

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

Original Application No. 97/2002
With
Misc. Application No. 42/2003

Date of Order: 22/10/2003

Dr. A.K. Doshi, Ex Member, Company Law Board, Government of India,
Dalalon Ki Pole, Sirohi – 307001 (Rajasthan).

..Applicant

V E R S U S

1. Union of India through:
Secretary, Government of India,
Dept. of Company Affairs,
Ministry of Law, Shastri Bhawan,
5th Floor, 'A' Wing, New Delhi – 110001.
2. Chairman,
Company Law Board,
Shastri Bhawan, 5th Floor 'A' Wing,
Dr. Rajendra Prasad Marg, New Delhi – 110001.

Senior Accounts Officer,
Department of Company Affairs,
Block No. 8, 5th Floor Shastri Bhawan,
26, Haddows Road, Chennai – 600006.

..Respondents.

**Mr. A.K. Bhandari, Mr. D.K. Sharma and
Ms. Anjali Doshi, Advocates for the applicant.**

Mr. N.M. Lodha, Advocate for the respondents.

CORAM:

HON'BLE MR. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER

: O R D E R :

The original application was filed by Dr. A.K. Doshi, Ex-Member, Company Law Board, Govt. of India against the Union of India, Chairman, Company Law Board and Senior Accounts Officer, Deptt. Of Company Affairs, Govt. of India, under Section 19 of Administrative Tribunals Act, 1985, on 15th April 2002.

2. Through para 8 of the application, following reliefs were claimed:

- (a) Reimbursement of Airfare from Delhi to Chennai of 29 May 1998 by Indian Airlines amounting to Rs. 6955.00 as also a lump sum grant of Rs. 19,400/-.
- (b) Payment of bringing his luggage from Delhi to Chennai sometime in August 1999.
- (c) Reimbursement of Airfare from Chennai to Delhi of 8th October 1999 by Indian Airlines amounting to Rs. 7,720/-
- (d) Reimbursement of Airfare from Delhi to Chennai of 24th October 1999 by Airlines amounting to Rs. 7,720/-.
- (e) Reimbursement of Taxi fare from Delhi Airport to NOIDA of 8th October 1999 amounting to Rs. 350/-.
- (f) Reimbursement of Taxi fare from NOIDA to Delhi Airport of 24th Oct. 1999 amounting to Rs. 300/-.
- (g) Payment of G.P.F. amount.
- (h) Payment of Leave Encashment amount, fro which orders were apparently passed on 4th December 2001.
- (i) Payment of T.A. bill amounting to Rs. 24,093 (as a post retirement benefit) for which a claim was submitted on 3rd November 2001.
- (j) Though the applicant was relieved on 19th December 1999, he kept on hoping to be reappointed till 31st July 2001 (in view of the orders of the Hon'ble Supreme Court dated 2nd March 2001 in Civil Appeal No. 1692 of 2001 etc.) when a decision was taken by the Govt. of India tht no one should be appointed to the Board. The applicant has claimed salary and allowances for this period. Interest on all the aforesaid amounts till payment.
- (k)

In paragraph 5.1 of the application, Dr. Doshi admits that nearly twenty eight months have passed since his retirement and he is tired of writing letters. In paragraph 4.12 dates have been mentioned of various letters written by the applicant to different authorities. There is also mention of letters written by different subordinate officers regarding action that was being taken to clear the admissible dues.

4. The Union of India, through the Under Secretary, Deptt. Of Company affairs, has filed reply on 10 February 2003. Following important points have been raised, along with specific replies to different assertions of the applicant Dr. Doshi:-

- (a) That the prayer is for making payments some of which were due in 1999, and so suffers from delay.
- (b) That the applicant was informed vide a communication dated 19th August 1998 about his being not entitled for T.A. etc. for journey performed on 29th May 1998 but this has not been disclosed by the applicant.
- (c) That the applicant has not been responding positively to different communications of the Government regarding payment of dues which require making available in

advance stamped receipts. It is alleged that letters and reminders were sent on 25th September 2002, 17th October 2002, 14th October 2002 and 25th November 2002.

5. After filing of the aforementioned reply, the applicant Dr. Doshi has submitted a Misc. application (No. 42 of 2003) on 7th March 2003 making the following submissions:-

(a) That the O.A. was not time barred.
 (b) Even if it is taken as time barred, the delay may be condoned as during the entire period, the applicant was making representations of meeting various authorities.
 (c) That as per the decision of the Hon'ble Supreme Court in Dr. A.K.Doshi vs. Union of India and others reported in 2001 SCC page 1072 dated the 2nd March 2001, the case of the applicant was required to be considered for reappointment and he waited till the decision of the Government – but the Government did not comply with the directions of the Hon'ble Supreme Court and so this application (O.A.) filed after limitation.

6. On the last date, learned advocates for both the parties - Mr. A.K. Bhandari, Mr. D.K. Sharma and Ms Anjali Doshi for the applicant and Mr. N. M.. Lodha for the Union of India have been heard. The applicant reiterated the claims made in the M.A. as also in O.A. describing in detail, how he got to be appointed as a Member, Company Law Board, how he was transferred from Delhi to Chennai and then back to Delhi and again to Chennai, how he treats the whole episode as nothing but harassment and how the Supreme Court judgement referred to above has not been implemented by the Union of India.

7. The respondents took the basic objection of maintainability of the application in view of provisions of S.11 of the Act and explained how the averments made by the applicant in O.A. and in M.A. on this point are contradictory. They also assailed the prayer for condonation of delay on the ground that the applicant has not disclosed about the efforts made by them for clearing his admissible dues. They also pointedly referred to their communications for submitting pre-receipted bills, which remained unanswered. It also appeared during arguments that the applicant was in known of these efforts of the department, so much so that he even admitted in his reply to rejoinder of the Union of India that he was paid excess salary for December 1999.

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8. It may be relevant here to indicate – sequence of important events which are part of the present O.A.

22.5.98	-	Applicant appointed Member
25.5.98	-	Applicant reports to Delhi Office
29.5.98	-	Applicant takes oath of Secrecy at Chennai
24.6.98	-	Notification of appointment of Dr. Doshi w.e.f. 29.5.98 issued by the Ministry of Law, Justice and Company Affairs.
01.07.98	-	Applicant raises claim of T.A. for journey of 29.5.98 from Delhi to Chennai.
19.08.98	-	Ministry of Law, Justice and Company Affairs replies indicating that charge of the post has been taken on 29.5.98 and not on 25.5.98.
20.12.99	-	Applicant ceases to be Member Company Law Board.
26.03.2002	-	Applicant informed to receive payment of CPF.
15.04.2002	-	O.A. filed by applicant.
25.04.2003	-	C.P.F. with interest paid by cheque to applicant.

9. Coming now to the issue of limitation, S. 21 of the Administrative Tribunals Act, provides that:

“21. Limitation. – (1) A Tribunal shall not admit an application,-

- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1) where-

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

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(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period".

Strictly speaking for a cause of action which arose on 29 May 1998, when the applicant performed the Delhi – Chennai journey for which his claim for Travelling Allowance has not been accepted; or when this claim was regretted by the Ministry on 19th August 1998, the period of limitation is already over. Dr. Doshi ceased to be a Member on 20th December 1999 and so even for the post retirement benefits where in some cases payment has been made and in others action seems to be in progress, the application in this Tribunal not only suffers from the defect of indeterminate claims but is full of clubbing of diverse claims which is not permissible under R. 10 of the C.A.T. (Procedure) Rules 1987.

10. Dr. Doshi in his M.A. has sought condonation of delay by taking recourse mainly to the observations of their Lordships of the Supreme Court in Civil Appeal 1692 of 2001 heard along with C.A. 1693 and C.A. 1694. This appeal was filed by Dr. Doshi against the Union of India where the judgement dated 20.12.1999 of the Delhi High Court was challenged. Briefly stated, the facts are as follows. A selection committee, headed by Hon'ble Mr. Justice S.C. Agarwal, a nominee of the Chief Justice of India, prepared a panel of two names for the two posts of Member, Company Law Board – Shri S.B. Mathur for Member (Technical) and Shri C.D. Paik for Member (Judicial). A reserve panel, for the post of Member (Technical) was also prepared which could be used, in the event of Shri S.B. Mathur not joining and consisted of Dr. A.K. Doshi and Shri R. Vasudesom in that order. However, it so happened that the Government of India ignored the first recommendation and appointed Dr. Doshi as Member from the reserve panel. This was challenged by Shri S.B. Mathur before the Central Administrative Tribunal which by its order of 03.02.1999 quashed the appointment of Dr. Doshi. This was challenged by him in the High Court of Delhi which also dismissed it on 20.12.1999. This resulted in Civil Appeal no.

1692 in the Hon'ble Supreme Court which is relied upon by the applicant in his prayer for condonation of delay. He seems to be referring to the last para (no. 17) of the judgement of their Lordships which is as follows:

“17. We have held that the appointment of the appellant was correctly set aside and his civil appeal should be dismissed. However, as the post of the Member (Technical), Company Law Board has remained vacant for a long time, it is absolutely necessary that this post be filled up as expeditiously as possible. In our view it is not at all necessary to send the matter to another Selection Committee for selecting afresh. In our view interest of justice would be served if the three names selected by the Selection Committee along with the materials placed before it are placed before the Appointments Committee without any notings or comments by anybody. Only the report of the Selection Committee and the materials placed before it must be placed before the Appointments Committee for its consideration. The Appointments Committee must now select from amongst these names. With these directions all the civil appeals are disposed of. There will be no order as to costs.”

Dr. Doshi will like this Tribunal to believe that he sincerely kept hoping that the directions contained in this para would be given effect to and he would be given an appointment – And this is how he did not file the application in time.

Dr. Doshi is silent on whether he took steps to get these directions implemented; in any case, this cannot be and is not an issue before the Tribunal.

11. But it would not be out of place to revert to the judgement cited by him and recall some of the important observations of their Lordships. There are contained in para 13 & 14 and need to be quoted in extenso.

“13. We are unable to accept this argument. The Government of India has framed the Company Law Board (Qualifications, Experience and Other Conditions of Service of Members) Rules, 1993 (hereinafter called “the said Rules). These Rules were notified on 28.4.1993. Rule 4 provides for the method of recruitment of Members. It provides that the selection of Members shall be made by the Government of India in consultation with the Chief Justice of India or his nominee. Thus the appointment can only be in consultation with the Chief Justice of India or his nominee. It is for that reason that a Selection Committee headed by a nominee of the Chief Justice of India is constituted for the purposes of selecting a Member. All materials, which are relevant, are to be placed before the Selection Committee. It is the Selection Committee which makes the selection on the basis of relevant materials. After the Selection Committee completes the exercise and recommends one or more names for appointment the recommendation along with the materials considered by the Selection Committee should be placed before the Appointments

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Committee without any further addition or alteration. If in an exceptional case the Appointments Committee feels that certain material which was not available to be considered by the Selection Committee has come into existence in the meantime, and the material is relevant for the purpose of appointment, then, the matter should be placed before the Appointments Committee with the additional material for its consideration. Such a course, in our view, will be in accordance with the scheme of the Rules and the purpose of making appointment to the important public office. We are constrained to observe that the notings made by the Secretary of the Appointments Committee in the file, as noted earlier, was an attempt to interfere with the process of selection, which was neither permissible under the Rules nor desirable otherwise. By indulging in such unhealthy process the sanctity of the selection by the Selection Committee was attempted to be set at naught. Such conduct on the part of a senior and experience government officer does not commend us. It must be ensured that in future such a practice is not repeated. In this case the facts indicate that even though the Selection Committee made a recommendation, the appointment of that candidate was got rejected/stalled. Thereafter, even though directed to do so by the Appointments Committee, process of fresh selection was not initiated. The file was kept pending till name of the appellant could be sent to the Appointments Committee. The facts lead to the only conclusion that there was rank favouritism and a blantant attempt to get the appellant appointed as Member (Technical), Company Law Board. On these facts the ratio in Aggarwal case has not application. Also in the present case there is no office memorandum requiring selecting from the reserve panel".

"14. In view of the facts set out hereinabove, we are of the opinion that the Central Administrative Tribunal as well as the High Court were right in setting aside the appointment of the appellant. The appellant had been unduly favoured and the candidate selected by the Selection Committee and placed on the merit list had been deprived of appointment".

12. In view of the foregoing discussion, the Misc. Application is dismissed.

The Original Application is barred by limitation and the same is also dismissed.

There shall be no order as to costs.

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(G.R.PATWARDHAN)
Administrative Member

Received copy
10/13/03
for
Kernan, Charles

Received copy
for N. M. Ladd
10/10/03