
(2013) 08 DEL CK 0264

In the Delhi High Court

Case No : LPA No. 300 of 2013 and CM No. 7637 of 2013

Shri Rajan Sharma

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Press Council Act, 1978 — Section 6, 6(7)

Railway Claims Tribunal Act, 1987 — Section 10, 10(c), 5, 5(3), 7

Citation : (2013) 137 DRJ 537 : (2013) 5 ILR Delhi 3563 : (2013) LabIC 4356

Hon'ble Judges : Badar Durrez Ahmed, Acting C.J.;Vibhu Bakhru, J

Bench : Division Bench

Advocate : Maninder Singh and Mr. R.K. Saini, for the Appellant; V.S.R. Krishna, Abhishek Yadav for R-1 and 2, Mr. Sibbo Sankar Mishra and Mr. A. Pathak for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J.—The present appeal impugns the order dated 04.03.2013 passed by a Single Judge of this court in writ petition being W.P.(C) No. 1761/2012. The learned Single Judge has interpreted the provisions of Sections 5, 7 and 10 of the Railway Claims Tribunal Act, 1987 (hereinafter referred as the "Act") and held that as per the said provisions, a person who has completed his term as a member of the Railway Claims Tribunal would not be eligible for being appointed for a second term at the same post. The appellant is aggrieved by the impugned judgment inasmuch as he having completed his term as a member of the Railway Claims Tribunal had reapplied for another term and had been selected for the same. However, subsequent to his selection, the appellant has been denied the appointment to the post on account of the eligibility condition contained in Section 10 of the Act. The short question before us is whether the provisions of the Act, in particular Section 10, renders a member of the Railway Claims Tribunal ineligible for being appointed for a second term as a member of the Tribunal.

2. The learned Single Judge considered the provisions of the Act and concluded as under: -

9. From the aforesaid discussion, the following conclusions emerge:-

(i) Though it is undisputed that the petitioner was put at No. 1 in the selection list by the committee of appointments, the petitioner is being denied appointment on the ground of the bar contained in Section 10(c) of the Act.

(ii) Section 10(c) with its various sub-Sections provide for the avenues which are open, and thus also the avenues which are not open, after a person's term of appointment either as a member or Vice-Chairman or Chairman of the Railway Claims Tribunal comes to an end. With respect to a Chairman, there is a bar for appointment under the Government of India or Government of State. With respect to Vice-Chairman besides the afore-stated bar, there is an additional bar for being appointed as a Vice-Chairman or Member of the Railway Claims Tribunal, and, with respect to a Member, there is a bar for being appointed under the Government of India or Government of State and also as a Member of the Railway Claims Tribunal.

3. The learned counsel appearing for the appellant has contended before us that provisions of Section 10 of the Act do not expressly bar a person from being appointed as a member of the Railway Claims Tribunal on account of his having held the said post earlier. It is contended that in order to disqualify a member of a Tribunal who has completed his term from being re-appointed the same must be expressly provided by the words of the statute and in absence of express language to this effect such disqualification cannot be read into the statute. It is contended that clause (c) of Section 10 of the Act only provides that a member would be eligible for being appointed as the Chairman or Vice Chairman of the Railway Claims Tribunal but does not expressly state that a member on ceasing to hold his office would not be eligible for being appointed as a member of the said Tribunal. It is contended that in absence of such express bar under the Act, no such disqualification should be read in Section 10 of the Act. In support of his contention, the appellant has relied upon the decision of the Supreme Court in the case of Harbhajan Singh Vs. Press Council of India and Others,

4. It has also been contended on behalf of the appellant that restricting the appointment of the appellant as a member to only one term would also be unconstitutional. In support of this contention the appellant has relied upon the decision of a Constitution Bench of the Supreme Court in the case of S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, . Our attention has been drawn to paragraph 22 of the said judgment which reads asunder:-

... We would, however, like to indicate that appointment for a term of five years may occasionally operate as a disincentive for well qualified people to accept the offer to join the Tribunal. There may be competent people belonging to younger age groups who would have more than five years to reach the prevailing age of retirement. The fact that such people would be required to go out on completing

the five years period but long before the superannuation age is reached is bound to operate as deterrent. Those who come to be Chairman, Vice Chairman or Members resign appointments, if any, held by them before joining the Tribunal and, as such there would be no scope for their return to the place or places from where they come. A five years period is not a long one. Ordinarily sometime would be taken for most of the members to get used to the service jurisprudence and when the period of only five years, many would have to go out by the time they are fully acquainted with the law and have good grip over the job. To require retirement at the end of five years is thus neither convenient to the person selected for the job nor expedient to the scheme.....

5. The appellant has also placed another decision of a Constitution Bench of the Supreme Court in the case of Union of India (UOI) Vs. R. Gandhi, President, Madras Bar Association, before us, in support of the contention that restricting the appointment of a member of the Railway Claims Tribunal to only one term would render the provisions of Section 10 of the Act as unconstitutional and, thus, the same ought to be read down. He has relied upon the directions contained in paragraph 120 (ix) of the said judgment, which reads as under:-

(ix) The term of office of three years shall be changed to a term of seven or five years subject to eligibility for appointment for one more term. This because considerable time is required to achieve expertise in the field concerned. A term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, one term will be over. Further, the said term of three years with the retirement age 65 years is perceived as having been tailor made for persons who have retired or shortly to retire and encourages these tribunals to be treated as post retirement heavens. If these tribunals are to function effectively and efficiently they should be able to attract younger members who will have a reasonable period of service.

6. We have heard the learned counsel for the parties at length.

7. The appellant who was a practicing advocate was selected as a Judicial Member, Railway Claims Tribunal, for a term of 5 years from 14.03.2005 to 13.03.2010. It is asserted that during the course of his tenure as a member of the Tribunal, the appellant discharged his functions diligently and performed exceedingly well.

8. Since, the term of the appellant was coming to an end on 13.03.2010, he responded to an advertisement, issued in December, 2009, for a post of a Judicial Member of the Railway Claims Tribunal and applied for reappointment at the said post. The appellant was interviewed on 07.05.2011 and was placed at first position in the select list. The select list prepared by the Selection Committee was approved by the Appointment Committee of the Cabinet (ACC). Thereafter on 13.05.2011, the appellant was called upon to furnish the attestation form, for the purposes of verification of his character and antecedents, which he did and it is stated that his character verification was also

carried out.

9. Thereafter, apparently a complaint was received from one Shri Mahinder Sharma (who is asserted to be non-existent) and on the basis of that complaint a legal opinion was sought wherein it was opined that the appellant would not be eligible for the second term as a member of the Railways Claims Tribunal by virtue of clause (c) of Section 10 of the Act. It is contended that on the basis of this opinion, the appellant was not issued an appointment letter and persons placed below him in the select list were appointed instead. Aggrieved by the same, the appellant preferred the writ petition wherein, the following prayers were made:-

a) A writ of Certiorari calling for the records of the case & peruse the same.

b) A writ of Certiorari quashing the action on part of the respondent No. 1 in ignoring the name of the petitioner for appointment as Member (Judicial) Railway Claims Tribunal as per selection held on 07.05.2011 and not issuing him the appointment letter, being illegal arbitrary, mala fide, unjust without jurisdiction and in violation of the principles of natural justice and estoppel.

c) A Writ of Mandamus commanding the respondent to forthwith issue appointment letter to the petitioner as Member (Judicial) Railway Claims Tribunal, being the candidate having been placed at No. 1 in the Select List of selection held for the purpose on 07.5.2011.

d) A Writ of Mandamus commanding the Respondent to pay the costs of this petition to the Petitioner.

10. The said writ petition was dismissed by the impugned order as being without merit.

11. Although, it has been argued before us that the denial of appointment for a second term as a member of the Railways Claim Tribunal would be unconstitutional and, accordingly, the provisions of Section 10 of the Act should be read down, we are not inclined to entertain this challenge as the same was not the subject matter of the writ petition filed by the appellant. A perusal of the writ petition indicates that the appellant had not challenged the constitutional vires of the Act and, further, no prayer seeking to declare Section 10 of the Act as unconstitutional or read down that provision had been advanced before the learned Single Judge. There is also no material before us to examine the question whether the policy to deny appointment as a member for a second term is based on any intelligible criteria. We, therefore, refrain from entertaining this controversy which is sought to be raised for the first time before us. Thus, the only question to be considered in the present petition is whether the language of the Act and, in particular Section 10, disqualifies a member of the Railway Claims Tribunal for being appointed for a second term at the same post.

12. The provisions of Section 5, 7 and 10 of the Act are relevant for the purposes of considering whether the same contain a bar for a member of the Railway

Claims Tribunal for being re-appointed as such for a second term. These Sections being relevant are reproduced hereunder:-

5. Qualifications for appointment as Chairman, Vice-Chairman or other Member. -

(1) A person shall not be qualified for appointment as the Chairman unless he-

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least two years, held the office of a Vice-Chairman.

(2) A person shall not be qualified for appointment as the Vice-Chairman unless he-

(a) is, or has been, or is qualified to be, Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that service or any higher post for at least five years; or

(c) has, for at least five years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India; or

(d) has, for at least five years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways; or

(e) has, for a period of not less than three years, held office as a Judicial Member or a Technical Member.

(3) A person shall not be qualified for appointment as a Judicial Member unless he-

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a Member of the Indian Legal Service and has held a post in Grade I of that service for at least three years; or

(c) has, for at least three years, held a civil judicial post carrying a scale of pay which is not less than of a Joint Secretary to the Government of India.

(4) A person shall not be qualified for appointment as a Technical Member unless he has, for at least three years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways.

(5) Subject to the provisions of sub-section (6), the Chairman, Vice-Chairman and every other Member shall be appointed by the President.

(6) No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India.

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7. Term of office.-The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains,-

(a) in the case of the Chairman, the age of sixty-five years; and

(b) in the case of the Vice-Chairman or any other Member, the age of sixty-two years;

whichever is earlier.

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10. Provision as to the holding of offices by Chairman, Vice-Chairman etc., on ceasing to be such Chairman or Vice-Chairman, etc.- On ceasing to hold office-

(a) the Chairman of the Claims Tribunal shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) a Vice-Chairman shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman of the Claims Tribunal, or as the (Chairman, Vice-Chairman or member of any other Tribunal established under any law for the time being in force, but not for any other employment either under the Government of India or under the Government of a State;

(c) a Member (other than the Chairman or Vice-Chairman) shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman or Vice-Chairman or as the Chairman, Vice-Chairman or member of any other Tribunal established under any law for the time being in force, but not for any other employment either under the Government of India or under the Government of a State;

(d) the Chairman, Vice-Chairman or other Member shall not appear, act or plead before the Claims Tribunal.

13. In the case of Harbhajan Singh (supra), the Supreme Court quoted the following passage from Cross in Statutory Interpretation (3rd Edn., 1995) and applied the law explained therein in for interpreting the provisions of Section 6 of the Press Council Act, 1978:

9. The governing idea here is that if a statutory provision is intelligible in the context of ordinary language, it ought, without more, to be interpreted in accordance with the meaning an ordinary speaker of the language would ascribe to it as its obvious meaning, unless there is sufficient reason for a different interpretation.... Thus, an "ordinary meaning" or "grammatical meaning" does not imply that the Judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used. By enabling citizens (and their advisers) to rely on ordinary meanings, unless notice is given

to the contrary, the legislature contributes to legal certainty and predictability for citizens and to greater transparency in its own decisions, both of which are important values in a democratic society.(p.32 *ibid*).

The learned author cites three quotations from speeches of Lord Reid in House of Lords cases, the gist whereof is: (i) in determining the meaning of any word or phrase in a statute, ask for the natural or ordinary meaning of that word or phrase in its context in the statute and follow the same unless that meaning leads to some result which cannot reasonably be supposed to have been the legislative intent; (ii) rules of construction are our servants and not masters; and (iii) a statutory provision cannot be assigned a meaning which it cannot reasonably bear; if more than one meanings are capable you can choose one but beyond that you must not go (p.40, *ibid*). Justice G.P. Singh in his celebrated work-Principles of Statutory Interpretation (8th Edn., 2001) states (at page 54)

The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided.

The learned author states at another place (at p. 74, *ibid*) that the rule of literal construction whereby the words have to be assigned their natural and grammatical meaning can be departed from but subject to caution. The golden rule is that the words of statute must *prima facie* be given their ordinary meaning. A departure is permissible if it can be shown that the legal context in which the words are used or the object of the statute in which they occur requires a different meaning. To quote,

Such a meaning cannot be departed from by the Judges "in the light of their own views as to policy" although they can "adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy". A modern statement of the rule is to be found in the speech of Lord Simon of Glaisdale in *Suthendran v. Immigration Appeal Tribunal*, (All ER at p.616) (1976) 3 All ER 611, 616 to the effect- "Parliament is *prima facie* to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply ""the golden rule" of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification or statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further".

14. It is well settled that a statute must be interpreted by giving the words of the

statute their ordinary and plain meaning. The Supreme Court in the case of Dental Council of India and Another Vs. Hari Parkash and Others, stated the said principle as under:

7. The intention of the legislature is primarily to be gathered from the language used in the statute, thus paying attention to what has been said as also to what has not been said. When the words used are not ambiguous, literal meaning has to be applied, which is the golden rule of interpretation.

15. Applying the aforesaid principle of statutory interpretation, a plain reading of Sections 5 and 10 of the Act indicates that Section 5(3) of the Act provides for the qualifications required to be appointed as a judicial member of the Railways Claim Tribunal and Section 10 of the Act provides for the eligibility of a appointee to the Railway Claims Tribunal to take up further employment on his ceasing to hold office as a constituent of the Tribunal. While, Section 5 of the Act operates to specify the qualifications required of any person to be appointed as Member, Vice-Chairman or a Chairman of the Tribunal, the field of operation of Section 10 of the Act is restricted to appointees of the Railways Claim Tribunal who have already served a term on the Tribunal.

16. It is apparent from the language of clause (c) of Section 10 of the Act that the eligibility of a member ceasing to hold office to be re-appointed is restricted to being appointed as a Chairman or a Vice Chairman of the Tribunal. Clause (c) of Section 10 of the Act is couched both in positive and negative terms. In a positive manner, a member of the Railways Claim Tribunal on ceasing to hold office as such can be appointed as:

- (i) Vice Chairman of the Railways Claim Tribunal.
- (ii) Chairman of the Railways Claim Tribunal
- (iii) Member, Vice Chairman, Chairman of any other Tribunal other than Railways Claim Tribunal.

In a negative manner, the member would not be eligible for any other employment under the Government of India or under the Government of a State. Since, the eligibility of a member ceasing to hold office as a member Railway Claims Tribunal for appointment to the Railways Claims Tribunal is restricted only to the post of Vice Chairman or Chairman, the appointment as a member to the said Tribunal is clearly excluded. A conjoint reading of the clauses (a), (b), (c) of Section 10 of the Act indicates that the appointment for second term is possible, for the constituents of the Railway Claims Tribunal, only on a higher post of the Tribunal. A member of the Railways Claim Tribunal, thus, can be appointed as a Chairman or a Vice Chairman but not as a member of the Tribunal. Similarly, a Vice President can be appointed as a Chairman of the Railway Claims Tribunal but cannot be appointed as a Vice Chairman or a Member of the Tribunal. The Chairman being the highest post of the Tribunal, an incumbent on this post is ineligible for being appointed to the Railways Claims Tribunal on his ceasing to

hold office as such by virtue of clause (a) of Section 10 of the Act. We are unable to read the provisions of Section 10 in any other manner.

17. The decision of the Supreme Court in the case of Harbhajan Singh (supra) does not support the case of the appellant in any manner. On the contrary it is clearly held by the Supreme Court that words of a statute must be given their ordinary grammatical and full meaning. In that case, the Supreme Court was concerned with the provisions of Section 6(7) of the Press Council Act, 1978 which read as under:-

6(7). A retiring member shall be eligible for renomination for not more than one term.

18. The Court held that the language of Section 6(7) of the Press Council Act can be read as conferring a right on the retiring member to seek re-nomination as well as in an negative manner so as to make a retiring member not eligible for re-nomination for more than one term. The Court interpreted the provisions of Section 6(7) of the Press Council Act as under:-

7. Clearly, the language of Sub-section (7) of Section 6 abovesaid, is plain and simple. There are two manners of reading the provision. Read positively, it confers a right on a retiring member to seek renomination. Read in a negative manner, the provision speaks of a retiring member not being eligible for re-nomination for more than one term. The spell of ineligibility is cast on "renomination" of a member who is "retiring". The event determinative of eligibility or ineligibility is "renomination", and the person, by reference to whom it is to be read, is "a retiring member". "Retiring member" is to be read in contradistinction with a member/person retired some time in past, and so, would be called a retired or former member. "Re" means again, and is freely used as prefix. It gives colour of "again" to the verb with which it is placed. "Renomination" is an act or process of being nominated again. Any person who had held office of member sometime in the past, if being nominated now, cannot be described as being "again nominated". It is only a member just retiring who can be called "being again nominated" or "renominated". No other meaning can be assigned except by doing violence to the language employed. The Legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule-the Legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material-intrinsic or external-is available to permit a departure from the rule.

8. The provision is cast in present tense. A retiring member is ineligible for renomination. "Not more than one term" qualifies "renomination". The words "retiring", used in present tense, and "renomination" speak aloud of the intention of the legislature. If the word "retiring" was capable of being read as "retired" (sometime in the past) then there would have been no occasion to use

"renomination" in the construction of the sentence. If the intention of law-framers would have been not to permit a person to be a member of Council for more than two terms in his lifetime then a different, better and stronger framing of the provision was expected. It could have been said: "no member shall be eligible for nomination for more than two terms", or it could have been said: "a retired member shall not be eligible for nomination for more than two terms".

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16. We are clearly of the opinion that sub-Section (7) of Section 6 of the Press Council Act must be assigned its ordinary, grammatical and natural meaning as the language is plain and simple. There is no evidence available, either intrinsic or external, to read the word "retiring" as "retired". Nor can the word "renomination" be read as nomination for an independent term detached from the previous term of membership or otherwise than in succession. The provision on its plain reading does not disqualify or make ineligible a person from holding the office of a member of the Council for more than two terms in his life. The use of the words "retiring" as qualifying "member" coupled with the use of word "renomination" clearly suggests that a member is disqualified for being a member for the third term in continuation in view of his having held the office of membership for more than two terms just preceding, one of which terms, the later one, was held on renomination. Such an interpretation does not lead to any hardship, inconvenience, injustice, absurdity or anomaly and, therefore, the rule of ordinary and natural meaning being followed cannot be departed from.

(Underlining added)

19. In the case of Harbhajan Singh (supra), the Supreme Court reiterated the well settled rule of statutory interpretation that the language of a statute must be assigned its ordinary and natural meaning unless such an interpretation leads to some absurdity or anomaly and, applying the said rule, interpreted Section 6(7) of the Press Council Act as per the plain meaning of the language used. In the present case, the language of clause (c) of Section 10 of the Act is also plain and clear. There is no ambiguity in the language of clause (c) of Section 10 of the Act. Intention of the Legislature has been clearly spelled out by the language itself. It is expressly provided that a member on ceasing to hold office would be eligible for appointment as a Chairman or Vice Chairman of the Railways Claim Tribunal or as a Chairman, Vice Chairman or Member of any other Tribunal. We are unable to read clause (c) of Section 10 the Act in any other manner except to mean that the eligibility of a member to be re-appointed on ceasing to hold office as a member of the Railways Claims Tribunal is restricted to being appointed only as a Vice Chairman or Chairman of the Railway Claims Tribunal and thus the appellant would be ineligible for being reappointed as a member of the Railways Claim Tribunal for a second term. We find no merit in the present appeal. The appeal and the pending application are dismissed with no order as to costs.