

P. 4
9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 301/1989
T.A. No.

198

DATE OF DECISION 29.11.91

Shri M.C. Joshi

Applicant (s)

Shri Ashok Aggarwal

Advocate for the Applicant (s)

Versus
Union of India & Ors

Respondent (s)

P.P. Khurana

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. T.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT


(Amitav Banerji)
Chairman

(b)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
OA NO.301/1989 DATE OF DECISION: 29.11.1991
SHRI M.C. JOSHI ...APPLICANT
VERSUS
UNION OF INDIA & OTHERS ...RESPONDENTS
CORAM:
THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN
THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)
FOR THE APPLICANT SHRI ASHOK AGGARWAL,
COUNSEL.
FOR THE RESPONDENTS SHRI P.P. KHURANA, COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri M.C. Joshi the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 challenging the termination of his services under Central Civil Services (Temporary Service) Rules, 1965 vide order No.F.No.21/33/88-Ad-IC dated 11.1.1989.

2. The point at issue is whether the service of the applicant who retired as Chief Commissioner of Income-Tax and was appointed as Member of the Settlement Commission (IT/WT) on 17th February, 1987 for a period of three years at a time or till he attain the age of 62 years whichever is earlier can be terminated before the completion of the tenure under CCS (TS) Rules, 1965.

3. The applicant retired as Chief Commissioner of Income Tax on 30.9.1986 on attaining the age of super-annuation. He was appointed as Member, Settlement Commission vide order dated 17.2.1987 (Annexure A) "with effect from the date of taking over of the charge of the Member, Settlement Commissioner IT/WT at Bombay on reemployment basis during his appointment as Member

Settlement Commissioner (IT/WT). His condition of service will be regulated by the Settlement Commission IT/WT (conditions of service of Chairman and Members) Rules, 1987 as amended from time to time." In view of his family circumstances, as explained, the applicant requested for a posting in Delhi instead of Bombay. His request was considered by the respondents favourably to join as Member, Settlement Commission (IT/WT) at Delhi and in partial modification of the Ministry's order of even number dated 17.2.1987 the Central Government allowed Shri M.C. Joshi, Chief Commissioner of Income Tax (Retd.) to join as Member, Settlement Commission and in partial modification of their earlier order dated 7.2.87 allowed the applicant to continue to work in Delhi. Later vide order dated 28.1.1988, he was transferred with immediate effect from Principal Bench at Delhi to the Additional Bench of the said Commission at Bombay in an existing vacancy. The applicant, however, did not move to Bombay as according to him the circumstances which compelled him to seek modification of the earlier order appointing him to Bombay continued to subsist. He, therefore, proceeded on leave w.e.f. 8.2.1988. In the meantime, two more additional Benches of the Settlement Commission were sanctioned by the respondents on 28.1.1987. One of the additional Bench was located in Calcutta while the other additional Bench was sanctioned for Madras. The applicant expected that one of the members at Delhi would be promoted as Vice-Chairman to fill one of the newly created posts in one of the additional benches and that he would be found a berth in Delhi. This hope spurred the applicant to request the respondents vide letter dated 11.2.1988 to accommodate him in Delhi in the vacancy that was likely to arise in the near future. He was, however, advised by the Additional Secretary, Department of Revenue, Ministry of Finance that the applicant's request has not been acceded

(12)

to by the respondents. He pursued the matter further by meeting the Revenue Secretary and sought extension of his leave from time to time. It was on 5.12.88 that one of the members of the Settlement Commission posted in Delhi was promoted as Vice- Chairman Madras Bench and the said member took over the charge of the post of Vice Chairman at Madras on 6.12.88. At this stage, the applicant again represented vide his letter dated 24.11.88 for being accommodated in Delhi against the one of the anticipated vacancy. He also asked for a personal hearing as he did not receive any response from the Revenue Secretary. The applicant met the Finance Minister on 26.12.88 and followed it up by a written representation dated 26.12.88. Another representation was submitted by him to the Minister of State for Finance on the same date.

He was on sanctioned leave upto 3.8.88 as per respondents' letter dated 21.6.88. However, no orders were passed on his further requests for extension of leave initially upto 31.12.1988 in two instalments and later on medical grounds upto 31.1.89. In the meantime the applicant's service was terminated vide impugned order dated 11.1.89. He represented against the said order to the Minister of Finance vide representation dated 13.1.89. The applicant contends that the impugned order is ultra vires and malafide and that his service cannot be terminated under the CCS (TS) Rules, 1965 as he was appointed on tenure basis for a period of 3 years which would have been expired on March 3, 1990 in terms of clause (vi) of the Rules governing the Conditions of Service of Chairman and Members 1977. He further submits that there is no provision in the Rules for termination of the services of the Chairman or Members of the settlement Commission. He, however, admits that in terms of rule 7 of the said rules in respect of matters for

which no specific provision is made in the said rules, the provision of relevant rules applicable to other officers of the Government of India of equal status will be applicable to him. The applicant submits that his services could have been terminated only after following the provisions of Article 311 (2) of the Constitution of India, as the action of the respondents constitutes a punitive measure and is not sustainable under CCS (TS) Rules, 1965. He claims that the Members of the Settlement Commission "are vested with extraordinary powers including the power to grant immunity from prosecution and penalty for any offence under the Income Tax Act or the Indian Penal Code (45 of 1860) or any other Central Act for the time being in force."

By way of relief he prays that the impugned order dated 11.1.1989 terminating his service be quashed as being unsustainable in law and therefore non-est with a further direction to the respondents to grant the applicant all consequential benefits.

4. The facts of the case are not disputed by the respondents in their reply-affidavit. They, however, submit that in accordance with Rule 7 of the Settlement Commission IT/WT (Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1977, the conditions of service in respect of matters not provided in the Rules are to be regulated by the relevant provisions of the Rules as applicable to the other officers of the Government of India of an equal status. The Department of Personal and Training in the context of the various request of the applicant for grant of extraordinary leave had clarified that the applicant was to be treated at par with temporary Government servants and accordingly the respondents submit that the CCS (TS) Rules would be applicable in his case. They refute the contention of the applicant that he was a holder of a substantive appointment of a tenure post. Further the applicant was informed

14

that in accordance with provisions contained in Rule 34 of CCS (Leave) Rules, 1972 a person re-employed after retirement can be granted extraordinary leave for a period of three months (otherwise then on medical grounds) on any one occasion. Shri Joshi's leave, however, extended much beyond the provisions of the Rules and he was, therefore, absent unauthorisedly from his duties w.e.f. 30.6.1988. The applicant was further asked in view of his unauthorised absence, whether he was still interested in continuing as a Member of the Settlement Commission. He did not give any reply to this query but kept on making repeated representations for posting at Delhi. In the circumstances after giving due consideration to Shri Joshi's representation dated 24.11.1988 the Govt. was obliged to take the extreme step of dispensing with the services of the applicant in public interest. The respondents further submit that the applicant was accommodated at Delhi by transferring a post temporarily from Bombay where the applicant was initially appointed as Member, Settlement Commission (IT/WT). The post was restored to Bombay as soon as the additional Bench of Bombay became functional and consequently order dated 28.1.88, posting Shri Joshi to Bombay was issued. Shri Joshi did not resume duties at Bombay and proceeded on leave w.e.f. 8.2.1988 and he never joined the post till the date of termination of his service. Further He continued to remain on unauthorised extraordinary leave w.e.f. 30.6.88 till 11.1.89 when his service was terminated. His request for accommodating him in Delhi was considered at the appropriate levels but it was not found possible to accede to the same. He was also informed accordingly. Further sanction of extraordinary leave also could not be considered as according to Rules the Chairman of the Settlement Commission is competent to

grant 90 days extraordinary leave at a time and this period in the case of the applicant expired on 29.6.1988. The Department of Personnel and Training who were consulted in the matter had clarified that Shri Joshi's request for grant of extraordinary leave would be governed by rule 34 of CCS (Leave) Rules, 1972 which permits a person who is reemployed after retirement to be treated at par with those who entered Government service for the first time. Accordingly, the applicant could be granted extraordinary leave for a period upto 29.6.88. Thereafter there was no other alternative but to treat him as on unauthorised absence as he never joined the post to which he was transferred. Shri Joshi's various representations submitting that he cannot move on account of family problem, personal and family circumstances and obligations, clearly indicate that Shri Joshi was unwilling to join his assignment at Bombay. His absence resulted in giving a set back to the functions of the additional bench of the Settlement Commission at Bombay and affected the public interest adversely. In the circumstances the Government had no option to take extreme action against the officer. The respondents submit that in the case of Group 'A' officers of all levels the President is the appointing authority. The orders of termination of service in the case of the applicant have been issued in the name of the President after obtaining due approval from the Minister. His service was terminated under CCS (TS) Rules, 1965 as the Department of Personnel and Training had clarified that "in the matter of officers' request for grant of extraordinary leave he was at par with temporary Government servants."

The applicant has not filed any rejoinder.

16

We have heard the learned counsel for both the parties and carefully gone through the case of **P.L. Dhingra v. U.O.I AIR 1958 SC 36** and **Pushpa Kumari v. Chandigarh Admn. ATC 1987 (2) 430**. Both the cases deal with the protection available to the Government servants under Article 311 of the Constitution of India who are in regular service as distinct from re-employment. The facts of the case before us are qualitatively different inasmuch as that the appointment letter dated 17.2.1987 of the applicant clearly states that "the Central Government has decided to appoint the applicant as Member at Bombay on re-employment basis". The applicant was, however, retained in Delhi, keeping in view his representations in regard to his family circumstances in partial modification of February, 1987 order vide order dated 10.3.1987. Later, on 28.1.1988 he was transferred from Principal Bench at Delhi to the additional Bench of the Settlement Commission at Bombay. The applicant, thereafter made a series of representations and exhausted all his leave upto 30.6.1988. He could not have remained on leave beyond 30.6.1988, as the Rules do not make any provision for continuing on an extraordinary leave beyond a period of 90 days at a time. The respondents, therefore, treated his absence from duty as unauthorised. The applicant's contention is that his service cannot be terminated till he completes three years, as he was a substantive holder of the tenure post. "The word "tenure," in its technical sense, is the manner whereby lands or tenements are holden, or the service that the tenant owes to his lord, and there can be no tenure without some service, because the service makes the tenure." (**Bard v. Grundy's Devisees, 2 Ky. 168, 169, Ky. Dec. 168, 169**).

Thus the principle underlying tenure is the service that is rendered for holding the tenure.

In the case before us the applicant initially proceeded on leave. Thereafter he exhausted the extraordinary leave permissible under the Rules and continued to remain absent from duties without proceeding to the place of posting viz. Bombay, instead he chose to remain on unauthorised absence. The right of tenure does not guarantee that a person be retained in a particular place or assigned a particular job. (Words and Phrases, Permanent Edition, Volume 41, by West Publishing Co.). The applicant should have been aware of the implication of remaining absent from duty, as in the matter of extraordinary leave he is treated at par with temporary Government servants in accordance with the residuary provisions made in Rule 7 of Settlement Commission (Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1976. Although a tenure post is a permanent post it can be held for a limited period of time. In this restricted sense a tenure post simulates a temporary post. The applicant, after he had exhausted all the extraordinary leave permissible under the Rules chose to continue to remain absent. He also failed to give a clear cut answer to the query directed to him through the Settlement Commission whether he was interested in continuing as a Member of the Settlement Commission. Faced with a situation in which the applicant was:

- a) continuing on unauthorised absence;
- b) not giving his unwillingness to proceed to Bombay; and
- c) persisting with his representations to retain him in Delhi.

¹⁷ The respondents had little option but to deem that by his conduct the applicant has declined to continue as Member of the Settlement Commission. The provisions of Article 311 of the Constitution would also not rescue him from the situation in which he put himself, as he was holding a tenure

post on re-employment basis after he had retired on superannuation as Chief Commissioner of Income-tax. We are, therefore of the view that the impugned order of termination of service in the facts and circumstances of the case was passed by the respondents in valid exercise of the authority available under the law.

In the above conspectus of the case we do not find any merit in the application, which is dismissed with no order as to costs.

Salve
(I.K. RASGOTRA)
MEMBER(A) 29/9/91

Ab
29.11.91
(AMITAV BANERJEE)
CHAIRMAN