(SEE RULE 102(1))

ARMED FORCES TRIBUNAL ,KOLKATA BENCH

C. A. NO.6/2014, C.A. NO. 7/2014 & C. A. NO.8/2014(ARISING OUT OF O.A. NO.92/2012, T. A. NO. 211/2010 & T. A. NO.50/2011 RESPECTIVELY)

THIS 10TH DAY OF APRIL, 2015

CORUM

HON'BLE JUSTICE DEVI PRASAD SINGH,MEMBER(JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S)

1. Hav (Promoted as Nb Sub) Asha Nandan Singh (C.A. No.6/2014)

2. Ex-Hav/Clk Rajendra Kumar Mishra (C. A. No.7/2014)

3. Rect. Manoj Kumar @ Manoj Kumar Pande (C. A. No.8/2014)

-versus-

CONTEMNOR(S)

1. Lt Col K. S. Mehra ,
Commanding Officer,
945 Tpt Coy ASC Type 'A'
Ballygunge Military Camp,
Kolkata -700 019. (C. A. No.6/2014)

2. i) Shri R. K. Mathur, Defence Secretary
Govt. of India, 101A South Block
New Delhi -110 001.
ii) Lt Gen Sanjeeb Anand, Adjutant General
Adjutant General Branch, Army HQ
New Delhi -110 001.
iii) Brig S. S. Prasad, Dy. Director General(Recruiting)
Zonal Recruiting Officer
1, Gokhale Road, Kolkata -700 020.
iv) Lt Col B. K. Mishra (CRO), Chief Recording Officer
Mechanical Infantry Centre, Ahmednagar-414 110(C.A. No.7/14)

3. i) Gen Bikram Singh, the Chief of Army Staff
Army HQ, Defence HQ
New Delhi -110 011.

ii) Shri R. K. Mathur, Defence Secretary
Army HQ, Defence HQ
New Delhi -110 011.
iii) Lt Col R. C. Pathak, the Chief Record Officer
EME Records, Secunderabad – 21.(C. A. No.8/2014)

For the petitioner(s) : Miss Manika Roy, Advocate (C. A. No.6/2014)

Mr. A. K. Paul, Advocate (C. A. No.7/2014)

For the contemnor(s) : Mr. B. K. Das, Advocate and
Maj Narender Singh, OIC, Legal Cell (C.A. No.6/2014)

Mr. Sandip Kumar Bhattacharyya, Advocate and
Maj Narender Singh, OIC, Legal Cell (C. A. No. 7/2014 &
C. A. No.8/2014)

O R D E R

PER HON'BLE JUSTICE DEVI PRASAD SINGH, MEMBER (JUDICIAL)

1. C. A. No. 6/2014 arising out of O. A. No.92/2012 has been preferred u/s. 19 of the Armed Forces Tribunal Act, 2007 (in short 'Act') to initiate contempt proceeding against the respondents on account of non-compliance of final order dated 27.08.2014 passed by this Tribunal.

Other one C. A. No. 7/2014 arising out of T. A. No.211/2010 has been preferred u/s. 19 of the Armed Forces Tribunal Act, 2007 (in short 'Act') to initiate contempt proceeding against the respondents on account of non-compliance of final order dated 02.04.2014 passed by this Tribunal.

Another C. A. No. 8/2014 arising out of T. A. No.50/2011 has been preferred u/s. 19 of the Armed Forces Tribunal Act, 2007 (in short 'Act') to initiate contempt proceeding against the respondents on account of non-compliance of final order dated 17.07.2013 passed by this Tribunal.

2. The factual matrix of record shows the sorry state of affairs where final order of the Tribunal have not been complied with compelling the applicants to approach the Tribunal u/s. 19 of the Act. Persons who have served the Army and benefited by the final order of this Tribunal are running from pillar to post for compliance of the final order.

3. Preliminary objection has been raised by Major Narender Singh, OIC, Legal Cell, HQ Bengal Area as well as the ld. counsel that Sec. 19 deals with the criminal contempt and not civil contempt. Hence application move u/s.19 of the Act on account of non-compliance of final order of the Tribunal are not maintainable.

4. Before considering the provisions contained in Section 19 and Section 29 of the Armed Forces Tribunal Act, 2007 ('in short Act'), it shall be appropriate to have a glance on the scheme

of the Act. The Act is the outcome of orders passed by the Hon'ble Supreme Court from time to time emphasizing for special law to deal with the Army matter. It was in AIR 1982 SC 1413 - Prithi Pal Singh Bedi vs. Union of India, where Hon'ble Supreme Court held that the absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment, in the laws relating to the armed forces was a distressing and glaring lacuna. Hon'ble Supreme Court opines to take step to provide at least one judicial review in service matters. In pursuance of observation of Hon'ble Supreme Court, Parliament legislated the law (our Act in question). The relevant portion of aims, objects and reasons of the Act is reproduced as under :-

> "3. In view of the above, it is proposed to enact a new legislation by constituting an Armed Forces Tribunal for the adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the courts-martial of the members of the three services (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union.
>
> 4. Establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst members of the three services in the system of dispensation of justice in relation to their service matters.
>
> 5. The Bill seeks to provide for a judicial appeal on points of law and facts against the verdicts of courts-martial which is a crying need of the day and lack of it has often been adversely commented upon by the Supreme Court. The Tribunal will oust the jurisdiction of all courts except the Supreme Court whereby resources of the Armed Forces in terms of manpower, material and time will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various courts. Ultimately, it will result in speedy and less expensive dispensation of justice to the members of the above-mentioned three Armed Forces of the Union.
>
> 6. The Notes on clauses explain in detail the various provisions contained in the Bill
>
> 7. The Bill seeks to achieve the above objectives."

5. Thus, the aims and objects of the Act is to <u>provide quicker and less expensive justice to the member of armed forces of the Union.</u> That is why wide power have been conferred to the Tribunal to proceed for redressal of grievances of army personnel in service matter. Sec.14 of the Act deals with the jurisdiction, powers and authority of the Tribunal. It provides that from the appointed day all the jurisdiction, power and authority exercisable immediately before that day by all courts shall cease except the power under article 226 and 227 of High Court. The Tribunal shall have jurisdiction to adjudicate controversy. Under Sub-sec.(4) of Sec.14 of the Act

Tribunal has been conferred same power as vested in civil court in a suit under the Code of Civil Procedure to regulate its proceeding with regard to certain procedural matters.

Sec. 23 provides that Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure but shall be guided by the principle of natural justice and other provisions of the Act and rules framed thereunder. The Tribunal has been further conferred power to regulate its own procedure. The combined reading of aims, object and different statutory provisions as contained in the Act including the provisions referred to hereinabove, the aims and object is to provide speedy justice to the army personnel. It should be kept in mind that unless some punitive measures are inferred from the Act to punish the guilty for non-compliance of Tribunal's order it shall not meet the aims and object of the Act.

6. Indian law maker Manu in Manusmrti said that in case the King fails to punish offender the powerful will persecute the weaker. Manu further says that it is only the fear of punishment which keeps a man within fore corner of law and compel to obey the law. Some slokas from Manusmrti (English translation) by Maitreyee Deshpande are reproduced hereunder :-

> "(20) When the king fails to unremittingly inflict punishments on offenders the powerful will torture the weak, like fishes fried on gird irons.
>
> (21) (Had there been no terror of punishment), crows would have drunk the *sacrificial porridge*, the dogs would have licked off sacrificial clarified butter, no one would have had the right of ownership in anything and the miscreants would have been paramount in society.
>
> (22) Men are dominated by the fear of punishment, rare is the man who is moral for the sake of morality; it is the terror of punishment that enables all men to enjoy their earnings or possessions.
>
> (23) Even gods, and demons, *Gandharvas, Raksas*, and celestial serpents and birds, dominated by the fear of divine retribution, tend to discharge the irrespective duties (for the advancement of the universe)."

Under these basic principles, the provisions contained in Sec. 19 and Sec.29 should also be looked into.

Section 29.

7. It shall be appropriate to consider the objection raised by Major Narender Singh, OIC

Legal Cell, HQ Bengal Area with regard to applicability of Sec.29 and thereafter the mandate flowing from Sec.19 of the Act. Sec. 29 of the Act is reproduced hereunder :-

> "**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."

A plain reading of the provision (supra) shows that it speaks for finality of an order passed by the Tribunal followed by the command that order passed by the Tribunal shall be executed in terms thereof. The mandate is for the employer. It does not empower the court to initiate execution proceeding as provided in Sec.36 to Sec.74 read with order XXI of the Code of Civil Procedure(CPC). Provisions contained in the Code of Civil Procedure operates against a decree of civil court as is evident from the provisions contained in Part II of the CPC. Sec.33 of the CPC empowers the civil court to issue decree after pronouncement of judgment which is as under:-

> "**33. Judgment and decree**.- The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow."

The decree so issued by the court may be executed in pursuance of provisions contained in Part II of the CPC read with order XXI. Under the Act no such provision has been made by the Parliament which may empower the Tribunal to issue decree and initiate execution proceeding to give effect to its order.

8. Otherwise also, the word 'execution' does not only mean to execute a decree. Black's Law Dictionary defines 'execution' as under :-

"**execution**, n.(14c) 1.The act of carrying out or putting into effect (as a court order or a securities transaction) <execution of the court's decree> <execution of the stop-loss order>. 2. Validation of a written instrument, such as contract or will, by fulfilling the necessary legal requirements<delivery of the goods completed the contract's execution>. [Cases: Contracts 34; Sales 29; Vendor and Purchaser 23; Will 108-129.] 3. Judicial enforcement of a money judgment, usu. By seizing and selling the judgment debtor's property <even if the plaintiff receives a judgment against the foreign debtor, execution is unlikely>. – Also termed (in Scots law) diligence. [Cases : Execution 1; Federal Civil Procedure 2691.] 4. A court order directing a sheriff or other officer to enforce a judgment, usu. by seizing and selling the judgment debtor's property < the court issued the execution authorizing seizure of the car>. – Also termed writ of execution; judgment execution; general execution. [Cases : Execution 74; Federal Civil Procedure 2697.]

"A writ of execution is an authorization to an executive officer, issued from a court in which a final judgment has been rendered, for the purpose of carrying such judgment into force and effect. It is founded upon the judgment, must generally be conformed to it in every respect and the plaintiff is always entitled to it to obtain a satisfaction of his claim, unless his right has been suspended by proceedings in the nature of an appeal or by his own agreement."

Benjamain J. Shiupman, Handbook of Comon Law Pleading $26, at 50 (Henry Winthrop Ballantine ed., 3d ed.1923).

9. Kerala High Court in a case reported in 1984 Kerala Law Times 759 (at page 760) held that a public servant discharges his duties when he performs the functions of his office and carries on any statutory or executive duty assigned to him. He executes his duty when he carries out some act or course of conduct to its completion. 'Execution' denotes fulfillment, completion or carrying into operation of any act or direction or order. When statutory orders and executive directions have to be implemented, the public servant acts in execution of his duty. Discharge of duty is, therefore, an expression of wider connotation while the words 'execution of duty' are of limited application.

10. Calcutta High Court in a case reported in AIR 1956 Cal 644 in Mury Exportation vs. Khaitan & Sons Ltd. while interpreting the word 'validity', 'construction' or 'execution' in arbitration clause held that the ambit of the arbitration clause is wide enough to include in the expression, 'validity', 'construction' or 'execution'. The word 'execution' in arbitration means in this context the entire range of performance and enforcement of agreement.

11. In judicial dictionary by K J Ayer (14th Edition) the word 'executed' has been defined with the assistance of Wharton's Law Lexicon which is reproduced below :-

"**Executed.** Consideration. A consideration which is executed before the promise upon which is is founded is made. An executed consideration will be a good consideration if it is executed at the desire of the promisor.

Contract. - Where nothing remains to be done by either prty and where the transaction is completed at the moment that the agreement is made, s where an article is sld and delivered and payment therefor is made on the spot.[Wharton's Law Lexicon, 1976 reprint, p. 387]."

12. In view of the aforesaid dictionary meaning and interpretation of the word 'execution' and 'executive' (supra) Sec. 29 of the Act does not seems to empower the Tribunal to initiate execution proceeding. Sec. 29 speaks with regard to finality of order of the Tribunal and command to employer/Union of India/ Central Govt. or the Army to execute the order or to implement the judgment of the Tribunal in its letter and spirit. No punitive action may be

taken by the Tribunal in the event of non-compliance of its order in pursuance of power conferred by Sec.29 of the Act.

13. It does not mean in case attention of the Tribunal is invited by litigant that in spite of finality of its order employer or the Government has failed to comply within the stipulated or reasonable period, Tribunal may be mute spectator.

14. Rule 25 of the Armed Forces Tribunal (Procedure) Rules, 2008 empowers the Tribunal that it may pass appropriate order or direction which is expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice. For convenience Rule 25 is reproduced as under :-

> "**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."

On application filed under Sec.29 of the Act, Tribunal may pass appropriate order or direction to enforce its earlier order for the ends of justice and it shall be obligatory on the part of the employer or the Government to comply with it.

Section 19.

15. Next limb of argument is whether Sec.19 empowers the Tribunal to punish the offender on account of non-compliance of Tribunal's order as well as for criminal contempt. It shall be appropriate to refer Sec.19 of the Act which is 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."

We have already held that Sec.29 correlates with the duty of employer as well as finality of order passed by the Tribunal. Attention has not been invited to any provision in the Act under which action may be taken against erring employer in case the order of the Tribunal is not complied with except the provision contained in Sec.19 (supra) of the Act. Accordingly, Sec.19 of the Act should be interpreted keeping in view the 'Act' as a whole as well as intention of legislature flowing from Sec.19 to punish the guilty on account of non-compliance of order of the Tribunal as well as in the event of an incident which may amount to interruption or disturbance of the proceeding of the Tribunal.

16. Under the Contempt of Court Act, 1971 (in short Contempt Act) civil contempt has been defined u/s.2(d) which means willful disobedience to any judgment, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

Whereas criminal contempt has been defined u/s.2(c) which means the publication whereby word is spoken or written or by signs, or by visible representation as well as any other action which scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court or prejudices, or interferes or tends to interfere with the due course of any judicial proceeding or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.

17. Sec. 12 of the Contempt Act deals with procedure for punishment for contempt of court. According to the said provision, a person may be punished for contempt of court with simple imprisonment for a term which may extend to six months. It does not distinguish between civil or criminal contempt. Sec. 13 of the Contempt Act deals with the situation where contemnor may not be punished in certain cases and also empowers the contemnor to set up a defence to justify his conduct by truth. Sec. 15 of the Contempt Act deals with cognizance of criminal contempt in other cases. Sec. 16 deals with contempt by Judge or Magistrate and Sec. 17 provides the procedure for hearing of criminal contempt.

18. Thus U/s. 12 of the Contempt Act the sentence has been provided. It relates to civil as well as criminal contempt. Procedure seems to be same except in certain circumstances for criminal contempt additional provision has been made u/s.15, 16 and 17 of the Act.

19. In case the contention of Major Narender Singh, OIC, Legal Cell, HQ Bengal Area is accepted then we have to adopt whole procedure as contained in the Contempt Act which seems to be not permissible. Only to limited extent of Sec. 15, 16 & 17 has been made applicable.

20. The maxims *Generalia specialibus non derogant* and *Generalibus specialia derogant* means where special provision is made on certain matter, that matter should be excluded from general provision. Accordingly, it is not permissible for this Tribunal to apply provisions contained in the Contempt Act to resolve the present conflict relating to civil and criminal contempt. Sec. 19 of the AFT Act should be interpreted on its own leg keeping with the schemes, aims and object of the Act.

21. Question cropped up whether in the event of violation of order of the Tribunal, final or interim, the Tribunal has got no jurisdiction to punish the contemnor in pursuance of power conferred by Sec. 19 of the Act ? Whether the litigant whose dispute has been resolved and the order of the Tribunal attains finality, should be remedy-less in the event of non-compliance of the Tribunal's order ?

22. While considering Section 19 we should take note of the fact that under Section 36 of the Act proceeding of the Tribunal shall be judicial proceeding. Armed Forces Tribunal (Practice) Rules, 2009 has been framed in pursuance of power conferred by Section 41 of the Act. Rule 10 of AFT Rules, 2009 (in short 'Rule 9') deals with scrutiny of application and pleadings by Registry **of** the Tribunal. For convenience Rule 10 is reproduced as under :-

"**10. Scrutiny of application or petition or other pleadings and papers**.- (1) The Scrutiny Branch of the Registry shall, on receipt of the application or appeal or pleadings from the receiving branch, scrutinize the same as expeditiously as possible but not beyond two days from the date of receipt.

Provided that if, for any reason, the scrutiny is not completed within the said period, the same shall be immediately reported to the Registrar, who shall take prompt steps to complete the scrutiny.

(2) The report of the scrutiny of the application shall be in Form No.2 and of Contempt Application either Civil or Criminal in Form No.3 and the scrutiny report shall be annexed to the application or appeal.

(3) Report of scrutiny of all other pleadings and papers shall be recorded on the reverse side of the last page of such pleadings or papers."

23. As per Sub-rule (2) of Rule 10 (supra) Registry shall ensure that application either of civil or criminal contempt should be filed in Form No.3 and accordingly make necessary scrutiny.

Form No.3 appended with the Rule contains specific column under clause 9 with regard to civil contempt and for criminal contempt permission has to be obtained from the Chairperson/Vice-Chairperson or the Member designated for the action in the event of criminal contempt. For convenience Form No.3 appended with the Rule is reproduced as under :-

"FORM NO.3
[See rule 10(2)]

ARMED FORCES TRIBUNAL ……..BENCH

Diary No……20…….

CA (Civil/Criminal)……..20…….

Between

……..Petitioner(s)

By

……
(Name of the Legal Practitioner, if any)

And

……..Respondent(s)

By

……
(Name of the Legal Practitioner, if any)

Subject : (No……..) Department : (No……..)

REPORT OF THE SCRUTINY OF CONTEMPT APPLICATION (CIVIL/CRIMINAL)

1. Whether the name (including as far as possible, the name of father/mother/husband), age, occupation and address of the petitioner(s) and the respondent(s) are given ?
   Note.- Together with personal number, rank, unit or formation, etc., as applicable, age.
2. Whether the parties impleaded as applicant(s) and respondent(s) are proper ?
   Note.- (a) In case of civil contempt for disobeying the order of the Tribunal, it is the party in whose favour the direction I issued that can be impleaded as applicant and the party against whom the direction is issued can be impleaded as the respondent.
   (b) In case of criminal contempt, the party who is alleged to have committed contempt that can be impleaded as the respondent.
3. Nature of contempt (Civil or Criminal) and the provisions of the Act invoked.

4.(a)Date of alleged Contempt
(b)Date of filing of the Contempt Application

(c)Whether the application is barred by limitation under section 20 of the Contempt of Courts Act, 1971 ?

5.(a) Whether the grounds and material facts constituting the alleged contempt are given ?

(b) Whether the grounds and facts alleged in the application are divided into paragraphs and numbered ?

(c) Whether the application is accompanied by supporting documents or certified/Photostat (attested) copies of originals thereof ?

(d) If the application relies upon any other documents(s) in his possession whether copy of such document(s) is/are filed along with the application ?

(e) Whether application and its annexure have been filed in a paper-book form and duly indexed and paginated ?

(f) Whether three complete sets of the paper-books have been filed ?

(g) Whether equal number of extra copies of paper-books have been filed there are more respondents than one ?

6. Whether the nature of the order sought from the Tribunal is stated ?

7. Whether the application is supported by an affidavit sworn to by the applicant verifying the facts relied upon ?

Note.- No affidavit is required if the Motion is by Attorney-General/Solicitor-General/Additional Solicitor-General.

8. Whether the applicant or his legal practitioner have signed the application indicating the place and date.

9. In case of civil contempt, whether the application is accompanied by a certified copy of the judgment/decree/order/undertaking alleged to have been disobeyed by the alleged contemnor?

10. (a) In case of criminal contempt, not covered by section 14* of the Contempt of Courts Act, whether the applicant has produced the consent obtained from the Attorney-General/Solicitor-General/Additional Solicitor-General ?

(b) If not, whether the application contains the reasons thereof

*contempt committed in the presence or hearing of the Member(s).

11. Whether the applicant had previously made a Contempt application on the same facts ? If so, have the following been furnished :-

(a) Number of the application ?

(b) Whether the application is pending ?

(c) If disposed of, nature/result of the disposal with date ?

12. Whether the draft charges are enclosed in a separate sheet ?

FOR ATTENTION

Orders on the administrative side have to be obtained from the Chairperson/Vice-Chairperson or Member designated in case of action for criminal contempt, as required by rule 7(ii) of the Contempt Rules before placing for preliminary hearing."

24. A combined reading of Rule 10 along with contents of Form No.3 shows that aggrieved party has got right to file an application under Section 19 of the Act either for civil contempt or for criminal contempt.

25. Sub-section (4) of Section 14 provides that Tribunal shall have the same power as are vested in a Civil Court under the Code of Civil Procedure. It has power to summon and enforce attendance of any person and examine him on oath, receive evidence on affidavit, requisition of public record or documents, issuance of commissions for examination of witnesses, review

its own decision, dismiss an application for default or decide ex parte or do any other matter which the Central Government may provide.

26. Rules (supra) have been framed under Section 41 of the Act. Rules, 2008 and 2009 have been framed by Central Government for the purpose of carrying out the provisions of this Act. Accordingly, it may be inferred that the Central Government or the Legislature interpreted Section 19 holding that it deals with civil and criminal contempt that is why Rule 10 as well as Form No.3 appended with Rule, 2009 specifically referred to civil and criminal contempt.

27. It is settled proposition of interpretative law that the entire Statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word. The relevant portion of the Statute must be read harmoniously vide **Deevan Singh Vs. Rajendra Pd. Ardevi (2007)10 SCC 528, Deepal Girish bhai soni Vs. United India Insurance Ltd. (2004) 5 SCC 385 & Essen Deink Vs. Rajiv Kumar (2002)8 SCC 409** and other catena of judgment of Hon'ble Supreme Court.

28. Maxwell also in his famous treatise 'The Interpretation of Statute' 12th Edn. said – A construction which would leave without effect any part of the language of a Statute would normally be rejected. Accordingly, a combined reading of the scheme of the Act, Rules framed thereunder and Forms appended with the Rule seems to make out a case that Section 19 of the Act empowers the litigant to file civil as well as criminal contempt.

29. Apart from the scheme, statutory provisions discussed hereinabove with regard to Tribunal's power to entertain a petition filed for civil contempt in the event of non-compliance of its order, Section 19 itself may further be looked into by interpretative tools to find out the intention of the legislatures for the purpose of contempt proceeding. Law of interpretation in modern concept seems to begin from Hydens law (Rules of Mischief) or as called purposive interpretation had travelled long way to solve the problem. The relevant modes of interpretation applicable in the present context are discussed hereinafter.

30. Maxim *UBI JUS IBI REMEDIUM* means there is no wrong without a remedy. If a man has a right, he should have a remedy. Aggrieved person would have a means to vindicate and maintain his right and enjoy from the benefit of the order of the Court or Tribunal. Maxim *lex semper dabit remedium* means if a man has a right, he must have a means to vindicate and

maintain it, and a remedy if he is injured in the exercise and enjoyment of it; and, indeed, it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal.

31. Maxim *UBI JUS IBI REMEDIUM* has been considered to be so good since it led to the invention of the form of action called an action on the case . Subject to the above, the provision contained in Sec. 19 of the AFT Act should be interpreted (supra). Maxim *BENIGN AE FACIEND AE SUNT INTERPRETATIONES PROPTER SIMPLICITATEM LAICORUM UT RES MAGIS VALEAT QUAM PEREAT (Co.Litt.36 a.); ET VERBA INTENTIONI, NON E CONTRA, DEBENT INSERVIRE* (Fox's Case, 8 Rep. 93b, at 94a.) means a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. According to Broom's legal maxim while construing written instrument it shall, if possible, be so interpreted *ut res magis* valeat *quam pereat (g)* and secondly such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties. The construction must be such as will (statute) not render destroyed.

32. On other maxim *CONTEMPORANEA EXPOSITIO EST OPTIMA ET FORTISSIMA IN LEGE* must be applied which means best and surest mode of construing an instrument is to read it in the sense which would have been applied when it was drawn up. In Broom's legal maxim it has been observed as under :-

33. "And in Salkeld v. Johnson (d), the Court of Exchequer observed, "We propose to construe the Act according to the legal rules for the interpretation of statutes, principally by the words of the statute itself: which we are to read in their ordinary sense, and only modify or alter so far as it may be necessary to avoid some manifest absurdity or incongruity, but no further (e). It is proper also to consider the state of the law which it proposes or purports to alter, the mischiefs which existed and which it was intended to remedy (f), and the nature of the remedy provided, and to look at the statutes *in pari materia* (g), as a means of explaining this statute. These are the proper modes of ascertaining the intention of the legislature."

34. In Rex v Vasey Lord Alverstone CJ observed :-

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience of absurdity, hardship or injustice presumable, not intended, a construction may be put upon it which modifies the meaning of the words, and the structure of the sentence."

35. The aforesaid opinion have been retreated by Maxwell in its famous Interpretation of statute which is as under :-

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule: "the canons of construction are not so rigid as to prevent a realistic solution."

Section 19 of the Act may be interpreted keeping in view the aforesaid broader principles of statutory interpretation relating to its applicability for civil and criminal contempt in tune with the scheme of the Tribunal's Act. The purpose of the Tribunal is ensure speedy justice to the armed forces personnel. In case the order of the Tribunal is not complied with and litigants are remedy-less then the orders of the Tribunal shall become waste paper.

36. Privy Council in Emperor verses Benoari Lal 1913 PC 36 held that the history of legislation and the facts which give rise to the enactment may usefully be employed to interpret the meaning of the statute, though they do not afford a conclusive argument.

37. In **(1966)3 All ER 265 (page 268(PC) IRC versus Mutual Investment Co.** while affirming the construction on the basis of absurdity, it has been observed that in case of ambiguity, that construction which better serves the ends of fairness and justice will be accepted, but otherwise it is for the Legislature in forming its policy to consider these elements.

38. It was Lord Denning, L.J. in his of quoted judgment, reported in **(1949)2 All ER 155 , p. 164(CA) Seaford Court Estates Limited versus Asher** had given his landmark verdict with regard to <u>principle of reading down or supply of causus omissus</u>. . Denning L.J. opined :

> "When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention

> of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

39. DENNIN, L.J. followed the aforesaid principle in another case reported in **(1950)2 All ER 1226, p. 1236 Magor & St. Mellons Rural District Council versus Newport Corporation** and observed, "We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis".

The observation of Denning L.J. was seriously criticized by House of Lords but Hon'ble Supreme Court in a case reported in (1978)2SCC213 **Bangalore Water Supply and sewerage board versus A. Rajappa and others** had approved the rule of construction as stated by Denning, L.J. while dealing with the definition of industry under the Industrial Disputes Act, 1947.

40. In a case reported in AIR 1955 SC 604 M. K. Ranganathan versus Govt. of Madras, Hon'ble Supreme Court observed that though the Statement of Objects and Reasons is not admissible as an aid to the construction of a statute but it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the bill to introduce the same and the extent and urgency of the evil which he sought to remedy.

41. In AIR 1958 SC 578 Express Newspapers Pvt. Limited versus Union of India, their Lordships of Hon'ble Supreme Court held that when the terms of statute are ambiguous or vague, the statement of objects and reasons may be resorted for the purpose of arriving at true intention of the legislature.

42. In AIR 1963 SC 1356 S.C. Prashar versus Vasantase, Hon'ble Supreme Court held that the Statement of Objects and Reasons may be referred for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation sought to remove is aimed at.

43. In State of West Bengal versus Union of India AIR 1963 SC 1241, Hon'ble Supreme Court observed that the Statement of Objects and Reasons may be used for limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. Same principle has been reiterated in AIR 1973 SC 913 A.C. Sharma versus Delhi Administration.

44. In AIR 1987 Sc 138 Kameswar Singh versus Addl. Dist. Judge, Lucknow, Hon'ble Supreme Court has widened the scope of object and reasons and observed that the court may strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The courts must therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case.

45. In (1964)2 SCC 183 R.S. Nayak versus A. R. Antulay, while considering the purpose of Prevention of Corruption Act, 1947 and mode of construing a provision of the Act, their Lordships observed that the purpose of Act is to make more effective provisions for prevention of bribery and corruption. To quote :

"The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it……. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it."

46. In a case reported in AIR 1986 Sc 1499 M/s. Girdhari Lal & Sons versus Balbir Nath Mathur and others, Hon'ble Supreme Court observed that while interpreting the statutory provisions, the Court has to ascertain the intention of the legislature, actual or imputed and the

Court must strive to interpret the statute as to promote and advance the object and purpose of the enactment. To reproduce relevant portion, to quote :

> "9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the written word if necessary."

47. In 2009 (7) SCC 1 N. Kanandasan Vs. Ajoy Khose and others the Hon'ble Supreme Court held that in case plain meaning assign to the section result in absurdity or anomaly, literal meaning indisputable would not be applied. It is also well settled that the Court may have to change the interpretative tool in the event it is necessary to give effective con textual meaning to the Act.

48. Needless to say that the courts are not precluded to supply causus omissus in the statutory provisions in case a plain reading of the statute result into absurdity, anomaly and loss or injury to public exchequer or public at large.

49. In AIR 1959 SC 422 (at page 427,428) Viluswami Thevar versus G. Raja Nainar, their Lordships of Hon'ble Supreme Court held that a construction which gives rise to anomalies should be avoided. In AIR 1955 SC 830 (p.833) Tirath Singh versus Bachittar Singh, Hon'ble Supreme Court observed, to quote :

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

50. Their Lordships have approved the principles of interpretation of a statute as done by Maxwell (11th Edn. Page 221)(supra)

Tirath Singh's case(supra) has been affirmed by the Hon'ble Supreme Court in State of **Madhya Pradesh versus Azad Bharat Finance Co. AIR 1967 SC 276 (p. 278), Union of India versus Sankalchand AIR 1977 SC 2328 (pp. 2337, 2358, 2373, CIT versus National Taj Traders AIR 1980 SC 485 (p. 490), R. Rudraiah versus State of Karnataka AIR 1998 SC 1070, Molar Mal versus Kay Iron Works(P.) Limited AIR 2000 SC 1261, AIR 2002 SC 1334 (pp. 1340, 1341) Padmasundara Rao versus State of T.N. and Modern School versus Union of India AIR 2004 SC 2236 (p. 2257)**.

51. Special Bench of Hon'ble Supreme Court in a case reported in **AIR 1955 SC 661 Bengal Immunity Co. Limited versus State of Bihar and others**, while considering the mode of interpretation considered certain ingredients required to be taken into account with regard to statutory interpretations. One of the modes of interpretation propounded by Hon'ble Supreme Court is always to make such construction as shall suppress the mischief, and advance the remedy. Relevant portion is reproduced as under :

> "22.It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case ; was decided that -
>
> "..... for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered :-
>
> 1st. What was the common law before the making of the Act.,
>
> 2nd. What was the mischief and defect for which the common law did not provide.,
>
> 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Common wealth., and
>
> 4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico".

52. Lord Denning in his famous treatise, "Discipline of Law" has observed that the Judges should not be mute spectator to ground realities and may proceed with ideas to remedy the mischief. The observation of Lord Denning in the "Discipline of Law" is reproduced as under :

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges' trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament."

> "15. And it is clear that when one has to look to the intention of the Legislature, one has to look to the circumstances under which the law was enacted. The Preamble of the law, the mischief which was intended to be remedied by the enactment of the statute and in this context, Lord Denning, in the same book at Page No. 10, observed as under:
>
> "At one time the Judges used to limit themselves to the bare reading of the Statute itself-to go simply by the words, giving them their grammatical meaning and that was all. That view was prevalent in the 19th century and still has some supporters today. But it is wrong in principle. The Statute as it appears to those who have to obey it-and to those who have to advise them what to do about it; in short, to lawyers like yourselves. Now the eccentrics cut off from all that is happening around them. The Statute comes to them as men of affairs-who have their own feeling for the meaning of the words and know the reason why the Act was passed-just as if it had been fully set out in a preamble. So it has been held very rightly that you can enquire into the mischief which gave rise to the Statute-to see what was the evil which it was sought to remedy."

53. The aforesaid observation of Lord Denning(supra) has been affirmed and accepted by their Lordships of Hon'ble Supreme Court in the case reported in **AIR 1988 SC 2239 U.P. Bhoodan Yagna Samiti, U.P. Versus Braj Kishore and others .**

54. In (**2004)5 SCC 385 Deepal Girishbhai Son and others versus United India Insurance Co. Limited, Baroda**, Hon'ble Supreme Court held that while interpreting the statute, it shall be read in its entirety. The purport and object of the Act must be given its full effect by applying the principle of purposive interpretation.

55. In **(2009)7 SCC 1 N. Kannadasan versus Ajoy Khose and others**, their Lordships of Hon'ble Supreme Court have applied purposive interpretation while ascertaining the intention of the Legislature.

56. In **Manu/SC/0619/2010 Bhakra Beas Management Board versus Krishan Kumar Vij and another,** Hon'ble Supreme Court held that a statute should be made workable and the interpretation thereof by a Court should be to secure that object. A construction should be rejected which is likely to defeat the plain intention of the Legislature. For convenience, relevant portion from the case of Bhakra Beas Management Board(supra) is reproduced as under :

> "34. It has been stated by Lord Dunedin, in the case of Murray v. IRC that, 'it is our duty to make what we can of statutes, knowing that they are meant to be operative and not inept and nothing short of impossibility should in my judgment allow a judge to declare a statute unworkable'. The principle was reiterated by him in a later judgment in the case of Whitney v. IRC , where he observed, 'a statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable.
>
> 35. The aforesaid observations make it abundantly clear that the courts will, therefore, reject the construction which is likely to defeat the plain intention of the legislature even though there may be some inexactitude in the language used. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided."

57. The principle of reading down has been applied by the Hon'ble Supreme Court again in a case, reported in (2009)5 SCC 625 M. Rathinaswany and others versus State of Tamilnadu. Their Lordships held that while construing a statute, interpretation should be in favour of constitutionality of statute and to remove anomaly.

58. Keeping the aforesaid principle of interpretative law and centuries old interpretative tool used by the Court to remove the absurdity provisions contained in Sec. 19 of the Act may be looked into and interpreted so that litigant have some remedy in the event of non-compliance of the order passed by the Tribunal.

59. The head-note of Sec. 19 empowers the Tribunal to punish for contempt. It does not speak for civil or criminal contempt. Accordingly, it may be interpreted as to include the incident of non-compliance of order as well as derogatory action of an offender which may amount to interference with the administration of justice. A person shall be guilty of contempt in case of intentional and deliberate non-compliance of the order of the Tribunal. The instances given in Sec.19 are only example dealing with certain situations which may amount to insult or use of threatening language or interruption or disturbance in Tribunal proceeding. Sub-section (1) of Sec.19 does not exclude the incident of non-compliance of Tribunal's order. It also does not speak of civil or criminal contempt.

60. Under Sec.29 the order of Tribunal is final and it shall be the duty of the authorities or the employer to execute the order within stipulated or reasonable period. Non-compliance of order of the Tribunal by the competent authority or person amounts to interruption in the enforcement of order of the Tribunal or in execution of the order from which an army personnel has been benefited. Interruption is a very wide term and it does not only correlate to an incident happened during proceeding before the Tribunal, but it includes an incident or the period between delivery of order by Tribunal and its compliance by the authorities. Unless an order is executed in its letter and spirit and benefit extended to the litigant, Tribunal will have jurisdiction to take action and punish for committing contempt of the Tribunal. The word 'or' used in sub-section (1) of Sec.19 is in disjunction and deals with different situation.

61. Like Sec.12 of the Contempt of Court Act sub-sec.(2) of Sec.19 additionally provide safeguard in certain circumstances attracting Secs. 14, 15, 16, 18 of the Contempt of Court Act. It may be noted that Sec. 20 of the Contempt of Court Act providing limitation in a contempt proceeding apply to both the situation i.e. where a person has been tried for contempt on

account of non-compliance of an order, judgment or decree as well as on account of disturbing the court proceeding or scandalizing the court or criminal contempt.

62. Miss Manika Roy, Ld. advocate had produced before the Court during the course of hearing an uncertified copy of the Division Bench judgment of Hon'ble Kerala High Court in a case decided on 20.12.2010 in writ petition (WP(AFT) No. 37433 of 2010) and invited attention to Para.9 of the observation made by the Hon'ble Kerala High Court. After considering the factual matrix of the controversy involved therein. Division Bench of Hon'ble Kerala High Court has observed as under :

"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 WP(AFT) No.37433/2010 the duty of the Tribunal under Section 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 it's orders under Section 29. For this purpose, it's inherent powers are retained and it has all the powers to enforce it's orders under Sections 29 & 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."

63. Miss Manika Roy, ld. advocate also invited attention by a judgment dated 26.04.2011 passed by Hon'ble Delhi High Court in W.P.(C) 13360/2009 whereby Delhi High Court observed that it may be debatable where Rule 25 (supra) recognizes the sui generis power of the contempt of criminal but in case not it may result with adverse consequences.

64. While recording a finding with regard to applicability of Sec. 19 to civil contempt i.e. to punish in the event of non-compliance of order of the Tribunal, it shall be appropriate to reproduce the relevant portion of the Constitutional Bench judgment of the Hon'ble Supreme Court reported in 1979 Vol.II SCC Page 34 (Chief Justice of Andhra Pradesh and Others vs. L. V. A. Dixitulu and Others) as under:-

"67. Where two alternative constructions are possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment."

The aforesaid observation of the Hon'ble Supreme Court having binding effect is in consonance with the catena of earlier and later decisions of Hon'ble Supreme Court of India, House of Lord and Principles of Interpretation(supra).

F I N D I N G

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 non-compliance 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.

Copy of the present order shall be placed in the respective three files. List/put up the matters on 29.04.2015.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE DEVI PRASAD SINGH)
Member (Judicial)