

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 573/91

198

~~Ex-Axx,Nxx~~DATE OF DECISION 5-04-1992Mr. P G Deshpande

Petitioner

Mr. M A Mahalle

Advocate for the Petitioner(s)

Versus

Union of India &x26amp;xx

Respondent

Mr. V S Masurkar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U C Srivastava, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? Y
4. Whether it needs to be circulated to other Benches of the Tribunal? A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" PRESCOT ROAD,
BOMBAY - 400001

O.A. No. 573/91

Mr. Prabhakar Gangadhar Deshpande
7 C 'Kamat' Anushakti Nagar
Bombay 400094

.. Applicant

V/s.

Union of India through
the Secretary
Ministry of Atomic Energy
Department of Atomic Energy
Anushakti Bhavan
Bombay 400039.

.. Respondents

Coram: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. M.A. Mahalle
Advocate
for the applicant

Mr. V S Masurkar
Counsel
for the respondents

JUDGMENT:
(PER: SHRI JUSTICE U.C. Srivastava, V.C.)

DATED: 3-4-92

The applicant was a Scientific Officer in Bhabha Atomic Energy Research Centre having completed 50 years of service on 6.1.1987. He was compulsorily retired under FR 56(j) on 27.8.1987. Against the order passed for compulsory retirement earlier the applicant filed an application before this Tribunal which was allowed vide its order dated 5.10.1990. The tribunal held that the decision of the competent authority was based on reasonable grounds and the same was not shown to suffer from malice or arbitrariness. They remanded the case to the concerned authorities for decision of the representation of the applicant notwithstanding that it has been addressed to the Chairman of the Department of Atomic Energy which should have been addressed to the President of India.

Accordingly a direction was given to the Union of India to dispose of the representation of the applicant treating it to be representation to the President of India within three months. The said representation was rejected ~~vide order dated 9.11.1987 the compul-~~ ~~sory~~ retirement of the applicant was cancelled and he was paid full salary for the intervening period and was treated as duty. However in less than three months the applicant was again retired under FR 56(j) ~~vide order dated 25.1.1988. The applicant has chall-~~ ~~enged~~ the said order. Learned counsel for the applicant contended that the applicant is debared from challenging on merit he is challenging on the ground that the order is not passed by the President of India, and also on the ground that the orders of Prime Minister were not approved for compulsory retirement of the applicant. He contended that the order in question is not in the name of the President though it is supposed to be for and on behalf of the President of India, which is violative of Article 77 of the Constitution of India as the same was to be expressed to be taken in the name of the President. So far as the first ground is concerned, in the written statement it has been averred by the respondents that the Prime Minister's orders were obtained. There appears to be no ~~reason~~ for doubting the same as no other material has been placed before us based on which a doubt could be created in our mind. Regarding the second plea the order dated 25.1.1988 states that *it is a public interest to do so and the President is of the opinion that in exercise of the powers conferred by Clause (j) of Rule 56 of Fundamental Rules, retires Shri P G Deshpande, Scientific Officer and the same has been signed for and on behalf of President of India by the Under Secretary to the Government of India. Thus the provisions of*

Article 77 of the Constitution of India have been complied with

Learned counsel for the applicant made reference to the case of KEDRANATH BAHAL V. STATE OF PUNJAB, AIR 1979 SC 220 and the case of ANITA KUMARI SOOD V. SECRETARY MINISTRY OF COMMUNICATION AND ANOTHER, 1989(1) SLJ 369, 371 CAT. These cases have got no applicability to the present case as the order in this case has been passed in the name of the President of India and has been authenticated on behalf of President by the Deputy Secretary.

Article 77 of the Constitution of India only requires that all executive action of the Government of India shall be expressed to be taken in the name of the President. The Constitution where requires a particular method for compliance of the same and the courts are only to see whether the substance of the requirement has been complied with, as has been observed in connection with a case of Article 166 of the Constitution of India which is analogous to Article 77 of Constitution of India but are vested with the Governor, STATE OF BOMBAY V. PURUSHOTTAM 1952 SCR, 674. In this case it was held that the notification was signed by a Secretary 'by order of the Governor' under Article 166 of the Constitution of India and similarly order signed by the Chief Secretary 'on behalf of the Government' too has been held to be in substantial compliance with Article 166 even though it might not have been expressed to have been made in the name of the Governor (JOHN V. STATE OF T.C., (1955)1, SCR 1011, in this case the order was signed by the Assistant Secretary.

In the instant case the order is not only has been signed for and on behalf of the President of India by one who is authorised to do so under the rules of business, the order has been passed in the name of the President who has confirmed the same.

Accordingly there is no substance in the application and also on the grounds taken by the learned counsel for the applicant in this application and accordingly this application deserves to be dismissed. The application is accordingly disposed of with no order as to costs.



(M Y PRIOLKAR)
MEMBER (A)

(U C SRIVASTAVA)
VICE CHAIRMAN