

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 836/93

Date of Decision: 24.6.99

R.Mohankumar

Applicant.

Shri M.S.Ramamurthy

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Shri Justice K.M.Agarwal, Chairman,

Hon'ble Shri. Shri R.K.Ahooja, Member(A).

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

K.M.
(K.M.AGARWAL)
CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.836/93.

Thursday, this the 24th day of June, 1999.

Coram: Hon'ble Shri Justice K.M.Agarwal, Chairman,
Hon'ble Shri R.K.Ahooja, Member(A).

R. Mohankumar,
Waiter at D/Car, Bombay Central,
on Western Railway,
Bombay - 400 008.
(By Advocate Shri M.S.Ramamurthy)

...Applicant.

Vs.

1. Union of India,
through the General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
 2. Chief Catering Services
Manager, Western Railway,
Churchgate,
Bombay - 400 020.
 3. The Chief Personnel Officer,
Western Railway,
Churchgate,
Bombay - 400 020.
 4. Chief Catering Inspector,
Pantry Car Unit/BCT,
Western Railway,
Bombay Central,
Bombay - 400 008.
 5. Assistant Commercial
Manager (Ctg.),
Western Railway,
Bombay Central,
Bombay - 400 008.
- (By Advocate Shri V.S.Masurkar)

...Respondents.

: O R D E R : (ORAL)

(Per Shri Justice K.M.Agarwal, Chairman)

By this O.A. the applicant has made a prayer for restoring him to the post of Bill Issuer after quashing the impugned reversion order dt. 29.12.1992 (Ex. 'A').

2. Briefly stated, the applicant was working with the respondents as a Waiter in Ajmer Division of the Western Railway in the time scale of Rs.775-1025 (RPS). By order dt. 11.9.1987 (Ex. - 'C') he was promoted to the post of Bill Issuer in the pay scale of Rs.825-1200 (RPS). Subsequently, by the impugned order dt. 29.12.1992 (Ex. - 'A') he was transferred and posted at CCG in the capacity of a Waiter in the pay scale of Rs.775-1025.

...2.

Treating it as an order of reversion, the applicant has filed this OA for the aforesaid reliefs.


3. The learned counsel for the respondents submitted that as a measure of stop gap arrangement, the applicant was promoted to the post of Bill Issuer by order dt. 11.9.1987. One of the qualifications for the post of Bill Issuer was to pass the departmental test which was not passed by the applicant and therefore, he was reverted to the post of Waiter and then transferred to Bombay Division, because the catering service in Ajmer Division was withdrawn. It was also pointed out that in 1990, the applicant had appeared in the departmental test, but was unsuccessful and therefore he cannot assail the reversion order on the ground that in the year 1987 there was no rule for passing the departmental test before promotion to the post of Bill Issuer from the post of Waiter.

4. After giving due consideration to the aforesaid arguments of the learned counsel for the department we find it difficult to agree with his arguments. The promotion order dt. 11.9.1987 does not show that it was as a measure of stop gap arrangement or on ad-hoc basis. There is also nothing on record to show that the post of Bill Issuer was a Selection Post when the applicant was promoted to that post. Even assuming that the promotion was on temporary basis and for certain period on probation, there is no material placed on record to show that the applicant was reverted to the post of Waiter either of the said grounds.

5. The counsel for the respondents placed before us letter No.EC 834/4/14 dt. 16.2.89 issued by the Western Railway along with a chart showing channel of promotion of N.G. Staff of Catering Department. Note No.5 in that chart does contain a condition that the suitability of the candidate for the post of Bill Issuer would be judged by way of written test. However, when

the applicant was promoted this rule was not in force and therefore, on that basis he could not be reverted back to the post of Waiter before transferring him from Ajmer Division to Bombay Division. We are therefore, of the view that there is not stoppage against law and accordingly only because the applicant appeared at the test in 1990 he could not be deprived of his right that was acquired by him in the year 1987. The application therefore, deserves to be allowed by quashing the impugned order with consequential reliefs to the applicant.

6. In the result, this O.A. succeeds and it is hereby allowed. The impugned order (Ex. - 'A') is set aside to the extent it relates to the applicant R.Mohankumar and insofar as it relates to reduction of his pay scale. It may be made clear that the transfer of the applicant from Ajmer Division to Bombay Division shall remain in-tact, but if the respondents find no post of Bill Issuer for the applicant in Bombay Division, he may be transferred to Ajmer Division again or he may be posted to any other Division within Western Railway where the post is available or if it is found necessary to do so in the administrative exigencies. No costs.


(R.K.AHOOJA)
MEMBER(A)

B.


(K.M.AGARWAL)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO.: 33 of 2000 IN O.A. NO.: 836 of 1993.

Dated this *Wednesday*, the *2nd* day of *MAY*, 2001 *BS*

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

Shri R. Mohan Kumar ... Applicant

VERSUS

Union Of India & Others ... Respondents.
(Review Petitioner)

MB TRIBUNAL'S ORDER

PER : Shri B. N. Bahadur, Member (A).

We have to decide herein a preliminary issue as to where a Revision Petition (R.P.) filed on an Order made in O.A. can be heard and decided when a Writ Petition has already been filed upon the same order in O.A.

2. The specific case herein arises on the order made in O.A. No. 836/93 by a Division Bench of this Tribunal on 24.06.1993. A Review Petition was filed by Respondents in O.A. viz. Union Of India on 25.04.2000 seeking review of the judgement/order dated 24.06.1999.

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When this came up for hearing, a point was raised that the applicant^{in RP} had filed a Writ Petition (in the High Court) on 11.04.2000 i.e. before the Review Petition was filed. In this background, the preliminary issue, as stated in para 1 above, came up for being decided.

3. We have heard the Learned Counsel, Shri Suresh Kumar and Shri S. S. Karkera for the Review Petitioner (Original Respondents) and the Original Applicant respectively, on this point, at some length.

4. Shri Suresh Kumar appearing for Union Of India referred to the judgement of Hon'ble Supreme Court in the matter of Kunhayammed & Ors. V/s. State of Kerala & Anr. reported at 2000 (5) Supreme 181. This decides the issue regarding jurisdiction of Lower Court to review its order after rejection/dismissal of Special Leave Petition (S.L.P.) by Supreme Court. The Head Note reads as follows :

Constitution of India - Article 136 - Special leave appeal - Dismissal of special leave petition- Whether amounts to merger of High Court's judgement with dismissal order ? - Jurisdiction of lower court to review its order after rejection/dismissal of special leave petition by Supreme Court - Doctrine of merger does apply in case of dismissal of special leave petition under Article 136 - It does not take away jurisdiction of Lower Court whose order/ judgement was subject to SLP - When SLP was granted and appeal thereafter stood dismissal High Court's order merger with that of Supreme Court - Even if dismissal order of SLP is supported by reason then also doctrine of merger would not be attracted but reason stated by Supreme Court would attract applicability of Article - 141 - Statement of law contained in such an order would be binding on parties and Court - Still case not being one where leave was granted doctrine of merger would not apply - Review can be preferred in High Court/

ms

Tribunal before special leave to appeal is granted -
Once special leave is granted dismissal of appeal
with or without reason would attract doctrine of
merger barring review jurisdiction of High Court/
Tribunal.

5. The Learned Counsel argued that a Writ is not an appeal remedy, and when the order of the Tribunal merges, only then can an R.P. be filed. Order 47 Rule 1 of C.P.C. was not applicable.

6. The Learned Counsel for the other side, Shri Karkera, referred to provisions of Order 47 Rule 2 and made the point that what is filed has to be considered as equivalent to an appeal in the procedure existing in the matter of redressal of grievances arising out of the Orders of the Central Administrative Tribunal. It was totally inconceivable, he argued, as how a party who seeks a Review of an order can simultaneously, and even earlier, move the High Court. The point of merger was not relevant, he argued.

7. Let us first consider the provisions of the C.P.C. cited by Shri Karkera. Order 47 Rule 1 and 2 are indeed, important. For the issue in controversy, there is no doubt or controversy regarding provisions of Rule 1. We need, however, to go to Rule 2, which reads as under :

"(2) A party who is not appealing from a decree or order may apply for a review of judgement not withstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when being respondent, he can present to the Appellate Court the case on which he applies for the review."



8. The basic point clearly made is that a review can be made only by a party "who is not appealing". Now can the Writ filed in a High Court be construed to be an action which could be a bar to the filing of a Review Petition.

9. The matter, it must be remembered, is being decided with reference to the position in regarding to orders/judgements of the Central Administrative Tribunal.

10. The judgement made by the Hon'ble Supreme Court in the matter of L. Chandra Kumar V/s. Union of India provides us the guidance in the matter before us. Headnote (D) in the judgement reported at AIR 1997 SC 1125 reads as under :

"(D) Constitution of India, Arts. 323 A, 323 B, 226, 227, 136 - Tribunals constituted under Arts. 323 A, 323 B - Powers of - They have power to test vires of subordinate legislations except vires of their parent statutes - All its decisions would be subject to scrutiny before Division Bench of their respective High Courts under Arts. 226/227 - No appeal would lie directly to Supreme Court under Art. 136 - Said directions would operate prospectively."

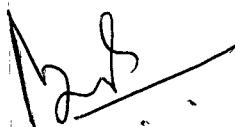
11. Now, clearly therefore in the background of the above position, ^{The} logical corollary ^{is} that it would be against the principles laid down in C.P.C. (Order 47 Rule 2) to entertain/decide a Review Petition on an order in an O.A., when a Writ Petition has already been filed.

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12. In regard to the judgement in the matter of Kunhayammed & Ors. vs. State of Kerala & Anr. cited by learned counsel for the respondents referred above, it is to be noted that this is a matter of SLP. The decision here was that review can be filed in High Court/Tribunal before special leave to appeal is granted. Also that once special leave to appeal is granted, the review jurisdiction is barred.

13. The important point here is that an appeal in Supreme Court is deemed to be filed only when leave is granted and once that happens, the jurisdiction gets barred. The learned counsel for the review petitioner/respondents argued that till the writ is not admitted, it is the only ministerial act of the Registry and the Hon'ble High Court has not applied it's mind to the order passed by the Tribunal. On the other hand, the counsel for the review respondent/original applicant argued that this is not the case in the High Court. Once a writ petition is filed, the jurisdiction of the Tribunal like ours gets barred for entertaining a Review Petition.

14. In the present case, writ is not admitted. So as per the submission, the Hon'ble High Court has not applied it's mind to the order passed by the Tribunal. Hence, mere filing of the writ petition can not debar the review petitioner to proceed with the review petition, appears to be to distinguish the act of the Registry and the Hon'ble High Court forgetting the fact that Registry is part of the High Court and acts for an on behalf of the High Court. It further forgets the fact that there is no provision like special leave petition before the Hon'ble High Court.



Order 47 Rule 1 C.P.C. is as under :-

"1. Application for review of judgment.--(1) Any person considering himself aggrieved --

(1) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(2) by a decree or order from which no appeal is allowed, or

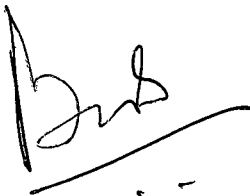
(3) by a decision on a reference from a Court or Small Causes,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order." (Underlined by us).

Rule 17 (1) of CAT (Procedure) Rule is as under:-

"17. Application for review.--(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed."

15. Perusal of the above provisions makes it clear that the above two provisions are not similar one. Provisions contained under Order 47 Rule (1) are not totally made applicable under CAT (Procedure) Rules. Hence, mere filing of the Writ before the Hon'ble High Court would not debar the review petitioner to proceed with the review petition is a point to be determined in this review petition.



..7/-

16. It is true that scope of review petition is similar as contained in Order 47 of Rule 1 C.P.C. while deciding a review petition on merits, but the said point has no relevance deciding the point in question.

17. On perusal of order 47 Rule 1, the critaria adopted by the legislature is preferring an appeal and not admission of appeal, while there exists a provision for admission of an appeal. Perusal of order 47 Rule 1 sub-clause (2) makes it further clear that if the similar point is involved in an appeal, a party is debarred from pursuing his remedy in a review petition even though he has not appealed against the decree or order. The said principles leads us to conclude that as soon as the Appellate Court acquires the jurisdiction or its jurisdiction is invoked by filing an appeal or so, the jurisdiction of the Tribunal or subordinate court is outsidied to consider the same matter.

18. The fact is that a party is going up simultaneously before two competent authorities, having jurisdiction to decide the same, i.e. one before the Tribunal and second before the Hon'ble High Court. In such a situation, the party approaching these two authorities has to elect only one remedy.



19. The situation may arise and has arisen that review petition is filed later, the writ is filed earlier or writ and review petitions are filed simultaneously. In our considered opinion, the principle adopted under Order 47 Rule 1 CPC makes no difference even in the said situation arising as stated above as soon as writ is filed, the Hon'ble High Court acquires a jurisdiction to decide the matter on merits. The fact that it has not reached to the Board or the Hon'ble High Court has no occasion to apply its mind has no bearing on the fact that review petition is to be heard and decided by the Tribunal. To be specific, as soon as the jurisdiction of the Hon'ble High Court in a writ is invoked, this Tribunal's jurisdiction to decide the review petition is ousted. This principle is based on Order 47 Rule 1 and Section 10 of the CPC along with a party cannot be allowed to pick and choose the forums.

20. The Review Petition No. 33/2000 filed before us cannot, therefore, be entertained and is rejected. No costs.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

B. N. Bahadur
(B.N.BAHADUR)
MEMBER (A)

os/mrj.

dt 21/5/01
order/judgment despatched
to Applicant/Respondent (s)
on *15/5/01*

Mo
21/5