
(2016) 01 BOM CK 0145

In the Bombay High Court

Case No : Writ Petition No. 3709 of 1998

Prabhatkumar S. Das

APPELLANT

Vs

Central Administrative Tribunal

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Citation : (2016) 5 ALLMR 55 : (2016) 150 FLR 878 : (2016) 4 MhLJ 98 :
(2016) 5 SLR 761

Hon'ble Judges : B.R. Gavai and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : Shri S. Sanyal, Advocate, for the Appellant; Shri D.S. Lambat,
Advocate h/f Shri N.P. Lambat, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

B.R. Gavai, J. (Oral) - The original petitioner though has approached this Court for quashing and setting aside the order dated 11.6.1998 passed by the learned Central Administrative Tribunal in Contempt Petition No.6/1997 and for declaration that respondents are guilty of contempt of Court for disobedience of the order dated 22.1.1997 passed by the learned Tribunal in Original Application No.533/1993, in view of subsequent development, i.e. death of original petitioner, the legal heirs of original petitioner, who are brought on record, have restricted their claim in the petition only for direction to respondents to pay retiral benefits to them.

2. The petition arises out of peculiar facts. The petitioner, who was an ex-serviceman, was appointed by the respondents as Apprentice Assistant Wireless Inspector (Class II) vide order dated 11.3.1963. After he was medically found fit, he was posted on 28.3.1963. He continuously served till 14.7.1976 and thereafter, went on medical leave till 26.9.1984. It is the case of the petitioner that during that period, he was suffering from mental ailment and was taking treatment from Mental Hospital, Nagpur. It is also the case of the petitioner that when he went to the respondents for resuming his duties on 27.9.1984, he came

to know that he was already removed from service by order dated 26.5.1984. The petitioner thereafter issued notice to respondents on 19.10.1984 under Section 80 of Code of Civil Procedure and filed Regular Civil Suit bearing No.186/1985. On Administrative Tribunals Act, 1985 coming into force, the suit came to be automatically transferred to Central Administrative Tribunal and the proceedings came to be re-numbered as Transfer Application No.30/1986. The learned Tribunal vide order dated 30.11.1987 partly allowed the original application and directed that petitioner should be jointly examined by the Civil Surgeon, Nagpur and Railway Medical Officer, Nagpur and if in the joint examination, he is found to be fit, he should be permitted to resume duties. This was directed to be done prior to 31.12.1987.

3. It appears that respondents did not make arrangement for the joint medical examination within the prescribed period and vide communication dated 14.2.1989 petitioner was informed that in the medical examination, he was not found fit for the post of Tele-communication Inspector and as such, could not be reinstated to the post of Tele-communication Inspector. It was further stated in the said communication that if petitioner desires, he may submit his application requesting for alternative employment. Perusal of application dated 21.2.1989 made by the petitioner shows that he requested for allotment of any post for which he would be considered fit as per previous medical examination. Vide another communication dated 7.7.1989 issued by the respondents, it was informed to the petitioner that since there was no direction by the learned Tribunal to reinstate him in any other post, his request in that regard could not be considered. The petitioner, in the meantime, retired from service and as such, filed a review application before the learned Tribunal. The same was disposed of by the learned Tribunal on 22.1.1997 holding that since petitioner has already retired from service in 1993, the respondents should disburse retiral benefits to him within a period of two months from the date of receipt of copy of the said order.

4. Thereafter, an application for review of the said order dated 22.1.1997 came to be filed by the respondents and application for contempt came to be filed by the petitioner. The same were heard by the learned Tribunal and decided by common order dated 11.6.1998. The review application filed by the respondents came to be rejected as it was filed beyond limitation. However, insofar as contempt petition filed by the petitioner is concerned, the learned Tribunal observed that observations made by it on 22.1.1997 were beyond the scope of original order and as such, order dated 22.1.1997 was not enforceable under Section 27 of the Administrative Tribunal Act, 1985. In these premises, petitioner has approached this Court.

5. Heard Shri Sanyal, learned Counsel for the petitioner, and Shri Lambat, learned Counsel for the respondents.

6. The facts are not much in dispute. Undisputedly, the petitioner has put in service from 28.3.1963 to 14.7.1976. Vide order dated 30.11.1987 the learned

Tribunal had directed the petitioner to undergo medical examination to be conducted jointly by Civil Surgeon, Nagpur and Railway Medical Officer, Nagpur. The same was directed to be conducted prior to 31.12.1987. Undisputedly, that has not been done within the prescribed period. Perusal of the record also reveals that respondents themselves had informed the petitioner that since he was not found fit for the post of Telecommunication Inspector, if he desires, he can apply for alternate post. Undisputedly, the petitioner had also applied for the same. However, subsequently respondents had taken a somersault and informed the petitioner that since there was no direction to that effect by the learned Tribunal, the same could not be done. Vide order dated 7.7.1989, an endorsement has also been made by respondent no.7 to the Office Superintendent for settling all the dues of the petitioner.

7. The only ground raised in the reply by the respondents is that since petitioner was terminated from service, he is not entitled to any terminal benefits. We find that the stand taken by the respondent Authorities is totally contrary to their earlier stand.

8. The very fact that learned Tribunal vide order dated 30.11.1987 had directed reinstatement of petitioner, if found medically fit on joint examination by Civil Surgeon, Nagpur and Railway Medical Officer, Nagpur would nullify the contentions raised by the respondents. Not only that, the respondents themselves had informed the petitioner though belatedly that he was not found medically fit for the post of Tele-communication Inspector, however, he would be considered against any other post. As such, even according to respondents, the order of removal of petitioner was not in existence and the effect of the order passed by the learned Tribunal dated 30.11.1987 was reinstatement of petitioner, if found medically fit. As per own version of the respondents, the petitioner was medically fit for other post except Telecommunication Inspector. In that view of the matter, we find that the contention of the respondents that the petitioner is not entitled to retiral benefits only on account of removal from service is without substance.

9. In the peculiar facts and circumstances, since petitioner has already completed qualifying service, we direct that the respondents shall treat the petitioner to have been reinstated in pursuance of the orders of the learned Tribunal and retired on the date of attaining superannuation and pay all the retiral benefits along with interest at the rate of six per cent per annum to the legal heirs of the petitioner. It is, however, directed that the petitioner shall not be entitled to any back wages for the period during which he was out of employment, however, would be entitled to continuity for the purpose of determining terminal and pensionary benefits. It is further directed that wife of the petitioner would also be paid family pension, if she is otherwise entitled, in accordance with relevant Rules.

10. The rule is made absolute in the aforesaid terms. No order as to costs.