

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CAMP : GOA.

Original Application No: 407/94

~~Transfer Application No: 407/94~~

DATE OF DECISION: 21.12.94

Shri V.V. Gaitonde Petitioner

Shri J.P. Mulgaonkar Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

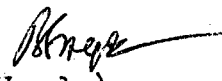
None for the Respondents ~~Advocate for the Respondents~~

CORAM :

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

The Hon'ble Shri P.P. Srivastava, 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)

(4)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CAMP : GOA

O.A. NO. 407/94

Shri V.V. Gaitonde ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM

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

2) Hon'ble Shri P.P. Srivastava, Member (A)

APPEARANCE

1) Shri J.P. Mulgaonkar, Advocate for the Applicant

2) None for the Respondents.

JUDGEMENT

DATED: 21.12.94

(Per: Hon'ble Shri B.S. Hegde, M(J))

1. The Applicant has filed his application under section 19 of the CAT Act 1985 in which he has challenged the impugned order dated 6-10-93/6-1-94 where he has been told that he has attained the age of superannuation on 31-1-1994 and allowing him to retire from that date.

2. There is no dispute regarding the facts of the case. The Applicant was appointed as an Operator (temporary) on 11-6-1962. Goa became liberated on 19-12-1961. His main contention is that he has been appointed in terms of Article 63 read with Art. 26-A of the Statute of the Overseas Functionaries; therefore, his age of retirement should be considered in accordance with the clause 430 (Chapter VII) of the E.F.U. i.e. ESTATUTO DO FUNCIONALISMO ULTRAMARINO as per which the age of retirement was 60 years. Since his appointment was done in accordance with the then existing Portuguese law, he should be allowed to retire only at the age of 60 years. Though

From pre-page:

he made various representations to the Respondents which have been duly considered by the competent authorities and rejected the contention of the Applicant on more than one occasions. The last communication was dated 6-10-1993 wherein he has been informed that he does not come under the review of "absorbed employee" and hence his request to permit him to retire at the age of 60 years cannot be accepted. Even earlier also when he took up the issue of date of birth with the Respondents, they did not accede to his request and accordingly he filed O.A. before the Tribunal which is pending consideration. In this connection, the Respondents vide letter dated 26-8-1993 (Exh. 'I') directed the Applicant to furnish a copy of the service conditions indicating the age of retirement at 60 years, which he failed to furnish the required information to the Respondents. Further, admittedly, the applicant is governed by the Central Government rules and the respective Pay Commission recommendations have been given effect to.

3. In this connection, the learned counsel for the Applicant relied upon clause 430 of E.F.U. Portuguese Rules of Pension which reads as thus :-

- OK
- "1. Those who are appointed on confirmed service, on contract, on daily wages of cadres or serving on commission.
 2. Those who satisfy or are likely to satisfy the conditions prescribed under clause 437 and the following.
 3. Those who have completed 60 years of age and 40 years of service or having atleast 40 years of age and fifteen years of service & declared absolutely medically unfit."

From pre-page:

The learned counsel for the Applicant also relied upon Government Gazette dated 1-11-1962 wherein in exercise of powers conferred by Art. 240 of the Constitution, the President made the following Regulations called as the "Goa, Daman and Diu (Repeal of Posts and Telegraphs Laws) Regulation, 1962 which came into force on the 1st day of September 1962 wherein certain laws specified in the schedule shall stand repealed. Section 2 states that the repeal of any law shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under such law; therefore, the applicant contends that since his appointment was done under the then existing law, and whatever rights accrued to him, the same shall not affect by virtue of the repeal made under the orders made in accordance with the Art. 240 of the Constitution.

4. In support of his contentions, the learned counsel for the Applicant relied upon the decision of the Bombay High Court dated 30th August 1993 in Writ Petition No. 79/91 - Shri Jose Carlos Lobo v/s Govt. of Goa wherein the interpretation of the term "absorbed posts" in the Goa, Daman and Diu (Absorbed Employees) Act 1965 has been considered in that decision. In that case, the applicant came to be appointed w.e.f. 8-7-1963 and the appointment was in the Portuguese scale Rs. 291.66. The Petitioner was holding the post of Copista/Aspirante and the Applicant and Others made representation that they should be treated as 'absorbed posts' and entitled to the wages as settled by the decree at the time of initial appointment which has been accepted by the Government of Goa, who published an order accepting the

Handwritten mark

From pre-page:

claim made by the petitioner. However, the fixation of pay of the petitioner was disturbed by the order dated 27-12-1990 (Exh. 'F') stating that the Petitioner is not entitled to the protection of his wages of Rs. 291.66 p. paid from the date of initial appointment as he was appointed after 15-9-1962 when the Financial Adviser to the Government of Goa revised the pay scales of employees in the scale of Rs. 130-250. The Petitioner cannot claim protection of pay of Rs. 291.66. As rightly held in P.C. Mendes' case by the Tribunal, the judgement of the High Court appears to identify the post and its designation. However, there cannot be an absorbed post independent of an absorbed employee i.e. to say that an employee who was holding absorbed post prior to 20-12-1961. The post does not merely mean a title or designation but the conscious decision to create a post along with particular scale and a financial commitment to bear the costs involved in making the payment of that scale to those employees. In the instant case, the Applicant himself stated in the application that he had never claimed to be as an absorbed employee but he has claimed that he is entitled to work till the age of 60 years in view of clause 430 of the Portuguese Rules. Even in the representation dated 10-8-1993 also, he has stated that he has not claimed as an 'absorbed employee' but states that his appointment was made during the transitional period. Soon after the liberation, the superannuation is to be governed by the existing law under which he is to retire at the age of 60. Even in Mendes' case referred to above, the

From pre-page:

Tribunal has held that when a person was appointed after liberation to hold the post of Operator in an Indian Pay scale, he cannot be said to be holding an absorbed post. The decision of the Bombay High Court does not come to the aid of the Applicant because in that case the initial pay of the Applicant was fixed at Portuguese pay scale and it was only a subsequent decision over turning the protection of that pay scale and benefits flowing therefrom that was challenged. In the present case, the scenario is different. From the very beginning, while filling up the post, a decision was taken to attach an Indian pay scale to the post and therefore the question of protection does not arise.

5. We have heard the learned counsel for the Applicant; none appeared on behalf of the Respondents, though they have filed their reply taking a definite stand that the Applicant cannot seek protection of Portuguese Law. In the reply, the Respondents denied the contention of the Applicant and stated that the Applicant initially was appointed on temporary basis and since Goa came to be liberated from the Portuguese Rules on 19th December 1961 and that the Applicant came to be appointed as Operator on 11th June 1962 by which time all service conditions of Government of India came into existence. Immediately after liberation of Goa from the Portuguese Rules, from 20th December 1961 all the employees employed from the said date were being governed by the Government of India laws as per the regulations and orders issued from time to time which includes the policy of retirement of an employee

From pre-page:

and therefore the Applicant cannot be isolated from the scheme of things since the Applicant is duly appointed subsequent to the liberation of Goa with a specific pay scale and it is not open to the Applicant to take advantage of service laws then in existence. After liberation of Goa, all the Government servants thus appointed were being governed by various rules and regulations framed by the Government of India regulating the service conditions of Central Government servants and therefore the Applicant cannot take any benefit of the said notification published on 1st November 1962 by virtue of which service privileges were saved. Needless to say that the Applicant was not appointed by virtue of the said regulations and thus he cannot claim the benefits of clause 430 dealing with the age of superannuation. Nowhere the service book discloses that the Applicant was appointed under clause 430 and at no point of time the Applicant had ever raised any objection in this behalf.

6. The various contentions raised by the Applicant have been elaborately dealt with in *Petro Cassiano Mendes v/s Union of India* in O.A. No. 155/93 dated 1-7-1994 wherein the issues raised in this case have elaborately been considered by the Tribunal and ultimately rejected the petition on the ground of latches. The learned counsel for the Applicant also draws our attention to the Goa, Daman & Diu Administration Ordinance 1962 wherein it is clearly stated that the appointment day means 20th December 1961. Even in the High Court judgement referred to above, it is

From pre-page:

observed that on 5-3-1962, the provisions of Indian Constitution were made applicable to Union Territory of Goa, Daman and Diu and the Goa, Daman and Diu Administration Act, 1962, also came into force. Section 5 of the Act provides that all previous posts under the Portuguese Administration should continue. Accordingly, the clause 4 reads as thus :-

"4. (1) All laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority."

In the instant case, the Applicant was admittedly appointed on 11-6-1962 before Goa, Daman & Diu (Repeal of Posts and Telegraphs Laws) Regulation, 1962 came into force on 1-9-1962 and this Act while repealing the various decrees saved the right, privileges and obligations and liabilities acquired, accrued or incurred under such law. It is brought to our notice that during the intervening period from the day of appointment of the Applicant till 1-9-1962, the Military Government of Goa, Daman and Diu passed the following orders which read as thus :-

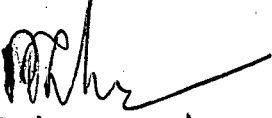
AB
"The following powers hereuntofore vested in the erstwhile Secretary-General of Goa in respect of CTT Administration are hereby delegated to the Director of CTT and shall henceforth be exercised by him.


- | | |
|--|--|
| (1) Temporary appointments, appointments on daily wages, provisional appointments, extension and confirmation. | Full powers for staff other than those whose appointment was vested in the erstwhile Overseas Minister." |
|--|--|

From pre-page:

Admittedly, the Applicant was appointed on temporary basis. The Respondents have taken a plea that the Military Government of Goa, Daman and Diu vide their order dated 17-1-1962 in which the Director of CTT was given full powers for appointment of staff other than those whose appointment was vested in erstwhile Overseas Minister, there is nothing on record to show that the Director, CTT did not possess powers to make appointment to the post of Operator with a particular scale. In the circumstances, we are of the view, that the Applicant has not made out any case to show that the CTT does not have any power to make appointment to the post of Operator. Reliance placed by the counsel to the provisions of Sections 6 and 24 of the General Clauses Act also does not have any relevance to the facts of this case and hence the said contention is also rejected. Since the Applicant is retired from service from ^{31.01.94} 31-10-1994 *Amal* which is not to be considered as premature retirement and the contention of the Applicant, that he is governed by the Portuguese Law (existing law) is not based on any documentary evidence nor is in accordance with the law.

7. In view of the reasons stated above, we are of the opinion, that there is no merit in the Application and the same is devoid of merit. Accordingly, the O.A. is dismissed with no orders as to costs.

P.P.

(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

R.P. No. 31/95

in

O.A. No. 407/94

Shri V.V. Gaitonde ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)

2) Hon'ble Shri P.P. Srivastava, Member (A)

Tribunal's orders (by circulation) Dated: 24.3.95
(Per: Hon'ble Shri B.S. Hegde, M(J)).

1. This Review Application has been filed by the Applicant seeking review of the judgement dated 21-12-1994 in O.A. No. 407/94.

2. We have seen the Review Application and we are satisfied that the Review Application can be disposed of by circulation under 17(iii) of the CAT (Procedure) Rules, 1987 and we propose to do so.

3. The main ground on which this R.A. is filed is that the Tribunal committed a patent error in not considering at all the decision of the Division Bench of the Bombay High Court dated 30-8-1993 in W.P. No. 79/91 and 77/91 on which the Petitioner relied and the Tribunal failed to apply its mind to the ratio laid down in the said decision of the Bombay High Court etc. and also committed a patent error in overlooking

From pre-page:

the Memorandum bearing No. F-11/1/62 Goa (1) dated 27-8-1962 etc. His other contention is that he was appointed in terms of Article 63 read with Article 26-A of the Statute of the Overseas Functionaries, therefore, the age of retirement should be considered in accordance with the clause 430 (Chapter VII) of the E.F.U. i.e. ESTATUTO DO FUNCTIONALISMO ULTRAMARINO as per which the age of retirement was 60 years. He has made a representation to the Competent Authority which has been considered by the Respondents and the same was rejected on more than one occasion. Even to change the date of birth, request has also been considered and was rejected. Thereafter, he filed his O.A. The Applicant retired from service with effect from 31-10-1994 and the same is not to be treated as premature. Admittedly, the Applicant is governed by the Central Government rules and respective Pay Commission recommendations have been given effect to.

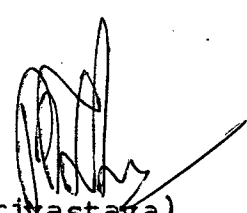
4. It is not the case of the Applicant that he had given a different date of birth at the time of initial appointment and later made request for a change of the date of birth. We have perused the Review Application and find no merit in it.

5. It is well settled that the Review Applications are not made by way of an Appeal and have to be strictly confined to the scope and ambit of O.47, Rule 1 of C.P.C. The power of review may be exercised in the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when the order was made.

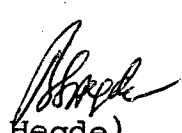
From pre-page:

It may be exercised when some matter or error apparent on any of the face of the record is found; it may also be exercised on any analogous ground, but it cannot be exercised on the ground that the decision was erroneous on merits; that would be the preamble of the Court of Appeal. A power of review is not to be confided with the Appellate Court to correct all manners of errors committed by the Tribunal. This is exactly the scenario in the present case. Accordingly, we see no merit in the Review Application.

6. In the result, we are of the view, that neither an error apparent 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. The grounds in the Review Application are more germane for an Appeal against the judgement and not for reviewing the judgement. The Review Application is, therefore, dismissed.



(P.P. Srivastava)
Member (A)



(B.S. Hegde)
Member (J)

ssp.