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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 94/93

~~Transfer Application No:~~

DATE OF DECISION: 21-11-94

Thomas Samuel Petitioner

Advocate for the Petitioner

Versus

Regional Director of Food-----Respondent
Western Region, Bombay and others.

Shri R.V.Desai Advocate for the Respondent(s)


Shri Suresh Kumar for Shri
M.I. Sethna, counsel for
Attorney General.

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 ? Y
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 94/93

Thomas Samuel

... Applicant.

V/s.

The Regional Director of Food
Western Region,
Government of India,
Mistry Bhavan, D.W. Road,
Churchgate, Bombay.

Managing Director
Food Corporation of India
16-20, Barakhamba Lane
New Delhi.

The Under Secretary
to the Government of India
Department of Food,
Krishi Bhavan,
New Delhi.

... Respondents.

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

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

Appearance:

Applicant in person.

Shri R.V.Desai, counsel
for the respondents.

Shri Suresh Kumar for Shri
M.I. Sethna, counsel for
Attorney General.

JUDGEMENT

Dated:

21-11-94

¶ Per Shri B.S. Hegde, Member (J) ¶

This application has been filed under
Section 19 of the Central Administrative Tribunals
Act 1985. Being aggrieved by the letter issued by
respondent No.1 vide letter dated 3.5.1991, he
preferred a representation to the Minister for
Personnel, Public Grievances and Pension, Government
of India, New Delhi on 16.10.1991. Since he had not
received any reply^{filed} he filed this O.A.

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2. Heard applicant in person and Shri R.V. Desai, counsel for respondent No.1 and 2. Since the applicant has challenged Rule 33 of the Pension Rule, notice was served on Attorney General, Government of India, who in turn empowered Shri M.I. Sethna, Sr. Counsel to appear on behalf of Attorney General. Shri Suresh Kumar for Shri M.I. Sethna appeared on behalf of Attorney General.

3. The short point for consideration is whether the Tribunal has jurisdiction to go into the dispute of the applicant in view of Section 14(2) of the Administrative Tribunals Act. Shri Desai, counsel for respondent No.1 and 2 has drawn our attention to Section 3 (p) and (q) of the Central Administrative Tribunals Act.

" Service matters, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation or society owned or controlled by the Government as respects -

- i) remuneration (including allowances), pension and other retirement benefits;
- ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- iii) leave of any kind;
- iv) disciplinary matters
- v) any other matter whatsoever;"

Further in view of Section 14(2) of the Central Administrative Tribunals Act:

" The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government.

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies."

4. In the light of the above, the learned counsel for the respondents submits that there is no notification by the Central Government, including that the Food Corporation of India would come within the purview of the jurisdiction of this Tribunal and since the applicant is an employee of Food Corporation of India, he cannot seek protection by this Tribunal which is not having any locus standi, therefore, the petition is required to be dismissed in limine.

5. The brief facts are: The applicant joined the service of the Regional Directorate of Food, Western Region, Bombay in the year 1957. Consequent upon the creation of Food Corporation of India by an Act of Parliament in the year 1964, the services of the employees of the erstwhile Regional Directorate of Food, Bombay were transferred initially on 1.3.69, on Foreign Service to the Corporation. The applicant is a Food

transferee whose services along with others were transferred from the Regional Directorate of Food to the Food Corporation of India with effect from 1.3.69 and finally absorbed vide Gazette Notification dated 11.10.1972. The Food transferees were given an option as to whether to be Governed by the retirement benefits of the Government of India or that of the Food Corporation of India. The applicant has opted for the terminal benefits of the Government of India. The applicant retired voluntarily from the services of the Food Corporation of India with effect from 1.3.91, after putting 33 years and 7 months service and he has been drawing the pension in accordance with rules. The main contention of the applicant is that during the course of the service with Food Corporation of India, working as Assistant Manager, the applicant consequent upon acquiring additional professional qualification received two special additional increments in the form of personal pay, to be merged on next promotion, as an incentive with effect from 1.4.84. He continued to get the Personal pay upto 1.1.86. The personal pay was discontinued and the amount paid to the applicant till June 1990 was adjusted on account of pay revision. His further contention is that his personal pay with effect from 1.1.86 has not taken into consideration for calculation of pension and Gratuity. Being dis-satisfied, the applicant made an application to the Regional Director, Western Region on 30.4.91. to which a reply has been received stating that as per CCS(Pension) Rules, pension was worked out correctly. Being aggrieved, the applicant preferred an application to the Minister for Personnel, Public Grievances & Pensions, Government

of India, New Delhi, to which no reply has been received, hence he filed this application.

6. Admittedly the applicant has become an employee of the Food Corporation of India with effect from 1.3.69 by virtue of his appointment in Food Corporation of India service. In this connection it is relevant to note the provisions of 12(a)(1) which is reproduced below:

"12 A(1) : Where the Central Government has ceased or ceases to perform any functions which under section 13 are functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates (which may be either retrospective to any date not earlier than the 1st January, 1965 or prospective) as may be specified in the order, to the Corporation any of the Officers or employees serving in the Department of the Central Government dealing with food or any of its subordinate or attached offices and engaged in the performance of those functions:

Provided that no order under this subsection shall be made in relation to any officer or employee in such department or office who has, in respect of the proposal of the Central Government to transfer such officer or employee to the Corporation, intimated within such time as may be specified in this behalf by the Government, his intention of not becoming an employee of the Corporation. "

7. In the light of the above; the applicant cannot state that he has kept his lien in the Central Government by virtue of his appointment in Food Corporation of India after 1969 onwards. The fact is that he has retained the pensionary benefit to that of Government of India, does not mean that he can seek the relief resort to section 14 of the

Central Administrative Tribunals Act. Unless there is specific notification stating that the dispute of the Food Corporation of India can be agitated by the Central Administrative Tribunal, this Tribunal will not have jurisdiction to go into the merits. Admittedly after 1.1.86 consequent to the IVth Pay Commission, the personal pay granted to the Central Government employees and others have been discontinued. In view thereof there is nothing wrong in the action taken by the Corporation in not calculating the Personal pay for calculating the pensionary benefits. Since the Corporation adopted the recommendations of the Pay Commission, while implementing the revised pay scale, there is considerable force in the contention of Shri Desai, counsel for the respondents.

8. In the result, we are of the view, that since the applicant has already become an employee of Food Corporation of India right from 1969 onwards, it is not open to him to challenge the vires of the Rule 33 of the CCS (Pension) Rules, seeking declaration from the Tribunal, which is not entitled under rules but also without jurisdiction. Since the cause of action arose in the year 1969, the Central Administrative Tribunal has no power or authority to take cognizance of a matter arising out of an order prior to 1.11.82. The Tribunal has jurisdiction to entertain the application in respect of any order made between 1.11.82 to 1.11.85. In view thereof, the relief claimed by the applicant is futile and devoid of any merits and this Tribunal cannot entertain this application and the same is dismissed for want of jurisdiction. Accordingly, we dismiss the O.A. but no order as to costs.

(B.S. Hegde)
(J)

(B.S. Hegde)
Member (J) ...7/-

Per M.R.Kolhatkar, Member(A)

I agree with the final decision arrived at by my learned colleague Member(J) but I would like to give my own reasons.

2. It is not disputed that the applicant was transferred to the Food Corporation of India in terms of F.C.I. Act, 1964, Section 12-A. He has been finally absorbed in the F.C.I. as ~~from~~ 11-10-1972 and he is an F.C.I. employee. He is not a central government employee. The central government by virtue of powers given to it by Section 14(2) extended provisions of Section 14(2) of the A.T. Act, 1985 to the Corporations and Societies and other authorities mentioned in the schedule. Such a notification was issued on 2-5-86 and was subsequently amended on 31-10-86, 6-2-87, and 20-4-87. Food Corporation of India is not one of the authorities etc. mentioned in the schedule as amended. This Tribunal, therefore, has no jurisdiction to entertain an application in respect of service benefits pertaining to the applicant.

3. The applicant has sought to draw support from the fact that F.C.I. employees coming from Regional Food Directorate were given an option to be governed by the retirement benefits of the Government of India or those of Food Corporation of India and the applicant having opted for the terminal benefits of the Govt. of India the applicant purports to challenge CCS(Pension) Rules as

amended after IVth Pay Commission on the ground that under those rules the definition of basic pay has been modified in such a way that pay for calculating DA does not include the personal pay granted to the applicant for acquiring additional qualifications. The applicant has challenged this on the ground of being illogical, discriminatory and anti-efficiency.

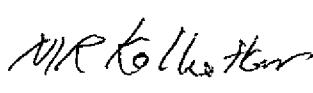
4. The applicant appears to believe that he is challenging CCS(Pension)Rules. However, by the fiction of adoption/option, the central service pension rules have become FCI Pension Rules and therefore, in substance, the applicant, an FCI employee, is challenging terms and conditions of service of FCI. But this Tribunal has no jurisdiction over FCI employees and therefore the mere fact that he opted for CCS Pension Rules does not give him the right to challenge CCS Pension Rules. The application is, therefore, liable to be rejected on this ground also. However, if the applicant is so advised he is at liberty to challenge the action of the FCI before the appropriate forum.


5. We, therefore, dispose of this O.A. by passing the following order:

O R D E R

O.A. is dismissed.

There is no order as to costs.


(M.R. KOLHATKAR)
Member(A)


(B.S. HEGDE)
Member(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

R.P.105/95 in O.A.94/93.

Thomas Samuel

... Applicant

V/s.

The Regional Director of Food,
Western Region,
Government of India,
Mistry Bhavan, D.W.Road,
Churchgate,
Bombay.

Managing Director,
Food Corporation of India,
16-20, Barakhamba Lane,
New Delhi.

The Under Secretary
to the Government of India,
Department of Food,
Krishi Bhavan,
New Delhi.

... Respondents.

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

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

ORDER (BY CIRCULATION)

DATED : 9.10.95

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

This Review Petition has been filed by Applicant seeking review of judgement dated 21/11/94 in OA 94/93. The main contention of the applicant in this review application is prior to their exercising of option by Food Transfer^es to the Food Corporation of India, Food Transfer^es were given all assurances about C.C.S. pension and other benefits on par with Central Government employees. It is true that for the purpose of pensionary benefits he is treated as a Central Government employee. However, after exercising the option as back as 1972, he is treated as Food Corporation of India employee.

2. The issue involved in this OA is whether the applicant is entitled to continue to draw the additional increments after 1/1/86 which is required to be paid to him or not. It is an admitted fact, after the IVth Pay Commission even the Food Corporation

of India adopted the Pay Commission recommendation while implementing the revised payscale., thereby the special additional increment have been discontinued after 1/1/86. Admittedly, the Food Corporation of India has not been notified under section 14 of the [redacted] Administrative Tribunals Act, in the absence of which, the Tribunal cannot take cognizance in disputes that relates to Food Corporation of India employees.

3. The scope of the review application is very limited and the review 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 warrant a review of the aforesaid judgement. It is well settled that the Review pleadings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 rule 1 CPC. It is true there is nothing in article 226 to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it but there are definitive limits to exercise the power of review. As stated above, these may be exercised in the aforesaid circumstances only. But it cannot be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. The

power of review is not to be ~~confused~~ with the Appellate Court to correct all manner of errors committed by the Subordinate Court.

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 ^{for} the 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)

abp.