

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 30TH DAY OF MARCH, 1988

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman.

And:

Hon'ble Mr. L.H.A. Rego, .. Member(A)

APPLICATION NUMBER 512 OF 1988

J. Wakefield
S/o P. Esudas,
Aged about 63 years,
Indian Christian,
E.D. Branch Post Master,
E.D. Branch Post Office,
Sastrinagar, BELLARY.

.. Applicant.

v.

Government of India,
by its Secretary, Posts and Telegraphs
Department, Government of India,
New Delhi.

.. Respondent.

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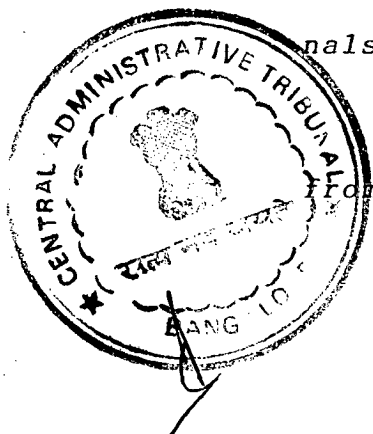
This application having come up for preliminary hearing this day, Vice-Chairman made the following:

O R D E R

This case received on transfer from the Court of the Principal Munsiff, Bellary ('Court') has been placed before us to examine the necessity or otherwise of issuing notices to the parties and then decide the same in accordance with the Administrative Tribunals Act, 1985 ('the Act').

2. We have carefully examined the papers received from the Court and the office note.

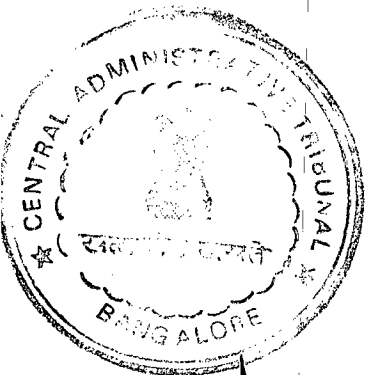
3. We find that the applicant who was once working



as a regular employee in the postal department of Government of India and had retired from service and is stated to be working as an Extra Departmental Branch Post Master at Bellary (EDBPM) had instituted O.S.No. 391 of 1986 in the Court on 29-7-1986 claiming diverse reliefs against the defendant/respondent and the said suit has been transferred by the learned Munsiff to this Tribunal in pursuance of his orders dated 5th December, 1986 and 26th February, 1986. From this it is clear that the suit had been instituted by the applicant/plaintiff on and after 1-11-1985 from which day the jurisdiction of the High Courts and Civil Courts over Central Government service matters was completely barred.

4. In *M.RACHAIAH v. SOUTHERN RAILWAYS AND OTHERS* [(1987) 3 ATC 566] we had occasion to examine whether a proceeding instituted on or after 1-11-1985 before the High Court of Karnataka can be transferred to this Tribunal or not under Section 29 of the Act. On an examination of that question, we expressed thus:

Under this section only proceedings that were pending before a High Court or any other Civil Court relating to a service matter of Government of India as on the date of Act came into force and a Tribunal was constituted viz., as on 31-10-1985 alone can be transferred to the Tribunals under the Act. We have earlier noticed that what is transferred to this Tribunal was not a proceeding that was pending as on 31-10-1985. This section does not provide for transfer of proceedings filed on and after 1-11-1985 to the Tribunals or empower them to receive on transfer, take them on file and deal with them under the Act.

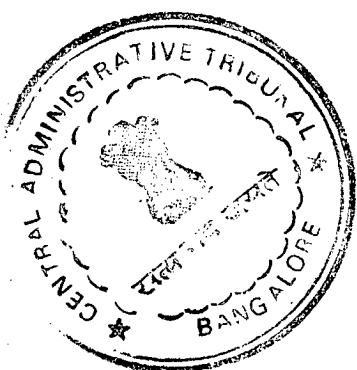


When that is so, the Hon'ble High Court could not have transferred Writ Petition No. 10882 of 1986 filed before it on 26-6-1986 to this Tribunal for disposal. We cannot, therefore, take this application on or file and deal with the same under the Act. If that is so, we have no alternative except to re-transfer the proceedings to the Hon'ble High Court for disposal. We refrain to say as to how the Hon'ble High Court should dispose of the re-transferred proceedings.

6. In the light of our above discussion we direct the Registrar of this Tribunal to re-transfer Writ Petition No.10882 of 1986 to the Hon'ble High Court of Karnataka for disposal along with an authenticated copy of this order and also the order made by us in A.No.1709 of 1986 for such action as it deems fit.

What has been expressed by us herein with reference to a proceeding before the High Court under Article 226 of the Constitution is equally applicable to suits filed before the Civil Courts. On these principles, it is clear that the suit filed by the applicant/plaintiff on 29-7-1986 cannot be transferred to this Tribunal under Section 29 of the Act. We have, therefore, no alternative but to retransfer this case to the civil Court. As stated in Rachaiah's case, we refrain to say as to how the civil Court itself should deal with the re-transferred proceedings.

5. In the light of our above discussion, we direct the Registrar of this Tribunal to retransfer O.S.No. 391 of 1986 to the Principal Munsiff, Bellary along with an authenticated copy of this order and a copy of the order in Rachaiah's case for such action as he deems fit.



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Sd/-

VICE-CHAIRMAN.

Sd/-

MEMBER(A)

20.3.88

12/4/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THIS THE 22nd DAY OF OCTOBER, 1986

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,
And

.. Vice-Chairman.

Hon'ble Mr. L.H.A. Rego,

.. Member

APPLICATION NO. 1750 OF 1986.

M. Rachaiah,
S/o late Mari Javaraiah,
Aged about 50 years,
Enquiry-cum-Reservation Clerk,
Grade-I, Southern Railway,
Mysore Division, MYSORE.

.. Petitioner./

(By Sri G.B. Manjunath, Advocate)

v.

1. The Southern Railways
represented by its Chief
personnel Officer, Head Quarters.
Office, Personnel Branch, MADRAS-3.
2. The southern Railways
represented by the Divisional Railway Manager,
Mysore Division, MYSORE.
3. The State of Karnataka
represented by its secretary,
Education Department,
Vidhana Soudha, Vidhana Veedhi,
Bangalore-1.
4. The Karnataka Secondary Education
Examination Board, represented
by its Secretary, 6th Cross,
Malleswaram, BANGALORE-3.

.. Respondents

(By Sri A.N. Venugopal for Respondents)

This application coming for preliminary hearing this day,
Vice-Chairman made the following:

ORDER

This case transferred from the Hon'ble High Court
of Karnataka where it was registered as Writ Petition
No. 10882 of 1986, has been placed by the Registrar of
this Tribunal before us to examine whether this Tribunal
should take this application into its file, issue notice to parties
and then deal with the same in accordance with the provisions
of the Administrative Tribunals Act of 1985 ('the Act')
or not.

2. The applicant who was the petitioner before the High Court working in the Southern Railways is an employee of Government of India. When the applicant's claim for rectification of his date of birth from 28-8-1928 to 28-6-1936 was not allowed by respondent Nos. 1 and 2 he moved the High Court in Writ Petition No. 10882 of 1986 under Article 226 of the Constitution of India challenging their action and seeking for appropriate reliefs. On 27-6-1986 Swami, J. before whom the said Writ Petition was posted for preliminary hearing made the following order:

"Emergent notice returnable in 2 wks. In the meanwhile the petitioner shall not be retired on the basis that his date of birth is 28-6-1928 and as such the date of superannuation of the petitioner is 30-6-1986. Call on 14-7-1986".

On 5-9-1986 the same learned judge made an order thus:

"Call after 2 weeks in view of the submission made on behalf of the petitioner that he will move the relevant Administrative Tribunal for appropriate relief."

On 1-10-1986 the same learned Judge directed the case to be called on 15-10-1986. But on 16-10-1986 the High Court on the administrative side had transferred the said Writ Petition to this Tribunal under Section 29 of the Act and the same has been received by this Tribunal on 16th October 1986.

3. On 18-9-1986 the applicant made an application before this Tribunal for very ^{the} reliefs he had sought in Writ Petition No. 10882 of 1986 which we have rejected on 17-10-1986.

4. The

4. The Act came into force from 1-11-1985 from which day Tribunals for the State of Karnataka and other States were also constituted by Government conferring exclusive power over service matters of Government of India. On and from 1-11-1985, the jurisdiction of all Courts in the country over service matters of Government of India was exclusively conferred on the Tribunals constituted and functioning under the Act. In this view the applicant should have approached only this Tribunal for adjudication of his grievance at any rate against respondents Nos.1 and 2 (Vide:Section 28 of the Act).

5. Section 29 of the Act providing for transfer of pending proceedings reads thus:

"29.(1). Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal.

Provided that nothing in this subsection shall apply to any appeal pending as aforesaid before a High Court.

(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation or society being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal.

Provided that nothing in this subsection shall apply to any appeal pending as aforesaid before a High Court.

Explanation:



" Explanation: For the purpose of this sub-section "date with effect from which jurisdiction is conferred on a Tribunal" in relation to any local or other authority or corporation or society means the date with effect from which the provisions of sub-section(3) of Section 14 or, as the case maybe, sub-section(3) of Section 15 are applied to such local or other authority or corporation or society.

(3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the states for which it is established, has or have a State Tribunal or State Tribunals all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

Explanation:- For the purpose of this sub-section, "State Tribunal" means a Tribunal established under sub/section

(2) of Section 4.

4. Where any suit, appeal or other proceeding stands transferred from any Court or other authority to a Tribunal under Sub-section(1) or sub-section (2),-

(a) the court or other authority shall, as soon as may be after such transfer forward the records of such suit, appeal or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an application under Section 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem it.

(5) Where any case stands transferred to a Joint Administrative Tribunal under sub-section(3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred.

Under this section only proceedings that were pending before a High Court or any other Civil Court relating to a service matter of Government of India as on the date of Act came into force

and



and a Tribunal was constituted viz., as on 31-10-1985 alone can be transferred to the Tribunals under the Act. We have earlier noticed that what is transferred to this Tribunal was not a proceeding that was pending as on 31-10-1985. This section does not provide for transfer of proceedings filed on and after 1-11-1985 to the Tribunals or empower them to receive on transfer, take them on file and deal them under the Act. When that is so, the Hon'ble High Court could not have transferred WritPetition No.10882 of 1986 filed before it on 26-6-1986 to this Tribunal for disposal. We cannot therefore take this application on our file and deal with the same under the Act. If that is so, we have no alternative except to re-transfer the proceedings to the Hon'ble High Court for disposal. We refrain to say as to how the Hon'ble High Court should dispose of the re-transferred proceedings.

6. In the light of our above discussion we direct the Registrar of this Tribunal to re-transfer Writ Petition No.10882 of 1986 to the Hon'ble High Court of Karnataka for disposal along with an authenticated copy of this order and also the order made by us in Application No.1709 of 1986 for such action as it deems fit.



VICE_CHAIRMAN


MEMBER(AM)(R)

22.11.1986

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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE