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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: OA-613/91.

Transfar Application No:

DATE OF DECISION: 18. 7. 96

Shri S. R. Krishnamurthy, , Petitioner

In person. Advocate for the Petitioners

Versus

B.A.R.C., Respondent


Shri A. I. Bhatkar, with Advocate for the Respondent(s)
Shri M. I. Sethna,

CORAM :

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

The Hon'ble Shri M. R. Kolhatkar, Member (A).

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(B. S. HEGDE)
MEMBER (J).

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

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O.A. NO.: 613/91.

Shri S. R. Krishnamoorthy ... Applicant
Versus
Union Of India and Others ... Respondents.

CORAM :

1. Hon'ble Shri B. S. Hegde, Member (J).
2. Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCES :

1. Shri S. R. Krishnamoorthy,
Applicant in person.
2. Shri A. I. Bhatkar with
Shri M. I. Sethna, Senior
Counsel for the Respondents.

JUDGEMENT

DATED : 18-7-94

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

1. The applicant has filed this O.A. under Section 19 of the Central Administrative Tribunal, challenging the penalty of compulsory retirement vide dated 08.03.1991 and prayed for the following reliefs:-

- I. That this Tribunal be pleased to direct/ declare the passing of the impugned order dated 08.03.1991 compulsorily retiring the Applicant from the Government Service as a penalty with stigma in contravention of the directions of the Hon'ble Supreme Court in SLP (Civil) No. 11694 of 1988 vide dated 24.01.1989 permitting voluntary retirement of the Applicant is an act of high handedness, major penalty and the impugned order is illegal and void and be quashed.

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- II. To direct the respondents to implement the directions/order of voluntary retirement granted to the applicant by the Hon'ble Supreme Court dated 24.01.1989 and quashing the order dated 08.03.1991.
- III. That this Hon'ble Tribunal may be pleased to direct the respondents to pay to the applicant his service dues, pay and emoluments on a notional and consequential pecuniary benefits including due promotions, arrears of salary, etc.
- IV. That this Hon'ble Tribunal may be pleased to direct the respondents to promote the applicant to Engineer Grade (SF) (Pre-revised grade of Rs. 1800-100- $\frac{125}{2}$ -2250 and revised grade of Rs. 4500-150-5700 from 01.01.1986), etc.

2. This case ^{has} a chequerred history. Heard the Applicant in person and Shri A.I. Bhatkar with Shri M. I. Sethna, Senior Counsel for the respondents. During the course of the hearing, the Learned Counsel for the Respondents has drawn our attention to this Tribunal's Order dated 14.03.1988.

3. The applicant was appointed as Scientific Officer/Engineer (SC 2) in 1962. In 1966, he was promoted as Scientific Officer/Engineer (SD 2). In 1973, he was promoted as Scientific Officer/Engineer (SE). By an order dated 08.06.1982 passed by the Under Secretary to the Government Of India, Department Of Atomic Energy, he was transferred to Reactor Research Centre, Kalpakkam, Madras. He

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challenged that transfer by filing Misc. Petition No. 1344 of 1982 in the High Court of Judicature at Bombay. In the same Petition he had also challenged his non-promotion to higher posts. The petition was dismissed on 03.09.1982. Against that decision, he had filed Appeal No. 522 of 1982. After hearing both the sides, that appeal was also dismissed on 13.06.1983 by a Division Bench of the High Court. Against that decision the applicant had preferred Special Leave Petition No. 9331 of 1983 in the Supreme Court Of India. On 19.08.1983 that SLP was dismissed as withdrawn by the Supreme Court which gave direction to the Respondents to consider the grievances if any, of the petitioner, uninfluenced by any allegations of malafide made by the petitioner earlier.

4. Admittedly, the Applicant did not join his posting at Kalpakkam, Madras. Even after the decision of the Supreme Court, he went on making representations. Since he did not join duty at Kalpakkam, Madras, the Respondents framed a Charge-Sheet against him for unauthorisedly remaining absent from duty with effect from 16.09.1983.

5. The Applicant, on 02.02.1984 submitted an application of Voluntary Retirement, however, that request was rejected by the Respondents on 29.03.1984 on the grounds that the Departmental Enquiry is pending against him. Again, he filed a Writ Petition No. 1962 of 1984 in the High Court of Judicature at Bombay for directing the respondents to accept his request for voluntary retirement. After hearing both the sides, the High Court dismissed that petition on 23.01.1985.

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Thereafter, the respondents sent a letter to the Applicant, suggesting him to submit a fresh notice of voluntary retirement for consideration of the department, in view of his earlier application requesting for voluntary retirement. The applicant, however, refused to give notice of voluntary retirement at that stage.

6. The Learned Counsel for the Respondents submit that the relief prayed in the earlier O.A. No. 491/87 is exactly the same relief which he claimed in the present O.A., therefore, the application is barred by the Principle of Resjudicata and is not entitled to file any fresh application under Section 19 of the Central Administrative Tribunal for the same relief. The Tribunal had gone into the merits of the case filed earlier and dismissed the O.A., as it did not have any merits. However, considering the facts of the case, the Court gave directions to the respondents to consider his request for voluntary retirement without prejudice to the rights of the parties. Against the decision of the Tribunal, he filed a SLP No. 11694 of 1988 in the Supreme Court. The Supreme Court on perusal of the records vide dated 24.1.1989 and after hearing the parties, has passed the following order :-

"The petitioner will be at liberty to make an application for voluntary retirement to the Appropriate Authority. If any such application is made, the Appropriate Authority shall consider the same and dispose of the same in accordance with law. Such consideration shall be made within two months from the receipt of the application.

7. Pursuant to the Supreme Court decision/direction, instead of making an application to the

Competent Authority, the applicant has not adhered to the order, on the other hand, he filed a representation dated 02.03.1989 seeking for certain clarification. The respondents in their reply dated 17.02.1989 stated that he will not be entitled to any notional increments and promotions as contended by him. Further, the period of his unauthorised absence from 16.09.1983 till the date of acceptance of his voluntary retirement will not be entitled to any pay and allowance, since he had not joined duty at Kalpakkam, Madras. Thereafter, *Department* proceeded with the enquiry. Inquiry Officer submitted his report to the Disciplinary Authority. Thereafter, the Disciplinary Authority imposed penalty of compulsory retirement vide their letter dated 08.03.1991, which is challenged in this O.A. Since the subject matter has already been agitated by the Applicant and adjudicated in the earlier O.A. No. 491 of 1987, the question of reagitating the same does not arise. The applicant, despite the directions of the Supreme Court, to submit his voluntary retirement application, did not do so nor did he join duty as per the transfer order made earlier. Therefore, the respondents were left with no other alternative but to pursue the enquiry on the basis of charge-sheet issued earlier.

8. During the course of hearing, when it was pointed out to the Applicant that he cannot agitate the same matter over again and whether he is inclined to submit his voluntary retirement application to the Competent Authority even at this stage, he was inclined to agree to the proposal and submitted to the court that, he would file an application for voluntary retirement. Considering the entire gamut of this case, we are of the

view, that no useful purpose will be served in reopening the entire episode once again as he is out of job since 1983 onwards, the respondents are directed to take a lenient view in accepting the Voluntary retirement application, which they themselves had suggested in the year 1986 itself and clear his retirement dues without prejudice to his existing rights.

9. In the circumstances, the following directions/orders are issued to the respondents while confirming the penalty of compulsory retirement :

(i) So far as pension is concerned, it is true that he is deemed to have been relieved from 1982 onwards; however, the matter has been pending before the Court Of Law, in the meanwhile, the 4th Pay Commission pay scales have come into effect from 01.01.1986 consequent thereupon the benefit of the fixation of the pension as per revised scale, irrespective of the fact whether he has worked after the new scale has come into force, may be given to the ^{Applicant} respondent and the same may be worked out and released within two months from the date of receipt of this order.

(ii) Regarding provident fund and gratuity, which are otherwise due to the applicant with effect from 08.03.1991 and which have not been paid till now, the respondents are directed to pay the same with interest @ 12% from 08.03.1991, the date on which compulsory retirement order was passed by the respondents till the payment is made.

- (iii) In the circumstances he is situated, the Applicant is at liberty to seek re-employment and for that purpose, he may submit an application to the Competent Authority for permission. In that event, considering the background of the case, without going into the technicalities of the same, the respondents should consider the Applicant's application and give permission to him to seek employment elsewhere. The said application be disposed of within two months from the date of receipt of his application.
- (iv) Pursuant to the Judgement passed by the Tribunal in O.A. 491/87, he has been evicted from the official quarters, charging penalty rent for not joining duty at Kalpakkam, Madras. The Tribunal did not give any relief on that score. Admittedly, since he challenged the Transfer Order, the High Court had given a Stay Order against the transfer order till 16.09.1983 and he has been allowed to go on leave. Till that time, therefore, the department is not justified in charging market rent till the grace period given by the High Court. If at all any penalty rent/market rent is recovered from the Applicant till that period, the same shall be reimbursed to the Applicant after adjusting normal rent to that period and balance amount be refunded to the Applicant within two months of receipt of this order.

10. In the light of the above, the
O.A. stands disposed of with the above directions.
No order as to cost.

M R Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

B S Hegde
(B. S. HEGDE)
MEMBER (J).

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

R.P. NO. 9/95

in

O.A. NO. 613/91

S.R. Krishnamoorthy ... Applicant

v/s

Union of India & Others ... Respondents

Tribunal's orders (by circulation) Dated: 17.1.1995
(Per: Hon'ble Shri B.S. Hegde, M(J))

1. The Review Application is filed by the Applicant seeking review of the judgement dated 18-7-1994 in O.A. 613/91.
2. We have seen the Review Application and we are satisfied that the Review Application can be disposed of by circulation under rule 17(iii) of the CAT (Procedure) Rules, 1987 and we proceed to do so.
3. On perusal of the Review Application, we find that the Applicant has reiterated the same ground as was agitated before the Tribunal in O.A. 613/91 and various other litigations before High Court and the Supreme Court. He has not made out any new ground in which the interference with the Tribunal's decision is called for except stating that the order of the Tribunal is perverse and bad in law. Therefore, we felt no need to go into the details of the Review Application. The Applicant is aware of the fact that the scope of the Review Application is very limited and the Review

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From pre-page:

Application is maintainable only if there is an error apparent on the face of the record or some new evidence has come to notice which was not available even after exercise of due diligence or any other sufficient reason. Review Application cannot be utilised for rearguing the case traversing the same ground again.

4. A perusal of the Review Application, makes it clear that none of the ingredients referred to above have been made out to warrant a review of the aforesaid judgement.

5. In the circumstances, we are of the view, that neither an error on the face of the record has been pointed out nor any new facts have been brought to our notice calling the review of the judgement. Further, keeping in view the provisions of the Order 47, Rule 1 read with section 115 of the CPC, the grounds raised in the Review Application are more germane for an appeal against the judgement referred to above, and not for review of the judgement. The Review Application is, therefore, dismissed.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

ssp.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

M.P. 492/95 & R.P. 16/95 in

Original Application No. 613/91

~~Transfer Application No.~~

Date of Decision : 2/8/1995

S. R. Krishnamoorthy

Petitioner

Applicant in person

Advocate for the
Petitioners

Versus

Department of Atomic Energy

Respondents

Shri.Suresh Kumar for Shri.M.I. Sethna

Advocate for the
respondents

C O R A M :

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

The Hon'ble Shri M.R.Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not ? X
- (2) Whether it needs to be circulated to
other Benches of the Tribunal? X

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (A)

J*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

M.P. 492/95 & R.P. 16/95 IN
O.A. 613/91

S. R. Krishnamoorthy

.. Original Applicant

Vs.

Deptt. of Atomic Energy

.. Original Respondent
(Review Petitioner)

TRIBUNAL'S ORDER

DATED : 2/8/1995

Heard the applicant in person and Shri. Suresh Kumar for Shri. M. I. Sethna on behalf of respondents.

M.P. 492/95

Applicant has filed M.P. 492/95 seeking review of R.P. filed by him earlier i.e. R.P. 9/95 which was disposed of on 17/01/1995. In the circumstances, M.P. does not survive and the same is accordingly dismissed.

R.P. 16/95

In this Review Petition, the respondent department has sought for review of our judgment dated 18/7/1994, especially directions No. 9(i) and 9(ii) on the ground that they are contradictory to rules and not capable of implementation. So far as direction No. 9(i) is concerned, the same is as below :

"So far as pension is concerned, it is true that he is deemed to have been relieved from 1982 onwards; however, the matter has been pending before the Court of Law, in the meanwhile, the 4th Pay Commission pay scales have come into effect from 01/01/1986 consequent thereupon the benefit of the fixation of the pension as per revised scale, irrespective of the fact whether he has worked after the new scale has come into force, may be given to the applicant and the same may be worked-out and released within two months from the date of receipt of this order. "

2. Respondents contend that there is an error apparent on the face of record in the direction, in as much as the Hon'ble Tribunal has not considered the Rules 33 & 34 read with Rule 50(5) of CCS (Pension) Rules 1972. So far as direction No. 9(ii) is concerned, the directions are as below :

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"Regarding provident fund and gratuity which are otherwise due to the applicant with effect from 8.3.1991 and which have not been paid till now, the respondents are directed to pay the same with interest @ 12% from 8.3.1991, the date on which compulsory retirement order was passed by the respondents till the payment is made."

3. According to the respondents, the direction contained in 9(ii) are contrary to rule 68 of C.C.S (Pension) Rules, 1972 which stipulates the quantum of rate of interest on delayed payment of Gratuity and the conditions subject to which the same is granted.

4. We have heard the learned counsel for the respondent petitioners and also the original applicant in person. The original applicant has, firstly urged that R.P.16/95 is hopelessly time barred in as much as it has been filed not within one month of the judgment but after rejection of the R.P filed by the applicant. On this point, the respondent petitioners have filed an affidavit stating that the alleged error apparent on the face of the record came to their notice only at the stage of scrutinising the application of the applicant for final settlement of dues. We have considered the matter in detail *and condone the delay in filing the R.P*

5. The next ground urged by the original applicant is that there is a contradiction in para 8 of the judgment which reads as under :

"During the course of hearing, when it was pointed out to the Applicant that he cannot agitate the same matter over again and whether he is inclined to submit his voluntary retirement application to the Competent Authority even at this stage, he was inclined to agree to the proposal and submitted to the Court that, he would file an application for voluntary retirement. Considering the entire gamut of this case, we are of the view, that

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no useful purpose will be served in reopening the entire episode once again as he is out of job since 1983 onwards, the respondents are directed to take a lenient view in accepting the voluntary retirement application, which they themselves had suggested in the year 1986 itself and clear his retirement dues without prejudice to his existing rights."

and the operative portion of para 9 which proceeds on the basis of upholding the order of compulsory retirement imposed on the applicant. According to us, para 8 of our judgment has to be read in continuation of para 7 of the judgment in which we have noted that the Supreme Court had given liberty to the applicant to make an application for voluntary retirement to the Appropriate Authority and the applicant instead of availing this liberty, sought certain clarifications. In para 8 of the judgment, we have given reasons as to why we wanted to cut-short the whole matter instead of re-opening the entire episode once again as the applicant is out of job since 1983 onwards. In this judgment, reference of 'the respondents are directed to take a lenient view in accepting the voluntary retirement application, which they themselves had suggested in the year 1986 itself' appears to be inappropriate as it is not in consonance of para 7 of the judgment and it was not intended since having upheld the penalty of compulsory retirement imposed on the applicant. We could not have given liberty to file a fresh application for voluntary retirement.

6. So far as the contention of the respondents petitioner about pension is concerned, it was not our intention that pension to be paid to the applicant should be d'hors the Pension Rules, especially when the question of vires of the pension rules was not the issue. So far as challenge to direction at para 9(ii) is

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concerned, according to us, the challenge is ^{wholly} ~~only~~ misconceived because it proceeds on the basis of directions to pay interest in terms of Rule 68 of C.C.S (Pension) Rules whereas as will be clear, the direction to pay interest at 12% has been given by the Tribunal at its discretion and not in terms of Rule 68 which is applicable to departmental officers and not to the Tribunal. We therefore dispose of this R.P by passing the following order :

O R D E R

- (i) Following portion from para 8 of our judgment dated 18/7/94, may be deleted and ^{should} ~~to~~ be deemed ab-initio to have been deleted :

'in accpeting the Voluntary Retirement Application, which they themselves had suggested in the year 1986 itself'

- (ii) Direction at para 9(i) should be re-worded as below :

"So far as pension is concerned, the same may be paid to the applicant in accordance with rules and the same should be worked-out and released within two months from the receipt of this order"

As noted above, para 9(ii) does not require any modification.

With this direction, the R.P is partly allowed without any orders as to costs.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S. Hegde

(B.S.HEGDE)
MEMBER (J)