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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9953/2016**

**MOHAN LAL**

..... Petitioner

Through Mr Vishwendra Verma, Mr Yogesh and  
Mr Pranav, Advs.

versus

**ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ANR**

..... Respondent

Through Mr R.K. Gupta and Mr M.K. Singh,  
Advs. for R1

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MS. JUSTICE SUNITA GUPTA**

**ORDER**

**27.10.2016**

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We have heard learned counsel for the petitioner and the respondent no.1 who is present on advance notice. With the consent of the counsels for the parties, we have taken up the writ petition for hearing and disposal.

2. TA No.43/2008 filed by the petitioner was disposed of by the Central Administrative Tribunal, Principal Bench vide order dated 23.01.2009 with the following directions:

*“11. In the result, for the foregoing reasons, TA is allowed. As the applicant stood retired on superannuation, the penalty imposed upon him is set aside with a direction to the respondents to restore back the withheld salary. It is also made clear that insofar as recovery of Rs.47709/- is concerned, the respondents are at liberty to further probe into this matter and also finding out involvement of others. In such an event, any proceeding or methodology to recovery amount from them also and also the amount recovered from the appellant shall be adjusted therein and in case of an excess amount, the same shall be refunded to him. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.”*

3. The aforesaid directions were made subject matter of challenge in W.P.(C) No.1074/2010 by the respondent – All India Institute of Medical Sciences. The challenge was rejected by the judgment pronounced on 12.03.2010.
4. The petitioner had filed contempt petition being CP No. 917/2010 asserting that the directions given in the order dated 23.01.2009 had not been complied with. The contempt petition was disposed of vide order dated 08.04.2011 recording as under:

*“The directions of the Tribunal as per order dated 23.01.2009, in TA No.43/2008 para 11 are reported to have been complied by the respondents. This has not been opposed by the learned proxy counsel for the applicant. Hence, the CP is closed. Notices are discharged.”*

5. Immediately thereupon, the petitioner filed MA No.2320/2011 for revival of the contempt petition, contending that the facts were to the contrary. This application was dismissed vide order dated 21.11.2011 by the Tribunal recording as under:

*“3. In the course of the MA for revival of the CP, the averment made is that increments for the relevant period have not been paid and fixture of salary in terms of the recommendation of the 5<sup>th</sup> Pay Commission has not come about and that the arrears have not been paid to the applicant. The further grievance in the context is that no promotional benefit has come to be granted throughout his career i.e. with effect from 01.02.1968 (with effect from which he was appointed), till 31.05.2008 (i.e. the date with effect from which he retired from service).*

*4. The learned Coordinate Bench, in the course of the order dated 08.04.2011, recorded as categorical finding to the effect that “The directions of the Tribunal as per order dated 23.01.2009, in TA No.43/2008, para 11, are reported to have been*

*complied by the respondents.*

*5. That factual averment was not denied by the learned counsel for the applicant. In that view of things, it is not open to the applicant to file a plea for revival of the CP. If he has any grievance with regard to the factual accuracy of the stance recorded in the order, he has to take recourse to the remedy for review of that order before this Tribunal or a judicial review before the High Court.*

*6. The plea for revival of the CP shall stand negated accordingly.”*

A reading of paragraph 3 would indicate that the petitioner had averred and pointed out two grievances. The first was that he had not been given increments for the relevant period and his salary had not been fixed as per the recommendations of 5<sup>th</sup> Pay Commission. The second grievance was regarding non-grant of promotions between 01.02.1968 to 31.05.2008. The said application was summarily dismissed relying upon order dated 08.04.2011. The merits of the contempt petition and the issues raised therein were not decided.

6. The petitioner thereafter filed MA No. 88/2012 which was renumbered as 88/2013 and was disposed of vide order dated 29.09.2016 challenged in the present writ petition. This order holds that CP No.917/2010 was closed as the order dated 23.01.2009 passed in TA No.43/2008 had been complied with and nothing survived. The MA was not maintainable.

7. Having heard learned counsel for the petitioner and the respondent we are clearly of the view that the question of promotion etc was not dealt with or allowed in the order dated 23.01.2009 passed in OA No.43/2008. What was directed and allowed was that the petitioner, who had retired on superannuation, would be restored and paid the withheld salary. The penalty imposed in the departmental proceedings was set aside. Further Rs.47,709/- which had been

recovered from the petitioner were to be repaid.

8. A prayer not granted and allowed cannot be made the subject-matter of an application for implementation or contempt. Merits of the order dated 23.01.2110 could not have been made a ground or issue in the Miscellaneous Application or the contempt petition as such. Thus, the question of promotion etc. could not have been made the subject matter of the Miscellaneous Application or contempt petition, unless promotion was denied on account of punishment which had been set aside.

8. However, the contention of the petitioner that he had not been paid increments and his salary was not fixed in terms of the recommendations of the 5<sup>th</sup> Pay Commission, requires consideration and examination. It is correct that the petitioner's Contempt Petition was closed and notices were discharged vide order dated 08.04.2011 recording that the proxy counsel for the petitioner had not opposed the statement that the payments had been made in terms of the order dated 23.01.2009 passed in TA No.43/2008, but the case of the petitioner is that the statement made by proxy counsel was incorrect. He had, therefore, filed MA No.2320/2011. As noticed above, the said MA was disposed of as not maintainable.

9. The petitioner's grievance is clear and simple. He had not been given increments for the relevant period, when the enquiry proceedings were pending and his salary had not been fixed as per the recommendations of the 5<sup>th</sup> pay Commission. These remain undecided. Learned counsel for the petitioner has pertinently relied on Section 27 of the Administrative Tribunal Act, 1985 which reads:-

"27. Subject to the other provisions of this Act and the rules, <sup>1</sup>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) of 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."

10. Given the aforesaid facts and also noticing that the original petitioner – Late Mr. Mohan Lal is now being represented by his legal heirs, we set aside the order dated 20.09.2016 with the direction that the claim of the petitioner on the aforesaid aspects would be examined afresh without being influenced by the order dated 08.04.2011 passed in CP No. 917/2010. We would like to clarify that we have not made any comments on the merits and it is open to the respondent to contest the said application on merits on the said aspects/issues. Relief would be granted if the prayers made can be granted under Section 27 of the Administrative Tribunals Act, 1985. Otherwise, the petitioner, if aggrieved, will have to take recourse to an appropriate remedy in accordance with law. The respondent would be entitled to question the claim and contest the proceedings, if initiated.

11. With the aforesaid observations, the writ petition is disposed of.

12. To cut short the delay, the parties are directed to appear before the Central Administrative Tribunal on 28.11.2016, when a date of hearing could be fixed.

**SANJIV KHANNA, J**

**SUNITA GUPTA, J**

**OCTOBER 27, 2016/rd**