

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I.

O.A.No.1088/89

Date of Decision: 6th March, '92.

R.R. KHOSLA

Petitioner.

Mr.G.D. GUPTA

Advocate for the
Petitioner.

Versus

U.O.I. & Another.

Respondents.

Mr.P.P. KHURANA

Counsel for the
Respondents.

CORAM:

THE HON'BLE MR. KAUSHAL KUMAR - VICE CHAIRMAN.

THE HON'BLE MR. T.S. OBEROI - MEMBER (JUDL.).

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

Yes

Yes

No

Yes

T.S. Oberoi
(T.S. OBEROI)
MEMBER (JUDL.)

K. Kaushal
6-3-92
(KAUSHAL KUMAR)
VICE CHAIRMAN.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.1088/89.

Date of Decision: 6th March, 1992.

R.R. KHOSLA	-	Applicant.
Mr.G.D. GUPTA	-	Counsel for the Applicant.

Vs.

U.O.I. & Another	-	Respondents.
Mr. P.P. KHURANA	-	Counsel for the Respondents.

CORAM:

1. The Hon'ble Mr. Kaushal Kumar - Vice Chairman.
2. The Hon'ble Mr. T.S. Oberoi - Member (Judl.).

MR. KAUSHAL KUMAR, VICE CHAIRMAN.

The applicant who joined the Income-tax Department in 1951 as an Income-tax Officer, Group 'A', on the result of the competitive examination for the I.A.S. and allied services held in 1950 rose to the position of Member of the Central Board of Direct Taxes on 21st November, 1983. He would have ordinarily retired under the provision of F.R. 56 with effect from 31st August, 1985 on attaining the age of superannuation, namely, 58 years but, in the meantime, he was appointed as a Member of the Settlement Commission set up under the provision of Section 245-B of the Income-tax Act, 1961 and Section 22-B of the Wealth Tax Act, 1957 with effect from 25th April, 1984. Later on, he was elevated as Chairman of the Commission with effect from 6th November, 1985. As per provision of ^{Rule 6 of} the Settlement Commission (Income-tax/Wealth Tax) (Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1977, notified on 4th June, 1977 which were subsequently amended on 12th February, 1987, " a person appointed as Chairman, Vice Chairman or Member shall hold office for a period

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of three years or till he attains the age of 62 years whichever is earlier and shall not be entitled for re-appointment....." The applicant demitted office as Chairman of the Settlement Commission with effect from 5th November,1988 when the tenure of three years as Chairman of the Commission was over. However, in the meantime, the Government of India, Ministry of Finance (Department of Revenue) had issued a Notification on 17th September,1985 filed as Annexure A-V with the application that the applicant had retired from Government service on superannuation on 31st August,1985 (A/N) but continued to hold the statutory appointment as Member, Settlement Commission (Income-tax/Wealth Tax) on re-employment basis. The grievance of the applicant is that he has been given retiral benefits as if he had retired with effect from 31st August,1985 and not with reference to the date when he ceased to hold the office of the Chairman, Settlement Commission, with effect from 5th November,1988. The applicant made a representation to the respondents on 30th November,1987, filed as Annexure A-VIII which was rejected on 30th August,1988, vide reply filed as Annexure A-IX. The relief prayed for in the application is for quashing the impugned notification dated 17th September,1985 and the communication dated 30th August,1988 referred to above.

2. The short point for determination in the present case is as to whether the applicant would be deemed to have retired from Government service on 5th November,1988 when he ceased to hold the office of Chairman, Settlement Commission in terms of the provision made in Rule 6 of the Settlement Commission Rules notwithstanding the Notification dated 17th September,1985 retiring him from Government service on attaining the age of 58 years on 31st August,1985 or the applicant should be considered

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as having retired on 31st August, 1985, as per the Notification.

3. The learned counsel for the applicant Shri G.D. Gupta contended that the applicant had been appointed as Member of the Settlement Commission while he was still in Government service holding the post of the Member, Central Board of Direct Taxes and the Settlement Commission being itself a Wing of the Government, it was an automatic extension of his service and the retiral benefits had to be worked out with reference to the date when he actually ceased to hold office as Chairman. The learned counsel in this connection relied on the case of one Shri C.C. Ganapathy who was the first Chairman of the Settlement Commission and who had been given retiral benefits with reference to the date when he ceased to hold the office of the Chairman in July, 1978 on attaining the age of 60 years in accordance with the provisions of the Rules as they stood at that time. In this connection, the learned counsel for the applicant relied on the rule of interpretation by reference to contemporanea expositio as held by the Supreme Court in K.P. Varghese Vs. Income-tax Officers, Ernakulam, 1981 I.T.R. Vol. 131 Page 597. The Supreme Court observed as follows :-

" The rule of construction by reference to contemporanea expositio is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly and felicitously expressed in Crawford on Statutory Construction, 1940 Edn., where it is stated in paragraph 219 that "administrative construction (i.e., contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight, it is highly persuasive". The validity of this rule was also recognised in

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Baleshwar Bagarti v. Bhagirathi Dass (1908) ILR 35 Cal 701, 713, where Mookerjee J, stated the rule in these terms:

"It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it."

4. This principle was reiterated in Collector of Central Excise, Bombay-I, And Another Vs. Parle Exports(P.)Ltd. 1990 Vol.183 I.T.R. Page 624. The Supreme Court observed as follows :-

"It was submitted that how the Government understood a matter at the time of the notification is a relevant factor and that is a factor which one should bear in mind in view of the principles enunciated by this Court in K.P. Varghese Vs. ITO (1981) 131 ITR 597. It is a well settled principle of interpretation that courts, in construing a statute or notification, will give much weight to the interpretation put upon it at the time of enactment or issue and since, by those who have to construe, execute and apply the said enactments."

5. The learned counsel for the applicant Shri Gupta contended that the respondent having interpreted the tenure rule in the case of Shri Ganapathy by giving him the benefit of retirement on expiry of his tenure as provided in the Settlement Commission Rules, they could not give a different interpretation to the said rules in their applicability to the petitioner's case.

6. The learned counsel for the respondents Shri P.P. Khurana refuting the contentions advanced on behalf of the applicant argued that the case of Shri Ganapathy was clearly distinguished from that of the petitioner in as much as Shri Ganapathy was appointed as Chairman of the Commission in April, 1976 when the rules framed under the proviso to Article 309 of the Constitution had not come into force and in his case the Government had given him extension of service beyond 58 years and, therefore, he had been given retiral benefits with reference to the date of retirement

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on completion of his tenure as Chairman, Settlement Commission, on attaining the age of 60 years. The learned counsel Shri Khurana also relied on Rule 7 of the Settlement Commission Rules which reads as follows :-

"7. Other conditions of Service: The conditions of service of the Chairman and other Members in respect of matters for which no provision is made in these rules shall be the same as may for the time being be applicable to other officers of the Government of India of an equal status".

7. We have carefully considered the contentions advanced on both sides and notice that the Settlement Commission Rules have drawn a distinction between persons who are appointed to the Commission while still serving in Government before attaining the age of 58 years and those who are re-employed in the Commission after retirement from Government service in certain matters such as contribution to General provident Fund and Contributory Provident Fund as is clear from the provision of Rule 6 A. Contribution to the GPF or CPF in the case of persons re-employed as Chairman and Members has been ^{made} subject to such conditions as are applicable to re-employed Central Government servants whereas this condition has not been prescribed in case of Chairman and Members appointed before retirement from service. The learned counsel for the respondents Shri Khurana drew sustenance from the provision of Rule 7 and argued that since ~~there has been~~ ^{had been} no specific provision ^{made} for retirement as such on completion of tenure in the rules, a Chairman or Member would be deemed to have retired from Government service on attaining the age of 58 years as in the case of any other Government servant ^{Even though he might have been appointed to the Commission before attaining the said age.}

8. The learned counsel also pointed out that in this particular case, a notification had been issued as early as 17th September, 1985 soon after the retirement of the

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petitioner from Government service on 31st August, 1985 making it clear that continuance of his statutory appointment as Member, Settlement Commission, was on re-employment basis only. The learned counsel Shri Khurana also argued that the case of Shri Ganapathy could not be relied upon for giving any benefit to the applicant since the Government had necessarily to give extension of service to Shri Ganapathy because the Settlement Commission Rules had not come into force at the time of his appointment as Chairman. The learned counsel further argued that even though the extension of service had been given to Shri Ganapathy upto 31st March, 1978 and he had actually retired in July, 1978, this would not make any difference since the quantum of financial benefits accruing on retirement whether the same occurred on 31st March, 1978 or 31st July, 1978, would more or less have been the same. He further argued that there had been so many Chairmen and Members appointed to the Settlement Commission after Shri Ganapathy and their cases had been dealt with in the same manner as that of the petitioner taking their retirement ^{as} on the date of completion of the age of superannuation i.e. 58 years.

9. The letter dated 21st September, 1977, filed as Annexure A-X issued by the Government in case of Shri C.C. Ganapathy is extracted below :-

" I am directed to refer to this Department's Notification No.86 of 1977 dated 20/4/1977 issued from D.No.19012/1/74 Ad.1 granting extension of service to Shri C.C. Ganapathy in the post of Chairman, Settlement Commission (II & WT) upto 31.3.1978 and to say that after the promulgation of the rules regulating the conditions of service of Chairman, and Members of Settlement Commission, would retire on 31.7.1978 on attaining the age of 60 years. I am also to inform that it has been

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decided in consultation with Department of Expenditure to allow Shri Ganapathy to carry forward 120 days earned leave from the date of his superannuation viz. 31.7.76 which is the maximum permissible as refused leave Shri Ganapathy can, during his tenure as Chairman, avail himself of a part of the refused leave and the leave earned after superannuation in terms of rule 39(5) (i) of the CCS (Leave) Rules. However, if he avails of the refused leave and the leave that he earns during his tenure as Chairman after demitting that office, the total of such leave should not exceed 120 days."

10. From the above, it is seen that in the case of Shri Ganapathy, the Government took the view that after the promulgation of the Settlement Commission Rules, Shri Ganapathy would retire on 31st July, 1978, on attaining the age of 60 years even though his service had been extended only upto 31st March, 1978. This appears to be the most natural and harmonious construction of the rules in the absence of any provision in the rules that any person who is appointed to the Settlement Commission before attaining the age of 58 years would be deemed to have retired on attaining the said age notwithstanding his continuance in the Settlement Commission. It is admitted by the learned counsel for the respondents that Settlement Commission is a Government Organisation and a person who is appointed to the Commission continues to draw all the benefits to which a Government servant is entitled subject to the provision of the rules. Rule 6 prescribes the tenure of a Member and the Chairman. As such, a person who, while still in Government service, is appointed to the Commission gets an automatic extension of service in terms of Rule 6 prescribing the tenure. The age of retirement, as prescribed under F.R. 56, is deemed to have merged into the rule of tenure. Any Notification which retires a Government servant on attaining the age of 58 years and designates the service after the said date as being on re-employment basis cannot be upheld when there is an automatic extension of service in case of a serving Government servant on his appointment

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to the Settlement Commission. This interpretation and construction of the rule derive support from dispensation given by the respondents in the case of Shri Ganapathy.

11. It is an accepted fact that Settlement Commission is like any other Government Organisation - only the appointment thereto and tenure etc. are governed by a set of statutory rules. That being so, Rule 6 regarding tenure has the effect of continuing in Government service a Government servant already in service at the time of his appointment to the Commission. Any order or Notification regarding extension of service or re-employment is an executive act. Where is the necessity for extension or re-employment in a case where the Government servant continues in service by virtue of Rule 6? The question of extension or re-employment arises only in those cases where the Government servant has actually ceased to be in service on attaining the age of superannuation. A Notification regarding re-employment in case of a Government servant continuing in service beyond the age of superannuation is not only unnecessary and superfluous but has the negative effect of depriving the concerned Government servant of certain monetary benefits which would otherwise accrue if such a Notification were not issued. It nullifies the logical and positive outflow of Rule 6. There is no bar in the Settlement Commission Rules regarding appointment of serving Government servants. The rules do not say that only a Government servant who has retired or seeks voluntary retirement can be appointed to the Commission. An executive act cannot over-ride the effect of a statutory provision. Therefore, the Notification regarding re-employment in the present case has to be held illegal.

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12. In view of the above discussion, the application is allowed and the Notification dated 17th September, 1985 filed as Annexure A-V is hereby quashed. Respondents are directed to work out the retiral benefits of the applicant with reference to his actual date of retirement as Chairman of the Settlement Commission in November, 1988.

13. The direction given in the judgment shall be implemented within a period of three months from the date of receipt of a copy of the judgment by the Respondents.

14. There shall be no order as to costs.

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(T.S. OBEROI)
MEMBER (JUDL.)

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(KAUSHAL KUMAR)
VICE CHAIRMAN.