

(1986) 07 AHC CK 0014

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12011 of 1986

Shanti Swaroop

APPELLANT

Vs

The Additional Bench, Central Administrative Tribunal and
Others

RESPONDENT

Date of Decision : 24-07-1986

Acts Referred:

Administrative Tribunals Act, 1986 — Section 14, 19, 19(4), 28, 29(1)
Constitution of India, 1950 — Article 136

Citation : (1986) 07 AHC CK 0014

Hon'ble Judges : A.N. Dikshita, J;A. Banerji, J

Bench : Division Bench

Advocate : A.S. Divekar, for the Appellant;

Judgement

1. The main contention of the Petitioner in this writ petition is that the Central Administrative Tribunal (hereinafter referred to as the Tribunal) at Allahabad has no jurisdiction to consider the application for setting aside the exparte decree or to allow the same.

2. The Petitioner was employed as Engine Driver, Grade-A, in the North Eastern Railway, Bareilly. He filed a suit for the correction of his age and a declaration that his retirement from service of North Eastern Railway in consequence of the incorrect date of his birth be declared illegal and void. The suit was decreed on 23rd December, 1981 by X-Additional Munsif, Bareilly. An appeal was filed by the Railways and in the course of proceedings before the Additional Civil Judge, 6th September, 1985 was fixed for hearing. However, since no one appeared for the Appellant the appeal was dismissed in default on that day. An application for restoration was made on 12th September, 1985 in the said court and it remained pending. The Petitioner, who was Plaintiff-Respondent in the appeal, filed an objection on the 25th of November, 1985 to the above application. It will be relevant to mention here that amongst his objection he took the plea that the appellate court had no jurisdiction to proceed with the application after coming in

force of the Administrative Tribunal Act, 1986 (hereinafter referred to as the Act).

3. The pending proceedings were then transferred to the Tribunal at Allahabad. It came up before the Tribunal (Allahabad Bench) at Allahabad on 15th July, 1986 and after hearing learned Counsel for the parties the application for setting aside the judgment and decree dated 6th September, 1985 was set aside. The case was thereafter fixed for final hearing on 12th August, 1986. A copy of this order has been marked as Annexure-5 to the writ petition and it is this order that is the subject matter of challenge in this writ petition.

4. We have heard Sri A.S. Divekar, learned Counsel for the Petitioner-He argued that the Tribunal had no jurisdiction to hear or allow the application-He urged that it could have been heard and decided by the court of Additional Civil Judge, where it had been filed and not by the Tribunal. He further urged that the Tribunal had not been conferred with any such power to hear such matters or to decide them. He specifically referred to the provisions of Sections 4, 14, 28 and 29(1) and 29(2) of the Act.

5. We find no merits in any of these arguments. Section 4 deals with establishment of the Tribunal. Section 14 refers to the jurisdiction, powers and authority of the Tribunal. Section 28 refers to the exclusion of jurisdiction of courts except Supreme Court under Article 136 of the Constitution and Section 29 deals with the transfer of the pending cases. Sub-section (1) of Section 29 refers to transfer of such suit or other proceedings which were pending before any court or other authorities immediately before the date of establishment of a Tribunal under the Act and being a suit or proceeding the cause of action were on it is based is such that if it had arisen after such establishment within jurisdiction of such a Tribunal it would stand transferred on that date to the Tribunal. A proviso made it clear that this Sub-section would not apply to any appeal pending before the High Court or Supreme Court. Sub-section (2) of Section 29 refers to a similar matter as above but being in relation to any local or other authority or Corporation, similar proviso as to Sub-section (1) followed. The argument of the learned Counsel that provisions of Sub-sections (1) and (2) of Section 29 only provided for the transfer of pending matters to the Tribunal but it did not confer jurisdiction on it to proceed with such cases. This argument is fallacious. A perusal of Sub-section (4) makes it clear that where any suit, appeal or other proceedings stand transferred from any court or other authority to a Tribunal Under Sub-section (1) or (2) the court or other authority shall, as soon as may be after such transfer, forward the record of such suit, appeal or other proceedings to the Tribunal and (b) " the Tribunal may, on receipt of such record, proceed to deal with such suit, appeal or other proceedings, so far as may be, in the same manner as in the case of an application u/s 19 from the stage which was reached before such transfer or from any earlier stage or de novo, the Tribunal deems fit.

6. It is, therefore, clear from the above provision that after the record is received in the Tribunal, the Tribunal may proceed to deal with such suit or other

proceedings in the same manner as an application u/s 19 from the stage which was reached before such transfer. Consequently the application for setting aside dismissal of the appeal which came within the term " other proceedings and which was pending before the Appellate Court would stand transferred to the Tribunal. Further, in view of the provisions of Sub-section (4)(b) the Tribunal on the receipt of the record is to proceed to deal with such application (other proceeding) in the same manner and from a stage which was reached before the transfer. It is evident from the material on the record that the stage that had been reached before the appellate court was the application made by the Railways for setting aside the dismissal order. No orders have been passed on it by that court, incidentally no order could be passed by that court after 1st November, 1985 when the Tribunal was established at Allahabad. That application had to be dealt with by the Tribunal for it alone had the jurisdiction and power to decide it in accordance with law. Consequently, we find that provisions of Section 29(4)(b) of the Act is a complete answer to the argument of the learned Counsel and we hold that the Tribunal had jurisdiction and power to decide the application.

7. Reference was made to the provisions of Section 28 by the learned Counsel but a perusal of the same makes it clear that no court except the Supreme Court Under Article 136 of the Constitution shall have or be entitled to exercise any jurisdiction, power or authority in relation to matters concerned with recruitment or service matters. This provision excludes the jurisdiction of other courts in those matters in which exclusive jurisdiction has been given to the Tribunal under the Act. As seen above the jurisdiction has been conferred on the Tribunal in respect of pending suits u/s 14 read with Section 29 of the Act. It is, therefore, apparent that the Tribunal at Allahabad had jurisdiction in this case and the contention to the contrary is without any force.

8. In view of the above we are of the opinion that there are no merits in this petition. The writ petition is accordingly dismissed at the admission stage.