

Slater's Justice condition

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 539 OF 1987
~~TAX No.~~

DATE OF DECISION 19-7-1991.

D.N. Nanavaty & Ors. Petitioner(s)

Mr. M.D. Rana, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent(s)

Mr. Jayant Patel, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No.*

(19)

1. D.N. Nanavaty
2. Rashila Sinalhan
3. Aruna Vyas
4. Pratapsinh Parmar
Clerk-cum-Typist,
Nehru Yuvak Kendra,
Junagadh (Gujarat). Applicants.

(Advocate: Mr. M.D. Rana)

Versus.

1. Union of India,
(Notice to be served on
The Secretary,
Ministry of Education &
Welfare Department-
Education. Nehru Yuvak Kendra,
New Delhi.)

2. Youth Co-ordinator,
Nehru Yuvak Kendra,
Junagadh,
Dist: Junagadh. Respondents.

(Advocate: Mr. Jayant Patel)

J U D G M E N T

O.A.No. 539 OF 1987

Date: 19-7-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The Government of India, Ministry of Human Resources Development, Department of Youth Affairs and Sports issued Resolution No. F-24-1/87-NYK dated 25.2.1987 creating an autonomous society named Nehru Yuvak Kendra Sangathan under the Societies Registration Act 1860 to take over, manage, and run the existing Nehru Yuva Kendras and to carry on activities to achieve and promote the purposes of the Nehru Yuva Kendra scheme. The four applicants of this original application filed under section 19 of the Administrative Tribunals Act, 1985, who were the employees of the Nehru Yuvak Kendras, question the transfer of the organisation of Nehru Yuvak Kendras

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to the Nehru Yuvak Sangthan and seek our direction to the Union of India and its officers and servants to make suitable provisions and clarifications for the protection of the service conditions of the Nehru Yuvak Kendra Employees. Their say is that the rules of recruitment for various posts in the Kendras were promulgated by a notification dated 7.6.1975 issued by the President of India in exercise of authority under Article 309 of the Constitution. This notification included rules for recruitment of Accounts clerk-cum-typist, the post to which applicant No.1 was appointed. The other three applicants were appointed as daily wagers. They were given regular payscale following the judgment of the Supreme Court in Nehru Yuvak Kendra case, ((1986) SCC 637).

2. The applicants' contentions appear to be twofold. Their first contention appears to be that their services cannot be transferred to the Sangthan without their opting for the service of the Sangthan. Their second contention is that their service conditions as Kendra employees should remain unchanged and, in any case, not be changed unilaterally to their disadvantage. They say that the above resolution provisions contain no safeguard on that score. Their say is that the transfer of their services to the Sangathan would, in its effect, cause extinction of their status holding civil posts of the Union of India. It is thus argued that the resolution suffers from the vice of arbitrariness and it would also result in depriving the applicants the protection of the provisions of Article 311 of the Constitution as servants of the Union of India. Making averments and contentions on these lines, the applicants have spelt out the purpose of filing this original application

H. M. J.

thus: "The petition is filed only with a purpose to seek clarification about their status and service conditions to be offered to them in the future".

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

4. Coming to the first contention of the applicants that their services cannot be transferred to the Sangathan without their opting for the service of the Sangathan, the written reply filed by the Under Secretary, Department of Youth Affairs and Sports, Government of India, dated 12.12.1988 states that a circular (Annexure-I to the reply) dated 27.6.88 was addressed to Accounts Clerk-cum-typist of Nehru Yuva Kendra informing them that their posts, consequent upon the establishment of Nehru Yuva Kendra Sangathan and transfer of all the Kendras to the Sangathan, stand abolished as no longer required in the Government and that the Sangathan has made provision to take their services in the Kendra under the Sangathan as per enclosed terms and conditions and in case the same are acceptable their services will be placed at the disposal of the Sangathan whereafter they would be the employees of the Sangathan for all purposes. It was notified to them that in case the terms and conditions offered by the Sangathan are not acceptable, the Government will have to repatriate/terminate their services. They were requested to send their option by 27.6.88. The original application before us was filed on 19.10.1987 before the Department of Youth Affairs and Sports issues this letter. Therefore, the applicants would be required to intimate this Tribunal their position with regard to the letter dated 27.6.88

by filing amendment application. However, this was not done. As the applicant must also have been given the option, their challenging the impugned resolution dated 25.2.1987 has become infructuous and baseless. The second contention of the applicants is that their service conditions as Kendra employees should remain unchanged and in any case not be changed unilaterally to their disadvantage. It is clear from the contents of letter dated 27.6.88 that terms and conditions of the offer of service to them in the Sangathan were enclosed with it. It should have been for the applicants to show in what respects if at all these terms and conditions changed to their disadvantage the terms and conditions of their service in the Kendras. Unless that is specifically alleged, we have no material to hold that the terms and conditions of the service of the applicants have been changed much less to hold that the same have been changed to their disadvantage. Their further contention that the transfer of their service to the Sangathan would in its effect cause extinction of their status of holder of civil posts, legally there is no escape from this eventuality. The judgment of the Principal Bench of this Tribunal in Mrs. Suraksha Markande & Ors. Vs. Union of India & Ors. (ATR 1989(1)CAT 462) relying on Supreme Court precedent, contains the following in paras 8 and 9 of the judgment:

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"8..... It is no doubt true that, as observed by the Constitution Bench of the Supreme Court in M.Ramanatha Pillai v. The State of Kerala and another, 1973(2)SCC 650, "the power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of Government policy. Every sovereign Government has this power in the interest and necessity of internal administration. The creation or

abolition of post is dictated by Policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public..... The power to abolish any civil post is inherent in every sovereign Government and this power is a policy decision exercised by the executive, it being necessary for the proper functioning and internal administration of the State". It was further observed by the Supreme Court in the aforesaid case that "the abolition of post may have the consequence of termination of service of a Government servant, but such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The abolition of post is not a personal penalty against the Government servant". The same view was reiterated by the Supreme Court in K.Rajendran V. State of Tamil Nadu, 1982(2)SCC 273 and T.Venkatareddy v. State of Andhra Pradesh, 1985(3)SCC 198. In the former case, it was ruled that "the power to abolish a civil post is inherent in the right to create it. The Government has always the power, subject, of course, to the constitutional provisions, to reorganise a department to provide efficiency and bring about economy. Whether or not a post should be retained or abolished is essentially a matter of policy decision. But the decision should be taken in good faith and the action to abolish a post should not be just a pretence taken to get rid of an inconvenient incumbent. The law is well settled that whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such a decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the Court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether the post should or should not be abolished."

M H. J

9. "In view of this well settled proposition of law, it is not at all open to us to question the wisdom of the respondents in taking the policy

decision to create an autonomous body like the Sangathan and entrust to it the task of running and administering the Nehru Yuva Kendras as a suitable mechanism to supervise, administer, monitor and evaluate the programmes of the Nehru Yuva Kendra in the country vide resolution dated 25th of February, 1987, even though it sounds somewhat strange that such a decision was taken just a few months after the Recruitment Rules were amended in October, 1986. Presumably the volume of administrative work, the measures of economy and the need of streamlining their administration to make it more efficient induced the Government to convert the Establishment to that extent into an autonomous body viz. the Sangathan. Any-how we are more concerned with the consequences which flow from discontinuance of the post of Youth Co-ordinators under the Central Government with effect from 1st of March, 1988."

5. Thus the first relief praying for direction to the Union of India and its officers and servants to make suitable provisions and clarification for the protection of the service condition of the employees serving in the Nehru Yuva Kendras particularly at Junagadh has become infructuous as an offer is seen to have been made. The applicants have not disputed this position by filing rejoinder or submitting any material to raise any doubt about the authenticity of the letter dated 27.6.88. The prayer for first relief thus has to be rejected. The second relief seeking declaration that a transfer of service without offering option is illegal, arbitrary also does not survive because it has been shown by the respondents that such an offer was made.

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NO
Status? Service
Condition? Termination

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

M.A.No. 325/91

in

R.A.No. 28/91

in

O.A. No. 539/87

~~Ex-Ax-Dex~~

DATE OF DECISION 25-11-1991.

D. N. Nanavati, Petitioner

Petitioner-in-person. ~~Advocate for the Petitioner(s)~~

Versus

Union of India & Ors. Respondents

Mr. Jayant Patel, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M. M. Singh, Administrative Member.

The Hon'ble Mr. S. Santhana Krishnan, Judicial Member.

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

D.N. Nanavati. Applicant.

Vs.

Union of India & Ors. Respondents.

M.A.No.325/91

in

R.A.No. 28/91

in

O.A.No.539/87

Date: 25-11-1991.

Decision by circulation:

Per: Hon'ble Mr.M.M.Singh, Administrative Member.

A Miscellaneous Application in the form of affidavit seeking condonation of delay in filing the review application has been filed. However, in the first para of this Miscellaneous application appears "The petitioner's therefore present this review application on the following grounds". This shows that the affidavit itself is review application. An affidavit is now required to be filed in compliance with the provisions of notification No. A-11019/44/87 dated 26.2.1991 issued by the Government of India (Department of Personnel & Training). The following are the principal grounds contained in the affidavit for filing the review application:

"2. That the applicants have noticed from the contents of the judgment that their Advocate has failed to make the amendment by filing rejoinder as observed by the CAT.

3. That the petitioners took some time to discover New & important evidences & obtained a copy of the Nehru Yuva Kendra

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Sangathan (Service) Regulation 1987.

4. That the petitioners took some time to clarify the mistakes why the material mistakes apparent on the face of the record & facts remained to be brought to the notice of the Hon'ble CAT from their Advocate in OA/539/87 in order to decide for filing review application. As these were the mistakes of an Advocate it was found necessary to clarify before filing review application.
5. That an Advocate of OA/539/87 failed to explain before the CAT how the New Services of Nehru Yuvak Kendra Sangathan are disadvantageous to the petitioners as compared to the services in Nehru Yuvak Kendra, as it is observed from the judgment.
6. That the petitioners have found so many lapses on the part of an Advocate of OA/539/87 which has resulted into the miscarriage of justice and or to correct grave & palpable errors on the face of record."
2. The delay condonation application which appears as above stated to double up as a review application also is dated 3.9.91. The separate review application is also dated 3.9.91. Our judgment of which review is sought is dated 19.7.91. As the delay is marginal, we condone the delay and allow the Miscellaneous application.
3. The review application avers at point 1 that "Because the appeal is allowed against the order in question but it has not been preferred so far". We presume that applicant wants to convey that no appeal has been filed.

4. The above grounds have been carried forward to the separate review application also besides advancing some more grounds. In para 5 the applicant is averred that his advocate did not inform him for filing necessary amendment application regarding the latest position contained in letter dated 27.6.88 after filing original application on 19.10.87 due to which the material facts remained to be brought to the notice of this Tribunal due to mistake of the advocate. It has been averred in para 8 that the petitioners did not get opportunity to produce service regulations and their advocate did not demand for it. In para 18 of the application it has been averred that the advocate failed to explain to this Tribunal as to how the change in service conditions become disadvantageous to the applicant.

5. The applicant has produced with the review application (i) draft of Nehru Yuva Kendra Sangathan (Service) Regulations, 1987 dated 3.11.87, (ii) his letter dated 20.7.1988 addressed to Director, Government of India, Ministry of Human Resource Development, Deptt. of Youth Affairs & Sports, Shastri Bhavan, New Delhi on the subject of transfer of Service of Accounts Clerk cum Typist of Nehru Yuva Kendras to the Nehru Yuva Kendra Sangathan with reference to Director's order dated 27.6.88, (iii) Resolution dated 25.2.87 of Government of India regarding establishment of Nehru Yuva Kendra Sangathan, (iv) Government of India, Ministry of Human

Resource Development letter dated 27.6.88 addressed to the applicant on the subject of transfer of services of Accounts Clerk-cum-Typists of Nehru Yuva Kendras to the Nehru Yuva Sangathan, (v) judgment of Bombay High Court in the case Shridhar Hari Chandorkar Vs. State of Maharashtra & Anr. on the subject of transfer on deputation and (vi) a copy of the judgment of this Tribunal of which review is sought.

6. From the averments of the applicant, it is clear that the main grounds of his review application consist of contents of regulation dated 3.11.87 and letter dated 27.6.88 above. Admittedly, this record was in possession of the applicant and letter dated 27.6.88 is addressed to the applicant and circular dated 3.11.87 containing draft of regulations and inviting of applicant's option known to the applicant as seen from letter dated 20.7.88 above in which the applicant had informed the Director that he will give his option after hearing from Central Administrative Tribunal which is kept on 27.7.88. It is thus clear that the material papers above which the applicant seeks to produce now with the review application were in the knowledge and possession of the applicant though he blamed his advocate as above for their non production before this Tribunal. It is not the contention in the application that the applicant brought these documents to the notice of the advocate despite which the advocate did not take appropriate action with regard to the documents.

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7. In the above circumstances it is clear that this application is to be taken as not filed on the ground of discovery of new matter. The matter as seen above was already known to the applicant and therefore within his knowledge. Failure to produce the same before this Tribunal has to be taken as resulting from the applicant's own inaction in not bringing the same to the knowledge of his advocate. When an applicant files an application in the Tribunal after the filing of which he gets some more documents by way of further developments in the matter on which application has been filed, it is natural that unless the applicant himself brings the documents to the notice of his advocate, the advocate cannot know that the applicant is in possession of any such documents which have bearing on the outcome of the application filed. The question of filing any amendment to the original application can arise only when the applicant has shared the contents of the documents with his advocate. But as above stated, such is not the averment of the applicant. There is no such assertion in the application.

8. The application therefore does not fall within the ambit of review application provided for in order XLVII of the Code of Civil Procedure, 1908. We therefore hereby reject it.


(S. Santhana Krishnan)
Judicial Member


(M.M. Singh)
Administrative Member