

(2023) 07 DEL CK 0097

In the Delhi High Court

Case No : Letter Patent Appeal No. 527 Of 2023, CAV No. 326 Of 2023, Civil Miscellaneous Application No. 33590, 33591, 33592 Of 2023

Union Of India And Anr

APPELLANT

Vs

R N Singh

RESPONDENT

Date of Decision : 12-07-2023

Acts Referred:

Constitution of India, 1950 — Article 14

Tribunal Reforms Act, 2021 — Section 5, 5(1), 8(2), 9

Citation : (2023) 07 DEL CK 0097

Hon'ble Judges : Satish Chandra Sharma, CJ; Sanjeev Narula, J

Bench : Division Bench

Advocate : Mukul Singh, Ira Singh, Rajshekhar Rao, Gauri Puri, Aditi Gupta, Areeb

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. This case concerns determination of the commencement date of re-appointment of the Respondent, Mr. R. N. Singh, a judicial member of the Central Administrative Tribunal ["CAT"]. Under the purview of the Administrative Tribunals Act, 1985 [hereinafter, "ATA, 1985"], the original five-year tenure of Respondent is set to conclude on 11th July, 2023 and his request for re-appointment has been accepted. However, Appellants assert that this is a fresh selection under the provisions of the Tribunal Reforms Act, 2021 [hereinafter, "TRA, 2021"] and the term of his initial appointment under the ATA, 1985, would have no effect. The judgement dated 03rd May, 2023, rejects this contention, holding that such an interpretation would curtail Respondent's original tenure and perpetrate discrimination against him, as compared to other individuals appointed under the provisions of the ATA, 1985 [referred to as "impugned judgement" hereinafter].

Factual Background

2. Mr. R. N. Singh was appointed as a judicial member of CAT on 03rd July, 2018 under the provisions of ATA, 1985 for a term of five years or until the age of 65, whichever arrives sooner, commencing from the date of assumption of his post. He joined the service on 12th July, 2018, and his term is due to end on 11th July, 2023.

3. The ATA, 1985 was superseded by the TRA, 2021 on 04th April, 2021. Post this amendment, the service conditions, including selection procedure of CAT members came to be governed by TRA, 2021 and the subsequent rules framed thereunder. On 04th April, 2022, Appellant No. 1 issued a circular soliciting applications for appointment against the sanctioned vacancies for judicial members of CAT, in terms of the TRA, 2021 and Tribunal (Conditions of Services) Rules, 2021 [hereinafter, "2021 Rules"]. Notably, both the circular and 2021 Rules entail provisions for re-appointment of members already in service.

4. With just over a year left of his existing tenure, which is to conclude on 11th July, 2023, Respondent applied for re-appointment on 22nd April, 2022, responding to the afore-mentioned vacancy circular.

5. Following the recommendation of the Search-cum-Selection Committee, Respondent's appointment was approved by the competent authority for a period of four years, or until he reaches the age of 67, whichever comes first. Per the appointment order dated 06th August, 2022, he was required to report to the Principal Bench of CAT within thirty days from the date of the order.

6. In response to the said appointment order, Respondent addressed communication dated 16th August, 2022 to the Appellants, requesting for an extension of joining date to roughly after a year, i.e., after the completion of his initial tenure under ATA, 1985. This request was however rejected vide communications dated 26th August, 2022 and 11th October, 2022. As a result, Respondent was deemed to have relinquished his first tenure as a judicial member of CAT under ATA, 1985 w.e.f. 04th September, 2022, and he assumed his second tenure the following day.

7. Against the aforesaid refusal, Respondent filed a writ petition [W.P.(C) 16933/2022] before this Court, arguing that his appointment order dated 03rd July, 2018, issued under ATA, 1985, granted him a five-year tenure from 12th July, 2018 to 11th July, 2023 and as such, his tenure could not be truncated upon re-appointment.

8. The learned Single Judge, in the impugned judgment agreed with the Respondent and ordered that his re-appointment should take effect from 11th July, 2023, the end date of his first tenure.

9. Discontented with the impugned judgment, Appellants have filed this intra-court appeal.

The Impugned Judgement

10. The learned Single Judge examined the matter in its entirety, interpreted the provisions of TRA, 2021, and concluded that since Respondent was a serving judicial member of CAT, which term was still alive, his re-appointment must be reckoned from 11th July, 2023, and not before. The relevant portion of the impugned order reads as follows:

"19. As per Section 5 of the TRA, 2021, the term of a member was curtailed to four years unlike Section 8(2) of the ATA,1985 where the term was five years. The age bar has also changed from 65 years to 67 years. However, the proviso to Section 5 stipulates certain conditions upon which the order of appointment under the 1985 Act, would take precedence over the age limit prescribed in Section 5. The said provision commences with the phrase 'Notwithstanding any contained'. However, the Proviso prescribes the conditions in which Section 5 would not apply. Thus, while the main provision is notwithstanding any other law i.e., even the ATA 1985, the Proviso is an exception to the main section. Thus, if the conditions under the proviso are satisfied, the ATA 1985 would continue to apply. The said conditions to be satisfied are as under:

i) The appointment had to have been made between 26th May, 2017 and 4th April, 2021;

ii) The term of office is greater than what is specified in Sections 5(1) and 5(2).

20. If the above two conditions are satisfied, irrespective of the age limit prescribed in Section 5, the order of appointment under ATA 1985, would take precedence, so long as the term does not exceed five years.

21. Ld. Counsel seeks to rely upon the phrase 'age of retirement' to argue that the proviso applies only in case of retirement and not reappointment. This interpretation is however not borne out from the reading of the Sec. 5 which clearly stipulates the 'term of his office' or 'the age of the retirement' shall be as provided in his order of appointment. Thus, the term of office of the Petitioner ought to be as provided in his order of appointment i.e., 3rd July, 2018 which clearly fixed the term as five years.

22. Section 5 of the TRA, 2021 is notwithstanding any law for the time being in force. However, the proviso is an exception to those persons who have been appointed during a specified period. The Petitioner was appointed during the said period i.e. between 26th May 2017 to 4th April 2021. Thus, the Petitioner's case would be governed by Section 8(2) of the ATA,1985 insofar as the first tenure of five years is concerned.

23. The Petitioner was serving as a judicial member in the CAT when the vacancy circular was issued on 4th April, 2022. The Petitioner's original date of appointment being 3rd July, 2018 and he having assumed charge on 12th July, 2018, his case would clearly fall within the period as stipulated in the proviso of Section 5. Even after re-appointment was made, the Petitioner had made it clear that his reappointment tenure would commence after the initial period of five

years had culminated on 11th July, 2023. The case of the Petitioner has also been supported by the Chairperson of the CAT.

24. The Respondent's stand that the initial tenure of the Petitioner of five years would stand curtailed from the date he takes charge in terms of the ACC's order does not find the favour of the Court, inasmuch as the Petitioner cannot be discriminated against with other similarly placed persons, who had been appointed under the provisions of the ATA, 1985.

25. All those persons, who may not have sought reappointment have been protected under the Proviso to Section 5 in the sense that the five years tenure or attainment of 65 years, whichever is earlier, would be enjoyed by the said persons.

26. If the manner, in which the Respondent is interpreting the said provisions, is accepted, the same would be discriminatory to the Petitioner and violative of the rights of the Petitioner under Article 14 of the Constitution of India.

27. Moreover, this Court takes notice of the fact that there are a large number of vacancies, which continue to exist in various Tribunals across the country. Under such circumstances, the curtailment of the Petitioner's tenure would also not be in the interest of dispensation of justice as well.

28. Mr. Mukul Singh, apprises the Court that insofar as the vacancies are concerned, the process of appointment is already underway for the year 2022-23 and the matter is pending before the Supreme Court. However, in the present case, this Court is not dealing with issues relating to filling up of vacancies.

29. In view of the above discussion, the Petitioner's first term of appointment would, therefore, be permitted to continue till 11th July, 2023 and the reappointment shall take effect from the date when the first tenure ends i.e. from 11th July, 2023. Thus, insofar as the Petitioner is concerned, the date of assumption of charge, in terms of the ACC's order dated 5th August, 2022, for the second term, shall be taken as 11th July, 2023.

30. The Petitioner would be entitled to all the consequential benefits in view of the above order and any orders to the contrary including the orders dated 14th October, 2022 and 19th October, 2022 are set aside.

31. The petition is allowed in the above terms. All pending applications are disposed of."

Contentions

11. Mr. Mukul Singh, CGSC for Appellants, assailed the impugned judgment on the following grounds:

11.1. The learned Single Judge has erred in holding that Respondent's re-appointment shall take effect from the date when the first tenure ends. The circular dated 04th April, 2022 calling for applications for the post of judicial

members was issued under TRA, 2021 and the 2021 Rules. The application form required candidates to submit a declaration to the effect that they would join the service within thirty days from the issuance of the appointment order. Even the TRA, 2021, 2021 Rules and the Office Memorandum dated 16th July, 2009 contain a similar clause. Thus, despite knowledge of said condition, the Respondent willingly applied for the position advertised on 04th April, 2022, although his existing tenure was to continue till the next year.

11.2. On previous occasions, applicants in similar situations have only been granted an extension of one to two months, on the basis of merits of the case and only when they are on the verge of completing their existing engagement. However, such is not the situation in Respondent's case.

11.3. Respondent's request was not acceded to in public interest as he had sought extension for approximately a year, which would have resulted in the post lying vacant till the completion of his first tenure.

11.4. The proviso to Section 5 of TRA, 2021, relied upon by the learned Single Judge, provides that term of persons appointed as the Chairperson/ members of the CAT between 26th May, 2017 and 13th August, 2021 (the notified date) shall not be longer than five years. Although the tenure of appointed members before promulgation of TRA, 2021 is protected and cannot be curtailed by the Government, but Respondent has every right under Section 9 to relinquish the charge, even before the completion of five years. On his fresh selection, Respondent relinquished the charge as a judicial member on 04th September, 2022. Thus, the competent authority did not curtail his first tenure, but he himself decided to take on the new assignment.

Analysis

12. The Court has considered the afore-noted contentions. Respondent was appointed as a judicial member of CAT on the recommendations of the Search-cum-Selection Committee and after due approval from the Appointments Committee of the Cabinet ["ACC"]. In terms of the appointment letter dated 03rd July, 2018, he was to continue in office for a period of five years from the date of assumption of charge of the post, or till the age of 65 years, whichever is earlier. These conditions of service were governed by the provisions of ATA, 1985. After the enactment of TRA, 2021, the 2021 Rules were notified by the Ministry of Finance on 15th September, 2021. Thereafter, Appellant No. 1 advertised vacancies for the post of judicial member, CAT, which included the provision for re-appointment. Given that there was no prohibition on sitting members applying for re-appointment, Respondent applied for re-appointment with a complete disclosure of his current status in CAT in the application form. The Search-cum-Selection Committee, headed by a sitting Judge of the Supreme Court, recommended the name of Respondent for the post of judicial member of CAT. ACC accorded its approval thereto, which was conveyed vide communication dated 05th August, 2022, inter alia reading as under:

“The Appointments Committee of the Cabinet has approved the proposal of the Department of Personnel and Training for appointment of following candidates, against 16 posts of Judicial Member in Central Administrative Tribunal (CAT), in the pay scale of Rs.2,25,000/- (fixed), for a period of 04 years from the date of assumption of charge of the post or till attaining the age of 67 years, whichever is earlier”

13. Consequent to the above approval of ACC, Appellants issued the order dated 06th August, 2022, intimating Respondent’s appointment as a judicial member for a period of four years from the date of assumption of charge of the post or till the attainment of age of 67 years, whichever be earlier. At this stage, Respondent was asked to report within thirty days of the date of issuance of the order, failing which his appointment was to be treated as cancelled.

14. In the Court’s opinion, the learned Single Judge correctly held that Respondent’s re-appointment should take effect after the first tenure ends i.e., from 11th July, 2023. The rationale is rooted in the concept of tenure stability, a fundamental feature of judicial independence. This principle prevents premature cessation of tenure, ensuring that a judge can discharge their functions without fear of arbitrary removal or pressure to seek re-appointment. The process for filling up vacancies under TRA, 2021 and 2021 Rules was initiated while the Respondent was still serving under ATA, 1985. There is no prohibition on sitting members from applying for re-appointment. Respondent’s application for re-appointment was a prudent step to secure continuity in service rather than an attempt to circumvent the completion of his current tenure. The fact that extensions have been granted to other similarly placed members of CAT, as disclosed by Appellants, indicates that the institution recognizes the need for flexibility in joining times, especially when the concerned person is engaged in an ongoing assignment. Respondent’s request for an extension should be seen in light of this practice as well as the fact that he was already serving as a member of CAT, thereby negating the possibility of any detrimental impact on the functioning of the Tribunal. The Court is informed that the vacancy arising from Respondent’s post was also advertised, which further indicates that the system is equipped to handle such scenarios in order to ensure least disruption of the Tribunal’s functioning. Therefore, any argument about potential delay or disruption due to Respondent’s request for an extension, lacks merit. Respondent will officiate as a judicial member of CAT till 11th July, 2023, and on completion, he will continue to hold the post for another period of four years. Therefore, the vacancy position would not be adversely affected.

15. While it is crucial to avoid a scenario where vacancies remain unfilled for long periods, the situation in the present case is different. Respondent was not asking to keep the re-appointment reserved, but simply to ensure that his new term starts after the completion of his current tenure, thus, upholding the principle of a secured tenure. He had a legitimate reason to apply for re-appointment even though his existing term had more than a year left. Therefore, he should not be

penalised for this reason.

16. The argument that tenure under ATA, 1985 cannot be curtailed but can be relinquished, does not hold good in this case. Respondent's application for re-appointment does not amount to relinquishment of his ongoing tenure, but represents his willingness to transition to a new term, post the completion of his existing tenure. The very basis of a secured tenure is that it can neither be curtailed arbitrarily, nor can it be forced to be relinquished. Respondent's decision to apply against an open advertisement does not automatically signify acceptance to forego his existing tenure. There is a marked difference between applying for re-appointment (which suggests continuity of service), and applying for a new appointment (which suggests willingness to start a new service). Here, Respondent applied for re-appointment, which naturally implies an intent to continue service post the culmination of current tenure. The argument that Respondent willingly gave up his position is thus devoid of merit. It is evident that he was compelled into doing so due to potential complications of not joining within the specified timeframe, which could have jeopardized the benefits of his re-appointment. Therefore, it cannot be said that Respondent's decision was voluntary. Further, the Court remains unconvinced by the rationale put forth by the Appellant to justify refusal of Respondent's request for extension, particularly in light of extensions granted to others. Therefore, the learned Single Judge has appropriately adjudged the Appellants' decision as discriminatory, thus violating Article 14 of the Constitution of India, 1950.

17. Appellants' contention that Respondent violated conditions mentioned in the application form is also misguided, as these conditions cannot override the fundamental principle of a secured tenure. Appellants' case hinges on the assertion that Respondent was aware of the requirement to join his post within thirty days of the appointment order under TRA, 2021. This claim, however, is unconvincing as the TRA, 2021 does not specify that a serving member must surrender their ongoing tenure to be eligible for re-appointment. Pertinently, the Respondent's request for an extension was endorsed by the Chairman of CAT vide communication dated 27th August, 2022; however, the same was not considered by the Appellants.

18. For the afore-mentioned reasons, we concur with the conclusions drawn by the learned Single Judge and find no flaw in the impugned judgement.

19. The present appeal is therefore dismissed, along with other pending applications.