COURT NO.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CA 4/2014
In OA 04/2014 (RB Kolkata)

IC-46298N Lt Col Mukul Dev ….. Applicant

Versus

UOI & Ors ….. Respondents

For Applicant : **Ms Jyoti Singh, Sr. Advocate with Mr. Rajiv Manglik, Advocate.**

For Respondents : **Mr. Maninder Singh, ASG, Mr. R. Balasubramanian, ASG with Mr. Anil Gautam, Advocate.**

With

CA 7/2014
In OA 29/2014 (RB Kolkata)

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CORAM
HON'BLE MR. JUSTICE R.C. MISHRA, MEMBER.
HON'BLE LT GEN S.K. SINGH, MEMBER

O R D E R
15.04.2015

In these Contempt Applications, under Section 19 read with Section 29 of the Armed Forces Tribunal Act 2007(hereinafter referred to as "the Act"), and Rule 25 of the Armed Forces Tribunal

(Procedure) Rules, 2008 (for short" the Rules"), a common preliminary objection as to maintainability on the ground of absence of requisite power has been raised. We, therefore, propose to examine the issue by way of this common order.

2. Shorn of details, the factual background and circumstances leading to filing of the first Contempt Application may be narrated thus:-

(i) The applicant viz. Lt Col Mukul Dev moved the Kolkata Bench of this Tribunal by filing an OA, challenging legality of the order dated 10.01.2014 issued by the Govt. of India, Ministry of Defence rejecting his statutory complaint against punishment of 'reprimand' awarded to him in a Summary Trial held in April, 2001. Upon conclusion of the hearing, the Tribunal for the reasons recorded in the order dated 27.08.2014 proceeded to allow OA (registered as OA 04/2014) in part. The relevant extract of the order reads:

> *" 1) Army HQ DV Directorate letter No. C/06270/SC/237/AS/DV-2 dated 07 June 2001 directing MP-6 (AG Branch) with copy to MS-4 (MS Branch) to enter the punishment of 'reprimand' into the applicant's dossier is quashed since DV Directorate of AHQ at that point of time was not competent to pass such order. Consequentially the rejection order of the statutory complaint dated 10th Jan 2014 (Annexure-A2 to the OA) is quashed only to that extent where the MoD has held the said punishment entry as valid.*
>
> *2) The respondents are directed to consider the case of the applicant as special review (fresh) case for promotion to the rank of Colonel in the ensuing No. 3 Selection Board, de hors of any disciplinary implications linked to the 'reprimand' awarded to him on 17 April 2001 in the rank of a Major and by way of ignoring the punishment entry of 'reprimand', in view of his subsequent promotion to Lt. Col., treating the same as wiped off.*

3) Compliance to our ibid directions shall be done at the earliest but not later than 60 days from the date of pronouncement of this order. "

(ii) The respondents filed an application, under Section 31(2) of the Act, seeking leave to appeal to the Supreme Court. This application, numbered as MA No.127/2014, was rejected by the Tribunal vide its order dated 08.09.2014. Thereafter, within the limitation period of 30 days, stipulated in Section 31(1) of the Act, the respondents did not prefer SLP before the Apex Court.

3. According to the applicant, the respondents have committed contempt of the Tribunal by not implementing the directions contained in the order dated 27.08.2014 passed in OA 04/2014 by 08.10.2014 i.e. after expiry of 30 days from the date of dismissal of the leave application and in any case by 26.10.2014 viz within the period of 60 days from the date of judgment.

4. In response, it has been submitted that the order dated 27.08.2014 has been implemented subject to final outcome of the appeal to be filed before the Supreme Court. However, in his rejoinder, the applicant has alleged that the respondents have further violated the order by not de-classifying the result.

5. The facts and circumstances giving rise to filing of the second Contempt Application are as follows:-

(a) An OA, registered as OA 34/2013, was preferred by the applicant before Kolkata Bench of this Tribunal calling in question legality of the order dated 17.04.2001 awarding punishment of 'reprimand' to him in a Summary Trial. Observing that no representation was ever made by the applicant against the punishment, the Tribunal by order dated

15.05.2013, directed the respondents to treat the OA as a statutory complaint and decide the same in accordance with law. It was ultimately rejected by order dated 10.01.2014 holding *inter alia* that the Summary Trial was a valid trial.

(b) Being aggrieved, the applicant filed another OA, numbered as OA No.29/2014, questioning the legality of the finding as to validity of the Summary Trial held on 17 Apr 2001. By way of order dated 19.09.2014, the impugned order, so far as it related to the finding that the summary trial was a valid trial, was set aside and the respondents no. 1 and 2 were directed to re-examine the grievance of the applicant as ventilated in this OA in the light of corresponding observations and pass a reasoned order within 60 days.

6. Inviting attention to the fact that the order dated 19.09.2014 (above), though communicated to the respondents on the same day, remained unimplemented even after expiry of the stipulated period of 60 days, the applicant has prayed for initiation of the contempt proceedings against the respondents No.1 & 2 alleging that by their conduct of not re-examining the issues as raised in the OA in the light of the observations made by the Tribunal, they, in effect, have caused obstruction to the proceedings.

7. In reply, questioning maintainability of the Contempt Applications, the respondents have submitted that

(i) The Parliament in its wisdom has not conferred on the Tribunal the power to punish for civil contempt and their conduct in question does not fall under any one of the species of criminal contempt, made cognizable by the Tribunal by virtue of Section 19 of the Act.

(ii) By no stretch of imagination Rule 25 of the Rules can be described to have been framed for investing the Tribunal with the power to punish for civil contempt.

8. We have heard Ms Jyoti Singh, learned Senior Advocate appearing on behalf of the applicant and Mr. Maninder Singh, ASG representing the Union of India at length. In the light of rival contentions, the following pivotal points germane to the main issue arise for consideration:-

(1) What is the basic distinction between Civil and Criminal Contempt?

(2) Whether a wilful or contumacious disobedience to any order or direction or other process of the Tribunal is punishable as contempt of the Tribunal under Section 19 of the Act read with Rule 25 of the Rules?

(3) Whether this Tribunal is a Court of Record?

9. In order to appreciate the merits of rival contentions in a proper perspective, it would be necessary to advert to the legislative history as set out in the decisions of the Apex Court in the cases of **Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409** and **Pallav Sheth v. Custodian AIR 2001 SC 2763**, object, basic scheme and the provisions of the Contempt of Courts Act, 1971, relevant to the purpose of present discussion.

10. The origin and historical development of the law relating to Contempt of Courts in India, can be traced from the English law. In England Superior Courts of Record have from early times, exercised the power to commit for contempt persons who scandalized the Court or the Judges. The right of the Indian High Courts to punish for contempt, was in the first instance recognized by the Judicial Committee of the Privy Council which observed that the offence of the contempt of court and the powers of the High Courts to punish it

are the same in such courts as in the Supreme Court in England. It also observed that the three chartered High Courts of Calcutta, Bombay and Madras had inherent power to punish for contempt. Almost all the High Courts in India, apart from the chartered High Courts have exercised the jurisdiction and where its authority had been challenged each has held that it is a jurisdiction inherent in a court of record from the very nature of the court itself. It had been judicially accepted throughout India that the jurisdiction was a special one inherent in the very nature of the court.

11. The first Indian statute on the law of contempt, i.e., the Contempt of Courts Act was passed in 1926. It was enacted to define and limit the powers of certain courts in punishing contempt of courts. When the Contempt of Courts Act, 1926 (XII of 1926) was in existence in British India, various Indian States also had their corresponding enactments. These States were Hyderabad, Madhya Bharat, Mysore, Pepsu, Rajasthan, Travancore-Cochin and Saurashtra. State enactments of the Indian States and the Contempt of Courts Act, 1926 were replaced by the Contempt of Courts Act, 1952 (32 of 1952).

12. After the Constitution of India was promulgated in 1950, it appears that on 1-4-1960, a Bill was introduced in the Lok Sabha “to consolidate and amend the law relating to contempt of court”. The Bill was examined by the Government which felt that law relating to contempt of courts was “uncertain, undefined and unsatisfactory” and that in the light of the constitutional changes which had taken place in the country, it was advisable to have the entire law on the subject scrutinised by a special committee to be set up for the purpose. Pursuant to that decision, the Ministry of Law on 29-7-1961 set up a Committee under the Chairmanship of Shri H.N. Sanyal, Additional Solicitor General of India. The Committee came to be known as Sanyal Committee and it was required:

> "(i) to examine the law relating to contempt of courts generally, and in particular, the law relating to the procedure for the punishment thereof;
>
> (ii) to suggest amendments therein with a view to clarifying and reforming the law wherever necessary; and
>
> (iii) to make recommendations for codification of the law in the light of the examination made."

13. The Committee, inter alia, opined that Parliament or the legislature concerned has the power to legislate in relation to the substantive law of contempt of the Supreme Court and the High Court subject only to the qualification that the legislature cannot take away the powers of the Supreme Court or the High Court, as a court of record, to punish for contempt nor vest that power in some other court. After the submission of the Sanyal Committee Report, the Contempt of Courts Act, 1952, was repealed and replaced by the Contempt of Courts Act, 1971 which Act was enacted to "define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto".

14. Sections 2(*a*), (*b*) and (*c*) of the Contempt of Courts Act, 1971 define contempt of court as follows:

> *"2. Definitions.—In this Act, unless the context otherwise requires,—*
>
> *(a) 'contempt of court' means civil contempt or criminal contempt;*
>
> *(b) 'civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;*
>
> *(c) 'criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—*

> *(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or*
>
> *(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or*
>
> *(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."*

15. To highlight the fundamental distinction between Civil and Criminal Contempt, the following illuminating observations made by Sir Asutosh Mookerje way back in 1918 in the case of **Tarit Kanti Bishwas AIR 1918 Cal 988**, may usefully be quoted :-

> *"A criminal contempt is conduct that is directed against the dignity and authority of the Court. A civil contempt, on the other hand, is failure to do something ordered to be done by a Court in a civil action for the benefit of the opposing party therein. Consequently, in the case of a criminal contempt, the proceeding is for punishment of an act committed against the majesty of the law and as the primary purpose of the punishment is the vindication of the public authority the proceeding confirms as nearly as possible to proceedings in criminal cases. In the case of a civil contempt, on the other hand, the proceeding in its initial stages at least, when the purpose is merely to secure compliance with a judicial order made for the benefit of a litigant, may be deemed instituted at the instance of the party interested and thus to possess a civil character. But, here also refusal to obey the order of the Court may render it necessary for the Court to adopt punitive measures against the person who has defied its authority at that stage at least the proceedings may assume a criminal character. In this manner the dividing line between acts which constitute criminal and others which constitute civil contempt may become indistinct in those cases, where the two gradually merge into each other. ..... "*
>
> *"The power to punish for contempt is inherent in the very nature and purpose of Courts of Justice. It sub-serves at once a double purpose, namely, as an aid to protect the dignity and authority of the tribunal and also as an aid in the enforcement of*

civil remedies. The power may consequently be exercised in civil or criminal cases or independently of both and either solely for the preservation of the authority of the Court or in aid of the rights of the litigant or for both these purposes combined. By reason of this two-fold attribute, proceedings in contempt may be regarded as anomalous in their nature possessed of characteristics which render them more or less difficult of ready or definite classification in the realm of judicial power. Hence such proceedings have sometimes been styled sui generis."

16. In **Samee Khan v. Bindu Khan AIR 1998SC2765, t**he Apex Court had the occasion to explain the distinction between civil and criminal contempt. Accordingly, enforcement of the order in civil contempt is for the benefit of one party against another, while object of criminal contempt is to uphold the majesty of law and the dignity of the court.

17. In **Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307**, observing that the application of the decree-holder had been for violation of the undertaking which at the most could be civil contempt as defined under Section 2(*b*) of the 1971 Act as it includes the wilful breach of an undertaking given to a court, the Supreme Court proceeded to set aside the judgment passed by the High Court of Delhi convicting the appellant for committing criminal contempt of court. The relevant excerpts of the decision may be reproduced here:

"the trial court failed to make a distinction between civil contempt and criminal contempt. A mere disobedience by a party to a civil action of a specific order made by the court in the suit is civil contempt for the reason that it is for the sole benefit of the other party to the civil suit. This case remains to the extent that, in such a fact situation, the administration of justice could be undermined if the order of a competent court of law is permitted to be disregarded with such impunity, but it does not involve sufficient public interest to the extent that it may be treated as a criminal contempt. It was a clear-cut case involving private rights of the parties for which adequate and sufficient remedy had been provided under CPC itself, like attachment of the property and detention in civil prison, but it was not a case wherein the facts and circumstances warranted the reference to

the High Court for initiating the proceedings for criminal contempt."

18. As elucidated by a three Judge Bench in ***Niaz Mohd. v. State of Haryana, (1994) 6 SCC 332***

> "*Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines "civil contempt" to mean "wilful disobedience to any judgment, decree, direction, order, writ or other process of a court …". Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner."*

19. Having thus appreciated that the parameters of civil and criminal contempt as defined under Section 2(b) and 2(c) of the said Act are entirely different, we proceed to deal with point No.(2).

20. For a ready reference, Section 19 of the Act and Rule 25 of the Rules, may be reproduced as under:-

> ***19. Power to punish for contempt****.—(1) Any person who is guilty of contempt of the Tribunal by using any insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such Tribunal shall, on conviction, be liable to suffer imprisonment for a term which may extend to three years.*
>
> *(2) For the purposes of trying an offence under this section, the provisions of Section 14, 15, 17, 18 and 20 of the Contempt of Courts Act, 1971 (70 of 1971) shall mutatis mutandis apply, as if a reference therein to—*
>
> *(a) Supreme Court or High Court were a reference to the Tribunal;*
> *(b) Chief Justice were a reference to the Chairperson;*
> *(c) Judge were a reference to the Judicial or Administrative Member of the Tribunal;*
> *(d) Advocate-General were a reference to the prosecutor; and*
> *(e) Court were a reference to the Tribunal.*
>
> ***25. Powers of the Tribunal with regard to certain orders and directions.****—Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.*

21. Learned counsel for the petitioner, while placing implicit reliance on decision rendered by a Division Bench of Kerala High Court in **Shihabudeen Vs. Principal Controller of Defence Accounts (Pensions) (2011(1) KLT 683)** has vehemently contended that non-implementation of order of the Tribunal, that has attained

finality, would amount to criminal contempt by way of obstruction or interference with the course of justice falling within the purview of Section 19(1) of the Act read with Rule 25 of the Rules. The relevant observations made in para 9 of the judgment are extracted below:-

> *"9.....However, under S.19 (1), causing any interruption or disturbance in the proceedings of the Tribunal is a contempt, which is made punishable thereunder. Basically, the interruption or disturbance provided therein is physical obstruction affecting the smooth functioning of the Tribunal. We feel, even refusal to enforce the Tribunal's orders could also be brought within the scope of interruption or disturbance of the proceedings of the Tribunal because execution of orders of the Tribunal being the duty of the Tribunal under S.29 read with Rule 25 quoted above, the proceedings of the Tribunal continue until the orders are executed and implemented. In other words, with the passing of interim orders or final orders the Tribunal is not relieved of the matter, and the proceedings before it continues until the Tribunal executes its orders under S.29. For this purpose, its inherent powers are retained and it has all the powers to enforce its orders under Sections 29 and 19 read with Rule 25. We do not see any other mechanism to enforce an order except to punish those guilty of non-implementation for contempt. In other words, only on fear of contempt action, the orders of the Tribunal could be enforced. Clauses (ii) and (iii) of the definition of criminal contempt under S.2(c) of the Contempt of Courts Act cover interference with the due course of any judicial proceedings or obstruction of the administration of justice in any other manner. Non-implementation of the orders of the Tribunal that has become final is certainly an obstruction or interference with the course of justice, and so much so is a criminal contempt for which the Tribunal is entitled to initiate prosecution proceedings under S.19(1) of the Act."*

22. Making reference to these observations made by the Division Bench in **Shihabudeen**'s case (above) and the order dated 06.05.2014 passed by the Apex Court in **Subrata Roy Sahara Vs. UOI & Ors (WP(Crl.) No.57 of 2014)**, the Kochi Bench of this Tribunal (by way of order dated 23.06.2014 passed in M.A. No.361 of 2013 titled **Anil Kumar B. vs. Union of India and Ors.**) proceeded to lay down the following guiding principles:-

"(a) The Tribunal may, in appropriate cases, initiate contempt proceedings under Section 19 of the Act against the officer responsible for the disobedience of the order of the Tribunal and to punish him accordingly, if the disobedience has resulted in causing interruption or disturbance in the proceeding of the Tribunal."

(b) If the disobedience of the Tribunal's order does not technically amount to a contempt under Section 19 of the Act, even then the Tribunal may, with the aid of its inherent powers under Rule 25 of the Procedure Rules, extend its contempt jurisdiction and accordingly proceed to punish the contemnor after following the due procedure, particularly the principles of natural justice;

(c) In appropriate cases, the Tribunal may enforce the order rendered in exercise of civil jurisdiction, by adopting recourses available to the civil court for executing its decrees under Order XXI of the Code of Civil Procedure and in doing so, it is also open to the Tribunal even to detain the responsible officer in civil prison for the disobedience of the order, of course, after observing due procedures;

(d) If the order under execution has been rendered in exercise of criminal jurisdiction under Section 15 of the Act, the Tribunal may adopt all or any of the recourses available to the criminal court for executing its orders and sentences under the Code of Criminal Procedure;

(e) Apart from the aforesaid recourses, it is also open to the Tribunal to impose special costs, including compensatory as well as exemplary costs, against the respondents as also the officers responsible for not implementing the order;

(f) The Tribunal may, in appropriate cases, adopt such other legal recourses, as it considers just and expedient for enforcing its orders".

23. However, a bare reading of the order in the case of **Anil Kumar B.** (supra) would reveal that the Bench at Kochi did refer to the similar principles laid down by this (Principal Bench) in O.A. No. 135 of 2013 but an earlier view on the point articulated by a Bench, headed by the then Chairperson, in **Fayaz Khan Vs. UOI** (MA No.335/2010 decided on 27.01.2011) was not brought to its notice. In **Fayaz Khan**'s case, taking note of the piquant situation arisen due to non-conferral of the

power to initiate action for civil contempt on the Tribunal, the following observations were made:-

> *"This is an unfortunate matter in which the order was passed way back on 25.1.2010 and the order has not been complied with till this date. Number of times notice has been issued to all authorities including Defence Secretary, Govt. of India but without any result. We feel that we are handicapped because we do not have powers to issue a civil contempt to get the orders of the Tribunal executed. It is said that the power to civil contempt for getting the Tribunal's order executed has not been given in the Act. It may be an error or omission or may be deliberate. But because of not having this power we cannot issue a civil contempt to get our orders executed and we feel helpless in the matters.*
>
> *Normally each Tribunal has their own power to get their orders executed, but unfortunately, this is the only Act, in which no power of civil contempt has been given to get the orders of the Tribunal executed. The only power to prosecute a person for criminal contempt has been given under Section 19 of the Armed Forces Tribunal Act. We feel helpless that this Tribunal cannot come to the rescue of persons despite the orders passed by the Tribunal. It is very strange state of affairs and we are sorry to say that we cannot help the applicant. Since because of lack of civil contempt power, the functioning of the Court is greatly hampered. The recommendation for necessary amendment in Act has already been sent to Government long time back. The orders are at the mercy of the authorities, if they wish they can execute and if they do not wish, they may not. This is a serious thing which has been already taken up with the government but without any result. Hence, we cannot interfere in this execution application and same is dismissed.*
>
> *Learned counsel has prayed for a leave to appeal to the Supreme Court under section 31 of the Act, we grant him leave to appeal before the Hon'ble Supreme Court because of the fact as this involves the serious question of law of public importance as the Act lacks power to get the orders executed. Therefore, we certify that this is the fit case to be taken to the Hon'ble Supreme Court so that proper directions can be given by the Hon'ble Supreme Court to make this Tribunal functional and effective."*

24. Thereafter, in the course of hearing of the appeal preferred by **Fayaz Khan,** learned A.S.G. informed the Apex Court on 04.04.2011 that a suitable amendment to the Act was already under

contemplation. However, no follow up action has been taken in this regard as yet even after submission of the report titled as 18th Report on 'The Armed Forces Tribunal (Amendment) Bill, 2012' by the Standing Committee on Defence as back as on 15.03.2013. The Bill proposes to substitute the following for the present Section 19:

> ***"19.Power to punish for contempt***
>
> *The Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to the modifications that -*
>
> *(a) The references therein to a High Court shall be construed as including a reference to such Tribunal;*
>
> *(b) The references to the Advocate-General in section 15 of the said Act shall be construed in relation to the Armed Forces Tribunal, as a references to the Attorney-General or the Solicitor-General or the additional Solicitor-General."*

25. In answer to the query made by the Committee as to the difference between criminal contempt and civil contempt, the Ministry of Defence had clarified that the proposed amendment would, in effect, vest the power to punish for civil contempt in the Tribunal.

26. Coming to the Rules, it may be noticed that the same have been framed by the Central Government in exercise of the powers conferred by clauses (*f*), (*g*) and (*k*) of sub-section (2) of Section 41 of the Act and none of these clauses relates to Section 19 or 29 thereof. This apart, no rule, even though statutory can override the provisions contained in Section 19 of the Act.

27. As explained by the Apex Court in **Kanwar Singh Saini**'s case(*ibid*)

> *"There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can*

neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. [Vide United Commercial Bank Ltd. v. Workmen[14], Nai Bahu v. Lala Ramnarayan[15], Natraj Studios (P) Ltd. v. Navrang Studios[16], Sardar Hasan Siddiqui v. STAT[17], A.R. Antulay v. R.S. Nayak[18], Union of India v. Deoki Nandan Aggarwal[19], Karnal Improvement Trust v. Parkash Wanti[20], U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd.[21], State of Gujarat v. Rajesh Kumar Chimanlal Barot[22], Kesar Singh v. Sadhu[23], Kondiba Dagadu Kadam v. Savitribai Sopan Gujar[24] and CCE v. Flock (India) (P) Ltd.[25]]"

28. It can, therefore, be easily concluded that this Tribunal does not have power to punish for civil contempt and further that the power conferred on the Tribunal to punish for criminal contempt as contemplated by Section 19 (supra) does not include the power to punish for disobedience to or non-execution/non-implementation of any order passed by the Tribunal. As rightly pointed out by learned counsel for the respondents, a Bench headed by Hon'ble the Chairperson has expressed a similar opinion in **Ex Hony Nb Sub Jai Narain Yadav Vs UOI & Ors** (MA 482/2013 in OA 52/2013 decided on 02.12.2014)

29. This takes us to point No.(3) above.

30. Learned senior counsel, appearing on behalf of the petitioner has strenuously contended that having been established under a special enactment vesting it with the jurisdiction, hitherto exercisable by the High Courts to deal with the cases arising thereunder, this Tribunal is a Court of Record. To substantiate the contention, she

has also made reference to the reply given by the Ministry of Defence to the Parliamentary 10th Standing Committee for Defence in response to a query raised by the Committee as to nature of the proposed Tribunal. The reply, quoted by the Supreme Court in para 13 of the judgment rendered in **Union of India and Ors Vs Major General Shri Kant Sharma and Anr.** (Civil Appeal No.7400 of 2013 decided on 11.03.2014) was couched in these words:-

> *"Since the Armed Forces Tribunal would be dealing with offences, legally awardable punishments and termination of services etc and the Tribunal is being armed with the powers of contempt, it would be a judicial body. It would be a permanent Tribunal and a Court of Record."*

31. The expression 'Court of Record' has not been defined in the Constitution of India. Article 129 however, declares the Supreme Court to be a court of record, while Article 215 declares a High Court also to be a court of record.

32. In *Jowitt's Dictionary of English Law, First Edn. (p. 526) a court of record has been defined as:*

> *"A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority."*

33. Wharton's Law Lexicon defines a court of record as:

> *"Courts are either of record where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison; or not of record being courts of inferior dignity, and in a less proper sense the King's Courts — and these are not entrusted by law with any power to fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament. These proceedings are not enrolled or recorded."*

34. In Words and Phrases (Permanent Edition Vol. 10 page 429) "Court of Record" is defined as under:

"Court of Record is a court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the 'record' of the court, and are of such high and supereminent authority that their truth is not to be questioned."

35. Halsbury's Laws of England, 4th Edn., Vol. 10, para 709, page 319, states:

"Another manner of division is into courts of record and courts not of record. Certain courts are expressly declared by statute to be courts of record. In the case of courts not expressly declared to be courts of record, the answer to the question whether a court is a court of record seems to depend in general upon whether it has power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a court of record …. The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein."

36. After referring to these definitions the Apex Court in **Supreme Court Bar Assn.**'s case (supra) concluded that

"*A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice.*"

37. As explained by the Supreme Court in **T. Sudhakar Prasad v. Govt. of A.P., (2001) 1 SCC 516, at page 525:**

"…….jurisdiction hitherto exercised by the High Court now legislatively conferred on Tribunals to the exclusion of the High Court on specified matters, did not amount to assigning Tribunals a status of substitute for the High Court but such jurisdiction was capable of being conferred additionally or supplementally on any court or Tribunal which is not a concept strange to the scheme of the Constitution more so in view of Articles 323-A and 323-B. Clause (2)(b) of Article 323-A specifically empowers Parliament to enact a law specifying the

> *jurisdiction and powers, including the power to punish for contempt, being conferred on the Administrative Tribunals constituted under Article 323-A. Section 17 of the Act derives its legislative sanctity there from. The power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdiction, power and authority to hear and decide the matters covered by sub-section (1) of Section 14 of the Act having been conferred on the Administrative Tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for contempt of itself in the matters now falling within the jurisdiction of Tribunals if those matters would have continued to be heard by the High Court has now been conferred on the Administrative Tribunals under Section 17 of the Act. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the Contempt of Courts Act, 1971. The need for enacting Section 17 arose, firstly, to avoid doubts, and secondly, because the Tribunals are not "courts of record".*

38. In view of a well settled position of law on the subject as discussed above, the arguments that the Tribunal is a Court of Record does not deserve acceptance. Moreover, even if, for the sake of argument, the Tribunal is taken as a Court of Record, conferral of the power to punish for civil contempt would still be required. For this, reference may be made to language employed in Articles 129 and 215 of the Constitution of India:

> ***129. Supreme Court to be a court of record.***—*The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.*
>
> ***215. High Courts to be courts of record.***—*Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.*
>
> (Emphasis supplied)

39. Originally, Article 129 (proposed as Article108) was couched in these terms:

> *"The Supreme Court shall be a court of record".*

40. In the Constituent Assembly, stressing the need to add the words "and shall have all the powers of such a Court including the power to punish for contempt itself" Dr. B.R. Ambedkar said:-

> "*The new article 108 is necessary because we have not made any provision in the Draft Constitution to define the status of the Supreme Court. If the House will turn to article 192, they will find exactly a similar article with regard to the High Courts in India. It seems therefore necessary that a similar provision should be made in the Constitution in order to define the position of the Supreme Court. I do not wish to take much time of the House in saying what the words 'a court of record' mean. I may briefly say that a court of record is a court the records of which are admitted to be the evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words 'court of record'. Then, the second part of article 108 says that the court shall have the power to punish for contempt of itself. As a matter for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England this power is largely derived from Common Law and as we have no such thing as Common Law in this Country, we felt it better to state the whole position in the statute itself. That is why article 108 has been introduced."*

41. In the light of the conclusions arrived at on the aforesaid points, with great respect, we find ourselves unable to subscribe to the view taken by the Kochi Bench in **Anil Kumar B.**'s case(supra), that, in essence and substance, appears to be endorsed by the Kolkata Bench of this Tribunal by way of a common order passed on 10.04.2015 in C.A. Nos. 6/14,7/14 and 92/12 titled **Hav Asha Nandan Singh and others v. Lt Col K S Mehra and others.** Since we intend to differ and accordingly hold that the contempt applications are not maintainable, it would be appropriate to refer the matter to a larger Bench for consideration on the following question of general importance –

Whether a wilful disobedience to or non-implementation of its order may amount to causing any interruption or disturbance in the proceedings of this Tribunal thereby attracting action for contempt, under Section 19 of the Act read with Rule 25?

The matter be placed before Hon'ble the Chairperson for orders.

(R.C.MISHRA)
MEMBER(J)

(S.K. SINGH)
MEMBER (A)

New Delhi
15.04.20153
Raj