

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

22

C.A./T.A. No. 2249 /1995 Decided on: 13.4.98

Shri Harish chander APPLICANT(S)
(By Shri G.D. Gupta Advocate)

VERSUS

U.O.I. RESPONDENTS
M.S. Usgaonkar with
(By Shri Shri P.H. Ramchandani Advocate)

COMRAM

THE HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A)

THE HON'BLE ~~SHRI/SMT.~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal? NO

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2249 OF 1995

New Delhi, dated the 13th ~~March~~ ^{APRIL} 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Harish Chander,
S/o Shri Sat Bhushan,
R/o D-5, 5th Floor,
Special Type Quarters,
(Opp. R.M.L. Hospital),
Baba Kharak Singh Marg,
New Delhi-110001.

.... APPLICANT

(By Advocate: Shri G.D. Gupta)

VERSUS

Union of India through
the Secretary,
Ministry of Finance,
Dept. of Revenue,
North Block,
New Delhi.

..... RESONDENT

(By Advocate: Shri M.S. Usgaonkar, ASG with
Shri P.H. Ramchandani, CGSC)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant seeks continuation in CEGAT as President/Vice President/Vice President-cum-Judicial Member till he reaches 62 years of age with consequential benefits.

2. Applicant who was a practising advocate applied for one of the six posts of Judicial Member CEGAT advertised on 23.8.81 (Annexure A-1). He was selected and was offered appointment on 14.9.82 (Annexure A-2). He communicated acceptance on 17.9.92 (Annexure A-3) and was formally appointed as Judicial Member, CEGAT on 25.9.82 (Annexure A-4). On 27.9.82 he (Annexure A-5) requested for some time to join and on the same day (Annexure 6)

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was asked to join by end October, 1982 which he did on 29.10.82. Meanwhile his appointment as Judicial Member was notified in Gazette on 11.10.82 (Annexure A-7).

3. On 26.2.87 the CEGAT (Recruitment and Conditions of Service) Rules were promulgated (Ann. A-8) which were subsequently amended as on 12.11.93 (Ann. A-9). By those rules applicant's probation period was taken as one year, which he was deemed to have satisfactorily completed on 28.10.83 vide order dated 3.11.88 (Ann. A-1-2) and by order dated 7.11.88 he was appointed substantively as Judicial Member w.e.f. 29.10.83 (Annexure A-11).

4. Subsequently on 15.1.91 (Ann. A-12) he was appointed as Vice President, CEGAT and he took over charge ^{on} the same date. By subsequent order dated 15.5.91 (Ann. A-13) he was declared as HOD from 13.5.91 to 24.5.91 during which Shri G. Shankaran, President was on leave and again from 4.6. 91 (Shri Shankaran's date of voluntary retirement) till the new President took over.

5. On 13.4.92 (Ann. A-14) applicant was appointed as President, CEGAT for a period of three years from the date he entered upon office, or till he attained the age of 62 years, whichever was earlier. He admittedly took over charge on the same date (A.N.) and Notification dated 23.4.92

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(Ann. A-15) issued, appointing him as President, CEGAT for a period of three years w.e.f. 13.4.92 (AN), or till he attained the age of 62 years, whichever was earlier. Thereafter the impugned order dated 17.4.95 issued (Page 42), whereby it was held that consequent upon completion of three years tenure on 12.4.95 (AN) applicant had relinquished charge of the post of President, CEGAT w.e.f. 12.4.95 and on completion of his tenure as President and in accordance with Rule 10, CEGAT Members (Recruitment and Conditions of Service) Rules, 1987 he would not be entitled to hold any post in the Tribunal. Even as per applicant's own admission, he relinquished charge of the office of President, CEGAT on 25.4.95 (Ann. A-17).

6. Applicant's contention is that in 1995 he was only 54 years of age and he has an enforceable legal right to continue as President/Sr. Vice President/Vice President-cum-Judicial Member till he reaches 62 years of age.

7. We have heard Shri G.D. Gupta for applicant and Shri M.S. Usgaonkar, Id. ASG for the respondents. Both sides have also filed written submissions which are taken on record. We have given the matter our careful consideration.

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8. The substance of Shri Gupta's arguments are that applicant having been substantively appointed and confirmed on the post of Member, held a lien on the post of Member within the meaning of FR 9(13), and that lien could not be terminated unless he had acquired lien on any other post as per FR 14A(a). It was contended that applicant while holding lien as Member, was promoted as Vice President under Rule 12 CEGAT Members (RCS) Rules and was further promoted as President under aforementioned Rule 10. It was argued that even if the post of President was a permanent post, applicant not having been confirmed or substantively appointed to that post never acquired a lien on that post and therefore as his lien as Member still continued, he was entitled to continue as Member till 62 years, there being no bar in the rules for the same.

9. Section 129 Customs Act makes it clear that the post of President of CEGAT is recognised by Statute and Section 129(c) provides that while a Member and President are both Members of CEGAT they hold different offices and the ^{President} has special powers which a Member does not have. The post of President CEGAT thus being recognised by statute, and also carrying a different scale of pay sanctioned without limit of time, is a permanent post within the meaning of FR 9(22). In this connection FR 9(30A) defines tenure post to mean a

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permanent post which an individual Govt. servant may not hold for more than a limited period, and the Note below that provides that in case of doubt, the Central Govt. may decide whether a particular post is or is not a tenure post.

10. In the instant case, applicant's appointment order dated 13.4.92 gave him a clear tenure of three years upto 12.4.95, the effect of which was that it could not be terminated before the expiry of the aforesaid period unless otherwise curtailed on justifiable grounds but came to an end on the completion of the tenure. Applicant's appointment as President being for a specified tenure, it automatically ended on the expiry of the tenure and as he was not appointed as President with a right to be reverted to the post of Member/Vice President, the question of his reversion as Member/Vice President does not arise. In fact the only case of reversion contemplated under the CEGAT Members (RCS) Rules is in respect of what is contained in Rule 9(5) which certainly does not cover the instant case.

11. In this connection certain other provisions of the CEGAT Members (RCS) Rules are also relevant. Rule 2(a) of those Rules makes a clear reference to the Customs Act and in Rule 3(c) Member means a member of the Tribunal and unless the context

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otherwise requires includes the President, the Sr. Vice President, a Vice President, a Judicial Member and a Technical Member. Rule 10 provides for the appointment of the President and Rule 10(3) states that when a member (other than a sitting or retired Judge of a High Court) for a period of three years or till he attains the age of 62 years whichever is earlier.

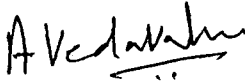
12. Thus both the CEGAT Members (RCS) Rules as well as FR 9(22) read with FR 30A) as applied to the facts of the present case, make it abundantly clear that applicant's appointment as President was a tenure appointment, and on completion of that tenure, applicant was required to demit office without any question of his reversion or continuation on some other post in that organisation.

13. In so far as Shri Gupta's contention that applicant was holding a lien on the post of Member and hence his non-continuation as Member was illegal is concerned, the definition of the term lien in FR 9(3) read with FR 14(A)(d) lends credence to Shri Usgaonkar's submission that applicant having taken the office of President, his lien on the office of Member (which also is a permanent post) stood terminated and he acquired a lien on the post of President for a period three years.

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14. We are fortified in our views by the Hon'ble Supreme Court's rulings in Dr. L.P. Agarwal Vs. UOI (1992) SCC 326; State of Mysore Vs. R.V. Bidap (1994) 3 SCC 337 and Dr. S.K. Kakkar Vs. AIIMS (1996) 10 SCC 734, and we find ourselves unable to accept Shri Gupta's contention that these rulings do not apply to the facts of the present case. Indeed in our view the ratio in Kakkar's case (Supra) squarely applies to the facts and circumstances of the present case, and it is the rulings relied upon by Shri Gupta which includes AIR 1964 SC 600; 1976(1) SLR 191; 1975 SLWR 589 and AIR 1992 SC 416, ^{which} are not directly relevant in regard to the matter before us and thus do not advance the applicant's claims.

15. This O.A. is therefore dismissed. No costs.


(DR. A. VEDAVALLI)
MEMBER (J)


(S.R. ADIGE)
VICE CHAIRMAN (A)

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