

**Court No. 1****HON'BLE ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****CONTEMPT APPLICATION No. 09 OF 2018**

Ram Gopal Sharma ..... Applicant

Versus

Sh Sanjay Mitra IAS (WB:82), Defence Secretary, 101-A, South  
Block, New Delhi ... Contemnor**In re:  
M.A. No. 1344 of 2017  
In  
O.A. No. 224 of 2018**

Ram Gopal Sharma Vs Union of India &amp; Others.

**ORDER (Oral)**

1. This is a contempt application moved by the applicant under Section 19 of the Armed forces Tribunal Act, 2007 for alleged non-compliance of the Tribunal's order dated 23.11.2017 and 26.02.2018 on the part of the respondents. By means of this application, the applicant has made the following prayers:

*“(i) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to execute and comply the Judgment/Order dated 26.02.2018 & 23.11.2017 of the Hon'ble Court in letter and spirit, in the interest of justice.*

*(ii) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to pay the entire cost within a period of one month with the compound interest @ 18% p.a. from the date of the applicability of order till the date of actual and final payment of the amount is paid, be also granted to the*

*Armed Forces Tribunal Bar Association, Lucknow, against the opposite parties.*

*(iii) That this Hon'ble Tribunal may kindly be pleased to award the cost Rs.20,000/- (twenty thousand) to the Armed Forces Tribunal Bar Association, Lucknow for financial loss as expenses in filing the instant application with the interest @ 18% p.a.*

*(iv) Any other beneficial relief which this Hon'ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents.”*

2. On behalf of the respondents, a preliminary objection has been raised regarding maintainability of this contempt application. Learned counsel for the respondents has drawn our attention towards the provisions of Sections 19 and 29 of the Armed Forces Tribunal Act, 2017, which read 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 sections 14, 15, 17, 18 and 20 of the Contempt of Courts Act, 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.”*

**“29. Execution of order of the Tribunal. -** *Subject to the other provisions of this Act and the rules made thereunder, the order of the Tribunal disposing of an application shall be final and shall not be called in question in any Court and such order shall be executed accordingly.”*

On the strength of the aforesaid provisions, it has been submitted by learned counsel for the respondents that this contempt application is not maintainable.

3. **Per contra**, learned counsel for the applicant has argued that a co-ordinate Bench of Armed Forces Tribunal, Regional Bench, Kolkata in C.A.Nos. 6/2014, 7/2014 and 8/2014 has decided the controversy and the orders passed therein have attained finality. The submission is that the findings given by the said co-ordinate Bench is binding on this Tribunal and, therefore, this contempt application is maintainable. Several case laws have been cited with regard to the binding effect of the order of co-ordinate Bench.

4. We have heard learned counsel for the parties and perused the record.

5. Before proceeding further, we would like to reproduce the orders dated 23.11.2017 and 26.02.2018, against which non-

compliance on the part of the respondents has been alleged.

These orders are as under:

**“23.11.2017**

**Hon’ble Mr. Justice D.P. Singh, Member (J)**  
**Hon’ble Air Marshal BBP Sinha, Member (A)**

*Present: Shri Vijay Kumar, Ld. Counsel for the applicant and Shri Siddharth Dhaon, Ld. Counsel for the respondents, assisted by Maj Salen Xaxa, OIC LegalCell.*

*Shri Siddharth Dhaon, learned counsel for the respondents makes a statement at the Bar that he had provided a copy of the affidavit to be filed against the delay condonation application to the respondents on 30.10.2017, but till date, the respondents have not handed over the duly sworn affidavit to him so that it may be placed on record. Prayer has been made for grant of further time to file objection. The functioning of the respondents does not seem to be appropriate. The officer concerned should have sent back the duly signed affidavit to his counsel within the time stipulated. However, as prayed, we grant one week’s further time to the respondents to file objection, subject to payment of costs of Rs. 5000/-, which shall be remitted to the AFT Bar Association. Costs shall be recovered from the officer held responsible for the negligence.*

*List this case for orders on 05.01.2018.*

*Copy of this order be given to the respondents on usual charges today.”*

**“26.02.2018**

**Hon’ble Mr. Justice S.V.S.Rathore, Member (J)**  
**Hon’ble Lt. Gen. Gyan Bhushan, Member (A)**

*Present: Shri Vijay Kumar, learned Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondent.*

*Learned counsel for the applicant submits that the cost of Rs. 5000/- which was imposed vide Court order dated 23.11.2017 has not yet been remitted.*

*Learned counsel for the respondents prays for and is granted two weeks' further time to remit the aforesaid cost.*

*List this case on 18.04.2018 for orders.*

*Meanwhile, learned counsel for the applicant shall file reply to the objection filed by learned counsel for the respondents on the application for condonation of delay.”*

6. A bare perusal of Section 19 of the Armed Forces Tribunal Act shows that power to punish for contempt has been given to the Tribunal, but the tenor of this provision *prima facie* shows that this power is to be exercised only with regard to criminal contempt and not to civil contempt. Section 29 of the Act provides for execution of order of the Tribunal. Thus an application for execution can be moved under Section 29 of the Act where final order disposing of an application has been passed. In the instant case, the orders aforesaid, against which contempt has been alleged, were passed at the intermediate stage so as to require the respondents to file objection on the application for condonation of delay. Subsequently, the delay

has been condoned and the OA has been admitted for hearing on 18.04.2018.

7. Further, when an application for contempt is proposed to be preferred for non-compliance of any order, then, as per settled law, an application for execution should be moved first, which would be only against final orders and only thereafter contempt application should be moved. The Hon'ble Apex Court in the case of **'Kanwar Singh Saini versus High Court of Delhi'** reported in (2012) 4 SCC 307 has observed as under:

*“20. The proceedings under Order 39 Rule 2A are available only during the pendency of the suit and not after conclusion of the trial of the suit. Therefore, any undertaking given to the court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceedings under Order 21 Rule 32 CPC and not by means of contempt proceedings. Even otherwise, it is not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a decree is for an injunction, and the party against whom it has been passed has wilfully disobeyed it, the same may be executed by attachment of his property or by detention in civil prison or both.*

*21. The provision of Order 21 Rule 32 CPC applies to prohibitory as well as mandatory injunctions. In other words, it applies to cases where the party is directed to do some act and also to the cases where*

*he is abstained from doing an act. Still to put it differently, a person disobeys an order of injunction not only when he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. Execution of an injunction decree is to be made in pursuance of the Order 21 Rule 32 CPC as the CPC provides a particular manner and mode of execution and therefore, no other mode is permissible. (See: Hungerford Investment Trust Ltd. v. Haridas Mundhra (AIR 1972 SC 1826).”*

8. Admittedly, in this case the OA has not been finally disposed and the orders imposing costs were passed on account of non-filing of objection by the respondents on the application for condonation of delay and the same was to be remitted to AFT Bar Association. This contempt application has been moved by Ram Gopal Sharma, who is the applicant in the OA. We fail to understand as to how he is aggrieved in the matter because the cost was to be deposited by the respondents and was to be remitted to the AFT Bar Association in compliance of the Tribunal's orders. The applicant was not in picture at all. Thus, the matter was between the Tribunal and the respondents; the applicant had in fact no concern in it.

9. Now, advertent to the decision of co-ordinate Bench of Armed Forces Tribunal, Regional Bench, Kolkata in C.A.Nos. 6/2014, 7/2014 and 8/2014, we may observe that learned counsel for the applicant has not provided us a copy of the orders passed by the Kolkata Bench. However, the findings

given by the Kolkata Bench in the said case have been quoted in the OA, which are as under:

*“65. For the reason discussed hereinabove, causus omissus may be supplied and by applying the principle of reading down a purposive interpretation may be given that Sec.19 deals with both the situation i.e. non-compliance of order of the Tribunal as well as disturbing its proceeding by insulting or using threatening language. Accordingly the litigant may file a contempt petition subject to limitation provided in Sec. 20 of the Contempt of Court Act in the event of non-compliance of the order of the Tribunal and the Tribunal may punish the contemnor in pursuance of the power conferred by Section 19 of the Act.*

*66. Section 29 of the Act provides that the order passed by the Tribunal shall be final with regard to service matters of the armed forces personnel and it shall be obligatory on the part of the authorities or the employer to implement or enforce it. For any omission and commission on the part of the employer Tribunal may pass appropriate order or direction for the ends of justice to ensure compliance of its order.*

*Section 19 of the Act deals with civil as well as criminal contempt. In the event of noncompliance of order passed by the Tribunal, the aggrieved party has right to file application before the Tribunal under Section 19 of the Act to initiate contempt proceeding and punish the contemnor on account of willful and deliberate disobedience of the order of the Tribunal. Accordingly, objection raised by the respondents is over-ruled.*



*Since we have dealt with the extent and scope of Section 19 of the Act (Civil or Criminal contempt) Registry shall immediately forward a copy of the present order to the Chairperson.”*

10. Learned counsel for the respondents submits that the observation of the Hon’ble Kolkata Bench that Section 19 of the Act deals with civil as well as criminal contempt, is contrary to the decision of Hon’ble Kochi Bench of the AFT dated 18.06.2013 in *D. No. 254 of 2013 (Unnumbered Contempt Application (Crl) of 2013) in TA No. 83 of 2010* in re: **Jose George versus Radhakrishna Mathur**. In the said case, Hon’ble Kochi Bench has held as under:

*“3. What is criminal contempt, according to the aforesaid provision, is use of any insulting or threatening language, causing any interruption or disturbances in the proceedings of the Tribunal. Non-compliance of an order does not fall in any of the aforesaid categories. Neither it is interruption nor disturbance in the proceedings of the Tribunal. Even the same cannot be treated to be use of an insulting or threatening language. In our considered view, non-compliance of the Tribunal’s order is not a criminal contempt under section 19 of the Act.*

4. Section 29 of the Act *inter alia* provides for execution of the orders of the Tribunal, which reads:

**“29. Execution of order of the Tribunal.** -Subject to the other provisions of this Act and the rules made thereunder, the order of the Tribunal disposing of an application shall be final and shall not be called in question in any Court and such order shall be executed accordingly.”

5. *The aforesaid Section has clearly provided that the order of the Tribunal disposing of an application shall be final and shall not be called in question in any Court and such order shall be executed accordingly. But Section 29 is silent as to how the order is to be executed. The procedure as to how the order is to be executed, has been provided in Rule 25 of the Armed Forces Tribunal (Procedure) Rules, 2008, which confers power on the Tribunal to enforce its orders. Rule 25 reads:*

**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.”

*The aforesaid Rule has, thus, conferred the inherent power on the Tribunal to make such orders or give such directions as may be necessary to expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. To our mind, as and when any order is passed by the Tribunal under Section 14 or 15 of the Act, the same can be enforced, if not already implemented, according to the aforesaid Rule 25. While giving effect to its order, it is open to the Tribunal to adopt such legal recourses as may be expedient for the enforcement of its order. In doing so, it can even adopt any of the recourses, ordinarily observed by the Civil Court in executing its decrees under Order XXI of the Code of Civil Procedure.”*

11. It is pertinent to mention here that the order passed by the Regional Bench, Kochi was binding on Regional Bench, Kolkata also. Thus, we find substance in the submission of learned counsel for the respondents that the order passed by Hon'ble Kolkata Bench is *per incuriam*.

12. Learned counsel for the respondents has also argued that the question whether the power to punish for civil contempt should be given to Armed Forces Tribunal is still under consideration of the Legislature. He has produced before us a copy of Press Release of the Ministry of Defence, which reads as under:

*“Press Information Bureau  
Government of India  
Ministry of Defence.*

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*26-April 2012 14:35 IST*

### ***Contempt Powers to Armed Forces Tribunals***

*The provisions of clause (1) of Section 19 of Armed Forces Tribunal Act, 2007 (55 of 2007) has given power to the Tribunal to punish for ‘criminal contempt’. There is no power vested with AFT in respect of ‘civil contempt’.*

*The Ministry of Defence has agreed ‘in principle’ to amend section 19 of the Armed Forces Tribunal Act, 2007, for implementation of AFT Orders/Judgements more effectively.*

*This information was given by Minister of Defence Shri AK Antony in a written reply to Shri A.A. Jinnah in Rajya Sabha today.”*

13. For the arguments sake only, if the findings aforesaid of the Hon’ble Kolkata Bench, when read in conjunction with the provisions of Sections 19 and 29 of the Armed Forces Tribunal Act, lead to inescapable conclusion that these provisions have been made with respect to the final orders passed by the Tribunal. The order against which this application for contempt

has been moved is not even an interim order but an intermediate order passed on the order-sheet, by which cost was imposed on the respondents with a view to expedite the filing of objection by them on the application for condonation of delay. Such orders can, by no stretch of imagination, be termed as final orders, as the same can, on the application of aggrieved party, be recalled, modified or cancelled at any time. In the Code of Civil Procedure, when an interim order is passed under Order 39, then specific provision under Rule 2(a) of Order 39 is there whereby an application for contempt for non-compliance of the order can be moved, but under the Armed Forces Tribunal Act, no such provision exists for execution of intermediate orders.

14. A perusal of the aforesaid order of Hon'ble Kolkata Bench further shows that against any willful and deliberate disobedience of the order, application for contempt can be moved, but in the facts of the instant case, the applicant was nowhere in picture. The Tribunal had directed that costs should be remitted to AFT Bar Association. Further, as observed above, once an application for contempt is moved, then it becomes a matter between the Court and the alleged contemnor. Since in the instant case only an intermediate order was passed and it was not even an interim order, such an order does not fall within the purview of final order, therefore, we are of the considered view that this application is misconceived and not maintainable. We refrain ourselves in imposing cost on the applicant for moving such application.

15. Accordingly, the application is **dismissed as misconceived and not maintainable.**

**(Air Marshal BBP Sinha)  
Member (A)**

**(Justice SVS Rathore)  
Member (J)**

Dated: Sept.13, 2018  
LN/-