

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 10 NOV 1988

APPLICATION NO. S 1110 & 1111
R.A. NOS. 71 & 80/85 (Addl Civil Judge & C.M. Court, Dharwad)
D.S.P. NO. 192 / 82 in II Addl Munsiff
Court, Dharwad

Applicant(s)

The Secretary, M/o Information &
Broadcasting, New Delhi & anr
To

v/s Shri T.V. Chavan

Respondent(s)

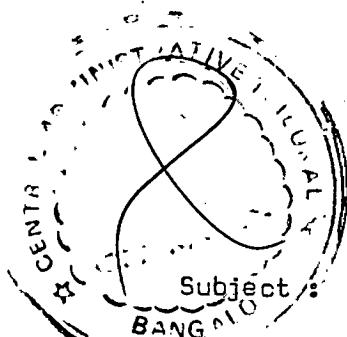
1. The Secretary
Ministry of Information & Broadcasting
Shastry Bhavan
New Delhi - 110 001

4. Shri T.V. Chavan
Staff Artist
All India Radio
Dharwad

2. The Station Director
(Now Station Engineer)
All India Radio
Dharwad.

5. Shri L.S. Chikkanna Goudar
Advocate
No. 10, Kalyan Lodge
Near Swastic Talkies
Seshadripuram
Bangalore - 560 020

3. Shri C.J. Patil
Advocate
Laxmi Road
Dharwad - 1



Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY/INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 31-10-88.

Encl : As above

SC
SECTION OFFICER,
~~RECORDED/INDEXED/SEARCHED~~
(JUDICIAL)

*Issued
K. N. Rajan
10-11-88*

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 31ST DAY OF OCTOBER, 1988.

PRESENT:

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

And:

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

APPLICATIONS NUMBERS 1110 AND 1111 OF 1988
(R.A.NOS. 71 AND 80 OF 1985)

1. The Union of India,
represented by the Secretary,
Department of Information and Broadcasting,
Central Government Secretariat,
New Delhi.
2. The Station Director,
(Now Station Engineer)
All India Radio, Dharwad. .. Applicants/Appellants in
A.No.1110 of 1988 (R.A.71/85) and
Respondents 1 and 2 in A.No.1111
of 1988 (R.A.No.80 of 1985).

(By Sri C.J.Patil, Govt.Pleader,Dharwad)

v.

T.V.Chavan,
Major, Occ: Staff Artist, .. Respondent in A.No.1110/88
A.I.R., Dharwad. (R.A.No.71/85) and Applicant/Appellant
in A.No.1111/88 (R.A.No.80/85)

(By Sri L.S.Chikkana Goudar,Advocate)

These applications having come up for hearing this day, Hon'ble Vice-Chairman made the following:

O R D E R

These are transferred applications and are received from the Court of the Additional Civil Judge, Dharwad ('CJ Court') under Section 29 of the Administrative Tribunals Act,1985 ('the Act').

2. Sri Thippanasa Venkusa Chavan ('Chavan') who will be hereafter referred to as the plaintiff, is a Hindusthani Flute Player.

3. In response to advertisements issued by the Director of All India Radio, Dharwad ('Director') on 17-2-1975 and 8-3-1985 for the post of a Staff Artist, Instrumentalist, Flute Player (Hindustani) Grade 'A' or 'B High' the plaintiff was an applicant. In due course he was selected and appointed on 5-9-1975 as a Flute Artist in the then time-scale of pay of Rs.210-10-290-15-470 which scale was definitely lower to the scale of pay sanctioned to Grades 'A' and

'B High' which carried the then time-scales of pay of Rs.350-25-500-30-800 and 325-15-475-20-575 respectively. On that offer of appointment, the plaintiff accepted the same and reported for duty on 22-9-1975 from which date he has been working in that capacity.

4. When so working, the plaintiff's flute recital was recorded on 27-4-1976 at the Dharwad Station to consider his case for appointment to 'B High' Grade artist which, however, was not forwarded to Music Audition Board of All India Radio, Delhi ('MAB'), the final authority to make an assessment and decide on his suitability for appointment to that higher grade. We will revert to this aspect later after narrating one more legal proceeding first.

5. On 3-1-1979 the plaintiff instituted O.S.No.6 of 1979 in the Court of the Additional Munsiff, Dharwad ('Munsiff') impleading the Union of India and the Director as defendants to that suit, for a declaration that he was entitled to higher scale of pay of Rs.325-15-475-20-575 allowed to 'B High' Grade artists which was resisted by the defendants on diverse grounds. We will hereafter refer to them as defendants. On 12-1-1983 the learned Munsiff dismissed the said suit and the first and second appeals filed by the plaintiff against the same have also been dismissed.

6. On 17-9-1987 the plaintiff filed Application No.819 of 1987 before this Tribunal under Section 19 of the Act claiming for extending him the time-scale of pay of Rs.325-575 allowed to 'B High' grade artists from 3-11-1975 and onwards. On 30-9-1987 we rejected this application at the admission stage on two grounds viz., (i) that the claim rejected by the Director as early as on 28-9-1978 was not adjudicatable by the Tribunal under the Act and (ii) that the claim which had been negatived by the Civil Court in O.S.No.6 of 1979 culminating in Second Appeal No.190 of 1986 decided on 25-3-1986 by the High Court of Karnataka, was barred by res judicata.

7. On the flute recording made on 27-4-1976, there was correspondence between the plaintiff and the Director, a sui notice under

Section 80 of the Code of Civil Procedure and a reply thereto by the Director on 13-11-1981 repudiating his claim. On this, the plaintiff on 2-6-1982, instituted O.S.No.192 of 1982 in the Court of the Munsiff, Dharwad against the defendants for a declaration that he was entitled to be placed as 'A' grade artist from 27-4-1976 and for consequential reliefs flowing from the same. In his suit, the plaintiff asserted that the cause of action for the suit arose on 13-2-1981 and reckoning the limitation from that date, the suit was in time. On these and other pleas, the plaintiff claimed for the reliefs sought in his plaint.

8. In their common written statement filed on 18-11-1982, the defendants asserted that the flute recital recorded on 27-4-1976 of the plaintiff was not of the standard expected for 'B High' grade artist and was not forwarded to MAB at his own request and, therefore, he was not entitled for the reliefs sought by him. In addition to this, the defendants urged certain other defences, one of which was that the suit was barred by time.

9. On an examination of the pleadings, the learned Munsiff framed as many as 9 issues. Issues 1 to 4 which are material, read thus:

- (1) Whether the plaintiff proves that he is entitled to be placed in 'A' grade from 27-4-1976 for the purpose of upgrading?
- (2) Whether the plaintiff is entitled to the benefit of salary from 27-4-1976 as if he was upgraded to 'A' grade from that date?
- (3) Whether the defendant proves the plaintiff was advised that his recording, if sent to the MAB may adversely affect his service conditions and the plaintiff agreed for that advise and for that reason his recording was not sent to the MAB?
- (4) Whether the defendant proves that the suit is barred by limitation?

On a consideration of the evidence placed by both sides, the learned Munsiff by his Judgment delivered on 25-7-1985 answered issues 1 to 3 against the plaintiff and issue No.4 against the defendants.

Notwithstanding these findings, the learned Munsiff issued a direction to the defendants to forward the flute recital tape record of the plaintiff to MAB for its examination, decision and further

appropriate directions. In other words, the learned Munsiff partially decreed the plaintiff's suit.

10. Aggrieved by the judgment and decree made against them, the defendants filed Regular Appeal No.71 of 1985 on 17-9-1985 before the Civil Judge, Dharwad who made over the same to the Additional Civil Judge. To the extent his suit was dismissed by the learned Munsiff the plaintiff filed Regular Appeal No.80 of 1985 on 4-10-85 with an application under Section 5 of the Limitation Act of 1963 (Central Act No.36 of 1963) ('1963 Act') for condoning the delay of 5 days in filing the appeal.

11. On 8-6-1988, the CJ Court directed the transfer of the said appeals to this Bench under Section 29 of the Act and in pursuance of the same, the appeal papers and the records in O.S.No.192 of 1982 were transmitted on 14-7-1988 which were received by this Bench on 20-7-1988. On their receipt, this Bench has registered them as Applications Nos. 1110 and 1111 of 1988 respectively.

12 Sri L.S.Chikkana Goudar, learned Advocate has appeared for the plaintiff in both the cases. Sri C.J.Patil, learned Government Pleader, Dharwad, who had represented the defendants in the civil Courts has represented them before us also. We have heard them on 24-10-1988.

13. On the pleadings and the contentions urged by both sides before us, as many as 5 points arise for our determination and they are:

- (1) Whether the plaintiff has made out a sufficient cause for condoning the delay in filing his Regular Appeal No.80 of 1985 before the CJ Court.
- (2) Whether the findings recorded by the learned Munsiff on issues 1 to 3 are correct or not.
- (3) Whether the finding of the learned Munsiff on issue 4 is correct or not.
- (4) Whether the present suit was barred by res judicata or not.
- (5) Whether the plaintiff was at all entitled for any relief on compliance with the directions of the learned Munsiff by the defendants.

We now proceed to examine these points in their order.

RE: POINT NO.1.

14. In filing his Regular Appeal No.80 of 1985 before the CJ Court, there is a delay of 5 days. In his affidavit accompanying I.A.No.I, the plaintiff has stated that he was extremely busy with other legal proceedings and was under great tension which prevented him from contacting his learned Advocate and filing the appeal in time.

15. I.A.No.I is opposed by the defendants.

16. Sri Goudar has contended that the facts and circumstances stated in I.A.No.I constitute a sufficient cause for condoning the short delay of 5 days.

17. Sri Patil has urged that the facts and circumstances stated in I.A.No.I do not constitute a sufficient cause to condone the delay.

18. Sri Patil is right in contending that the facts and circumstances stated by the plaintiff even if true are not very convincing. But, still taking into account the peculiar facts and circumstances and the pendency of a valid appeal by the defendants, we consider it ~~proper~~ proper to hold that the plaintiff has made out a sufficient cause for condoning the short delay of 5 days and deal with his appeal along with the other appeal on merits only. We accordingly hold that the plaintiff has made out a sufficient cause for condoning the delay and answer point No.1 in favour of the plaintiff and allow

I.A.No.I.

RE: POINT NO.2.

19. Sri Goudar has urged that the answers furnished by the learned Munsiff on issues 1 to 3 are contrary to his reasoning and conclusions on them.

20. Sri Patil has urged to the contrary.

21. We have carefully read the reasoning, the conclusions and answers furnished by the learned Munsiff on issues 1 to 3. On such

examination we are of the view that the answers furnished by the learned Munsiff on issues 1 to 3 are in conformity with his reasoning and conclusions and are not opposed to them at all. We see no merit in this contention of Sri Goudar and we reject the same.

22. Sri Goudar has urged that the findings recorded by the learned Munsiff on issues 1 to 3 were not based on a critical appraisal of the evidence on record.

23. Sri Patil has urged to the contrary.

24. We have carefully examined the discussion part and the findings recorded on issues 1 to 3. The fact that the discussion on these issues is not very elaborate and there is no detailed reference to the evidence of the witnesses touching on them, does not necessarily mean that the learned Munsiff, had not critically appraised the evidence on record. On a close examination, we find it difficult to hold that the learned Munsiff had not critically evaluated the evidence and has recorded his findings. We see no merit in this contention of Sri Goudar and we reject the same.

25. Sri Goudar has urged that the findings recorded by the learned Munsiff on issues 1 to 3 were contrary to the evidence on record, all the relevant facts and circumstances and the documents which had not been marked as exhibits in the case. In driving home this point, Sri Goudar has urged that Section 29 of the Act does not restrict our power to the evidence placed before the Court as in a Civil Court.

26. Sri Patil in supporting the findings of the learned Munsiff on issues 1 to 3 has urged that we cannot travel beyond the pleadings and the evidence on record.

27. Section 29(1) and (2) of the Act provides for the transfer of proceedings pending before any Court or authority immediately before the date of establishment of this Tribunal under the Act. Section 29(3) of the Act provides for transfer of proceedings pending

pending before the Court or other authorities to a State Tribunal constituted under the Act.

28. Section 29(4) which regulates the manner of dealing with transferred cases, which is material reads thus:

"29 (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), -

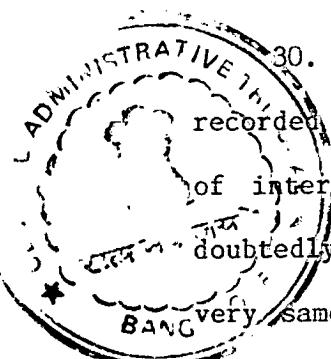
(a) the court or other authority shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with suchsuit, 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 fit."

This section provides for dealing with a transferred application as if it is an application made under Section 19 of the Act. On the very terms of the section in transferred proceeding also, this Tribunal can exercise every power it can exercise in a fresh application made under Section 19 of the Act.

29. On the scope and ambit of Section 19 of the Act, we have expressed that the power conferred is essentially one of judicial review and is not an appellate power. From this it follows that it is permissible for us to rely on evidence already recorded and not recorded also, allother relevant materials and decide the case finally. But, in doing so, we must be cautious and do so only if the circumstances so justify and not otherwise.

30. In appreciating the evidence on record and the findings recorded thereon, we should keep before us the well settled principles of interference by appellate Courts. A Court of appeal can undoubtedly re-appreciate and come to a different conclusion on the very same evidence. But, in so doing, it should also bear in mind one of the well settled principles that the Judge who had recorded the evidence was in a better position to appreciate the demeanour of witnesses and reach his conclusions and his findings should not be lightly interfered with except for valid and sound reasons. Bear-



Bearing all these principles, we proceed to examine the correctness of the findings recorded on issues 1 to 3.

31. We have carefully read the evidence on record, the reasoning and the conclusions of the learned Munsiff on issues 1 to 3. On such an examination, we are satisfied that the findings recorded on issues 1 to 3 are in conformity with the pleadings and the evidence on record. We find no error either in the appreciation of the evidence on record or the findings recorded on issues 1 to 3.

32. The plaintiff has examined himself and has closed his case. Even the examination-in-chief of the plaintiff which is as sketchy as it could be, will not aid any Court to accept the case of the plaintiff on issues 1 to 3. Sri Goudar realising this infirmity only asked us to examine all other circumstances and records to disturb the finding of the learned Munsiff on issues 1 to 3. But, in so doing, he has not brought to our notice any new circumstances or relevant documents on which we can come to a different conclusion on issues 1 to 3.

33. Whatever be the grade to which applications were invited, there is no dispute that the plaintiff was appointed to a grade which carried the time-scale of pay of Rs.210-470. The time-scale of pay of Rs.210-470 is the time-scale allowed to Grade-B artists and not to 'B High' or 'A' grade artists. If that is so, there can be hardly any doubt on the grade to which the plaintiff was appointed. Even otherwise, this very claim was agitated by the plaintiff in O.S.No.6 of 1979 and was rejected. On this very basis, we have also rejected Application No.819 of 1987 filed by the plaintiff. We are of the view that the findings recorded in these cases also support the conclusions of the learned Munsiff on issues 1 to 3.

34. On the foregoing discussion, we answer point No.2 against the plaintiff and uphold the findings of the learned Munsiff on issues 1 to 3.

RE:POINT NO.3.

35. Sri Patil has urged that the finding recorded by the learned Munsiff on issue 4 against the defendants was contrary to the provisions of 1963 act and the pleadings in the case.

36. Sri Goudar sought to support the finding of the learned Munsiff on issue 4.

37. We have earlier noticed that the learned Munsiff had answered issue 4 in favour of the plaintiff and against the defendants. In reaching his conclusions (vide: para 14) the learned Munsiff has held that the cause of action for the suit had started on 13-11-1981 on which day the Director sent his reply to the suit notice issued by the plaintiff and not from 27-4-1976 on which day the plaintiff's flute recital was recorded.

38. Part III in the Schedule - First Division to the 1963 Act - Suits relating to declarations containing three articles namely Articles 56 to 58 govern the period of limitation for suits relating to declarations. Articles 56 and 57 which deal with suits to declare forgery of an instrument issued or registered or to obtain a declaration that an alleged adoption is invalid or never, in fact, took place have no application to the nature of the declaration sought by the plaintiff. If that is so, then Article 58 which is the residuary article of Part-III will govern the case of the plaintiff. Sri Goudar did not rightly dispute this position.

39. Article 58 of the 1963 Act which governs the case, but which has not been noticed by the learned Munsiff in the course of his judgment reads thus:

Description of suit	Period of Limitation	Time from which period begins to run
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58. To obtain any other declaration.	Three years	When the right to sue first accrues
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when the right to sue first accrues. The terms 'the right to sue first accrues' are not synonymous with the cause of action or any overt or covert action by the defendants. A reply issued to the suit notice can hardly be construed as falling within the meaning of the term 'the right to sue first accrues'. All that the plaintiff could have claimed in relation to his suit notice was the benefit of Section 15 of the 1963 Act providing for excluding the period of notice contemplated in Section 80 of the Code of Civil Procedure. Except for this, the plaintiff could not claim the benefit of the suit notice got issued by him or the reply issued by the Director on 13-11-1981 Exhibit-P2.

40. In his plaint the plaintiff claims for a declaration from 27-4-1976. On the very pleas and the reliefs sought by him we must necessarily hold that the right of the plaintiff to sue in the civil Court first accrued on 27-4-1976 itself and not on 13-11-1981 as held by the learned Munsiff. Even otherwise, the entire reasoning and the conclusions reached by the learned Munsiff on issue 4 is opposed to the scheme of the 1963 Act, Article 58 which governs the period of limitation. We have, therefore, no hesitation in holding that the finding of the learned Munsiff on issue 4 is erroneous and the same calls for reversal.

41. On the foregoing discussion, we answer point No.3 in favour of the defendants and against the plaintiff.

RE:POINT NO.4.

42. Sri Patil has urged that the present suit which really seeks to agitate the very claims negatived in O.S.No.6 of 1979 and Application No.819 of 1987 or what had not been urged in either of them, was barred by res judicata.

43. Sri Goudar has urged that the plea of res judicata which had not been urged by the defendants in their defence should not be permitted to be raised and decided and that even otherwise there was no merit in the contention of Sri Patil.

44. In their written statement the defendants have not urged the plea of res judicata. But, that omission is hardly a ground for us not to permit the defendants to raise this plea and decide the same on merits. Even otherwise the plea urged before us is based on the legal proceedings to which the plaintiff was a party and is fully aware of them. We, therefore, proceed to examine this contention on merits.

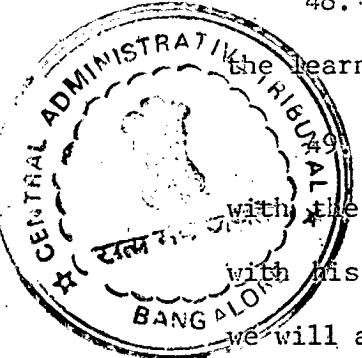
45. We have earlier noticed the nature of the claims made by the plaintiff in his earlier suit, Application No.819 of 1987 and the present suit and how the earlier proceedings have ended against him. In reality and in substance, the plaintiff in the present suit is agitating what he had agitated and lost in his earlier suit and application. If that is so, then as also held by us in Application No.819 of 1987, the present suit is barred by res judicata.

46. On the foregoing discussion, we answer point No.4 against the plaintiff and in favour of the defendants.

RE: POINT NO.5.

47. Sri Patil has urged that on the very findings recorded on issues 1 to 3 and on our answer to issue 4 in favour of the defendants, the learned munsiff should have only dismissed the plaintiff's suit in its entirety without issuing any further directions on the flute recital tape record and its forwardal to MAB as done by him.

48. Sri Goudar has sought to support the direction issued by the learned Munsiff.


49. We have earlier set out issue 3. We have also concurred with the finding of the learned Munsiff on that issue and disagreed with his finding on issue 4. But, in order to examine this aspect, we will also assume that the conclusion reached by the learned Munsiff on issue 4 was also correct.

50. In their defence, the defendants had pleaded that the flute recital tape record was not sent to MAB at the very request of the

plaintiff. In his reply dated 13-11-1981 Exhibit-P2, the Director had offered to send the flute recital tape record which was available with him to MAB if the plaintiff so desires. But, the plaintiff without availing of the offer had rushed to the Court and had sought for a contrary declaration and had not sought for a declaration and direction to the defendants to forward the flute recital tape record to MAB.

51. When the learned munsiff had accepted the case pleaded by the defendants, we fail to see as to how he could have issued a direction that too in the manner he issued. We are of the view that the direction issued by the learned Munsiff was contrary to his own reasoning, conclusions and findings recorded on issue 3. On this view, we cannot uphold the directions issued by the learned Munsiff.

52. We have earlier noticed that the plaintiff had not availed of the offer made by the defendants and had sought for a contrary direction. On this view also, the learned Munsiff should have refrained from issuing any direction to the defendants. Even otherwise, the direction issued by the learned Munsiff is contrary to the pleadings and the evidence on record. On this view also we cannot uphold the direction issued by the learned Munsiff.

53. On our finding on issue 4, the question of issuing any direction in favour of the plaintiff will not at all arise. On this view also, we cannot uphold the directions issued by the learned Munsiff.

54. While challenging the decree made against them in appeal, the defendants complied with the decree made against them, forwarded the flute recital tape record to MAB which examined the same and opined that the performance of the plaintiff did not justify the upgradation of the post held by him to 'B High' and he should be retained in B grade only. In pursuance of that, the Director has issued Memo No.DHA-21(7)-S(TVC) dated 19-10-1985 which reads thus:

Memo

Shri T.V.Chavan, Staff Artist (Flute) is informed that the tape containing his recording for assessment by the Music Audition Board for upgradation was sent to the

Directorate General, AIR, New Delhi as directed by the Court (Reference: Decree in the Court of II Additional Munsiff, Dharwad at O.S.No.192/82 - Suit filed on 2-6-1982 Suit disposed on 25-7-1985).

After the listening session by the Music Audition Board Shri T.V.Chavan has been declared not fit for upgradation and is retained in E grade."

As the defendants have complied with the direction and the NAB has found that the plaintiff is not fit for upgradation, nothing now really survives. On this development, the plaintiff is not also entitled for any relief.

55. On the findings recorded by us on Points 2 to 5 which are in favour of the defendants, we have necessarily to allow Application No.1110 of 1988, dismiss Application No.1111 of 1988 and consequently dismiss O.S.No.192 of 1982 filed by the plaintiff.

56. In the light of our above discussion, we allow Application No.1110 of 1988 (R.A.No.71 of 1985) filed by the defendants and dismiss Application No.1111 of 1988 (R.A.No.80 of 1985) filed by the plaintiff and dismiss in its entirety O.S.No.192 of 1982 filed by the plaintiff.

57. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs throughout.



Sd/-
VICE-CHAIRMAN
TRUE COPY

Sd/-
MEMBER (A)
5-7-1985

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
18/1

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 16 NOV 1988

To

1. Shri Sanjeev Malhotra
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2. Administrative Tribunal Reporter
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Lucknow - 226 001
4. The Editor
Administrative Tribunal Law Times
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(Kolhapur Road)
Delhi - 110 007
5. M/s All India Reporter
Congressnagar
Nagpur

Sir,

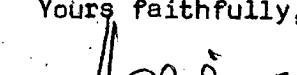
I am directed to forward herewith a copy of the under mentioned order passed by a Bench of this Tribunal comprising of Hon'ble

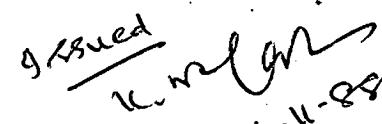
Mr. Justice K.S. Puttaswamy Vice-Chairman/~~Member (A)~~(2)

and Hon'ble Mr. L.H.A. Rego Member (A) with a request for publication of the order in the journals.

Order dated 31-10-88 passed in A.Nos 1110 & 1111/88(T).

Yours faithfully,


(~~BXXXXXXBXXXXXXBXXXXXX~~)
DEPUTY REGISTRAR(J)


K. M. Ganesh
16-11-88

9c.

Copy with enclosures forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compounds, Nungambakkam, Madras - 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta - 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex (CBD), 1st Floor, Near Konkon Bhavan, New Bombay - 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad - 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shillong Road, Guwahati - 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floors, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin - 682 001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur (MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M. Enterprises, Shri Krishna Nagar, Patna - 1 (Bihar).
11. The Registrar, Central Administrative Tribunal, C/o Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad (Gujarat).
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 001 (Orissa).

Copy with enclosures also to :

1. Court Officer (Court I)
2. Court Officer (Court II)

H. S. Reddy
~~(H. S. REDDY)~~
S/o DEPUTY REGISTRAR (J)

*Getted
K. M. Khan
15-11-88*

dc

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 31ST DAY OF OCTOBER, 1988.

PRESENT:

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

And:

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

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2. The Station Director, (Now Station Engineer) All India Radio, Dharwad. .. Applicants/Appellants in A.No.1110 of 1988 (R.A.71/85) and Respondents 1 and 2 in A.No.1111 of 1988 (R.A.No.80 of 1985).

(By Sri C.J.Patil, Govt.Pleader,Dharwad)

v.

T.V.Chavan, Major, Occ: Staff Artist, A.I.R., Dharwad. .. Respondent in A.No.1110/88 (R.A.No.71/85) and Applicant/Appellant in A.No.1111/88 (R.A.No.80/85)

(By Sri L.S.Chikkana Goudar, Advocate)

These applications having come up for hearing this day, Hon'ble Vice-Chairman made the following:

O R D E R

These are transferred applications and are received from the Court of the Additional Civil Judge, Dharwad ('CJ Court') under Section 29 of the Administrative Tribunals Act,1985 ('the Act').

2. Sri Thippanasa Venkusa Chavan ('Chavan') who will be hereafter referred to as the plaintiff, is a Hindusthani Flute Player.

3. In response to advertisements issued by the Director of All India Radio, Dharwad ('Director') on 17-2-1975 and 8-3-1985 for the post of a Staff Artist, Instrumentalist, Flute Player (Hindustani) Grade 'A' or 'B High' the plaintiff was an applicant. In due course he was selected and appointed on 5-9-1975 as a Flute Artist in the then time-scale of pay of Rs.210-10-290-15-470 which scale was definitely lower to the scale of pay sanctioned to Grades 'A' and

examination we are of the view that the answers furnished by the learned Munsiff on issues 1 to 3 are in conformity with his reasoning and conclusions and are not opposed to them at all. We see no merit in this contention of Sri Goudar and we reject the same.

22. Sri Goudar has urged that the findings recorded by the learned Munsiff on issues 1 to 3 were not based on a critical appraisal of the evidence on record.

23. Sri Patil has urged to the contrary.

24. We have carefully examined the discussion part and the findings recorded on issues 1 to 3. The fact that the discussion on these issues is not very elaborate and there is no detailed reference to the evidence of the witnesses touching on them, does not necessarily mean that the learned Munsiff, had not critically appraised the evidence on record. On a close examination, we find it difficult to hold that the learned Munsiff had not critically evaluated the evidence and has recorded his findings. We see no merit in this contention of Sri Goudar and we reject the same.

25. Sri Goudar has urged that the findings recorded by the learned Munsiff on issues 1 to 3 were contrary to the evidence on record, all the relevant facts and circumstances and the documents which had not been marked as exhibits in the case. In driving home this point, Sri Goudar has urged that Section 29 of the Act does not restrict our power to the evidence placed before the Court as in a Civil Court.

26. Sri Patil in supporting the findings of the learned Munsiff on issues 1 to 3 has urged that we cannot travel beyond the pleadings and the evidence on record.

27. Section 29(1) and (5) of the Act provides for the transfer of proceedings pending before any Court or authority immediately before the date of establishment of this Tribunal under the Act. Section 29(3) of the Act provides for transfer of proceedings pending

pending before the Court or other authorities to a State Tribunal constituted under the Act.

28. Section 29(4) which regulates the manner of dealing with transferred cases, which is material reads thus:

"29 (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 suchsuit, 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 fit."

This section provides for dealing with a transferred application as if it is an application made under Section 19 of the Act. On the very terms of the section in transferred proceeding also, this Tribunal can exercise every power it can exercise in a fresh application made under Section 19 of the Act.

29. On the scope and ambit of Section 19 of the Act, we have expressed that the power conferred is essentially one of judicial review and is not an appellate power. From this it follows that it is permissible for us to rely on evidence already recorded and not recorded also, aliother relevant materials and decide the case finally. But, in doing so, we must be cautious and do so only if the circumstances so justify and not otherwise.

30. In appreciating the evidence on record and the findings recorded thereon, we should keep before us the well settled principles of interference by appellate Courts. A Court of appeal can undoubtedly re-appreciate and come to a different conclusion on the very same evidence. But, in so doing, it should also bear in mind one of the well settled principles that the Judge who had recorded the evidence was in a better position to appreciate the demeanour of witnesses and reach his conclusions and his findings should not be lightly interfered with except for valid and sound reasons. Bear-

Bearing all these principles, we proceed to examine the correctness of the findings recorded on issues 1 to 3.

31. We have carefully read the evidence on record, the reasoning and the conclusions of the learned Munsiff on issues 1 to 3. On such an examination, we are satisfied that the findings recorded on issues 1 to 3 are in conformity with the pleadings and the evidence on record. We find no error either in the appreciation of the evidence on record or the findings recorded on issues 1 to 3.

32. The plaintiff has examined himself and has closed his case. Even the examination-in-chief of the plaintiff which is as sketchy as it could be, will not aid any Court to accept the case of the plaintiff on issues 1 to 3. Sri Goudar realising this infirmity only asked us to examine all other circumstances and records to disturb the finding of the learned Munsiff on issues 1 to 3. But, in so doing, he has not brought to our notice any new circumstances or relevant documents on which we can come to a different conclusion on issues 1 to 3.

33. Whatever be the grade to which applications were invited, there is no dispute that the plaintiff was appointed to a grade which carried the time-scale of pay of Rs.210-470. The time-scale of pay of Rs.210-470 is the time-scale allowed to Grade-B artists and not to 'B High' or 'A' grade artists. If that is so, there can be hardly any doubt on the grade to which the plaintiff was appointed. Even otherwise, this very claim was agitated by the plaintiff in O.S.No.6 of 1979 and was rejected. On this very basis, we have also rejected Application No.819 of 1987 filed by the plaintiff. We are of the view that the findings recorded in these cases also support the conclusions of the learned Munsiff on issues 1 to 3.

34. On the foregoing discussion, we answer point No.2 against the plaintiff and uphold the findings of the learned Munsiff on issues 1 to 3.

RE:POINT NO.3.

35. Sri Patil has urged that the finding recorded by the learned Munsiff on issue 4 against the defendants was contrary to the provisions of 1963 act and the pleadings in the case.

36. Sri Goudar sought to support the finding of the learned Munsiff on issue 4.

37. We have earlier noticed that the learned Munsiff had answered issue 4 in favour of the plaintiff and against the defendants. In reaching his conclusions (vide: para 14) the learned Munsiff has held that the cause of action for the suit had started on 13-11-1981 on which day the Director sent his reply to the suit notice issued by the plaintiff and not from 27-4-1976 on which day the plaintiff's flute recital was recorded.

38. Part III in the Schedule - First Division to the 1963 Act - Suits relating to declarations containing three articles namely Articles 56 to 58 govern the period of limitation for suits relating to declarations. Articles 56 and 57 which deal with suits to declare forgery of an instrument issued or registered or to obtain a declaration that an alleged adoption is invalid or never, in fact, took place have no application to the nature of the declaration sought by the plaintiff. If that is so, then Article 58 which is the residuary article of Part-III will govern the case of the plaintiff. Sri Goudar did not rightly dispute this position.

39. Article 58 of the 1963 Act which governs the case, but which has not been noticed by the learned Munsiff in the course of his judgment reads thus:

Description of suit	Period of Limitation	Time from which period begins to run
58. To obtain any other declaration.	Three years	When the right to sue first accrues

Under this Article the suit has to be instituted within three years

when the right to sue first accrues. The terms 'the right to sue first accrues' are not synonymous with the cause of action or any overt or covert action by the defendants. A reply issued to the suit notice can hardly be construed as falling within the meaning of the term 'the right to sue first accrues'. All that the plaintiff could have claimed in relation to his suit notice was the benefit of Section 15 of the 1963 Act providing for excluding the period of notice contemplated in Section 80 of the Code of Civil Procedure. Except for this, the plaintiff could not claim the benefit of the suit notice got issued by him or the reply issued by the Director on 13-11-1981 Exhibit-P2.

40. In his plaint the plaintiff claims for a declaration from 27-4-1976. On the very pleas and the reliefs sought by him we must necessarily hold that the right of the plaintiff to sue in the civil Court first accrued on 27-4-1976 itself and not on 13-11-1981 as held by the learned Munsiff. Even otherwise, the entire reasoning and the conclusions reached by the learned Munsiff on issue 4 is opposed to the scheme of the 1963 Act, Article 58 which governs the period of limitation. We have, therefore, no hesitation in holding that the finding of the learned Munsiff on issue 4 is erroneous and the same calls for reversal.

41. On the foregoing discussion, we answer point No.3 in favour of the defendants and against the plaintiff.

RE:POINT NO.4.

42. Sri Patil has urged that the present suit which really seeks to agitate the very claims negatived in O.S.No.6 of 1979 and Application No.819 of 1987 or what had not been urged in either of them, was barred by res judicata.

43. Sri Goudar has urged that the plea of res judicata which had not been urged by the defendants in their defence should not be permitted to be raised and decided and that even otherwise there was no merit in the contention of Sri Patil.

44. In their written statement the defendants have not urged the plea of res judicata. But, that omission is hardly a ground for us not to permit the defendants to raise this plea and decide the same on merits. Even otherwise the plea urged before us is based on the legal proceedings to which the plaintiff was a party and is fully aware of them. We, therefore, proceed to examine this contention on merits.

45. We have earlier noticed the nature of the claims made by the plaintiff in his earlier suit, Application No.819 of 1987 and the present suit and how the earlier proceedings have ended against him. In reality and in substance, the plaintiff in the present suit is agitating what he had agitated and lost in his earlier suit and application. If that is so, then as also held by us in Application No.819 of 1987, the present suit is barred by res judicata.

46. On the foregoing discussion, we answer point No.4 against the plaintiff and in favour of the defendants.

RE: POINT NO.5.

47. Sri Patil has urged that on the very findings recorded on issues 1 to 3 and on our answer to issue 4 in favour of the defendants, the learned munsiff should have only dismissed the plaintiff's suit in its entirety without issuing any further directions on the flute recital tape record and its forwardal to MAB as done by him.

48. Sri Goudar has sought to support the direction issued by the learned Munsiff.

49. We have earlier set out issue 3. We have also concurred with the finding of the learned Munsiff on that issue and disagreed with his finding on issue 4. But, in order to examine this aspect, we will also assume that the conclusion reached by the learned Munsiff on issue 4 was also correct.

50. In their defence, the defendants had pleaded that the flute recital tape record was not sent to MAB at the very request of the

plaintiff. In his reply dated 13-11-1981 Exhibit-P2, the Director had offered to send the flute recital tape record which was available with him to MAB if the plaintiff so desires. But, the plaintiff without availing of the offer had rushed to the Court and had sought for a contrary declaration and had not sought for a declaration and direction to the defendants to forward the flute recital tape record to MAB.

51. When the learned munsiff had accepted the case pleaded by the defendants, we fail to see as to how he could have issued a direction that too in the manner he issued. We are of the view that the direction issued by the learned Munsiff was contrary to his own reasoning, conclusions and findings recorded on issue 3. On this view, we cannot uphold the directions issued by the learned Munsiff.

52. We have earlier noticed that the plaintiff had not availed of the offer made by the defendants and had sought for a contrary direction. On this view also, the learned Munsiff should have refrained from issuing any direction to the defendants. Even otherwise, the direction issued by the learned Munsiff is contrary to the pleadings and the evidence on record. On this view also we cannot uphold the direction issued by the learned Munsiff.

53. On our finding on issue 4, the question of issuing any direction in favour of the plaintiff will not at all arise. On this view also, we cannot uphold the directions issued by the learned Munsiff.

54. While challenging the decree made against them in appeal, the defendants complied with the decree made against them, forwarded the flute recital tape record to MAB which examined the same and opined that the performance of the plaintiff did not justify the upgradation of the post held by him to 'E High' and he should be retained in B grade only. In pursuance of that, the Director has issued Memo No.DHA-21(7)-S(TVC) dated 19-10-1985 which reads thus:

Memo

Shri T.V.Chavan, Staff Artist (Flute) is informed that the tape containing his recording for assessment by the Music Audition Board for upgradation was sent to the

Directorate General, AIR, New Delhi as directed by the Court (Reference: Decree in the Court of II Additional Munsiff, Dharwad at O.S.No.192/82 - Suit filed on 2-6-1982 Suit disposed on 25-7-1985).

After the listening session by the Music Audition Board Shri T.V.Chavan has been declared not fit for up-gradation and is retained in B grade."

As the defendants have complied with the direction and the MAB has found that the plaintiff is not fit for upgradation, nothing now really survives. On this development, the plaintiff is not also entitled for any relief.

55. On the findings recorded by us on Points 2 to 5 which are in favour of the defendants, we have necessarily to allow Application No.1110 of 1988, dismiss Application No.1111 of 1988 and consequently dismiss O.S.No.192 of 1982 filed by the plaintiff.

56. In the light of our above discussion, we allow Application No.1110 of 1988 (R.A.No.71 of 1985) filed by the defendants and dismiss Application No.1111 of 1988 (R.A.No.80 of 1985) filed by the plaintiff and dismiss in its entirety O.S.No.192 of 1982 filed by the plaintiff.

57. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs throughout.

Sd/-

VICE-CHAIRMAN

TRUE COPY

np/

Sd/-

MEMBER(A)

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Hale 16/11

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 SEP 1989

REVIEW APPLICATION NO (s) 36 /89
IN APPLICATION NOS. 1110 & 1111/88(T)
W.P. NO (D)

Applicant (s)

Shri T.V. Chavan

v/s

The Secretary, M/o Information & Broadcasting,
New Delhi & anr

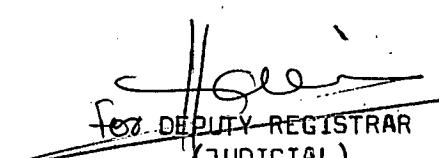
To

1. Shri T.V. Chavan
Maratha Colony
Near Durgadevi Temple
G.B. Patil Chawl
At & Dist - Dharwad
2. Shri T. Radhakrishna
Advocate
No. 37/5, K.V. Temple Street
Bangalore - 560 053

Respondents

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER ~~STAY / INTERIM ORDER~~
passed by this Tribunal in the above said Application(s) on 19-9-89.


For DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 19TH DAY OF SEPTEMBER, 1989

Present:

Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri L.H.A. Rego,
Member (A)

REVIEW APPLICATION NO. 36/1989.

Shri T.V. Chavan,
Age 59 years,
Staff Artist,
Instrumentalist,
Flute Player (Hindustani),
All India Radio,
Dharwad.

.... Applicant.

(Shri T. Radhakrishna, Advocate).

v.

1. The Secretary,
Dept. of Information & Broadcasting,
Central Secretariat,
New Delhi.

2. The Station Director,
Now Station Engineer,
All India Radio,
Dharwad.

.... Respondents.

This Review Application having come up for hearing to-day,
Hon'ble Vice-Chairman made the following:

O R D E R

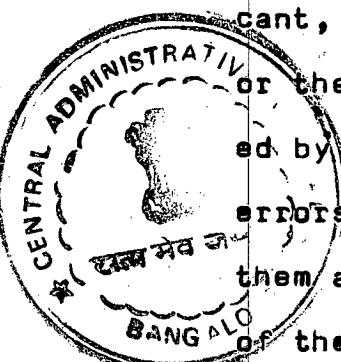
In this application made under Section 22(3)(f) of the
Administrative Tribunals Act, 1985 (the Act), the applicant
has sought for a review of our order made on 31.10.1988 dis-
posing of Transferred Application Nos. 1110 and 1111/1988.

2. In T.A. Nos. 1110 and 1111/88 transferred from the
court of Additional Civil Judge, Dharwad, under Section 29 of
the Act, the claim of the applicant for upgrading or appointment
as Grade A Artist in the All India Radio, Dharwad (AIR) arose for

determination. On this the applicant had instituted O.S. No.192/82 in the court of Munsiff, Dharwad, which had been decreed in part. Aggrieved by the judgment and decree of the learned Munsiff, both sides filed appeals before the learned Civil Judge, in R.A. 71 and 80/85 and they were transferred to this Tribunal under Section 29 of the Act. On their transfer, they were registered as T.A.Nos. 1110 and 1111/88. On affording full opportunity of hearing we reserved our orders and pronounced the same on 31.10.1988.

3. In our order, we formulated as many as five points as arising for our decision in the cases (vide para 13). We have examined each one of them in detail and recorded our findings on each one of them. In this application made under Section 22(3)(f) of the Act, the applicant has sought for a review of our orders and urges for granting him the reliefs sought in the suit filed by him.

4. Shri T. Radhakrishna, learned counsel for the applicant, who had not appeared in the transferred applications or the civil courts strenuously contends that findings recorded by us in particular on points 2 and 3 suffer from patent errors in that we had not made a proper approach in determining them and the same justifies a review under Section 22(3)(f) of the Act.



5. We have carefully read our findings on points 2 and 3 as also on other points. We find that we have examined every one of the submissions made on all the points and recorded our findings on every one of them.

6. We will assume that our findings on all of them are not correct and are even erroneous. But those errors, if any,

do not constitute a patent error to justify a review under section 22(3)(f) of the Act read with section 47 of the CPC. In reality and substance, the applicant is asking us to re-examine our order as if we are a court of appeal and come to a different conclusion on the material points and uphold his claim which we cannot do in a review application.

7. On any view of the matter, this application for review which is devoid of merit, is liable to be rejected. We, therefore, reject the review application at the admission stage without notices to the respondents.

Sd —

VICE-CHAIRMAN

10/9/89

Sd —

MEMBER (A) 10.10.89

TRUE COPY



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CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

25/9