

(2021) 05 DEL CK 0078

In the Delhi High Court

Case No : Civil Writ Petition No. 3583 Of 2021, Civil Miscellaneous No. 10856 Of 2021

Union Of India

APPELLANT

Vs

Chikkam Vijay Mohan

RESPONDENT

Date of Decision : 11-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Civil Services (Conduct) Rules, 1964 — Rule 2(b)
Debt Recovery Tribunal (Procedure For Appointment As Presiding Officer Of The Tribunal) Rules, 1998 — Rule 3, 4, 5, 7, 8
Administrative Tribunal Act, 1985 — Section 14
Recovery of Debts due to Banks and Financial Institutions Act, 1993 — Section 4, 4(1), 6, 15, 15(1), 15(2), 15(3)

Citation : (2021) 05 DEL CK 0078

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Ravi Prakash, Shahanullah, Gurtejpal Singh, G.Tushar Rao, Hitendra Nath Rath, Mayank Sharma

Final Decision : Allowed

Judgement

Amit Bansal, J

1. The petition impugns the order dated 18th March, 2020 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi in OA

No.100/538/2020 preferred by the respondent. Vide the said order, interim relief has been granted to the respondent and the respondent has been

directed to be continued in service as Presiding Officer, Debt Recovery Tribunal (DRT), Nagpur. The present petition has been filed by the

petitioners, who were the respondents before CAT.

2. The respondent herein was a member of the Judicial Service of the State of

Andhra Pradesh. Vide notification dated 24th October, 2016 under Section 4(1) read with Section 6 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (DRT Act), the respondent was appointed as Presiding Officer of DRT, Nagpur. The respondent, vide order dated 29th June, 2017 was recalled by High Court of Andhra Pradesh. The respondent challenged the said order of the High Court before the Supreme Court, whereby an interim order dated 28th July, 2017, the order of recall was stayed. Though on the High Court of Andhra Pradesh having recalled the respondent, the Ministry of Finance, vide order dated 12th July, 2017 had relived the respondent from the charge of Presiding Officer of DRT, but on interim stay being granted by the Supreme Court, the said relieving order was ordered to be kept in abeyance and accordingly a revised notification was issued on 8th August, 2017 and the respondent was allowed to continue in service.

3. The respondent, on attaining the age of superannuation of 60 years on 30th September, 2017, superannuated from the judicial service of State of Andhra Pradesh. The Ministry of Finance issued notification dated 11.03.2019 and directed that the respondent shall be entitled to remain in service till 20th October, 2021 when he completes 5 yearsâ?? service in the

4. In view of the fact that the Respondent had superannuated from the judicial service of Andhra Pradesh, the Supreme Court, vide order dated 5th February, 2020 disposed of the challenge made by the respondent to the recall order. On the said challenge before the Supreme Court being disposed of, the interim order also lapsed and the Ministry of Finance vide order dated 12th February, 2020 relieved the respondent from charge as Presiding Officer, DRT Nagpur.

5. Aggrieved therefrom, the respondent approached CAT by filing the present OA challenging the relieving order dated 12th February, 2020 from which the present petition arises. The said OA was contested by the petitioner herein by filing counter affidavit. An objection as to the jurisdiction of CAT to entertain the said OA was raised by the petitioner in the counter affidavit filed before CAT wherein reliance was placed upon the judgment of this Court in Union of India & Others vs. Shiv Charan Sharma (WPC No. 15754/2006 dated 26.04.2007).

6. Interim relief was granted to the Respondent by CAT vide the impugned order

that Respondent shall be continued in service. It was reasoned/observed by CAT (i) Whatever may have been the circumstances, in which Honâ??ble High Court of Delhi observed in Shiv Charan Sharmaâ??s case (supra), the facts remain that at a later stage, when matters of similar nature were filed before the Honâ??ble High Court, the writ petitions were returned, leaving it open to the parties to approach the Tribunal first; (ii) The respondents are not able to show any precedent from the Honâ??ble Supreme Court on this aspect; (iii) Batch of OAs filed before the Tribunal in relation to the service conditions of the members of DRT got transferred to the Honâ??ble Supreme Court and relief was granted therein and nowhere it was mentioned that the Tribunal does not have jurisdiction in such matters; (iv) No disciplinary proceedings were initiated nor any order of termination was issued when the Respondent was in service and hence he cannot be kept on hold or be relieved; (v) Petitioners themselves issued an order dated 11.03.2019, directing that the respondent shall remain in service till 20th October, 2021; (vi) The very basis for relieving the respondent on earlier occasion was the order of recall by the AP High Court and upon challenge made to the said order of recall before the Honâ??ble Supreme Court, the Honâ??ble Supreme Court observed that the High Court cannot recall the applicant.

7. Aggrieved by the said decision of CAT, the present writ petition has been filed by the petitioners. This petition came up before this Court on 19th March, 2021 when the contention of the Ld. ASG appearing on behalf of the Petitioner was noted that the presiding officers of DRT are appointed under provisions of DRT Act and their services are not governed by any of the Rules, to be subject matter for CAT to have jurisdiction. Placing reliance on Vijay Kumar Verma Vs. Union of India (2016) 233 DLT, it was stated that PO, DRT is not a civil post. Accordingly, notice was issued and the impugned order dated 18th March 2020 of CAT was stayed.

8. The counsel for the petitioner, Union of India has relied upon the judgment passed by a Division Bench of this Court in the case of Vijay Kumar Verma (supra). 4431 to contend that the Presiding Officer (P.O.) of a Debt Recovery Tribunal (DRT) is not a Government Servant in terms of Rule 2(b) of Central Civil Services (Conduct) Rules, 1964. In para 26 of the said judgment, it has been observed that during the statutory tenure as a P.O.,

DRT, the P.O. was not in any civil service and nor was he holding any civil post. Therefore, in terms of Section 14 of the Administrative Tribunal Act,

1985, CAT did not have jurisdiction in the present case.

9. It is contended on behalf of the senior counsel appearing on behalf of the respondent that the aforesaid judgment in the case of Vijay Kumar Verma

(supra) is distinguishable, as it has not considered various provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (DRT

Act). The senior counsel relies upon Section 4 and Section 15 of the DRT Act. Section 15(1) states that the P.O., DRT has to send his resignation to

the Central Government. Section 15(2) provides that the P.O., DRT shall not be removed from his office except by an order made by the Central

Government on the ground of proved misbehaviour or incapacity, after inquiry by a Judge of the High Court. Sub Section 3 of Section 15 provides that

the Central Government may, by Rules, regulate the procedure for investigation of misbehaviour or incapacity of the P.O., DRT. The senior counsel

also relies upon Rule 3 of the Debt Recovery Tribunal (Procedure for Appointment as Presiding Officer of the Tribunal) Rules, 1998, to show that the

appointment of the P.O. is made by the Central Government upon recommendation of a selection committee. He further relies upon Rules 4, 5, 7 and

8 of the Debt Recovery Tribunal (Procedure for Investigation of Misbehaviour or Incapacity of Presiding Officer) Rules, 2010. In terms of Rule 5, if

the Central Government is of the opinion that there are reasonable grounds for making inquiry into any misbehaviour or incapacity of a P.O, a

reference has to be made to the Chief Justice of India, requesting him to nominate a Judge of a High Court to conduct an inquiry. Reliance is placed

upon these Rules in support of the contention that in the entire procedure with regard to the investigation of misbehaviour or incapacity of P.O., DRT

the control is with the Central Government. Therefore, it cannot be said that the P.O. of a DRT would not be holder of a civil post under the Central

Government. It is further contended that if the Union of India did not have any control over the respondent then Union of India could not have issued

the relieving order to the respondent.

10. It was put to the senior counsel for the respondent that if the inquiry against the P.O. of a DRT is to be conducted by a Judge of the High Court,

would CAT still have jurisdiction in matters concerning the said inquiry. The senior counsel for the respondent fairly agrees that in such eventuality the jurisdiction would lie with the High Court and not with CAT, in view of the fact that High Court exercises jurisdiction over CAT under Article 226 of the Constitution of India. If that be so, it cannot be that depending upon the stage of inquiry, the jurisdiction would lie with CAT or with High Court. If post inquiry, the jurisdiction would be that of the High Court, it cannot be argued that pre inquiry, the jurisdiction would be that of CAT. There cannot be different forums depending upon different stages of disciplinary proceedings.

11. In the light of the discussion above, the P.O., DRT cannot be said to be holding a civil post under the Union and therefore, CAT did not have the jurisdiction to entertain the present O.A. In that view of the matter, the petition is allowed and the impugned order passed by CAT is set aside.

However, the respondent would be free to take any such remedies that may be available to him in law.