accepted by the applicant. Whereas the fact was that respondents had subsequently tendered a cheque of Rs.2,72,577/- only outside the Court which the applicant had refused. It is further submitted in the reply filed by the respondents to this application that the cheque of Rs.2,72,377/- was tendered to the applicant who referred to accept it. He submitted that there was no reason for the



applicant to have refused the cheque of Rs.6,82,290/- which the Hon'ble Supreme Court had directed to be paid to him, had it been tendered to him. It is submitted that the statement of Sh. Tambevakar recorded in the order that applicant was not accepting the amount of arrears of his salary which he is entitled to get is not correct. In para 10 of the application, the applicant has requested that the order dated 18.11.2003 be corrected to the effect that "an amount of Rs.2,72,577/- on the alleged rationale that the applicant is entitled to only 50% of salary as subsistence allowance for the period of suspension i.e. from 1.5.1988 to 13.5.1996 though tendered, has not been accepted by the applicant because he is entitled to inter alia full salary as a matter of right for the said period i.e. Rs.6,82,290/-".

In other words, applicant wants this Tribunal to re-write the order passed on MA-2202/2003. Even if we proceed on the assumption that the statement which Mr. Tambevakar had made to the Court was not factually correct, it does not mean that the order is to be re-written. If the applicant is aggrieved by the order, it was open to him to seek his remedy in appropriate proceeding against the order passed in MA-2203/2003.

Applicant has also referred to the order dated 29.9.2003 and has submitted that the order would show that the applicant was willing to accept the amount of Rs.6,82,290/- which the respondents were directed to pay to him by the Hon'ble Supreme Court.

We, therefore, do not find any merit in the application. We cannot rewrite the order and add some more facts as pleaded by the applicant now. Application is, therefore, dismissed.

Application stands disposed of.

Re. on file

MA-618/2004

Applicant had filed this application for a direction to respondent No.2 to pay the amount of Rs.6,82,290/- without prejudice to the rights of the applicant for which an offer had already been made as recorded in para 3 of the order of the Tribunal dated 18.11.2003. We are told that the amount of Rs.6,82,290/- has already been paid to the applicant on 14.5.2004. In view of this, no direction as prayed for in the application, is required to be passed. Counsel for respondents has submitted that amount was paid without prejudice to the rights of the respondents and applicants says that he had accepted the amount without prejudice to his rights. Application, accordingly, stands disposed of.

MA-11/2005

Applicant has filed this application for some clarification of the order dated 18/11/2003 passed in OA-1714/2003 to the effect that the OA so far as it related to the reliefs which have not been granted by order dated 18.11.2003 shall be deemed to have been permitted to be withdrawn with liberty to file a fresh petition regarding those reliefs. OA-1714/2003 was disposed of on merit by this Tribunal by passing the order dated 18.11.2003. The operative portion of the order read as under:-

“27. In the result, as the applicant has prayed for multiple reliefs, which is barred under Rule 10 of the CAT (Procedure) Rules, 1987, the OA is partly allowed. Impugned order dated 13.5.1996 is quashed and set aside. Respondents are directed to pass a fresh order in so far as treatment of suspension period is concerned under Rule 5(b) of the Rules ibid within a period of three months from the date of receipt of a copy of this order. Whatever is entitled in the shape of subsistence allowance or the pay and allowances as a consequence of revocation of suspension, shall be paid to the applicant within the aforesaid period. As regards disciplinary proceedings, in case any final order is passed, applicant shall be at liberty to take recourse in accordance with law. No costs.”

In the instant application, it is stated that the Tribunal has observed in the aforesaid paragraph that the applicant had prayed for multiple reliefs which is barred by Rule 10 of the CAT (Procedure) Rules, 1987 and accordingly had allowed the OA partly. It is submitted that an inference drawn from the order is that other prayers which have not

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been granted shall be deemed to have been permitted to be withdrawn with liberty to file a fresh petition. Applicant wanted such a clarification by virtue of Rule 10 read with Rule 24 of the CAT (Procedure) Rules. At the hearing, the applicant has fairly submitted that the remedy available for redressal of the grievance pleaded in the application was by way of review. He further submitted that he filed two review applications but both of them were dismissed by the Tribunal. The question is whether the applicant may be allowed to file the MA, which is a camouflage application for review of the order dated 18.11.2003. According to the applicant, after the order dated 18.11.2003 he had filed three OAs for grant of relief which were not specifically granted in the said OA and some other relief. But the said OAs were not entertained by the Tribunal in view of the order dated 18.11.2003. He is, therefore, seeking clarification that the reliefs which were not specifically granted should be deemed to have been withdrawn with liberty to the applicant to file a fresh petition. Applicant has heavily relied upon the judgment of the Hon'ble Supreme Court in A.R.Antuley vs. R.S.Nayak and another in AIR 1988 SC 1531 in support of his arguments. He strenuously argued that he should not be allowed to suffer because of any mistake or error on the part of the Court. He also contended that it has been laid down in the judgment of A.R.Antuley (supra) that no man should suffer a wrong by technical procedure or irregularities and that rules of procedure were the handmaid of justice and not the mistress of justice.

We have carefully considered the law laid down in the cited judgment of the Hon'ble Supreme Court. The facts of the case before the Hon'ble Supreme Court were materially different from those which obtain before this Tribunal in the present proceeding. The Hon'ble Supreme Court was dealing with a matter where certain directions were given by the Court which if were found to be not as per law and in order

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to do justice to the parties it had been observed that the technicalities of the procedure should not be allowed to come in the way of rectifying a mistake of court.

In the instant case, the applicant according to his own submission has availed of the legal remedies by way of filing two Review Applications. Both the review applications have been dismissed on merit. Applicant submitted that he did not know whether in the review application he had prayed for the same relief, which had been prayed in the present application. But the fact remains that a legal and statutory remedy is been resorted to by the applicant. Moreover, it is a settled proposition of law that a relief which has not been specifically granted shall be deemed to have been refused unless the text and tenor of the order shows otherwise.

Applicant also submitted that he may be allowed to file a review application afresh. We are unable to grant such prayer specifically by our order but as and when such an application is filed it will be dealt with and decided in accordance with law.

For the reasons stated above, we do not find that the prayer made in the application could be granted to him. Application is, accordingly, dismissed. We make it clear that since we have not decided the matter on the merit of the plea taken by the applicant, this will not cause any prejudice to the applicant in any other judicial proceedings.

MA-656/2004

By this application, applicant has requested that respondent No.2 be directed not to pass any further order under Rule 5 (B) of AIS (D&A) Rules, 1969. Applicant had filed an OA No.1714/2003 which was disposed of by the Tribunal vide its order dated 18.11.2003 which is reproduced as under:-

“27. In the result, as the applicant has prayed for multiple reliefs, which is barred under Rule 10 of the CAT (Procedure) Rules, 1987, the OA is partly allowed. Impugned order dated 13.5.1996 is quashed and set aside.

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Respondents are directed to pass a fresh order in so far as treatment of suspension period is concerned under Rule 5(b) of the Rules ibid within a period of three months from the date of receipt of a copy of this order. Whatever is entitled in the shape of subsistence allowance or the pay and allowances as a consequence of revocation of suspension, shall be paid to the applicant within the aforesaid period. As regards disciplinary proceedings, in case any final order is passed, applicant shall be at liberty to take recourse in accordance with law. No costs."

Applicant has submitted that in pursuance to this order, the respondents served a show cause notice dated 28.1.2004 on the applicant and followed it by passing order dated 29.7.2004. Applicant has submitted that the show cause notice as well as the order passed by the respondents purported to be under Rule 5(B) of AIS (D&A) Rules, 1969 is not legal because the same question is involved in a proceeding which are pending before the Hon'ble Supreme Court and it was not permissible for the respondents to have caused any prejudice in those proceedings.

Applicant has referred to the judgment in D.Jones Shield vs. N.Ramesam reported in AIR 1955 AP 156, in support of his argument. The judgment cited related to a contempt proceeding. A criminal proceeding were pending before the Magistrate when certain orders were passed by the respondents – authorities, which in view of the Hon'ble High Court amounted to the contempt of the subordinate Courts where the proceedings were pending. However, in the present proceeding the admitted position is that this Tribunal had directed the respondents to pass a fresh order under Rule 5(B) of AIS (D&A) Rules, 1969. Respondents had no option but to comply with the order passed in the OA. They issued a show cause notice and thereafter passed order dated 29.7.2004. The show cause notice and the order which culminated into the order dated 29.7.2004 is, as such, in compliance with the Tribunal's order. Proceedings are pending before the Hon'ble Supreme Court but in another proceeding which were before this Tribunal certain questions were raised which were determined by the Tribunal. The order dated

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18.11.2003 has become final. The Tribunal cannot give a direction to the respondents in conflict with the order which was passed in OA-1714/2003 on 18.11.2003. It can be done, at least, by way of this MA.

Accordingly, we do not find any merit and the MA is dismissed. As requested by the applicant, the observation made in the application will not cause any prejudice to the applicant in any other judicial proceeding. The applicant has further submitted that he may be allowed to avail any other remedy provided under the law. As and when such a proceeding is filed, it will be considered and decided in accordance with law.

MA-1456/2004

Applicant has prayed for recalling a direction to the respondents to pass the order under Rule 5(B) of AIS (D&A) Rules, 1969 and to clarify which of the respondents, i.e. respondent No.1 or respondent No.2 is required to pass the order under the said Rules. The fact leading to this application are that applicant had filed an OA-1714/2003 which was decided by this Tribunal by order dated 18.11.2003. The order reads as under:-

“27. In the result, as the applicant has prayed for multiple reliefs, which is barred under Rule 10 of the CAT (Procedure) Rules, 1987, the OA is partly allowed. Impugned order dated 13.5.1996 is quashed and set aside. Respondents are directed to pass a fresh order in so far as treatment of suspension period is concerned under Rule 5(b) of the Rules ibid within a period of three months from the date of receipt of a copy of this order. Whatever is entitled in the shape of subsistence allowance or the pay and allowances as a consequence of revocation of suspension, shall be paid to the applicant within the aforesaid period. As regards disciplinary proceedings, in case any final order is passed, applicant shall be at liberty to take recourse in accordance with law. No costs.”

According to the applicant, the direction of the Tribunal that the respondents shall pass fresh order under Rule 5(B) is ambiguous, since it does not specify which of these respondents, respondent No.1, Union of India or respondent No.2, State of Maharashtra is required to pass the order.

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The contention of the applicant that the order passed by this Tribunal dated 18.1.2003 is not clear or it is ambiguous, to our view is not tenable. Applicant belonged to an All India Service. The Union of India and State of Maharashtra were parties to the OA. The direction was given to the respondents to pass order under Rule 5(B) of AIS (D&A) Rules, 1969. The direction was to the respondents to pass fresh order. It was for the respondents to have the order passed by an authority which was competent to pass this order. Whoever passes the order, it would remain to be an order of respondents No.1 & 2. It will remain to be an order of the respondents. Whether the authority who exercised the powers for passing the fresh order was competent or not is a question which cannot be gone into and decided in the present OA. It may be considered by the Tribunal as and when a proceeding are filed questioning the power of that authority. But the fact remains that the directions of the Tribunal was to the respondents and any authority of the respondents No.1 and No.2 which had the power, could have complied with the order of the Tribunal. The respondents have not sought any clarification in this regard. We, therefore, do not find that the order required any clarification as regards which of the respondents was required to comply with the order of the _____ Tribunal _____ dated _____ 18.11.2003. We find no merit in the application and the same is, accordingly, dismissed.

As requested by the applicant, we clarify that none of the observation made in the application will cause prejudice to the applicant in case the order dated 29.7.2003 is challenged in some other judicial proceeding.

Meenakshi Malhotra

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MA-2566/2004

Applicant had filed OA No.1714/2003, which was disposed off by this Tribunal vide order dated 18th November, 2003. The operative portion in para 27 of the said order reads as follows:

"27. In the result, as the applicant has prayed for multiple reliefs, which is barred under Rule 10 of the CAT (Procedure) Rules, 1987, the OA is partly allowed. Impugned order dated 13.5.1996 is quashed and set aside. Respondents are directed to pass a fresh order in so far as treatment of suspension period is concerned under Rule 5(b) of the Rules ibid within a period of three months from the date of receipt of a copy of this order. Whatever is entitled in the shape of subsistence allowance or the pay and allowances as a consequence of revocation of suspension, shall be paid to the applicant within the aforesaid period. As regards disciplinary proceedings, in case any final order is passed, applicant shall be at liberty to take recourse in accordance with law. No costs."

2. In compliance of the said, respondents have purported to have passed the order dated 29th July, 2004 which is at Annexure P-3. It is impugned in the present MA.

3. The only short point to be decided is whether this Tribunal has the power and jurisdiction to interfere with the order dated 29th July, 2004 by entertaining this MA when the remedy of the applicant lies in some other proceedings. The applicant has submitted written submissions in support of this MA. Thus the limited question of power and jurisdiction of the Tribunal lies on this issue only.

4. The main thrust of argument of the applicant is that the Tribunal vide order dated 18th November, 2003 after setting aside the order dated 13.5.1996 has directed the respondents to pass a fresh order in so far as suspension period is concerned under Rule 5(B) of the Rules ibid within three months but the respondents have not decided about the treatment of the suspension period in accordance with Rule 5(B). It is submitted that this Tribunal may pass a suitable order in this connection. The grievance of the applicant is that the Tribunal can pass order to give effect to its order under Rule 24 of the CAT (Procedure) Rules, 1987 which provides that "the Tribunal may make such orders or give

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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".

5. We are not inclined to agree to the argument advanced by the applicant. After the Tribunal has passed the order on 18.11.2003 in the main OA, the Tribunal has become functus officio. If the order of the Tribunal has not been complied with the Tribunal should invoke this power to ensure compliance of the order. Infact the case of the applicant is that though Tribunal's order has been complied with the said order has not been passed in terms of Rule 5(B) of the Rules ibid. In terms of Rule 24, the Tribunal has power to give effect to its order, to prevent abuse of the power of the court or to secure ends of justice. In the present case, applicant has challenged the order which has been passed by the respondents stating that the same has not been passed under Rule 5(B). This ~~case~~ has to be challenged in accordance with Rules and Section 19 of the Administrative Tribunals Act, 1985, which clearly states that "subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of Tribunal may make an application to the Tribunal for the redressal of his grievance". It further states that "order" means an order made (b) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation owned or controlled by the Government; or (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation referred to in clause (a). The impugned order dated 29th July, 2004 has been passed in pursuance of Tribunal's order; it cannot be challenged under Rule 24. Therefore it can be challenged only under Section 19 of the AT Act, 1985 and not by way of MA. In view of this position, we are not inclined to interfere with the impugned order. Accordingly the present MA is dismissed. We make it clear that, at the request of the applicant, nothing said herein shall be taken as our observations on the

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merits of the case. It will be open to the applicant to impugn this order in other judicial proceedings in accordance with law.

MA-1458/2003

Arguments heard. Order reserved.

MA-1457/2004

Arguments heard. Order reserved.

Naik
(S.K. NAIK)

Member (A)

M.A. Khan
(M.A. KHAN)

Vice Chairman (J)

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