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**Central Administrative Tribunal
Principal Bench, New Delhi.**

**MA-1168/2007 in
OA-1269/2003**

New Delhi this the 12th day of November, 2007.

Present : Applicant in person.
Sh. A.K. Bhardwaj, counsel for respondents.

Order (Oral)

Hon'ble Mrs. Meera Chhibber, Member(J)

Counsel for respondents states that he does not wish to file counter because he is not getting any response from the department. He, however, stated that he can argue the case on the basis of pleadings on record.

2. Accordingly, we have heard the applicant in detail, who appeared in person, and counsel for respondents, who assisted us on the basis of different orders which have been passed in the MAs, CPs and OAs filed by the applicant from time to time.

3. Applicant has filed MA-1168/2007 in OA-1269/2003 seeking the following relief:-

"To direct the respondent No.2 to cancel his show cause notice dated 19.9.2002 in the light of the directions of the Hon'ble Tribunal order dated 27.04.2001 and the directions of Ministry of Defence dated 14.3.85 and grant the increments in the present



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pay scale and in the grade of Group-B since November, 1978 with the interest on the arrears of increments as directed by the Tribunal in order dated 27.4.2001."

4. The main grievance of applicant is that vide Tribunal's order dated 27.04.2001 passed in OA-168/1998 directions were already given to the respondents to grant annual increments to the applicant since 1978 as per Rules along with arrears of increments payable to the applicant and in case the above said directions are not complied with within the stipulated period of three months from the date of receipt of a copy of the order, respondents shall pay interest at the rate of 18% per annum on the amount payable to the applicant, yet till date respondents have not allowed the increments or arrears thereof to the applicant. He has relied on the above said judgment, which is on pages-65-69 and also an order dated 27.02.2007 passed in MA-1911/2006 in OA-1269/2003 whereby liberty was given to him to file fresh application (page-94).

5. It is stated by the applicant, who appeared in person, that his basic point has still not been decided by the Tribunal and OA-1269/2003 is still pending. Therefore, he has to file MA one after another. It is stated by the applicant that he had filed OA-168/1998, which was decided on 27.04.2001 pursuant to which respondents passed an order dated 10.08.2001 (page-70) where after applicant filed OA-1871/2002 but had not challenged the

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order dated 10.08.2001. Therefore, the said OA was dismissed as withdrawn with liberty to challenge the order dated 10.08.2001 (page-77). Thereafter, he filed OA-1269/2003 but without looking into the grievance of the applicant the said O.A. was disposed of on 11.02.2004 by directing respondents to decide his show cause notice. According to the applicant, respondents could not have issued this show cause notice because the matter has already been concluded by the Lucknow Bench in OA-168/1998.

6. In order to straighten the basic facts, It is relevant to narrate all the orders passed in applicant's different OAs, MAs and CPs. The first O.A. filed by the applicant on the question of increments was OA-168/1998, which was decided by Lucknow Bench on 27.04.2001 (pages 65-68) with the following directions to the respondents:-

"11. In the result, the O.A. succeeds and is allowed. The respondents are directed to grant annual increments to the applicant since 1978 as per rules as directed by the Army Headquarters and the Chief Engineer, within a period of three months from the date of receipt of a copy of this order. The respondents are further directed to grant all the arrears of increments payable to the applicant within the aforesaid stipulated period. If the aforesaid directions are not complied with by the respondents within the stipulated period, the respondents shall pay an interest at the rate of 18% per annum on the amount payable to the applicant, which shall be recovered from the salary of the officers found responsible for delaying the payment. In the facts and circumstances of the case the parties are directed to bear their own costs."



7. After this O.A. was decided, respondents passed an order dated 10.08.2001 (page-70) by observing as follows:-

"2. The case has been carefully examined in this HQ and the following decisions are conveyed:-

- (a) The CAT judgement dt. 27 Apr 2001 in OA 168/98 may be regularized by granting him leave in kinds at his credit and rest by granting him EOL as per CCS Leave Rules. In this case, the EOL period is beyond 5 years. Hence sanction of Govt of India. Min. of Def is required. Necessary statement of case alongwith connected documents be processed to this HQ separately for obtaining the Govt sanction.
- (b) The annual increment be granted with effect from the date he was due with arrears in obedience of CAT judgement dated 27 Apr 2001 in 168/98.
- (c) The pay and allowances for the period of his absence with arrears and consequential benefits as entitled to him be granted.
- (d) The payment towards the above benefits be effected from the amount already available with the public fund account of GE(W) Lucknow and excess if any claimed and paid as per Rules in vogue.

3. All the above exercise will be completed with utmost speed and a compliance report submitted to this HQ by 31 Aug 2001. Necessary intimation on given to the applicant to this effect and the CGSC.

4. Extension of sufficient time may be sought for to implement the order if necessary.

5. Please acknowledge receipt."



8 Being aggrieved, applicant filed CCP No. 125/2001 in OA-168/1998, which was dismissed on 14.05.2002 (pages 71-73) by observing as follows:-

"We have already found that the direction of the Tribunal was to grant increment as per the rules. It was open to the respondents to grant the increment as per the extant rules on the subject. We find that no direction for regularisation as on duty for period of absence was given. The same can not be examined by this Bench."

9. It was thereafter that respondents issued show cause notice to the applicant on 19.09.2002 (page-74). It is at that stage applicant filed another OA bearing No. 1269/2003 (page-78), which was disposed of on 11.02.2004 by issuing following direction to the respondents:-

"to pass a reasoned and speaking order and decide the show cause notice within a period of 2 months from the date of receipt of a copy of this order. Respondents shall also afford an opportunity of hearing including personal hearing to the applicant before passing a reasoned and speaking order. OA stands disposed of. If any grievance survives thereafter applicant would be at liberty to challenge the same. Applicant may give a supplementary reply also."

10. After the above said directions, respondents passed another speaking order dated 22.06.2005 (page-83 of MA-1378/2004), operative portion of which is as follows:-

"14. It is now stated that the Hon'ble High Court of Allahabad (Lucknow Bench) has since remanded MCA No. 205/92 (referred in Paras 3 & 4 above) to the

Prescribed Authority for further hearing. Pending decision of the above Authority on the Ild MCA No.205/92, It is not possible for the Deptt to take any decision on the Show Cause Notice dated 19 Sep 02 issued to the applicant.

15. This speaking order is issued in compliance of the order dated 11 Feb 04 of Hon'ble CAT Principle Bench, New Delhi in OA No. 1269/03."

11. Before this order was passed, applicant had already filed MA-378/2004 in OA-1269/2003 alleging non-compliance of Tribunal's order dated 11.02.2004. However, during the pendency of O.A. speaking order dated 22.06.2005 was passed so MA was disposed of vide order dated 08.07.2005 by giving liberty to the applicant to challenge the order dated 22.06.2005 on the original side if he was aggrieved by the same. Applicant thereafter filed yet another MA bearing No.1911/2006, which was dismissed as withdrawn with liberty to file fresh application vide order dated 27.02.2007 (page-94.

12. It is stated by applicant that the present MA bearing No.1168/2007 has been filed by him as liberty was given to him by the Tribunal on 27.02.2007. It is also stated by applicant that he had sought permission for personal hearing as was already granted by this Tribunal but the same was also rejected vide order dated 15.06.2005 (page-58). Therefore, respondents did not comply with the directions given by this Tribunal from time to time. However, it is



noticed that applicant had filed another CP No.158/2007 also in OA-1269/2003 which was dismissed by observing as follows:-

"4. Applicant herein filed MA No. 1378/2004 as well as other MAs before this Tribunal in OA No.1269/2003 alleging non-compliance of order dated 11.02.2004. The said MA was disposed of vide order dated 08.07.2005 noticing that Respondents had passed speaking order dated 22.06.2005. Vide said order, the Tribunal agreed with respondents that unless the matter is decided by competent authority, department cannot pass any further order pursuant to the show cause notice issued on 19.07.2002. However, the Tribunal, observed that in case applicant was aggrieved by the speaking order so issued, liberty was granted to challenge it "on the original side".

It was also observed further as follows:-

"6.....We may note that applicant tried to take shelter behind order dated 15.06.2006, rejecting his request for personal interview, as directed by this Tribunal vide order dated 11.02.2004. We may note that it is only after rejection of request for personal hearing, order dated 22.06.2005 was passed. Thus, said communication dated 15.06.2006 is, therefore, of no consequence and will not give any cause of action."

13. In view of facts as explained above and after hearing applicant in detail, we find that the grievance of applicant cannot be assailed in the form of MA as OA-1269/2003 stands already disposed of vide order dated 11.02.2004 (page-80). It cannot be said to be pending. Respondents had passed speaking order dated 26.06.2005 (page-83) pursuant to direction given in OA-1269/2003. Therefore, if applicant was aggrieved by the said order or even by



the order dated 10.08.2001, his remedy was to challenge those orders on the original side and not by filing MA one after another specially when after the disposal of OA-1269/2003 applicant had even filed CCP No. 158/2007 in OA-1269/2003, which was also dismissed on 14.05.2007 by observing that if applicant was aggrieved by order dated 22.06.2005 he ought to have challenged the same on the original side. We are thus satisfied that in view of the above orders passed already by this Tribunal, the present MA in this form is not at all maintainable. Therefore, MA-1168/2007 is rejected as not maintainable. However, applicant would be at liberty to seek redressal of his grievance by filing appropriate proceedings in accordance with law, if so advised.

Chitra Chopra
(Chitra Chopra)
Member(A)

Meera Chhibber
(Mrs. Meera Chhibber)
Member(J)

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