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(2023) 05 CHH CK 0024

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 2853 Of 2020

Union Of India APPELLANT

Vs

Chandan Das Vaishnav RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Administrative Tribunals Act, 1985 — Section 3(q), 3(q)(i), 3(q)(ii), 3(q)(iii), 3(q)(iv), 3(q)(v), 14, 14(1), 19
Limitation Act, 1963 — Section 3(1)

Citation : (2023) 05 CHH CK 0024

Hon'ble Judges : Ramesh Sinha, CJ;Sanjay K. Agrawal, J

Bench : Division Bench

Advocate : Ramakant Mishra, A.V. Shridhar

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This writ petition under Article 226/227 of the Constitution of Indian is directed against the impugned order dated 21.11.2019 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (hereinafter referred to as 'CAT') in Original Application No.203/01141/2018, whereby the original application filed by the sole respondent therein has been allowed and the petitioners / Union of India have directed to refund of an amount of Rs.17,40,000/-deposited by the respondent herein within a period of 90 days, failing which, the petitioners would be liable to pay the interest at the rate of 8% thereafter.

2. The respondent herein was working as Branch Post Mastar, Siltara, Takhatpur and it was the case of the respondent herein that he was issued a letter by the competent authority on 05.02.2015 alleging excess payment of Rs.17,00,000/- to the beneficiaries of various Government Schemes and to deposit the same in the office, otherwise criminal proceedings would be initiated against him. He,

thereafter, under the threat and coercion, deposited a sum of Rs.17,00,000/- on 10.02.2015 and also deposited an amount of Rs.40,000/- on some other date. Thereafter, a charge-sheet was issued on 15.06.2018 for excess payment of Rs.4,860/- and ultimately, after departmental enquiry, he was removed from service on 31.03.2021, against which the departmental appeal has been preferred by him, which is still pending. Meanwhile, the respondent herein had filed an application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'Act of 1985') claiming refund of Rs.17,40,000/- along with 18% interest, which has been allowed and against which, instant writ petition has been preferred.

3. Mr. Ramakant Mishra, learned Deputy Solicitor General for the Union of India / petitioners submits that application for refund of an amount of Rs.17,40,000/- before the Tribunal in terms of Section 3(q) read with Sections 14(1) and 19 of the Act of 1985 was not maintainable. Even otherwise, the respondent herein had paid an amount of Rs.17,00,000/- on 10.02.2015 as well as Rs.40,000/- on some other date and an application was filed on 19.09.2018, which has become barred by limitation, therefore, the original application was not maintainable. Hence, the writ petition deserves to be allowed.

4. Per contra, Mr. A.V. Shridhar, learned counsel, appearing for the sole respondent supported the impugned order passed by the learned CAT and submits that the aforesaid amount was deposited in the year 2015 consequent upon the department pressurising the respondent herein to deposit the said amount on the ground that there was embezzlement by the respondent. It has been submitted by him that subsequently, a charge-sheet was issued on 15.06.2018 for alleged embezzlement only for an amount of Rs.4,860/- and after completion of the enquiry, the respondent was removed from service, as against which, an appeal is pending consideration, and the charge-sheet was issued only in respect of Rs.4,860/-, the petitioners cannot claim that respondent had allegedly embezzled a sum of Rs.17,40,000/- and therefore, the writ petitioners have got no right to retain the money, as the same has resulted in unjust enrichment to the Union of India. As such, the writ petition is liable to be dismissed with cost.

5. We have heard learned counsel appearing for the parties, their rival submissions and perused the record with utmost circumspection.

6. It is apparent on record that the respondent had deposited a sum of Rs.17,00,000/- on 10.02.2015 and an amount of Rs.40,000/-on some other date and the charge-sheet was issued to him and he was terminated from services on 31.03.2021, against which, departmental appeal is pending consideration. It is not in dispute that an amount of Rs.17,40,000/- was not the subject matter of charge-sheet issued to him.

7. The question for consideration would be whether the jurisdiction of the Tribunal under Section 19 of the Act of 1985 was invokable for refund of subject

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amount and is covered by the “service matters” as defined in Section 3(q) of the Act of 1985.

8. Relevant clauses of the Act of 1985 extracted as follows for easy reference :

“3. Definitions.-In this Act, unless the context otherwise requires,--

x x x

x x x

(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects--

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.-(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court [***] in relation to--

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning--

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of

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any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

Explanation.--For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

19. Applications to Tribunals.-(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.-- For the purposes of this sub-section, order means an order made--

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation [or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) [in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government].

[(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.]

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

9. A careful reading of the provisions would show that the jurisdiction of Central Administrative Tribunal is limited to deal with the service matters as defined in Section 3(q) of the Act of 1985. Admittedly, the dispute was not in relation to Section 3(q)(i), 3(q)(ii), 3(q)(iii) & 3(q)(iv) and the question arise whether

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refund of money would be covered with Section 3(q)(v) of the Act of 1985 is in relation to “any other matter whatsoever”.

10. It is not in dispute that the respondent herein was not claiming the service benefits which he was entitled and the petitioners have not extended to him on account of service, which he has been performed while in service as a Post Master.

11. The term “any other matter whatsoever” under Section 3(q)(v) of the Act of 1985 would include incidental and ancillary matters such as selection processes, like short listing, interview, etc. and it may even relating to recruitment fall within domain of Administrative Tribunal and the “conditions of service” will mean all those conditions which regulate the holding of post by a person from the time of his appointment and will also cover matters which may arise after retirement. But by no stretch of imagination, it will cover refund of the amount which the Government servant has deposited, if any, having caused loss to the Government. Therefore, it would not be covered under the meaning of Section 3(q)(v) of the Act of 1985 and by virtue of Section 3(q)(v) read with Sections 14 and 19 of the Act of 1985, the Central Administrative Tribunal will have no jurisdiction to entertain the dispute in relation to refund of the amount alleged claimed by respondent.

12. Considering the matter from another angle, it is quite vivid that the refund of money, if it is a wrongly deposited under threat and coercion, the remedy of the Government servant would be to recover the amount by invoking the jurisdiction of the Civil Court within the period of limitation provided for the same. In the instant case, an amount of Rs.17,40,000/- was admittedly deposited on 05.02.2015 as per own showing of the respondent and the original application was filed before the learned CAT on 19.09.2018, i.e., after a period of three years from the date of deposit. As such, prima facie, the claim for refund of money was also barred by limitation and the Court must take cognizance of limitation by virtue of Section 3(1) of the Limitation Act, 1963 (hereinafter referred to as ‘Act of 1963’).

13. Consequently, it is held that the refund of money, which the respondent herein has allegedly deposited Rs.17,00,000/- on 10. 02.2015 and Rs.40,000/- on same date and he had filed an original application on 19.09.2018 would not fall within the meaning of service matter as defined under Section 3(q)(v) of the Act of 1985. Accordingly, by virtue of the provisions contained in Sections 14 and 19 of the Act of 1985, the Tribunal had no jurisdiction to entertain and grant refund of money to the respondent herein and more particularly the appropriate forum is the Civil Court, if any, for refund of such money.

14. As a fallout and consequence of the above legal analysis, impugned order dated 21.11.2019 passed by the learned CAT in Original Application No.203/01141/2018 is set aside and the original application is hereby dismissed. However, the respondent is at liberty to invoke the jurisdiction of the Civil Court,

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if any, in accordance with law. However, it is made clear that this Court has not made any opinion on the merits of the matter; including on limitation and observation made in this order is only for the purpose of adjudication of this writ petition.

15. The writ petition is allowed to the extent indicated hereinabove reserving the liberty in favour of the respondent to invoke jurisdiction of the Civil Court for redressal of his grievances, if so advised.

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