

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 557/95/199

Date of Decision: 30-09-76

T. Seetharaman

Petitioner/s

Mr. G.S. Walia

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

Shri Mohan Shiral for R.No.3

Advocate for the
Respondent/s

CORAM:

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

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 ? ☒

M.R.Kolhatkar

(M.R.KOLHATKAR)
M(A)

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.557/95

Pronounced this, the 30th day of Sept. 1996

CORAM:

HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

T.Seetharaman,
Flat No.105, Bansuri,
D-36, Lok Puram Co-op.Hsg.Society,
Off. Pukhran Road No.2, Majiwade,
Thane(West) 400 601.

(By Advocate Shri G.S.Walia)

.. Applicant

-versus-

1. Union of India
through
The Secretary,
Ministry of Communication,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi - 110 001.
2. Director General,
Overseas Communication Service,
Videsh Sanchar Bhavan,
M.G.Road, Fort,
Bombay - 400 023.
3. The General Manager,
Videsh Sanchar Nigam Ltd.,
Videsh Sanchar Bhavan,
M.G.Road, Fort,
Bombay - 400 023.

(By Advocate Shri Mohan Shiral for
Respondent No.3)

.. Respondents

ORDER

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

In this O.A. the applicant has sought the relief of payment of pension and all other retirement benefits for the period of qualifying service rendered by him with respondents No.1 and 2. The facts are as below:

2. The applicant while working as Engineer in Chief, Overseas Communication Service, Ministry of Communication tendered his resignation on 10-4-84 but the same was not accepted. The applicant made a representation but without effect. The applicant then filed a Writ Petition before the High Court of Judicature at Bombay. The High Court granted the interim relief allowing the petitioner to seek employment elsewhere and no action, disciplinary or otherwise, be taken against the petitioner for accepting the employment elsewhere. The respondents had filed an appeal before the High Court which was dismissed. According to the applicant due to the refusal of the respondents to accept the resignation and provide the applicant with a relieving certificate, the applicant was put to ~~embarrassment~~ and hardship and was unable to secure appropriate and/or suitable employment. The Writ Petition ^{subsequently} was transferred to this Tribunal and was numbered as T.A. 5/93. The applicant states that as the applicant in the meanwhile had reached the age of 58 years on 28-2-1993 he sought the leave of the Tribunal to withdraw the application on the ground of its ~~being~~ being infructuous and the same was granted. Thereafter the applicant approached the respondent No.3 for grant of pensionary benefits. The respondents, however, by their letter dt. 23-12-1994 intimated that the applicant for all intents and purposes had resigned from the services of the OCS w.e.f. his date of resignation i.e. 10-4-1984. Since he has resigned from the service he ~~M~~ is not entitled for any terminal dues from the Govt.

It is this communication which has been impugned by the applicant.

3. The respondents have opposed the O.A. First of all it is contended that respondent No.3 viz. Videsh Sanchar Nigam Ltd.(VSNL) is not a notified body in terms of Notification No. GSR 730(E) dated 2nd May, 1986 as amended from time to time and therefore this Tribunal has no jurisdiction to entertain this application.

Without prejudice to the above the respondents have contended that by obtaining the interim order from the High Court the applicant effectively enjoyed the main relief till he attained the age of superannuation and in this view of the matter the applicant is estopped from contending that he retired as civil servant from the Govt. On the applicant's superannuation the writ petition having become infructuous, the fact of the interim relief obtained by him is not wiped out.

4. So far as the point of jurisdiction is concerned it is to be noted that the High Court transferred the writ petition at the specific request of the counsel for the respondents who claimed that the High Court has no jurisdiction. Therefore, it does not lie in the mouth of the respondents now to argue that this Tribunal has no jurisdiction. No doubt any concession or a wrong plea cannot confer jurisdiction on this Tribunal but we proceed on the footing that the claim of the applicant is for pensionary benefits to be paid by respondent No.1 and 2 and therefore the Tribunal can consider the matter. On merits, however, we have to consider the equities of the matter. The applicant,

no doubt reaped the benefits of interim relief granted by the High Court. That interim relief enabled the applicant to seek employment elsewhere without being subjected to departmental action. Therefore, the applicant has to be treated as having effectively resigned from the service of the respondents. The applicant relies on certain statements made by the respondents in their Letters Patent Appeal in which the respondents had stated that it is not open to a government servant to just tender his resignation and quit service forthwith and that he continues to be in government service till his resignation is accepted by the appropriate authority and he is relieved of his duties. The applicant therefore would contend that it does not lie in the mouth of the respondents to contend that he is no longer a Govt. servant. In our view the appeal was dismissed and the statement made by the respondents in that appeal cannot be held against them. The effect of the dismissal of the appeal was to confirm the interim relief which enable the applicant to ~~seek~~ employment elsewhere as if he resigned from the service. The applicant by flux of time attained 58 years of age but that does not mean that the applicant continued as Govt. employee and superannuated as such. Having reaped the benefit of resignation he cannot now turn back and seek pensionary benefits.

4. We, therefore, consider that the O.A. is without merit. We dismiss the O.A. with no order as to costs.

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

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P.NO: 103/96 IN O.A. NO 557/95

T.Seetharaman

.. Review Petitioner

-versus-

Union of India & Ors.

.. Respondents

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

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

Tribunal's Order on Review Petition

by circulation :

Date: 18-11-96

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

In this Review Petition the original applicant has sought review of our judgment dt. 30-9-96 by which we dismissed the O.A. on merits meaning thereby that the applicant is not entitled to pensionary benefits, on the basis that he continued to be a civil servant under respondent No.1 & 2 respondent No.3 being Videsh Sanchar Nigam Ltd.


2. The review petitioner has contended that the matter first came before a Single Bench who had referred the matter to Division Bench as the issue of jurisdiction was involved. The Review Petitioner contends that the matter was listed before the DB of the Tribunal only for orders. However, the Tribunal proceeded to dispose of the matter on merits without hearing the parties on merits. The review petitioner contends that the rejection of the O.A. could imply that the applicant would not be entitled to his own contribution to ~~GPF~~ which ~~could not~~ have been the intention.

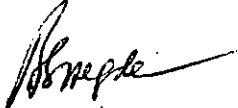
3. The mere fact that the matter was referred

by Single Bench to the Division Bench for deciding on the point of jurisdiction and ~~that the matter was~~ reserved by division bench for orders does not preclude the Tribunal from passing the final order. In our view the review petitioner has not made out any case for review which is covered by Rules under Order 47 of CPC. The review petitioner was claiming pensionary benefits on the basis that he superannuated from the Govt. service on 28-2-1993 and this contention was rejected by the Tribunal on the basis of the material on record. The original applicant had not ~~specified the~~ pensionary benefits but it was evident that he was claiming the same on the basis ^{of being a} ~~/superannuated~~ Govt. servant which was rejected by the Tribunal ~~since~~ the Tribunal held the applicant to have resigned from the service the natural consequence would be that he would not be entitled to the benefits which are not available to an employee who has resigned. The Tribunal's judgment said nothing regarding terminal benefits to the applicant ^{which} ~~to~~ ^{he} otherwise would be entitled on the footing that he has resigned from the service. While, therefore, review petition is rejected by circulation as permissible under the rules it is clarified that the original applicant is at liberty to approach appropriate authority for the benefits like employees' own contribution to the PF to which he will be entitled even after his resignation within a period of one month from the date ~~of communication of~~ order and the respondents may dispose of the same within two months

from the date of receipt of such application. If the applicant feels aggrieved by the action taken by the respondents in pursuance of his application he would be at liberty to approach the Tribunal if so advised.

4. Copy of this order may be given to both the parties.


(M.R. KOLHATKAR)
Member(A)


(B.S. HEGDE)
Member(J)

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