Duplicate for
I.st ser
OA 52/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, FORT, BOMBAY 400001.

O.A. Nos. 51/1996 and 52/1996.

Dated this 4th day of April 1996.

CORAM : Hon'ble Shri B.S. Hegde, Member (J).

Shri M.K. Bhalerao ... Applicant (in OA 51/96)

Shri S.R. Bhawar ... Applicant (in OA 52/96)

By advocate Shri Sureshkumar.

v/s

Union of India & Others ... Respondents

By advocates Shri A.N. Kulkarni with Shri G.D. Samant.

O R D E R

Per: Hon'ble Shri B.S. Hegde, Member (J)

Heard Shri Sureshkumar for the applicants and Shri A.N. Kulkarni alongwith Shri G.D. Samant for the Respondents. The only contention raised in these O.As is about belated payment made by the Respondents towards terminal benefits and seek interest for the belated payment. The admitted facts are that the applicants are servants of the Deolali Cantonment no. 4 and they have filed their respective applications to the Tribunal for the sole purpose of interest on the retiral benefits.

2. Both the applicants retired on superannuation on 30-5-1987 and 31-3-1988 respectively and they filed these O.As on 19-10-1985 i.e. after a lapse of 7-8 years. They have not filed any M.P. for condonation of delay. Since the issue involved in both the O.As is one and the same, both the O.As are being disposed of simultaneously.

...2

From pre-page:

3. The main contention of the learned counsel for the applicants is that the applicants are holding civil posts and thereby they are entitled to file the application before the Tribunal under section 19 of the Administrative Tribunals Act. Further, he contended that when the person is holding a civil post under State no notification is required. In support of his contention, he relies upon the decision of the Supreme Court in R.N.A. Britto v/s Chief Executive Officer 1995 II CATMAT 102. In that case, the appellant being a Secretary of a Panchayat established under the Act serving in connection with the affairs of the local authority was a State Government servant and hence the Tribunal had jurisdiction under clause (b) of sub-section (1) of Section 15 of the Tribunals Act. It is undisputed that the Secretary of Panchayat is working in connection with the affairs of the Local Authority under the control of the State Government and the civil jurisdiction of the State. Therefore, the Apex Court has held that such Tribunal has jurisdiction under the sub-section 1 (b) of section 15 of the Tribunals Act to decide the matter relating to termination of his service under the said Panchayat. He also draws my attention to the decision of the Apex Court 1983 SCC 231 State of Gujarat v/s Raman Lal Keshav Lal Soni wherein it is held that a personnel drawn from different sources Govt. departments as well as local authorities or municipal services merged together to constitute a single integrated civil service panchayat service under the State becomes State Government Employee, irrespective of their original status. In that connection, the Apex Court has laid down a single guideline which reads as follows -

...3

From pre-page:

> "It is not possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not."

Further, he relies upon the judgement of Supreme Court in State of Assam v/s Kanak Chandra Dutta 1967 (1) SCR 679 wherein the Apex Court has held that "in the light of the system of recruitment, employment and functions, a Mauzadar is a servant and the holder of a civil post, under the State, entitled to the protection of the Article 311 of the Constitution. A civil post means a post not connected with the defence and outside the regular civil services. It is an office or a position to which duties in connection with the affairs of the State are attached. It is under the administrative control of the State but need not necessarily carry "a definite rate of pay" and may involve only part-time employment. A person holding the post is a person serving or employed under the State. The existence of

...4

From pre-page:

the relationship of master and servant between the State and a person holding a post under it, is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration etc. Therefore, he contends that since they are holders of the 'civil post' and in view of the guidelines given by the Apex Court judgement stating that in the case of those who hold a civil post, the question of any notification under section 14(2) does not arise. In reply, the learned counsel for the Respondents Shri Kulkarni and Shri Samant draw my attention that this Tribunal does not have jurisdiction to adjudicate the issue raised in these O.A.s because the applicants are not holding 'civil posts' under Union or a State; secondly, the applications are hopelessly barred by limitation since the applicants have not filed any M.P. for condonation of delay and justification for filing the belated application and thus the present applications are liable to be dismissed in limine with costs. The learned counsel for the Respondents Shri Kulkarni draws my attention to the various contentions raised in the reply stating that the applicants are governed by Cantonment Fund Servants Rules 1937 as amended from time to time. He draws my attention to Rules 30 and 31 of the Cantonment Fund Servants Rules which envisage that all servants who are in permanent service of the Board on the date of coming into force of the Cantonment Fund Servants (Amendment) Rules, 1982 and who have either opted or

...5

From pre-page :

are deemed to have opted for the pension and joined service after the said date shall be eligible for Pension-cum-Gratuity. Rule 31 states that the provisions of the Central Civil Services (Pension) Rules 1972 as amended from time to time, shall, mutatis-mutandis, govern the grant of Pension, Family Pension and Death-cum-Retirement Gratuity to eligible servants subject to the modifications as stated therein. Section 11 specifically provides that every Board shall by name of the place by reference to which the cantonment is known, be a body corporate having perpetual succession and comman seal with power to acquire and hold property both movable and immovable and to contract and shall by the said name sue and to be sued. It is further pointed out that CCS (Pension) Rules 1972 have been adopted and were made applicable and the said Rules are regarded as the 'Deeming Provisions'. Therefore, they submit that the applicants are neither Central Government servants or are holding civil posts but are tne servants of the Deolali Cantonment Board and they are governed by the Cantonment Fund Servants Rules 1937. Admittedly, there is no notification of the Central Government, extending the jurisdiction of the Tribunal empowering to entertain the grievances of the Cantonment officials. In the absence of any such notification, this Tribunal cannot entertain these petitions and tne same are required to be dismissed. It is an admitted fact that the Board employees including the present applicants are governed by the statutory rules viz. Cantonment Fund Servants Rules 1937 as amended from time to time. Therefore, as stated earlier, these Rules are framed

...6

From pre-page:

under Section 280 (C) of the Cantonments Act, 1924. The Cantonment Fund Servants Rules 1937 envisage Chapter I to XI of the Fundamental and Supplementary Rules made under the Rules contained in the said Chapters, are continued in force and the CCS (Conduct) Rules 1964 shall so far as they are not inconsistent with these Rules may be deemed to apply to all servants. Similarly, CCS (Leave) Rules 1972 shall apply in so far as may be, apply to all servants appointed on or after the 18th September 1937. Rule 4 envisages that every Board shall determine what servants are required for proper and efficient execution of its duties and shall fix the salaries to such servants out of benefits of the Cantonment Fund. Further, the/Pension-cum-Gratuity Scheme was introduced by the Cantonment Board in view of the deemed provision made in the said Cantonment Fund Servants Rules 1982 and therefore they are the servants of the Board and not the servants of the Central Government. Therefore, the question whether they are holders of Civil Post does not arise. It is pertinent to note that from their date of appointment till filing of the present applications after their retirement, they have received benefits under the Cantonment Fund Servants Rules 1937 and by these petitions, they seek for grant of interest and they want this Tribunal to decide whether they are holder of civil post which is otherwise not maintainable. The applicants have not made any ground in the said applications nor even in the prayer clause for reliefs sought for declaration that they are the holder of the civil post.

...7

From pre-page:

In the absence of specific prayer for relief, it is not open to the Tribunal to give relief which is not sought for.

4. The learned counsel for the Respondents also draws my attention that in view of number of disputes of various Cantonment Boards in India and their workmen and those disputes were the industrial disputes within the meaning of section 2 (k) of the Industrial Disputes Act, these disputes were referred by the Government of India, Ministry of Labour to the National Industrial Tribunal of India in Reference No. (NT 2) of 1958 presided over by Shri F. Jeejeebhoy. The said Tribunal after allowing all the parties to the said reference to represent their cases, finally decided all the issues and published its award being dated 4-5-1960 which stood legally valid and bound on all India Cantonment Board Employees and also on the Cantonment Boards in India and which has a force of law. The applicants being the employees of the Deolali Cantonment Board were also parties to the said Disputes, as per the Award, they were given the revised pay scales which has been accepted without any protest. The National Industrial Tribunal in its order at para 9 stated as below -

> "The principal contention of labour in this Reference is to the effect that this Tribunal should hold that the employees of Cantonment Boards are direct employees of the Central Government, and are therefore entitled to the Central Government emoluments and conditions of service. This is not possible. Section 11 in terms makes it clear that a Cantonment is a corporate body which is principally for the services of the Forces. The Rules which have

...8

From pre-page:

> been framed under the Act and therefore have a force of law, clearly indicates that these employees are the employees of the Board. The Board fixes their salaries and terms of service and the Board has a power to appoint as well as the power to remove subject however, to the general supervision and control exercised by the higher authorities."

After expiry of the NIT Award, the All India Cantonment Board Employees Federation and the Cantonment Boards in India have entered into a Memorandum of Settlement dated 13-5-1969 and the pay scales were revised w.e.f. 1-9-1967 and the said Memorandum of Settlement is still in force and the applicants have exercised their option to elect the Revised pay scales. Having exercised the option to elect the revised pay scale and after receiving the benefits throughout their services, after retirement, the applicants cannot claim that this Tribunal to confer upon them the status of a Central Government servant and declare that they hold the civil post. In this connection, he draws my attention to a similar point which was considered and decided by this Tribunal in O.A. 268 of 1986 decided by the Division Bench of Vice Chairman B.C. Gadgil and Member Shri J.G. Rajadhyaksha vide their decision dated 15-12-1986 held that unless there is a notification under Section 14 (2) issued by the Government of India, this Tribunal will have no jurisdiction to entertain the application and therefore the application was summarily rejected and the said judgement was not challenged by the parties.

5. I have carefully considered the pleadings of the parties and the oral argument of the counsel. The decisions cited by the learned counsel for the applicants

From pre-page:

Shri Sureshkumar are not germane to the issue involved in this case. In so far as R.N.A. Britto's case is concerned, the ratio laid down in that case is not applicable in the present set of facts and law. That decision was rendered because the applicant is holding the civil post i.e. Secretary of Panchayat under the State and therefore the State Tribunal had jurisdiction to go through the grievances of the applicant. With regard to the next judgement in case of State of Gujarat v/s Ramanlal Keshavlal Soni, the said decision does not help to the applicants in these applications wherein the facts are distinguishing. Similarly, in Kanakchandra Dutta's case, that decision has no bearing in the circumstances and facts of the present case. Admittedly, in the present case, the applicants are not the holders of civil posts at any time. All the employees including the applicants are the employees of the Board in view of the Cantonment Act 1924 and are governed by the Statutory Rules viz. Cantonment Fund Servants Rules 1937. Similarly, the Apex Court in(1988) 7 ATC 296 General Officer Commanding-in-Chief v/s Dr. Subhashchandra Yadav held that the Cantonment Boards are autonomous bodies and the services under the Cantonment Board is neither centralised service nor it is a service at State level. It is further held that the Central Government will not be entitled to frame rules for transfer of an employee from one Cantonment Board to another within the State for the reasons that the Cantonment Boards are autonomous and service under the Cantonment Board is not a centralised service nor it is a service at the State level and any such transfer of an employee

...10

From pre-page:

will be termination of service in the Cantonment Board from where he is transferred and a fresh appointment by the Cantonment Board which he joined on such transfer etc. In the light of the above, in my opinion, the decisions cited by the learned counsel for the applicants would not have any relevancy to the facts involved in these cases and the applicants are not able to establish that they are holding civil post nor their appointment has been made by the Central Government or by State Government; therefore, it is eminently clear that the applicants are appointed under the Cantonment Fund Servants Rules 1937 as amended from time to time and they are governed by Statutory Rules. As such, they cannot hold a civil post nor can be treated as Central or State Government employees and they are only governed by the Cantonment Fund Servants Rules 1937 as amended from time to time. Secondly, the applications filed by them are hopelessly barred by time after a lapse of 8-9 years and no explanation of the applicants for filing this belated application is given; thirdly, no specific relief is sought except seeking interest on belated payment when they have received the payment without any objection.

6. In the result, in my opinion, the O.As. are hopelessly barred by limitation and also for want of jurisdiction the same cannot be entertained. Besides that, the O.As. are devoid of merits and the same are liable to be dismissed both on merits as well as on limitation and jurisdiction. In the result, I see no justification in entertaining the O.As and accordingly dismiss the same at the admission stage itself, but with no order as to costs.

(B.S. Hegde)
Member (J)

ssp.