

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00248/2015

DATED THIS THE 28TH DAY OF JULY, 2017

HON'BLE SHRI DR. K.B. SURESH, MEMBER (J)
HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

Ashish Ghoshal,
Aged 52 years,
S/o Late M.R.Ghoshal,
Hindi Translator,
Indian Bureau of Mines, Bangalore
Residing at: #47, 1st Cross,
Saraswathipuram, Nandini Layout,
Bangalore-560096.

... Applicant

(By Advocate M/s Panchajanya Associates)

Vs.

1. The Union of India
rep. by the Secretary,
Ministry of Mines,
New Delhi.

2. The Controller General,
Indian Bureau of Mines,
Indira Bhavan, Civil Lines,
Nagpur-440001.

... Respondents

(By Shri M.V. Rao, Senior Panel Counsel)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. We heard both the learned counsels. Shri M.V. Rao, Senior Panel Counsel, would categorically submit that facts as mentioned in this case

and the facts as stated in the order of the Hon'ble Apex Court are the mirror image of each other but he would say that the matter was badly handled in the Ernakulam Bench. Now we are at the command of judicial discipline. When the Hon'ble Apex Court had finally settled the matter and both counsel say that there is absolute similarity between one particular set of facts available in the case and another set of facts available in the case before the Hon'ble Apex Court and therefore there is parity in consideration. If there is a parity in consideration, no subordinate Court or Tribunal can object to the finding of the Hon'ble Apex Court. The Hon'ble Supreme Court is the final authority to decide. Once they have decided, whether rightly or wrongly, it is not open to the subordinate Tribunal to look into it again and comment on it. Since both the counsel admit categorically that both the cases are similar, it will be out of place for the Tribunal to examine the matter once again. Therefore we had passed an earlier order which we quote below:

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. Apparently this is a matter covered by a similar plateau in OA No. 107 of 2011 dated 27.09.2011 of the Ernakulam Bench which was taken up by the respondents in consequent judicial review to the Hon'ble High Court of Kerala in OP No. 467 of 2012 dated 21.06.2012 by which the Hon'ble High Court upheld the order of the Tribunal and which has now become final.

2. Now Shri M.V. Rao, learned counsel for the respondents, would submit that after the judgment of the Hon'ble High Court Annexure-R7 OM No. A3-14017/46/2011-Estt (RR) of DoPT dated 19.09.2013 was issued by the government. He would say that even though this OA was issued against the principle enunciated by the Hon'ble High Court of Kerala this must have credence. That is not so. Whether before issuing such an OM the DoPT was aware of the Hon'ble High Court judgment and the Tribunal's order is not clear from the records but such OM cannot survive, as the principle has been judicially stated that OM is hereby quashed.

3. *It is also brought to our notice that several Benches of the Tribunal including the Principal Bench in OA No. 747/2014 dated 22.04.2015 and several other cases had upheld the view of Hon'ble High Court.*

4. *Apparently the respondent had taken up this matter under challenge to Hon'ble Apex Court in SLP (Civil) No (s). 28536/2012 and vide order dated 15.10.2012 the Hon'ble Apex Court had dismissed the SLP and therefore this position has become concretized.*

5. *Shri M.V. Rao, the learned counsel for the respondents, places before us another order of Ernakulam Bench in OA No. 202 of 2011 dated 17.10.2012 which is said to be against the earlier order of the Tribunal but then this position has been held to be incorrect in the Hon'ble High Court judgment and which had been universally followed by many other Benches of the Tribunal also and, therefore, once the order had obtained the blessing of the Hon'ble Apex Court, it will rule the field. Annexure-A12 is quashed and applicant will be entitled to the benefit as provided in the Ernakulam Bench order stated above. This shall be complied within 2 months next from the date of receipt of copy of the order.*

6. *Therefore, OA is allowed to this extent. No order as to costs.*

2. On the basis of the admission made by both counsel in open court that these cases are similar, we do not propose to examine the fact position as found out by the Hon'ble Apex Court as the ground raised by Shri M.V. Rao is that there is some factual mistake in the case as adjudged by the Hon'ble Apex Court. We are not inclined to look into the methodology of adjudication gone through by the Ernakulam Bench in the first place, the Hon'ble High Court of Kerala in the second place and the Hon'ble Apex Court in the third place. That will be beyond the pale of our powers and jurisdiction. When the Hon'ble Apex Court had finally settled the matter whether rightly or wrongly, the only course open to the aggrieved person is to approach the Hon'ble Apex Court and not any other Court.

3. Therefore we will allow the OA with the benefits that had been granted as aforesaid. No order as to costs.

(P. K. PRADHAN)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/