
(2007) 12 CAL CK 0011
In the Calcutta High Court
Case No : W.P.C.T. No. 983 of 2003

Union of India and Others

APPELLANT

Vs

Dilip Bhusan

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

National Airports Authority Act, 1985 — Section 13

Citation : 112 CWN 450

Hon'ble Judges : Manik Mohan Sarkar, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Soumen Chandra Bose, P.K. Arora, Dinesh Chandra Roy and A.K. Ghosh, for the Appellant; R.N. Das, J.K. Bhattacharyya, Prasun Kumar Dutta and Nirbanesh Chatterjee, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—The petitioner above named has assailed by this application the judgment and order of the learned Tribunal dated 7th August 2000 passed in OA74 of 2002. The learned Tribunal by its judgment and order has allowed the prayer of the applicant (respondent herein), and thereby and thereunder quashed the order dated 5th July 2000 and directed to comply with the direction of the learned Tribunal passed in the earlier original application in its true spirit and issue appropriate direction regarding absorption of the applicant in the National Airport Authority (in short NAA) and now named as Airport Authority of India (in Short AAI). In order to appreciate the matter short fact is required to be narrated. The respondent was initially appointed as Aerodrome Assistant on 13th February 1986 and posted At Dum Dum Airport under the Civil Aviation Department when neither the separate body like NAA nor the subsequent authority namely All was in existence. By and under the provision of Section 13 sub section (3) of the National Airport Authorities Act 1985 (hereinafter in short as the sold Act) a separate body namely National Airport Authority was created.

2. Every Employee holding any office under the Director General of Civil Aviation

immediately before the commencement of this Act solely or mainly for or in connection with such affairs of the Directorate General of Civil Aviation as are relevant to the functions of the Authority under this Act as may be determined by the Central Government shall be treated as on deputation with the authority but shall hold his office in the authority by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement or other terminal benefits as he would have held such office as if the authority had not been constituted and shall continue to do so until the authority duly absorbs such employee in its regular service.

3. In Section 13 sub-section 3 there is provision for exercising option by the employee for absorption which is quoted hereunder:

"Provided further that any such employee, who has, in respect of the proposal of the authority to absorb him in his regular service, intimated within such time as may be specified in this behalf by the Authority his intention of not becoming a regular employee of the Authority shall not be absorbed by the Authority."

4. Accordingly the applicant along with 72 other Aerodrome Assistants were deputed to NAA. While deputing it was made clear that all such transferred employees would be continued to be in service with their existing service condition till they were absorbed in the NAA on exercise of option without offer. Some time in 1989 NAA offered to all the deputed employees including the applicant to exercise option for absorption and it is pertinent to mention NAA while inviting option stipulated various terms and conditions. The applicant, for the reasons best known to him, wished to go back to his parent department in similar post. The concerned Ministry obviously did not oblige the respondent applicant as there was no post of Aerodrome Assistant existing in the department. As such it was decided that the applicant would be sent to the Surplus Cell for which deployment in other Government offices in alternative post would be considered. In view of option not being exercised the applicant was released by the NAA by order dated 20th September 1993, the applicant was then taken back in the Ministry on supernumerary post. Meanwhile his name was sent to the Surplus Cell and he then was proposed to be sent to Geological Survey of India (GSI) so he was released from Civil Aviation Department from 22nd March 1994 to join GSI as Accountant. He then refused to accept the said post and exercised his option for being absorbed in AAI. One of the officials namely Director of Aerodromes Calcutta was also in favour of giving a chance for revising the option. However, the AAI did not allow him to exercise revised option on the ground that previously option for being absorbed was not exercised hence it was final and no fresh option could be permitted. The result was that the applicant was neither posted in his Ministry nor he joined GSI in spite of several chances being given.

5. On the aforesaid background the applicant approached Central Administrative Tribunal on or about 1995 with his application being OA No. 1180 of 1995 and the said application was decided on contest by order dated 28th September

1999. By the said order the learned Tribunal observed amongst other as follows :

"In view of the above, the case of the applicant, therefore, requires justifiably to be reconsidered afresh. If the cadre of Aerodrome Assistant and the posts of Aerodrome Assistant have been transferred to NAA as stated in paragraphs 3 and 4 of the supplementary reply of the respondents then the applicant automatically becomes absorbed in the NAA as part and parcel of the establishment of the NAA from the initial date of his deputation i.e. 1.6.86 and there is no question of asking for any option in that case. If the respondents, specially respondent No. 2 finds that it is not so then the cadre of Aerodrome Assistant and the post of the applicant continues to be and exists under them and, therefore, he should be allowed to work and continue on the post without hindrance. We therefore, hereby allow this application and direct the respondent authorities specially respondent No. 2 to consider and decide the case of the applicant according to our above observations within a period of three months from the date of communication of this order by passing a reasoned and speaking order and communicating the same to the petitioner within a week thereof."

6. The applicant before us had challenged the aforesaid observation and findings of the learned Tribunal in this court by filing a Writ Petition being WPCT 43 of 2002. This court by its order dated 3rd May 2000 did not interfere with the same rather upheld the findings of the learned Tribunal and directed that the case of the applicant should be, disposed of within a period of three months.

7. Pursuant to the aforesaid judgments and orders the respondent No. 2 was compelled to consider the case of the applicant and passed an order dated 5th July 2000 and, thereby rejected claim and contention of the respondent. Against this order the aforesaid OA was filed before the learned Tribunal. The learned Tribunal has allowed the application relying on the earlier judgment rendered by the learned Tribunal which was affirmed by this Hon'ble Court and subsequently in addition thereto the learned Tribunal in the impugned judgment and order found further that the aforesaid proviso does not apply to those employees who are regular employee of NAA as the applicant was sent with his post in NAA as a regular employee. The learned Tribunal also discussed two judgements of the learned Tribunal in two different cases and while dealing with the same the Learned Tribunal ultimately held in view of the Hon'ble High Court having confirmed the order of the Bench in matter no different finding can be arrived at this stage on the basis of the decision of the principal Bench. On 31st August 2005 this Court passed an interim order directing the applicant to join the said post as Accountant in GSI with the terms and conditions offered to him by a letter dated 22nd February 1994 in the scale which has been revised from the Scale of 1400-2300/-. It was also provided that if the post of Accountant is not available Dilip Bhusan may be allowed to join in any other post of equivalent scale. This order was passed without prejudice to the rights and contentions of the parties. On 14th September 2005 the GSI Central Headquarter informed that joining of respondent in terms of the earlier interim order in their establishment

was not possible for various reasons. Therefore GSI by order dated 14th September 2005 was added as party respondent and allowed to file affidavit in opposition. In the affidavit in opposition of GSI sum and substance of their case is that despite repeated opportunity being given to the applicant he did not join in the post of Accountant though at one point of time by a letter he expressed his willingness to join. In view of his unwillingness and/or failure to join, and after waiting for a long time on obtaining "no objection" of the Central Government Department concerned, the said post was filled in by G.S.I., and no post of Accountant nor any equivalent post thereof is now remaining vacant. As such it was not possible to allow the applicant to join in terms of the order of this Court.

8. The aforesaid facts and circumstances are updated position in this case. It appears from the records at no point of time the operation of the impugned judgment and order of the learned Tribunal was stayed.

9. Mr. Soumen Chandra Bose, learned Senior Advocate appearing in support of this application, contends that the respondent joined the new establishment NAA and he was allowed to work on the same terms and conditions as he was appointed under the Director of Civil Aviation and thereafter by virtue of provision of sub-section 3 of Section 13 of the said Act and proviso above the NAA invited his option for his absorption. Obviously NAA put forward terms and conditions for absorption, however the applicant in no uncertain terms did not exercise option to be absorbed rather wanted to be repatriated to his original and parent department. Hence he was released by office Order and he is no longer an employee of the NAA and he is the burden of the Government of India and it is the Government of India who has to take care of him. At present the petitioners namely AAI being the Successor in interest of NAI is unable to accommodate him. Under such circumstances the order rejecting his prayer was justified and learned Tribunal should not have interfered with it or quashed the same. Moreover he says in two matters passed by the learned Tribunal that almost in a similar case fresh option was refused to be accepted and as such there is nothing irregular in the decision of the Director General of Civil Aviation. He further submits when an authority was asked to decide something on fact or in law and if it is decided with reasons the learned Tribunal should not find fault in the reasoning to render different decision substituting its own reasoning. Therefore, this matter has now become final with the passing of the speaking order and the learned Tribunal has unnecessarily reopened the issue by asking to decide afresh.

10. Mr. R.N. Das, learned Senior Advocate appearing for the respondent submits that the judgment and order of the learned Tribunal is just and proper as the impugned speaking order was passed illegally ignoring the direction and guidance given by the learned Tribunal in earlier matter in the earlier judgment and order of the learned Tribunal in uncertain terms it has been decided that, it riot open for inviting option as by virtue of the operation of the law the applicant stood absorbed automatically. This fact finding and interpretation of law were challenged in this Court in the previous writ petition the aforesaid findings has

not only been affirmed and approved but the direction was given to carry out the same. Therefore, the order of rejection of the petitioner's claim on reasoning which were negative by the learned Tribunal, was invalid one and the same was nothing but an attempt to negate the judicial pronouncement. The instances of judgments in two other matters are inappropriate in this case absolutely.

11. Mr. N. Chatterjee learned Advocate appearing for the added respondent contends what has been stated in the affidavit in opposition. We need not repeat to record his submission.

12. Having heard the respective submissions of the learned Counsels we find only issue which is legal one, is whether the learned Tribunal is justified in setting aside the order of Director General of Civil Aviation on the grounds and reasoning mentioned in the impugned order or not.

13. We want to go into the core issue in the matter, which is whether the applicant, if the Option were not exercised for being absorbed, stood automatically absorbed, consequently there was no scope for repatriation to his parent department or not. The learned Tribunal as correctly urged by Mr. Das has already decided this issue on earlier occasion that once the cadre of Aerodrome Assistant and post of Aerodrome Assistant have been transferred to NAA the applicant automatically becomes absorbed in the NAA as being part and parcel of the establishment of NAA from initial date of his deputation that is 1st June 1986 and there is no question of asking for any option in that case. If the respondents especially the respondent No. 2 finds that it is not so, then cadre of Aerodrome Assistant and the post of the applicant continues to exist under them and therefore, he should be allowed to work and continue in the post without any hindrance.

14. This finding has been upheld by this Court in the earlier judgment dated 3rd May 2003 rendered by Their Lordships the Hon'ble Mr. Justice S. B. Sunhat and Hon'ble Mr. Justice MHS Ansari (as Their Lordships then were). The Division bench of this Court on earlier occasion observed while affirming the judgment of the learned Tribunal as follows :

"However having regard to the facts and circumstances of the present case, we are of the opinion that if an option had been obtained on suppression of fact, for the repatriation to his parent department he would not be able to hold the post to which he is entitled as per his status, the learned Tribunal cannot be said to have committed any illegality in passing the impugned order. In exercise of its power of judicial review the order of the Tribunal can be set aside if there exists an error apparent on the face of the record or if the same suffers from illegality or irrationality. So far as the questions of fact which had been raised before us, keeping in view- the order passed by the learned Tribunal we are of the opinion that all such questions of fact would fall for consideration before the appropriate authority while considering the case of the petitioner in terms of the order passed by the learned Tribunal."

15. Thus it is clear by both the judgements and order the respondent authority concerned had no option but to accept the legal position and status of the petitioner vis-a-vis his right to remain in the establishment of the AAI previously NAA. Only it has to be worked out how he should be accommodated.

16. Thus we are unable to accept the contention of Mr. Bose that in view of the respondent not having exercised option his right to remain in the establishment of NAA stood extinguished and he stood released. When the aforesaid legal position has been settled the factual position as to his placement and status will follow. The interpretation of the aforesaid proviso may be read in different way. The aforesaid provision of option might or might not be interpreted in different way. On earlier occasion when it has interpreted in one way which might or might not be wrong but the same has reached its finality because of the affirmation of the judgment of this court. It is no longer open, subsequently either by the Tribunal or any authority or even by the High Court to read the aforesaid provision of law on the fact otherwise. Once a judgment has reached its finality may be it is correct or incorrect, cannot be reopened subsequently in different proceedings in any manner. Thus we think the learned Tribunal has correctly passed the order following correct principle of law, but we cannot accept the subsequent interpretation having made by the learned Tribunal in paragraph 11. Further elucidation that it is clear the provision of the said proviso applied irregularly and against the context of the proviso. The aforesaid interpretation and observation are in my view absolutely redundant and are counter to the earlier interpretation so this is not approved nor accepted by us.

17. When it has been decided on the point of law that the applicant -stood absorbed from the initial date of his deputation from 1st June 1986 and there is no question of asking for any option in view of the case, the order of release and/or further repatriation and then his holding office in supernumerary post are absolutely illegal and this should not be taken into consideration.

18. Therefore, the contention of Mr. Bose on the aforesaid point of fact has no footing and contention is therefore, overruled. We accordingly affirm judgment of the learned Tribunal save as above, and we ask the department to take follow up action of the order of the learned Tribunal forthwith preferably within a period of one month from the date of communication of this order. On the facts and circumstances of this case there will be no order as to costs.

19. His placement with GSI as Accountant is also an illegal act as by virtue of legal findings of the learned Tribunal he continues to be an Aerodrome Assistant from the date of his joining the NAA. While considering this matter the Authority concerned shall take note of the salary he received in course of his discharging duty in the Government department on illegal repatriation. Hence, no further payment of salary is called for in view of receipt of his salary previously.

Manik Mohan Sarkar, J.

I agree.