

(2006) 12 MAD CK 0178

In the Madras High Court

Case No : Writ Petition No. 33800 of 2003 and W.P.M.P. No. 43954 of 2003

Revenue Secretary

APPELLANT

Vs

Syed Liaquath Peeran

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Customs, Excise and Gold (Control) Appellate Tribunal Members (Recruitment and Conditions of Service) Act, 1987 — Section 10

Customs, Excise and Service Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1987 — Rule 10, 18, 6, 6(4), 7

Citation : (2007) 5 STR 331

Hon'ble Judges : S.K. Krishnan, J;Dharma Rao Elipe, J

Bench : Division Bench

Advocate : S. Udaykumar, ASGSC, for the Appellant; Habibullah Basha, SC for Sathyanarayana, for the Respondent

Final Decision : Dismissed

Judgement

Dharma Rao Elipe, J.—The Secretary (Revenue), Government of India has filed this Writ Petition praying for the issuance of writ of certiorari, to call for the records of the Tribunal in O.A. No. 763 of 2002 and quash the order, dated 18-7-2003 made therein.

2. The brief facts which necessary for disposal of the Writ Petition, are as follows:

The first respondent who was a practising advocate, selected and appointed as Member (Judicial) at Delhi Benches with effect from 24-4-1989. At the relevant time, the first respondent was working as Member (Judicial) of Customs, Excise and Service Tax Appellate Tribunal at Chennai. According to the first respondent, Mr. Justice K. Sreedharan had occasion to visit to Chennai, and during the said visit, there was some misunderstanding in the arrangements made for the visiting President, that the first respondent had reservations in regard to arrangements, it appears to have caused some ill-feelings which were carried by the President. On the even of laying down the office of the President Mr. Justice

K. Sreedharan appeared to have made an adverse, entry in the Confidential Report of the first respondent for the year 2000-2001 as follows:

(a) "Physically sound - Mentally seems abnormal"

(b) "No control of himself while sitting on Bench. Loose talk makes him repulsive to the other Members sitting on the Bench. Behaviour towards others is unpredictable."

3. It is stated that the above said adverse remarks were belatedly communicated to the first respondent by letter dated 26-12-2001 by the Deputy Secretary to the Government of India, Ministry of Finance. The first respondent sent a detailed representation, dated 10-1-2002 along with supporting documents to demonstrate his outstanding performance. The competent authority had rejected the same and intimated the first respondent vide letter dated 28-6-2002. Aggrieved by the same, the first respondent approached the Tribunal by preferring O.A. No. 763 of 2002. On consideration of facts and circumstances and based on the Rules governing the service of the first respondent, the Tribunal allowed the O.A. and set aside the remarks. Challenging the same, the present Writ Petition has been filed.

4. While assailing the impugned order of the Tribunal, the learned Addl. Central Government standing Counsel appearing for the petitioners contended that though relevant orders in regard to continue the practice of writing Annual Confidential Reports for CEGAT members were produced before the Tribunal; without considering the same, the Tribunal has wrongly assumed that the decision in this regard is quite vague and the same, has not been taken by the appropriate authority; that the finding of the Tribunal is contrary to the records; that there was no delay in communicating the adverse remarks to the first respondent inasmuch as the President had written ACR on 21-5-2001 and the same was approved by the Reviewing Authority on 3-12-2001 and thereafter, within one month, i.e. on 28-12-2001, the first respondent was intimated with such remarks; that as against this adverse entry, the first respondent made a representation on 10-1-2002 which was rejected by the Reporting Officer by his letter dated 11-3-2002 reaffirming the remarks against the first respondent and based on which, the Finance Minister rejected the appeal on 28-6-2002. The learned standing Counsel further contended that when the Tribunal doubted even the order to write ACRs, the Tribunal ought not to have dealt with the aspect in regard to limitation for communicating the ACRs to the first respondent; that the Tribunal had wrongly treated the Members of the CEGAT as any other ordinary Government/civil servant since in respect of ACRs of such highly placed quasi-judicial officers and that too when the Reporting Officer being a retired Chief Justice and President of the Tribunal and the Reviewing Officer being the Secretary to the Government of India, their decision cannot be said to be arbitrary; that the President after having considered relevant records and on his subjective satisfaction, the remarks against the first respondent were made in ACR. Therefore, the order of the Tribunal expunging the remarks from ACR is

liable to be set aside.

5. On the other hand, Mr. Habibullah Basha, learned Senior Counsel appearing for the first respondent contended that there was discrimination since similar adverse remarks in respect of two other judicial Members were expunged and without assigning any reasons, the request of the first respondent was rejected; that in the absence of explicit rules, initiating ACRs for the Members is un-called for and not in accordance with any provision of law or rules; that the President is not vested any, power to write ACRs of a Member of the Bench who also sits along with the President and their functions are one and the same; that the President is not a supervisory officer though he discharges administrative functions in addition to his judicial functions; that the adverse remarks passed against the first respondent were baseless and no record or material has been produced or furnished to the first respondent in order to substantiate the adverse entries. The Tribunal, having considered all the relevant factors as well as the contentions raised on behalf of the petitioners, has rightly allowed the O.A. directing to expunge the adverse remarks contained in ACR of the second respondent, which does not require any interference and therefore, the learned Counsel prays for dismissal of the Writ Petition.

6. The point for consideration in this Writ Petition is whether the President of the Tribunal is empowered to supervise the work of other Member and write the ACR?

7. We have perused the Rules relating to the recruitment and conditions of service of the Members of the Tribunal, called as "Customs, Excise and Gold (Control) Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1987. Rule 6 deals with the method of recruitment. As per the said Rule, the recruitment to the post of a member, there shall be a Selection Committee consisting of a judge of the Supreme Court of India as nominated by the Chief Justice of India, the Secretary to the Government of India in the Ministry of Finance (Department of Revenue), the Secretary to the Government of India in the Ministry of Law (Department of Legal Affairs), the President and such other persons., not exceeding two, as the Central Government may nominate. Such Selection Committee shall recommend persons for appointment as members from amongst the persons on the list of candidates prepared by the Ministry of Finance after inviting applications therefore by advertisement or on the recommendations of the appropriate authorities and subject to the provisions of Section 10, the Central Government shall, after taking into consideration the recommendations of the Selection Committee, make a list of persons selected for appointment as members. Any three members of the Committee including the Chairman shall form a quorum for meeting of the Committee and it may devise its own procedure for selection of members. After selection as per Rule 6, no person shall be appointed as a member unless he is included in the list under Sub-rule (4) of Rule 6 and unless he is declared medically fit as required under Rule 7 and thereafter, he shall be on probation for a period of one year as per Rule 8 and it can be extended for a period of one year at a time so that the

period of probation in aggregate may not exceed three years. The member may be discharged from service at any time during the period of probation without assigning any reason. The power of reversion or termination of service of members is reserved by the Central Government and as per Rule 9, in case of judicial member directly appointed from the Bar, unless he is confirmed, the appointment may be terminated by the Central Government at any time without assigning any reason after giving him one month's notice of such termination and in case such judicial officer wishes to resign, he shall be required to give one month's notice to the Central Government.

8. Rule 10 deals with "President" and as per which, the Central Government a person who is a Judge of a High Court or one of the members of the Appellate Tribunal to be the President thereof, where a Member other than a sitting or retired judgment of a High Court) is appointed as President, he shall hold the office as President, for a period of 3 years from the date he enters upon the office or till he attains the age of 65 years whichever is earlier.

9. Rule 18 contemplates other conditions of service of a member in respect of matters for which, no provision is made in these rules shall be the same as may for the time being be applicable to other employees of the Government of India of a corresponding status.

10. So, under above said legal provision of law relating to Recruitment and Conditions of Service of the Members of the Appellate Tribunal and except these Rules, there is no provision of law enabling the President to write ACRs in respect of other Members of the Tribunal. However, in the counter-affidavit, it has been categorically admitted by the petitioners as under in Para 6:

6... Though the Rule 18 of the said Rules relating to "Other conditions of service states that the conditions of service of a member in respect of matters for which no provision is made in these rules shall be the same as may for the time being be applicable to other employees of the Government of India of a corresponding status", no prescription has been made to other employees of the Government of India of a corresponding status....

11. Further, in Para 14, it has been categorically admitted by the petitioners as follows:

14...The ACR is written by the reporting officer on the basis of available materials and records. As stated already, it is not necessary to record any reasons either for recording an adverse remark or for rejecting the representation against any adverse remark.

12. A reading of the above, it is clear that no prescription has been made with regard to corresponding status and therefore, the President has not been given any supervisory power against the members of the Tribunal. Except a retired Judge is appointed as President, the conditions of service will be the same as are applicable to the serving Judge of the High Court, but no corresponding provision

was made in respect of the members of the Tribunal. The only authority to take action is the Central Government. Therefore, we are satisfied by virtue of the categorical admissions made by the petitioners. In the counter and in the absence of any rule empowering the President to write ACRs of the members of the Appellate Tribunal, the adverse entries made against the first respondent cannot be approved. Moreover, from the record, it is elicited that when a question in regard to performance of Members, Vice-Chairman of CAT is being monitored, the Department of Personnel and Training has clarified that there is no system of reviewing APARS (Annual Performance Assessment Report) of CAT Members and "that Members/Vice-Chairman of CAT are selected by a Selection Committee under the Chairmanship of a sitting Judge of Supreme Court and in such circumstances, whether it can be dispensed with. For which, it was replied that since in ITAT, ACRs of Members and Vice-Chairmen are written, the writing of similar practice in CEGAT, SC, etc. may be continued. Therefore, except this reply, there is no other material was placed. Therefore, in the absence of any provision of law governing the service conditions of the Members of the Tribunal, the question of writing ACRs as a practice cannot be permitted in the provisions of service.

13. It is evident from the above discussion, a person who is a Judge or one of the members of the Appellate Tribunal can be selected and appointed directly as President, therefore, the members of the Tribunal are made on par with the President. Further, in the absence of law enabling the President to supervise the work and write the confidential reports and moreover, when an opportunity was given to the petitioners to place any material apart from the Rules, the petitioners were not able to place any material before this Court for consideration, except the endorsement of DPOT which is not based on any authority. There cannot be such practice of writing without any legal basis while dealing with highly placed officials like the Members of the Appellate Tribunal. As admitted in the counter extracted above, in the absence of any provision of law, the adverse remarks written by the President can be held to be without any authority or without any legal basis which cannot be allowed to continue in the service register of the first respondent and accordingly, they are liable to be expunged.

14. In view of the above discussion, we are satisfied and agree with the findings of the Tribunal upholding that the President is not the competent authority having no power to write ACRs of the Members of the Appellate Tribunal and it is contrary to the provisions of the Service Law. Accordingly, the Writ Petition fails and the same is dismissed. No costs.