

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 113/99

Monday, this the 6th day of December, 1999.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

J.S. Jayasudheer,
S/o Late Johnson, Sweeper,
Income-Tax Appellate Tribunal,
Cochin Bench, Cochin.
Residing at: Ponguvila Puthenveedu,
Mulluvila P.O.,
Via: Neyyattinkara,
Trivandrum District.

...Applicant

By Advocate Mr T.C. Govindaswamy.

Vs.

1. Union of India represented by
the Secretary to Government of India,
Ministry of Law and Justice,
Department of Legal Affairs,
New Delhi.
2. The Hon'ble President,
Income-Tax Appellate Tribunal,
Central Government Office Buildings,
4th Floor, Maharashi Karve Road,
Mumbai - 400 020.
3. The Registrar,
Income-Tax Appellate Tribunal,
Central Government Office Buildings,
4th Floor, Maharashi Karve Road,
Mumbai - 400 020.
4. The Assistant Registrar,
Income-Tax Appellate Tribunal,
Kochi -16.
5. Shri B.L. Hirve,
Assistant Registrar,
Income-Tax Appellate Tribunal,
Chandigarh Bench,
Chandigarh.

...Respondents

By Advocate Ms. I. Sheela Devi, ACGSC.

The application having been heard on 6.12.99, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A1 and A2 and to direct
the respondents to grant him consequential benefits.

2. The applicant, working as Sweeper in the Income-Tax Appellate Tribunal at Cochin Bench is aggrieved by A1 order issued by the 3rd respondent transferring him to the Income-TAX Appellate Tribunal, Guwahati Bench. He is also aggrieved by A2 relieving order.

3. According to applicant, the power to transfer him is vested in the Head of the Department, namely, the 2nd respondent. A1 order issued by the 3rd respondent, Registrar, is without jurisdiction. He also says that the order of transfer is vitiated by mala fides.

4. Respondents say that transfer of the applicant was proposed by the Registrar and the same was duly approved by the President of the Income-Tax Appellate Tribunal, the Head of the Department. He was, thereafter, relieved. The Assistant Registrar, Cochin, was directed to sent monthly report on the performance of the applicant regarding his official duties and behaviour from the date of his reporting to duty at Cochin as per R4(1).

5. As per R4(1), the President of the Income-Tax Appellate Tribunal has directed the Assistant Registrar of the Cochin Bench to send six monthly reports on the performance of the applicant for a period of two years from the date of his reporting duty at Cochin. Learned counsel appearing for the respondents submitted that the Assistant Registrar, Cochin, has not submitted any report in pursuance to R4(1) so far. It means that there was nothing adverse to report.

6. The main ground on which A1 order of transfer and A2 relieving order are attacked is that A1 order is issued by a person who is totally wanting jurisdiction



to issue the same. Al dated 2nd July, 1988, is issued by the Registrar of the Bombay Bench of the Income-Tax Appellate Tribunal.

7. In the reply statement it is admitted that the order of transfer of the applicant was proposed by the 3rd respondent and the same was duly approved by the 2nd respondent, the President of the Income-Tax Appellate Tribunal, and thereafter only the applicant was relieved. But the approval of the 2nd respondent, the President of the Income-Tax Appellate Tribunal is not produced by the respondents. If there is the approval by the 2nd respondent, the President of the Income-Tax Appellate Tribunal, there would have been no difficulty for the respondents to produce the same. Only the President of the Income-TAX Appellate Tribunal is competent to transfer the applicant is very much evident from what is stated in the reply statement that the approval of the President of Income-TAx Appellate Tribunal was obtained.

8. There is no mention in Al that the same was issued with the approval of the President of the Income-Tax Appellate Tribunal. R4(d) is an order transferring the applicant as well as another wherein it is stated that the same was issued with the approval of the President of Income-Tax Appellate Tribunal. So, if Al also is with the approval of the President of Income-Tax Appellate Tribunal, there will be a mention of the same. There is absolutely no explanation for the absence of the mention of the approval of the President of Income-Tax Appellate Tribunal in Al impugned order.

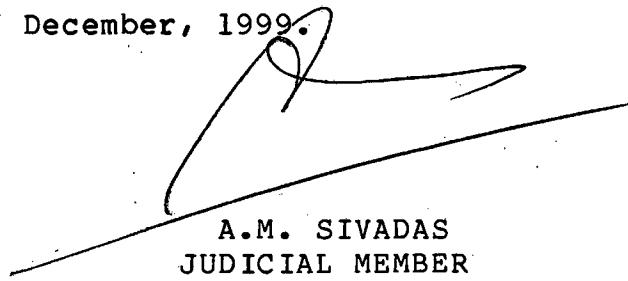
9. It is a case where it is evident that A1 is issued by an authority who is not competent. That being so, A1 is liable to be quashed.

10. When A1 is liable to be quashed, it follows that A2 order of relieving is also liable to be quashed.

11. Since A1 and A2 are liable to be quashed on the sole ground that A1 is issued by an authority who is lacking jurisdiction, it is not necessary to go into the other ground raised in this O.A.

12. Accordingly, A1 and A2 are quashed. The O.A. is disposed of as above. No costs.

Dated the 6th of December, 1999.



A.M. SIVADAS
JUDICIAL MEMBER

P/71299

LIST OF ANNEXURES REFERRED TO IN THE ORDER

A1, True copy of the letter No.F.300-Ad/AT/97-98 dated 2.7.98 issued by the third respondent.

A2, True copy of the letter No.F.5-Ad/AT/Coch/98-99 dated 17.7.98 issued by the fourth respondent.

R4(d), True copy of the order dated 24.4.96 by the 3rd respondent.

R4(l), True copy of the order dated 24.2.97 by the 4th respondent.