

(2009) 11 DEL CK 0236

In the Delhi High Court

Case No : Writ Petition (Civil) No. 5692 of 2001

Dr. S. Chakravarthy, Ex-Member, MRTS Commission

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Monopolies and Restrictive Trade Practices Act, 1969 — Section 5(2), 6(5)
Monopolies and Restrictive Trade Practices Commission (Conditions of Service of
Chairman and Members) Rules, 1970 — Rule 3, 4

Citation : (2009) 11 DEL CK 0236

Hon'ble Judges : Mukta Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : R.D. Makheeja, for the Appellant; Amit Bansal and Maneesha Singh,
for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Petitioner is aggrieved by an order dated 2nd March, 2000 passed by the Central Administrative Tribunal, Principal Bench in OA No. 1123/1999.

2. The Petitioner was working as Commissioner for Land Revenue in Andhra Pradesh and was drawing a pay of Rs. 8,000/- per month. He made a representation for being posted in Delhi on account of the fact that his wife was also posted in Delhi. In response to his request, the Petitioner was informed that he was being considered for appointment as a Member of the MRTS Commission in the scale of Rs. 7300-7600 for a period of five years or till he attains the age of 65 years, whichever is earlier. The Petitioner was asked to communicate his availability.

3. The Petitioner conveyed his willingness to accept the post of Member, MRTS Commission unconditionally by a letter dated 23rd November, 1993. Accordingly, the Petitioner was appointed as Member, MRTS Commission for the period of five

years from the date he assumes charge.

4. After he joined as Member, MRTP Commission, the Petitioner requested that his pay be fixed at Rs. 8,000/- which was the pay he was drawing when he was the Commissioner for Land Revenue in Andhra Pradesh. This request was rejected by the Respondents.

5. Feeling aggrieved, the Petitioner preferred an original application u/s 19 of the Administrative Tribunals Act, 1985 which came to be dismissed by the impugned order.

6. The Tribunal has referred to Section 6(5) of the MRTP Act, which reads as follows:

The Chairman of the Commission and other members shall receive such remuneration and other allowances and shall be governed by such conditions of service as may be prescribed.

Provided that the remuneration of the Chairman or any other member shall not be varied to his disadvantage after his retirement.

7. The Tribunal has also referred to Rule 3 and Rule 4 of the MRTP Commission (Conditions of Service of Chairman and Members) Rules, 1970 which read as follows:

3. Remuneration, Allowances, etc. of Chairman

(1) xxx xxx xxx(2) xxx xxx xxx (3) A person, not being a serving or a retired Judge of the Supreme Court or of a High Court appointed as Chairman shall be paid a salary of Rs. 8000/- per mensem and shall be entitled to draw such allowances as are admissible to a Government officer of the first grade.

Provided that if such person at the time of his appointment as Chairman is in receipt of a pension in respect of any previous service under the Government or any local body or authority owned or controlled by the Government, such salary shall be reduced by the amount of pension and pension equivalent of any other form of retirement benefits.

4. Remuneration, allowance of members

A person, not being a serving or retired Judge of the Supreme Court or of a High Court, appointed as a member shall be paid on and from the 1st day of January, 1986 salary in the scale of Rs. 7300-100-7600 per mensem and shall be entitled to draw such allowances as are admissible to a Government officer in the first grade.

Provided that if such person at the time of his appointment as Member was in receipt of a pension in respect of any previous service under the Government or any local body or authority owned or controlled by the Government, such salary shall be reduced by the amount of pension and pension equivalent of any other form of retirement benefits.

8. On a consideration of the statutory provisions, the Tribunal concluded that the salary of the Petitioner could not be fixed beyond the prescribed scale of Rs. 7600/-.

9. Before the Tribunal (and also before us), the Petitioner relied upon a decision of the Supreme Court in *M.P. Khosla v. Union of India* and Ors. Civil Appeal No. 2132/1997 decided on 17th March, 1997.

10. Shri M.P. Khosla was the Chief Secretary in the State of Jammu & Kashmir and had reached the pay scale of Rs. 8000/- per month. He was later appointed as Chairman-cum-Managing Director of Jammu & Kashmir Industries Limited, which was declared to be a post equivalent in status and responsibilities as that of a Chief Secretary. He, therefore, drew the pay scale of Rs. 8000/- per month.

11. Shri M.P. Khosla was subsequently appointed in some other capacities also and in all these capacities the equivalence was maintained. Eventually, Shri M.P. Khosla was offered the appointment of Secretary, AAIFR in the pay-scale of Rs. 7300-7600/-. He accepted this post but after his appointment, he represented to the Union of India that his higher pay may be protected as being personal to him. This was rejected by the Union of India and Shri M.P. Khosla then preferred an original application before the Tribunal which was dismissed. Against the decision of the Tribunal, Shri M.P. Khosla approached the Supreme Court and his appeal was allowed.

12. The Supreme Court noted that it would be unjust to deny the higher salary to Shri M.P. Khosla only on the ground that he accepted the lower post with his eyes wide open. The Supreme Court was of the opinion that the ends of justice demand that Shri M.P. Khosla should be paid all monetary benefits of an equivalent post because it would be just and equitable to do so.

13. On our reading of the decision, we find that the Supreme Court had confined the case to its own peculiar facts inasmuch as the claim of Shri M.P. Khosla was that his salary should be fixed at Rs. 8,000/- as being personal to him. Insofar as the present case is concerned, no such request is made for fixing the pay as personal to the Petitioner.

14. That apart, we find that there are statutory rules which fix the salary of a Member of the MRTTP Commission and it would not be appropriate for us to violate the statutory rules only to benefit the Petitioner.

15. The Tribunal has noted that if the relief prayed for by the Petitioner is granted to him, it is not as if the benefit will accrue to him only but that it would accrue to all Members of the Commission placing a financial burden on the Respondents. In our opinion, this issue has now become academic in view of the abolition of the MRTTP Commission.

16. The Tribunal finally held that the salary of the Chairman is fixed at Rs. 8,000/- and granting the same salary to a Member of the Commission would be putting him on par with the Chairman. According to the Tribunal, this will not be

appropriate in view of the higher status and more onerous duties, functions and responsibilities of the Chairman. There has to be some distinction between the salary paid to the Chairman and to the Members of the Commission.

17. In our opinion, the view taken by the Tribunal in this regard is correct keeping in mind the fact that the Chairman of the Commission is a retired Judge of a High Court or the Supreme Court and he has far more onerous duties and responsibilities as a Chairman than a Member of the Commission. A difference must, therefore, be maintained. In this regard, Section 5(2) of the MRTP Act is relevant and this reads as follows:

5. Establishment and constitution of the Commission.-

(1) xxx xxx xxx (2) The Chairman of the Commission shall be a person who is, or has been or is qualified to be, a Judge of the Supreme Court or of a High Court and the members thereof shall be persons of ability, integrity and standing who have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to Economics, Law, Commerce, Accountancy, Industry, Public Affairs or Administration.

18. For the reasons aforementioned, we do not find it appropriate to interfere with the order passed by the Tribunal.

19. The writ petition is dismissed.