Rejected/c

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 106 OF 1991. ~~198~~

~~T.A. No.~~

DATE OF DECISION 12-7-1991.

Major Ishwar N. Maligi, Petitioner

Mr. M.R. Anand, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s.

Mr.M.R.Raval for Mr.P.M.Raval, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R.C.Bhatt, 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 ? No
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

Major Ishwar N. Maligi,
Deputy Director, NCC,
NCC Directorate, Ahmedabad.
residing at 245/2, Infantry Road,
Camp,
Ahmedabad - 380 003. ..... Applicant.

(Advocate: Mr. M.R. Anand)

Versus.

1. Union of India,
through the Secretary,
Ministry of Defence,
Government of India,
Central Secretariat,
(South Block)
New Delhi - 110 001.

2. Director General,
Directorate General NCC,
Ministry of Defence,
Government of India,
West Block - IV,
R.K. Puram,
New Delhi - 110 066.

3. Deputy Director General,
NCC Directorate, Gujarat,
Camp, Ahmedabad - 380 003.

4. Director,
Zoological Survey of India,
New Alipore,
Calcutta - 700 027. ..... Respondents.

(Advocate: Mr.M.R. Raval for
Mr. P.M. Raval)

ORAL JUDGMENT

O.A.No. 106/1991

Date: 12-7-1991.

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

The applicant posted as Deputy Director, NCC, NCC Directorate, Ahmedabad, filed this application under section 19 of the Administrative Tribunals Act, 1985, impleading Union of India through Secretary, Ministry of Defence, Director General, NCC Ahmedabad and Director, Zoological Survey of India, to challenge order dated 20.3.1991 passed by Respondent No.3 retiring the applicant on attaining the age of 55 years on 31.3.1991.

The material facts in the application are that the applicant is a civilian in the Defence Department and governed by the Fundamental Rules and the CCS (Pension) Rules, 1972 according to which his retirement age is 58 years. Claiming his right to continue in service as a civilian upto the age of 58 years, the applicant pleads that the respondent No.3 could not retire him from service on attaining the age of 55 years and that he has right to continue in service upto the age of 58 years.

2. We have heard Mr.M.R. Raval for Mr.P.M. Raval, learned counsel for the respondents. Applicant and his counsel not present.

3. It was vehemently asserted ~~before us~~ by Mr.M.R.Anand, learned counsel for the applicant on 27.3.1991 when the matter was first placed before a bench of this Tribunal that the applicant had requested the Director General NCC to arrange his early repatriation to his present Zoological Survey of India to enable him to serve up to 58 years and to earn his pension and other benefits on the basis of service upto 58 years. It was alleged that the respondents gave no reply to his representation for repatriation. An order was issued to stay Annexure A-1 the order of retirement of the applicant till the final disposal of the application observing that the respondents have the liberty to repatriate the applicant to the Zoological Survey of India in case the applicant has lien of service in that department.

4. The first question that arises before us in this application is whether the submissions before us that the applicant had his lien of service in the Zoological Survey of India have substance. The respondents, in their reply, have annexed copy of office order No.81/79

dated 28-5-79 issued by Zoological Survey of India to the effect that the lien of Shri I.N. Maligi, Substantive Senior Zoological Assistant, Zoological Survey of India, is terminated with effect from the date of issue of this order and that Shri Maligi was released from Defence Services with effect from 3.4.76 and has not reverted to his parent Department inspite of repeated reminders and that retention of Shri Maligi's lien in his parent post was contingent on his continuing in the Defence Service which condition ceased to exist with effect from 3.4.1976. The copy of this office order was marked to the applicant Shri I.N. Maligi at 245-2, Infantry Road, Camp 3, Ahmedabad and two other departments and offices. The respondents have made a specific mention about the termination of the lien of the applicant in Zoological Survey of India in para 5.6 of their reply. The applicant's rejoinder to this para figures in para 6.1 of the rejoinder. The rejoinder is to the effect that the applicant reiterates what he had stated in the O.A. It is further alleged that the respondents have made an issue of the lien of the applicant aiming at misleading this Tribunal. When the respondents have produced the record consisting of the office order terminating the lien of the applicant with the Zoological Survey of India and no contrary material to dispute the veracity of this order has been produced by the applicant, we should be constrained to observe that it is the applicant and not the respondents who may appear to be misleading this Tribunal in this regard. We therefore hold that the lien of the applicant in the Zoological Survey of India by virtue of which the applicant could set up the claim for continuing in service up to the age of 58 years in the event of his repatriation to the Zoological Survey

of India from NCC is baseless seeing the office order, supra.

5. The second issue that arises is that whether the respondents are correct in retiring the applicant on attaining the age of 55 years on 31.3.1991. The respondents have in their reply para 5.4 specifically averred that in page 1 of the ACR Form for 1989/90 filled up by the applicant himself, he has himself mentioned the fact of his retirement from service in March 1991. The applicant has covered this para of the respondents' reply in para 6.1 of the rejoinder. In this rejoinder, the applicant has stated that the applicant reiterates what he had stated in the application. This shows that the applicant has ~~not~~ no given proper reply to the respondents drawing the applicant's attention to the applicant having himself in the said ACR Form taken himself as retirable in March 1991. We therefore view that the applicant is, by his own showing, to be precluded from questioning the impugned order of retirement issued to retire him on 31st March, 1991 on attaining the age of 55 years.

6. In view of the above, the application has no merits and it is liable to be dismissed. We hereby do so and, in the circumstances of the case, with cost of Rs.500/- against the applicant. Ad interim order in terms of para 4 of order dated 27.3.1991 is vacated with immediate effect.

(R.C.Bhatt) 15/7/91
Judicial Member

(M.M. Singh) 15/7/91
Admn. Member

Retirement yes

(17)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

M.A. St.No. 357 OF 1991.

in

O.A. No. 106 OF 1991.

~~TA No.~~

DATE OF DECISION 14-8-1991.

Major Ishwar N. Maligi, Petitioner

Mr. M.R. Anand, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr.M.R.Raval for Mr.P.M.Raval, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R.C.Bhatt, 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? yes

MGIPRRND—12 CAT/86—3-12-86—15,000

(18)

Major Ishwar N. Maligi,
Deputy Director, NCC,
NCC Directorate, Ahmedabad.
residing at 245/2, Infantry Road,
Camp, Ahmedabad - 380 003. ..... Applicant.

(Advocate: Mr.M.R. Anand)

Versus.

1. Union of India,
through the Secretary,
Ministry of Defence,
Government of India,
Central Secretariat,
(South Block)
New Delhi - 110 001.

2. Director General,
Directorate General NCC,
Ministry of Defence,
Government of India,
West Block - IV,
R.K. Puram,
New Delhi - 110 006.

3. Deputy Director General,
NCC Directorate, Gujarat,
Camp, Ahmedabad - 380 003.

4. Director,
Zoological Survey of India,
New Alipore,
Calcutta - 700 027. ..... Respondents.

(Advocate:Mr.M.R.Raval for
Mr.P.M. Raval)

O R D E R

M.A.St.No.357 OF 1991
in
O.A.No. 106/91

Date: 14-8-1991

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

In O.A.No.106/91 of this Bench the applicant and counsel as also respondents' counsel were not present on 11.7.1991 when the matter was called for final hearing. By way of last opportunity, the matter was adjourned to 12.7.1991. On 12.7.1991 when the matter was called, again the applicant and counsel were not present. We therefore proceeded to hear learned counsel Mr.M.R.Raval for Mr.P.M. Raval for the respondents. After hearing him

and appositioning the record to the relevant issues and so considering it, one of us dictated the judgment in the open court. After we retired to chambers, learned counsel Mr.M.R.Anand for the applicant called on us in the chambers and submitted a handwritten application the substance of which is that the case had appeared on 11.7.1991 and on 12.7.1991 in the cause lists for final hearing, it was not seen by the clerk of Mr.Anand for both the dates and therefore it was not listed on his (learned counsel's) board and he therefore remained completely in the dark about it. The matter came to be heard ex parte and oral judgment dictated learning about which Mr. Anand rushed to the Tribunal immediately with the request that the matter may be heard again after being restored. To quote from the application, "this request was made before the judgment was signed though it was already dictated in the open court". Mr. Raval, learned counsel for the respondents who was present recorded his strong objection on this application. Later, Mr. Anand filed a typed application dated 12.7.1991 on the lines of the handwritten application. This application has been numbered as Miscellaneous application for its identification.

2. Updating the events, the oral judgment above was submitted to us on 15.7.91 for our signature. We signed it on 15.7.1991. 13th & 14th July, 1991 were holidays, being Saturday and Sunday. The above application registered as miscellaneous application for identification was taken up for hearing on 15.7.1991. Learned counsel Mr. Raval graciously made statement on that date that the respondents will not take any further action persuant to our judgment and will maintain status quo as existing "today" till 18th July, 1991. The hearing of the application could be concluded on 24.7.1991.

3. Mr. Anand's submissions are to the effect that when he approached us in the chambers on 12.7.1991, no order in accordance with the provisions of Rule 20 of Central Administrative Tribunal (Procedure) Rules 1987 (hereinafter the Rules) was made as the order had not been rendered into writing to be signed by us; that Rule 15(1) of the Rules gives discretion to the Tribunal either to dismiss the application for default or hear and decide on merit and as this rule's language is not mandatory and it vests the Tribunal with discretion, the discretion should be exercised in the interests of justice; that on 2.7.91 the Original Application was adjourned by one week and the matter should therefore have been listed on 9.7.1991 but was not so listed and was listed on 11.7.1991 for which listing rule 13 of the Rules requiring notification to the parties of the date and place of hearing of the application in such manner as the Chairman may by general or special order direct not complied with; that the word "parties" in Rule 13 means not the mere advocates of the parties but also the applicant(s) and respondent(s); that some mischief might have been played by Mr. Anand's previous clerk and in his annoyance he might have removed page No.2 of cause list dated 11.7.91 from the notice board of the High Court where the cause list was displayed and in any case if the advocate had failed, it cannot be said that the applicant had also failed because the applicant entitled to notice under Rule 13 of the rules was given no notice; that Section 22(3) of the Administrative Tribunals Act (hereinafter the Act) vesting the Tribunal with powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of matters mentioned in its clauses has clause (g) on "dismissing a representation for default or deciding it ex parte" and

clause (h) on "setting aside any order of dismissal of any representation for default or any order passed by it ex parte; that O.9 R.8 of the Civil Procedure Code refers to what a Civil Court can do when the defendant only appears and it empowers the court to dismiss the suit unless defendant admits the claim or part thereof but does not provide for judgment on merits when defendant only appears as our oral judgment has doner; that provisions of Rule 15(1) of the Rules in so far as the Tribunal deciding on merits when the applicant absent and defendent only present go beyond the provisions of Section 22(3) of the Act but they cannot go and the Rule 15(1) of the Rules therefore ultra vires as section 22 has no provision to support judgment on merits provided for in rule 15(1) of the Rules; that section 33 of the Act provides that the Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force which includes the Rules also; and that the rule making power exercised by the Central Government under the provisions of Section 35(1) of the Act is controlled by the provisions of section 33 of the Act.

4. Mr. Raval appearing for the respondents wondered as to what nomenclature could be given to and what purpose the application filed by Mr. Anand is intended to serve as the application cannot be for restoration of the case and is not for review; that our judgment is not ex parte; that seen in the light of the provisions of O.20 R.1(3) of Civil Procedure Code which provides that the judgment may be pronounced by dictation in open court to a shorthand writer if the judge is specially empowered by the High Court in this behalf and its proviso laying down that where the judgment is pronounced by dictation in open court, the transcript

of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the judge, bear the date on which pronounced, and form a part of the record and that the oral judgment so pronounced by dictation is required to be signed to become a part of the record. Mr. Raval relied on the judgment of the Supreme Court in Vinod Kumar Singh Vs. Banaras Hindu University & Ors. (AIR 1988 SC 371), its para 9 in particular. He submitted that signing of a judgment pronounced in open court only affirms that the judgment has been pronounced in open court and any changes can be made in it only to the extent provided for under Section 152 of the Civil Procedure Code which is to the effect that clerical or arithmetical mistake in judgments, decrees or orders arising therefrom or any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of the parties and that such judgment cannot be changed or amended outside the scope section 152 above provides for correction. He also submitted that there is no statutory rule or law to rehear a case in which judgment has been pronounced on merits though the same is to be signed when the transcription is put up. He further submitted that rehearing in the case herein required reconsidering the discretion already exercised by us and that review cannot be considered as respondents will like to submit their reply to a proper review application which has not been filed and the application herein filed needed no reply of the respondents being no proper application under any provisions of the Act or the Rules. Regarding the binding precedent, he submitted that the precedent is about a different class of employees and appeal

against it filed in the Supreme Court is pending. In his view, even if there be a request for stay of operation of our judgment on the ground that the applicant wants to file appeal in the Supreme Court, such a request would also deserve to be rejected by the Tribunal on merits.

6. Mr.Anand submitted that he also relied on the above judgment of the Supreme Court but on its para 6. He clarified that his application is for rehearing of the case because a binding precedent cited had not been taken into consideration in our oral judgment. In the arguments that proceeded, Mr. Raval stressed that our oral decision and order became operative on dictation in the open court after the hearing though affixing signatures necessarily had to wait till the transcription of the dictation was put up to us. In his view, we had amply declared our mind on which parties became free to act and affixing our signatures to which declaration remained a mere formality which made no change to the declaration of mind on which declaration the parties could act and signing of the judgment remained in the circumstances a mere formality the nonperformance of which came to be disapproved by the Supreme Court in Vinod Kumar Singh case, supra. In his view, review remained as the only way left and the application for rehearing tantamounts to an abuse of the process of this Tribunal. Mr. Anand strongly leaned on the words "some exceptional feature" in para 9 of the judgment in Vinod Kumar Singh case, supra, and submitted that hearing not being fixed for 9th July though it should have been fixed, judgment not signed on 12th July before he called on us in the chambers, the applicant not served and a binding precedent not taken into consideration are exceptional features because of which

our judgment dictated by one of us in the open court should not be acted upon and rehearing be granted.

7. We first consider the group of Mr. Anand's submissions which find some fault or the other with the listing of the OA 106/91 and the applicant not served. Here it is necessary to begin from the begining. The OA was first taken up on 27.3.91 by a Bench of this Tribunal on urgent mention by Mr. Anand. Interim relief was granted and respondents given four weeks for reply and applicant two weeks for rejoinder thereafter and matter ordered then to be listed urgently for admission on which date it may be heard finally. Direct service by applicant to respondents was sought and was permitted. After such directions on 27.3.91, the OA was listed on 3.6.91 when it was adjourned by one week as Mr. Anand had filed sick note and respondents' appearing counsel also requested for an adjournment. Listed on 10.6.91, the OA was adjourned by one week at the request of respondents' counsel. Then listed on 20.6.91 (though should, have been listed on 17.6.91 if Mr. Anand's submissions in effect implying that one week should mean one week for listing after order of adjournment), Mr. Anil Raval nevertheless appeared as proxy counsel for Mr. Anand to seek time to prepare the case as respondents had submitted their reply. The OA was therefore adjourned to 21.6.91. On 21.6.91 Mr. Anand appeared and requested for and was given time upto 2.7.91 to file rejoinder and direction given was that when listed on 2.7.91 for admission, the matter may be finally heard. Though directed to be listed for 2.7.91, the OA figured in the cause list of 25.6.91 when Mr. Anil Raval, proxy counsel for Mr. Anand nevertheless appeared. It was directed that the matter be listed on 2.7.91 as ordered on 21.6.91.

Mr. Anand appeared on 2.7.91. But the OA was adjourned by one week on the request of respondents' counsel. Now, instead of being listed on 9.7.91 as one week should mean one week as submitted by Mr. Anand, the OA was listed on 11.7.91. As seen above, though the order of adjournment by one week made on some dates was not followed literally in next listings of the OA in the sense that the next listings happened in a few days more or in a few days less, nevertheless Mr.Anand or his proxy counsel did appear. However, this did not happen on 11.7.91 when counsel of both parties did not appear. The OA was adjourned to 12.7.91 as last opportunity. The happenings on 12.7.91 have already appeared above. Except for issue of notice to the four respondents on 27.3.91 along with a copy of the Tribunal's order dated 27.3.91 intimating that the case is now posted to 25.4.91 for filing reply, no notice was issued to the applicant and his counsel Mr. Anand and even to respondents. At no hearings above persuant to listings, did Mr. Anand or his proxy counsel Mr. Raval ask that the interests of the applicant should be safeguarded by the Tribunal by serving notices on the applicant complying with the provisions of Rule 13 of the Rules, supra, and that notice to Mr. Anand through the cause list would not suffice to safeguard the interests of the applicant though the name of the applicant and the respondents and OA No. and additional information in remarks did figure in such cause lists. Working Mr. Anand's such submission back to 27.3.91, the day Mr. Anand made urgent mention, Mr. Anand would, according to his argument, be required to wait till

return of the notice to issue to the applicant and the respondents for appearance instead of pressing for interim relief and getting it including permission of direct service in the absence of such notice and later, appearing himself or by proxy in hearings when also no such request was made to the Bench. No such request from Mr. Anand is shown to have been made to the Tribunal's office either.

8. In the above exhaustive survey compelled by Mr. Anand's submission above, we are left convinced that Mr. Anand was all through seeing after the applicant's interests and it did not become open to him now to shift this responsibility on to the Tribunal leaning on the provisions of Rule 13 of the Rules, supra, to implement which neither Mr.Anand nor the applicant even asked this Tribunal. Besides, when the parties chose to notify themselves through their counsel, the Tribunal cannot be expected much less to be found fault with for not complying with the provisions of Rule 13 of the Rules. Tribunal has not to do what has been rendered unnecessary by the conduct of the parties themselves. The axle on which the wheels of judicial proceedings turned in this case cannot, in after-the-verdict submission of Mr. Anand, be blamed of wrecking the wheels.

9. Coming to Mr. Anand's submission that the provisions of Rule 15(1) of the Rules, supra, should impel exercise of discretion in the interests of justice, the exhaustive survey above should suffice to show that in fact the Tribunal did so and adjournments were given on the requests of counsel on several dates and even on 11.7.91 when the OA was listed and none appeared, the OA was adjourned to 12.7.91 on which date

H H.

further adjournment was not considered necessary. Adjournment after adjournment in a case in which interim relief has been given and direction of urgency incorporated in the order of the Tribunal and no explanation or request to the Tribunal for or by the absenting counsel on two consecutive listings would, in the facts and circumstances before the Tribunal, have been overstretching the bounds of reasonableness.

10. Then there is the connected group of arguments of Mr. Anand attacking the vires of Rule 15(3) of the Rules, supra, when read with the provisions of section 22(3) of the Act, supra, vesting the Tribunal with powers vested in a Civil Court while trying a suit and O.9 R.8 of the Civil Procedure Code containing no provision for judgment on merits when the defendent only appears. Regarding section 22(3)(g), in our decision and order in the OA one of us dictated in the Court we neither dismissed any representation from the applicant in default nor we decided such representation ex parte. We gave our decision on merits. We, as can be seen from the decision, considered the material facts in the application. We even took into consideration the assertions Mr. Anand had made on 27.3.91 which figured in the proceedings and orders of the Bench of that date. Regarding section 22(3)(h), it is only the positive side of Section 22(3)(g). When we took no negative steps of the kind under Section 22(3)(g), question of taking any positive steps under provisions of section 22(3)(h) did not arise in the case before us. Thus giving a decision on merits in accordance with provisions of Rule 15(1) of the Rules is in no way exercise of authority in matters under provisions of section 22(3)(g) and(h) of the Act. The provision regarding decisions of the Tribunal occurs in

section 26 of the Act and not section 22(3). For this reason also, provisions of Section 22(3) of the Act cannot be made to cover decisions of the Tribunal. Having so held, the question of examining whether Rule 15(1) of the Rules is ultravires of the Act does not arise.

11. Now remain for our consideration the parts of the submissions of Mr. Anand based on / or structured on the fact that the oral decision one of us dictated in the open court on 12.7.91 had not been signed when Mr. Anand called on us in the chambers on that date. In connection with consideration of these submissions, pertinent is Mr.Raval's wondering regarding the nomenclature of the application Mr. Anand filed and Mr. Anand asserting that the application is for rehearing of the case and nothing else. In its purpose and substance therefore the application filed by Mr. Anand becomes an application filed against our decision to hear the matter on 12.7.91, proceeding to hear it and one of us dictating the oral decision in the Court after such hearing. This position therefore gives rise to the question whether the Tribunal can entertain such an application against its own decisions. We need not labour to reason out when we say the obvious / namely that only such applications can be entertained by the Tribunal and can therefore can be filed by the applicant as are prescribed in the provisions of the Act and the Rules. No provision regarding entertaining - and filing - of application for rehearing has been brought to our notice. This matter has another dimension, the dimension of filing with the Tribunal an application against the decision and order of the Tribunal itself though no provision in regard to filing of such applications is shown to exist. Then the question arises whether the application can be included in / a wider reading of the provisions of section 19 of the Act ? The answer

to this question has to be in the negative, besides on any other grounds, on the sole ground that the application being against the order of the Tribunal itself cannot be filed under section 19 of the provisions of the Act for it has the effect of seeking setting aside of the Tribunal's own decision and order. But application with such prayer can, of course, be filed under the provisions of section 22(3)(f) of the Act as a review application. However, Mr. Anand is firm that what he has filed is no review application. As we observed earlier, there is no provision in the Act for filing applications for rehearing. It is a different matter that when a review application has been filed, the Bench concerned or another Bench to whom the review application may come to be assigned for disposal may decide that the review application called for a hearing and proceed to hear and even set aside the decision sought to be reviewed. A Full Bench of this Tribunal, speaking through Hon'ble Justice K. Madhava Reddy, Chairman of the Central Administrative Tribunal as he then was, held in John Lucas & Another Vs. Additional Chief Mechanical Engineer, S.C. Railway and Others, ((1987) 3 ATC 328):

> "11. We accordingly hold that a person feeling himself aggrieved by any final judgment or order of the Tribunal is not entitled to file an original application under Section 19 to set aside the earlier judgment of the Tribunal, but may for the redressal of his grievance file a petition for review under clause (f) of sub-section (3) of Section 22 read with sub-section (1) of Section 22 of the Act. If such a petition is filed, the Tribunal will entertain the review petition, consider it and make such orders thereon as it may deem fit in the circumstances of that case."

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The same Full Bench also expressed in para 5 of the judgment:

> "In our view a final order or judgment of the Tribunal may be set aside only by way of a petition for review of the earlier judgment or by seeking leave to file an appeal by special leave before the Supreme Court and by no other means."

We are in respectful agreement with the above.

12. With regard to the group of submissions of Mr. Anand based on provisions of the Code of Civil Procedure on the subject of dictation of judgments, their dictation in open court after and persuant to the hearing but awaiting signature after the transcription has been put up, we may beneficially refer to the provisions of Section 22(1) of the Act itself :

> "22. Procedure and powers of Tribunals. - (1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private."

We have already held above that our decision in OA 106/91 dictated by one of us in the open court on 12.7.91 does not fall under the ambit of provisions of section 22(3)(g) and (h) to which the provisions of the Code of Civil Procedure Code are to apply according to the provisions of the Act. The subject of decisions of the Tribunal is covered by section 26 of the Act read with Rule 15(3) of the Rules in the case before us, and the subject of implementation of orders of the Tribunal appears in section 27 of the Act which reads as follows:

h. k. J

"27. Execution of orders of a Tribunal. - Subject to the other provisions of this Act and the rules, (the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order) shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) of Section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed."

By our decision dated 12.7.91 we had finally disposed of O.A.No. 106/91. There is no scope to entertain any doubt in that regard. In terms of the provisions of section 22(1) of the Act, supra, we are not bound by the provisions of the Code of Civil Procedure Code except where specifically directed under the Act and the Rules framed and except when so directed the Tribunal has to be guided by the principles of natural justice subject to the provisions of the Act and the Rules made by the Central Government. We therefore need not enter into a detailed consideration of the provisions of the Code of Civil Procedure ably pressed into use by the counsel on both sides. We should only say that no principle of natural justice was violated in the circumstances when the judgment on merits was dictated in open court after hearing the present and participating party, namely the respondents' counsel and applicant and counsel absent on two consecutive dates with no intimation that the counsel will not be able to appear for this or that reason.

13. As stated above both, Mr. Anand and Mr. Raval relied on Supreme Court judgment in Vinod Kumar Singh Vs. Banaras Hindu University & Ors. (AIR 1988 SC 371)

but on the different paras, Mr. Anand on para 6 and Mr. Raval on para 9. We, with respect, are of the view that the ratio decided in this case is contained in paras 7 and 8 of the judgment which we reproduce below:-

> "7. But, while the Court has undoubted power to alter or modify a judgment, delivered but not signed, such power should be exercised judicially, sparingly and for adequate reasons. When a judgment is pronounced in open court, parties act on the basis that it is the judgment of the Court and that the signing is a formality to follow."

> "8. We have extensively extracted from what Bose J. spoke in this judgment to impress upon everyone that pronouncement of a judgment in court whether immediately after the hearing or after reserving the same to be delivered later should ordinarily be considered as the final act of the court with reference to the case. Bose J. emphasised the feature that as soon as the judgment is delivered that becomes the operative pronouncement of the court. That would mean that the judgment to be operative does not await signing thereof by the court. There may be exceptions to the rule, for instance, soon after the judgment is dictated in open court, a feature which had not been placed for consideration of the court is brought to its notice by counsel of any of the parties or the court discovers some new facts from the record. In such a case the court may give direction that the judgment which has just been delivered would not be effective and the case shall be further heard. There may also be cases - though their number would be few and far between - where when the judgment is placed for signature the court notices a feature which should have been taken into account. In such a situation the matter may be placed for further consideration upon notice to the parties. If the judgment delivered is intended not to be operative, good reasons should be given."

In regard to the last sentence of the quotation above, all the reasons Mr. Anand advanced have been considered earlier except that in our decision we did not consider a decision of a coordinate bench of the Tribunal which Mr. Anand said is "binding" (judgment dated 12.4.91 of the Principal Bench, New Delhi, in O.A. 1513/90, Lt. Col. Komal Charan & Ors. Vs. Union of India). Mr. Raval submitted that this judgment is with regard to class of employees of NCC to which class the applicant does not belong. We, for reasons of fairness, would express no views on this submission of Mr. Raval for we are on the subject of tenability of "rehearing", the subject of the application which subject came to be much asserted by Mr. Anand and we would therefore restrain ourselves from making any observations which perhaps could be apt in a review application which Mr. Anand, firmly asserted he has not filed.

14. Thus on the above comprehensive analysis, we see no merit in the Miscellaneous Application for rehearing and therefore hereby reject it. There remains no impediment in the way of implementation of our order dated 12.7.91 in O.A. 106 of 1991 and any stay on any aspect stands vacated forthwith.

15. Before we part with this case, we may once again refer to the Full Bench judgment in the Lucas case, supra, to its para 12 where after holding that no original application under section 19 of the Act could be filed against the order of the Tribunal, the Tribunal had allowed the applicant's request to convert the Original Application against the Tribunal's judgment into a review application. There is no such request before us. On the contrary, "rehearing only"

M. R.

has been the firm and constant refrain of the submissions of Mr. Anand.

(R.C.Bhatt)
Judicial Member

(M.M. Singh) 14/8/91
Admn. Member

(35)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A.St.430/91
in
O.A. No. 106/91
~~TA No.~~
~~xxxxxxx~~

DATE OF DECISION 15-1-1992.

Major Ishwar N.Maligi, Petitioner

Mr. R.R. Tripathi, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. P.M. Raval, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R.C. Bhatt, 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? }

MGIPRRND—12 CAT/86—3-12-86—15,000

(36)

Major Ishwar N. Maligi. ..... Applicant.

V/s.

Union of India & Ors. ..... Respondents.

R.A.St.430/91
in
O.A.No.106/91

Date: 15-1-1992.

Decision by circulation

Per: Hon'ble Mr.M.M.Singh, Member(A).

An application dated 12.9.91 solemnly affirmed by the applicant before Notary titled as R.A. in O.A.No.106/91 on the jacket but titled as M.A. in O.A. 106/91 on its first page registered by the Registry as R.A.St.430/91 has been submitted on a cause list of "review matters for circulation". Prayers in the said application are reproduced below:

"a) The Hon'ble Tribunal be pleased to admit this Review Application.

b) The Hon'ble Tribunal be pleased to condone the delay, if any, in filing this review application.

c) The Hon'ble Tribunal be pleased to review the judgment and order dated 12 July 1991, in O.A.106/91, after giving an opportunity of hearing to the applicant.

d) The Hon'ble Tribunal be pleased to pass such order and any further relief as the Hon'ble Tribunal may deem fit.

e) During the pendency and disposal of this review application, the Hon'ble Tribunal be pleased to direct the respondents to arrange for immediate disbursal of applicant's withheld pay and allowances.

f) During the pendency and disposal of this Review Application the Hon'ble Tribunal be pleased to extend the protection of the interim order granted by the Hon'ble Tribunal earlier on 27 March 1991."

From prayer(a) above it is seen that the application is intended to be a review application. We therefore deal with it as a review application.

2. Rule 17 of the Central Administrative Tribunal (Procedure) Rules 1987 was substituted by notification No. A-11019/44/87 dated 26.2.1991 of Government of India (Department of Personnel & Training). This Notification was published in All India Services Law Journal, VI-1991(2)SLJ(CAT) on its page 28 also. The same reads as follows:-

"For Rule 17 of the said rules, the following rule shall be substituted, namely :-

"17. Application for review. -

(1) No petition for review shall be entertained unless it is filed within thirty days from the date of receipt and copy of the order of which the review was sought.

(2) No petition for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge-personal or otherwise and also those which are sworn on the basis of the legal advice. The counter affidavit in Review Petition will also be a duly sworn affidavit wherever any averment of fact is disputed.

(3) Unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either reject petition or direct notice to be issued to the opposite party".

Subrule (1) above visualises a petition for review and subrule (2) visualises an affidavit of the applicant the contents of which should indicate the material stipulated in the Subrule(2). The review application before us falls short of the requirement of the statutory rules and therefore not liable to enter the gate for our consideration.

3. Then, prayer (b) of the prayers is for condonation of delay if any in filing the review application. In para 1.1 of the review application the applicant has averred that the certified copies of the judgment of both the O.A.No.106/91 and M.A.357/91 were received by the applicant on 18th August, 1991 from the office of the Tribunal. M.A. 357/91 was filed on 12.7.91 by the learned counsel Mr. M.R. Anand for the applicant after the pronouncement of our judgment on the same date in the Open Court in O.A.106/91. M.A. 357/91 was filed, to quote from it, for "request that the matter may be heard again after being restored" and was filed before our judgment was signed. The judgment in the O.A. was signed on 15.7.91. As the M.A. was filed for hearing again after the pronouncement of our judgment, the averment in the review application that the certified copies of the judgment of the O.A. was received on 18.8.91 by the applicant can not be taken as acceptable for counting the period of limitation for filing the review application. A detailed hearing had taken place in the matter of the M.A. which was disposed of by order dated 14.8.91 as rightly stated in the review application. Para-15 of the order in this M.A. which is reproduced below is relevant here :

"15. Before we part with this case, we may once again refer to the Full Bench judgment in the Lucas case, supra, to its para 12 where after holding that no original application under section 19 of the Act could be filed against the order of the Tribunal, the Tribunal had allowed the applicant's request to convert the Original Application against the Tribunal's judgment into a review application. There is no such request before us. On the contrary, "rehearing only" has been the firm and constant refrain of the submissions of Mr.Anand."

It transpires from the above that the applicant had at least then, no intention to move or press for a review of our judgment. However, after the said order in the M.A., it appears the applicant had second thoughts. The limitation for filing of review application therefore has to run with reference to the date of our judgment in the O.A. and not from the date of the judgment in the M.A. The limitation for filing review application is not to be enhanced by any M.As parties to a suit may chose to file after the judgment in the suit. So viewed, the review application is clearly timebarred as the same has been filed much after thirty days of the date of the judgment of which the applicant was much aware of and in which he filed the M.A. after the pronouncement of our judgment.

4. Coming to the reasons for filing the review application, para 1.2 of the review application is reproduced below:

"Agrieved by the judgment and order dated 12 July 1991 in OA 106/91, as none of the basic, vital and most relevant facts

placed before the Hon'ble Tribunal have neither received the attention of the Hon'ble Tribunal nor have been dealt with at all in the judgment, the applicant is constrained to file this review application of the review of the said judgment and request for the same after giving an opportunity of hearing to the applicant to advance the cause of justice. The applicant humbly submits that granting of an opportunity to the applicant by the Hon'ble Tribunal will not cause any prejudice to the respondents, on the other had it will advance the cause of justice, particularly in view of the fact that the matter was decided ex parte on merits when neither the applicant nor the advocate for the applicant could be present in the court when the matter was called, for reasons beyond their control."

Thus the review application has been filed because, allegedly in the eyes of the applicant, none of the basic, vital and most relevant facts placed before the Tribunal have received the attention of the Tribunal nor have the same been dealt with at all in the judgment. We notice that the substance of the raison d'etre for filing the review application was also the raison d'etre for filing M.A.357/91 above referred which, for similar reasons, sought rehearing. The present review application is thus only M.A.357/91 elaborately dressed in new clothes.

5. According to Section 22 of the Administrative Tribunals Act, 1985, provisions of Code of Civil Procedure 1908 have to be followed by the Tribunal for reviewing of its decisions. Order XLVII on the subject of application for review of judgment in the said Code runs as follows:

"1. Application for review of judgment- (1) Any person considering himself Aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desire to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

(Explanation. - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.)

A review application to be entertained has to meet the ingredients in subrule(1) above. The subrule has no ingredient like seeking review when allegedly the basic, vital and most relevant facts placed before the Tribunal have failed to receive

the attention of the Tribunal and have not been dealt with at all in the judgment of which review is sought. The only way out for an applicant feeling so aggrieved is to file an appeal application. In Kunjukrishnan Nair V/s. State of Kerala (1991(4)SLR 633) by which judgment three appeals directed against the common judgments of a Single Judge were decided, principal contention of the learned counsel for the appellant, to reproduce the relevant portion of the judgment by Chief Justice Mr.V.S.Malimath (as he then was), was as follows :

> "The principal contention of the learned counsel for the appellants is that there are binding decisions of this Court on both the questions against the view taken by the learned Single Judge. It was submitted that there are two Division Bench decisions of this Court, and the copies of those judgments were produced by the petitioner in O.P.No.413 of 1987, and were relied on during the course of the arguments. It was submitted that apart from the fact that two binding decisions have not been followed, there is no advertence to these judgments in the judgment under appeal."

The principal contention came to be decided in appeal. Similar contentions have been taken in the review application before us. The same are in our view out of place in a review application.

6. The review application alleges that the applicant had cited a precedent of the judgment in an identical matter decided by the Principal Bench of the Central Administrative Tribunal, Delhi on 24.4.91 in O.A.1513/90, in the case of Lt.Kol. Komal Charan Vs. Union of India & Ors.with

claim to apply the precedent to the case of the applicant also but the same was not done in our judgment in O.A.106/91. It will be pertinent to reproduce the following paras from this judgment of the Principal Bench.

> "8. We have carefully gone through the records of the case and have heard the applicants in person. During the hearing, the applicants stated that they would argue their case in person without the assistance of any counsel who had been engaged by them earlier. Mrs.Raj Kumari Chopra, the learned counsel for the respondents drew our attention to the decisions of the Patna Bench and of the Bangalore Bench of this Tribunal, mentioned above. The applicants also relied upon some rulings of the Supreme Court in support of their contention. We have duly considered them".
>
> 11. "After the applicants have been reemployed on whole time basis in the NCC, they became fulfledged Government servants. The Fundamental Rules apply to all Government servants whose pay is to be debitable to civil estimates (vide FR 2). FR 56(a) provides, inter alia, that "every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years". The above provision in the Fundamental Rules has been in existence from 5.4.1975. The provision for exercisin option is contained only in the administrative instructions issued by the respondents. It is well-known that administrative instructions cannot run counter to the statutory rules, such as the Fundamental Rules. This aspect of the matter has not been considered by the Patna Bench or the Bangalore Bench of this Tribunal in the two cases mentioned above. In our considered view, the options exercised by the applicants and those

similarly situated were contrary to the provisions of FR 56(a) and on that ground alone were ab initio invalid and inoperative." (underscoring by us)

It is clear from the above that the Principal Bench judgment is opposing the judgments on the same issue of the Patna Bench and Bangalore Bench of the Tribunal. We with great respect therefore have to say that instead of one there are two opposite decisions brought to our notice in the above judgment though the same has been much vehemently, loudly and even agitatingly, pressed as a binding decision. A point or a matter receiving attention of the court is one thing. But a matter which has received attention not being adverted to in the judgment is quite another thing. A point which has been considered may not be adverted to in the judgment if the same is altogether unmerited, baseless and forceless. In our respectful view, when reliance is placed by a party to a suit on a judgment which itself refers to judgments opposite though the latter judgments be also of coequal benches, the judgment relied upon does not acquire the force of a binding judgment. Any impression behind such submissions that a judgment of a Principal Bench of the Tribunal overrules the judgments on the same issue of coequal other benches of the Tribunal will be erroneous. The Principal bench is not constituted as an appellate bench over the other Benches of the Tribunal. The judgments of all coequal benches of the Tribunal including of the Principal Bench must receive equal respect. Thus when a judgment of the Principal bench is pressed as precedent which judgment itself refers to the opposite judgments of other benches

of the Tribunal, we with respect would be right to proceed for our judgment on the basis of the peculiar facts of the case before us supported by acceptable material. As we found conclusive material in the record for our judgment, we based our judgment on such material. We, rightly in the circumstances, saw no need to advert to the judgment relied upon.

7. In view of the above, we find that having considered the review application from all angles, the review application has absolutely no merits. We therefore hereby reject the application by circulation. We should while doing so, however, point out that this decision shall have no bearing on the prayer(s) supra of the review application. That prayer is in our view out of place in a review application.

(R.C. Bhatt)
Member (J)

15.1.92

(M.M. Singh)
Member (A)