(2016) 05 CAL CK 0058

In the Calcutta High Court

Case No : W.P.C.T. No. 222 of 2015

Union of India APPELLANT

Vs

Nabin Chandra Mondal RESPONDENT

Date of Decision : 16-05-2016

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 3(q)

Citation : (2016) 3 CalHCN 91 : (2016) 4 LLN 343 : (2016) 5 WBLR 379

Hon'ble Judges : Nishita Mhatre and Tapash Mookherjee, JJ.

Bench : Division Bench

Advocate : Mr. Subir Sanyal and Mr. Sajal Kanti Bhattacharyya, Advocates, for the Petitioners; Mr. Malay Kumar Basu, Mr. Sarajit Sen and Mr. Sambhu Nath Sardar, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The decision of the Central Administrative Tribunal in M.A. 350/00395 of 2014 and O.A. 350/00689 of 2014 has been challenged in this petition. The petitioners had contested the maintainability of the original application before the Central Administrative Tribunal on the ground that the Respondent No.1 (hereinafter referred to as "Respondent") was not holding a civil post and therefore, was not entitled to approach the Central Administrative Tribunal. The Tribunal has not accepted this contention and has found that the original application is maintainable and has decided to hear it on merits.

2. The brief facts giving rise to the present petition are as follows:

The Respondent was engaged as a Project Scientist in the Institute of Radio Physics and Electronics under the Calcutta University. The Calcutta University and the Defence Research and Development Organisation (hereinafter referred to as "DRDO") entered into a joint venture in terms of a Memorandum of Understanding (for short "MoU") dated 30th August, 2006 and established the Centre for Millimeterwave Semiconductor Devices and Systems (hereinafter referred to as "CMSDS"). Although initially the joint venture was to continue for 3 years, it was extended till 31st March, 2014. A professor of the Calcutta University was appointed as Director of the CMSDS by the Governing Council of that organisation. The Respondent was engaged as a Research Scientist in the CMSDS initially for a period of 3 years. The appointment order was issued to the Respondent by the Director of the CMSDS. He was paid remuneration through the funds transferred by the DRDO to the Registrar, Calcutta University. The Respondent''s service with the CMSDS has been extended and he continues to be employed in the Centre.

3. The Respondent sought permanent appointment with the CMSDS. As that relief was not granted to him, he approached the Tribunal by filing an original application before it. Arguments were advanced on merits before the Tribunal till, as recorded by the Tribunal, at the final stage of hearing the issue of maintainability of the original application was raised by the petitioners.

4. The Tribunal, after considering the submissions of the respective parties before it, found that (i) the Respondent was discharging his duties in the CMSDS which was a joint venture project between DRDO and Calcutta University. The CMSDS had acquired the self-accounting status by an order issued by the Ministry of Defence, Government of India on 19th December, 2012 and was therefore not under the control of Calcutta University and neither was it governed by any MoU; (ii) CMSDS Centre in which the respondent sought absorption was to function as per the instructions of the DRDO Head-quarters. The budget of the Centre was controlled by the Directorate of Budget Finance and Accounts, DRDO Head-quarters; (iii) the Project Scientists of CMSDS were to be absorbed in the Centre; (iv) the Respondent rendered continuous service with the CMSDS till he was prevented by a letter dated 14th January, 2015 issued by the Director-in-Charge, CMSDS, DRDO; (v) the Respondent was continued in service beyond 8th May, 2013 as a Scientist-B, CMSDS and not as an employee of the Calcutta University by which date the CMSDS had acquired the self accounting status; (vi) since the respondent was seeking absorption in service with the CMSDS, his grievance would fall within the category of Section 14(1) of the Administrative Tribunals Act, 1985; and (vii) the civilian posts of CMSDS are controlled by the Central Services and Control Rules, 1985.

5. Mr. Subir Sanyal, the learned Counsel appearing for the petitioners, who are the DRDO, the Director of Research Centre Imarat, Hyderabad (hereinafter referred to as "RCI") and the Director of CMSDS, submitted that the Respondent was not holding a civil post and therefore was not entitled to invoke the jurisdiction of the Administrative Tribunal under the aforesaid Act. He submitted that the CMSDS which had initially been set up as a joint venture between the DRDO and the Calcutta University did not perform a sovereign function and was an independent body. He pointed out that though the MoU between the two organisations, i.e., DRDO and the Calcutta University was valid for 3 years initially when it was executed on 30th August, 2006, it was extended till 31st

March, 2014. According to the learned Counsel, the respondent was paid his remuneration by the Calcutta University and not by the Government of India. He submitted further that the appointment letter issued to the respondent clearly indicated that his appointment was made on a contractual basis and therefore, he could not be made permanent in service. The learned Counsel took us through the Defence Research Development Service Rules and the provisions of law which, according to him, amply demonstrate that the respondent was working in an organisation which was independent of the Government. He submitted that after the expiry of MoU in the year 2014, the CMSDS acquired an independent status and the DRDO had no control over it. He further submitted that the respondent was not a member of any All India Services nor was he a civilian appointed to any defence service or a post connected with the defence. He drew our attention to the fact that the CMSDS was neither controlled by the Union of India nor by any State Government. He further submitted that since the manpower for the CMSDS was drawn from two different sources, one being the Calcutta University, the employees of Calcutta University who were engaged in the CMSDS cannot be considered as holders of civil posts. Furthermore, according to him, since there were no sanctioned posts in the CMSDS, the question of regularisation involved in service in the Centre does not arise. Mr. Sanyal drew our attention to the fact that the appointing authority of the Respondent was the Director of the CMSDS and under the MoU, he was full time employee of the Centre. The learned Counsel further argued that the manpower recruitment, designation, pay-scale and average salary of the persons employed in the CMSDS were to be in consonance with the Norms prescribed by the University Grants Commission under the MoU. However, the scientists who were deputed by the DRDO had a different scale of pay and were entitled to benefits which were available to persons employed in the DRDO. The Government of India, according to the learned Counsel, had conveyed to the Director General of the DRDO by a letter dated 19th December, 2012 that the President of India had granted the self-accounting status to the CMSDS and that it would function as an independent entity under the RCI. He submitted that the RCI has nothing to do with the DRDO and therefore, the claim of the respondent that he was entitled to maintain the application under the Administrative Tribunals Act was erroneous.

6. Mr. Malay Kumar Basu, the learned Counsel appearing for the respondent, drew our attention to various documents which have been filed with the affidavit in opposition to substantiate his contention that the CMSDS was funded by the DRDO and had no independent existence. According to him if the Government of India does not provide funds for the CMSDS, it would have to close down its operations. He submits that after the CMSDS became a self-accounting unit of the DRDO, the Calcutta University had no role to play. All employees who had been taken from the Calcutta University thus became entitled to be considered as employees of the CMSDS which was an establishment of the Central Government. He further submitted by relying on the provisions of the Administrative Tribunals Act that the relief claimed by the respondent was in

respect of a "service matter" in an establishment which was dependent on the Central Government and/or the DRDO. Therefore, the Administrative Tribunal has jurisdiction to decide the respondent''s claim for regularisation.

7. The learned Counsel then drew our attention to the fact that the Government of India has recognised the CMSDS as a Laboratory/Unit functioning under the DRDO and performing research in various areas. He pointed out that the statements made in the affidavit filed by the petitioners in this Court were contrary to the statements made by the Minister of Defence in the Houses of Parliament. In reply to the submission of Mr. Sanyal that the Respondent ought to have approached this Court under Article 226 of the Constitution of India to redress his grievance, Mr. Basu pointed out the judgment in Awadhesh Singh v. Union of India & Ors reported in 2013 (2) CLJ (Cal) 522. The Special Bench of this Court dismissed the writ petitions which had been filed by Group D staff for regularisation/absorption and/or reinstatement or continuance in service of the Eastern Railways. The Court opined that the Central Administrative Tribunal would have jurisdiction to entertain such matters or indeed the Industrial Tribunal or the Labour Court.

8. While ascertaining whether an organisation falls within the purview of the Administrative Tribunal, it would be worthwhile to refer to certain Sections of the Act. Section 14 of the Act empowers the Central Administrative Tribunal to exercise jurisdiction in relation to recruitment to any All India Service or any civil service of the Union or a civil post under the Union or a post connected with the defence or the defence service being a post filled in by a civilian. Service matters pertaining to a person who is appointed to any defence service or a post connected with defence also fall within the ambit of the Act. Section 14(1)(b) which is relevant for our purpose reads as under:

S. 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) ... ...

(b) all service matter concerning ?

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

(ii) a person [not being a member of any 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 any corporation [or society] owned or controlled by the Government;

(c) ... ...

9. The expression "Service Matters" has been defined in Section 3(q) of the aforesaid Act and is defined as under:

(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;

10. Now, the issue regarding regularisation of an employee in service must be construed as a service matter in the light of the definition contained in Section 3(q) of the Act. Once it is found that the claim of the respondent is with regard to a service matter, it is necessary to ascertain whether the employer is covered by the provisions of the Act as mentioned in Section 14 of the said Act. There is no dispute that the respondent is working in the CMSDS which is an organisation set up by the DRDO and the Calcutta University as a joint venture. It was established under a MoU dated 30th August, 2006. On the expiry of the MoU, the Centre became a self-accounting unit of the DRDO. There are documents on record to establish this fact. Once it is established that the Centre has become a self-accounting unit of the DRDO it is obvious that the DRDO has control over the funds which are to be released to the Centre. The DRDO obviously gets its fund from the Union of India and consequently the funds available to the CMSDS are all from the Union of India. Moreover, there is no dispute that employees of the DRDO who have been absorbed in the CMSDS are employees of the Union of India. There is no control of the Calcutta University over the employees sourced from the Calcutta University who were engaged in the CMSDS after the Centre became a self-accounting unit. The employees of the CMSDS are governed by the Defence Research and Development Service Rules, 1975. It is not the case of the petitioners that those employees who were earlier engaged by the CMSDS had different rules of employment applicable to them, depending on where they were originally appointed. Moreover, under the MoU all employees of the CMSDS were to be governed by the Central Civil Services (Conduct) Rules, 1964 and the

Central Civil Services (Classification, Control and Appeal) Rules, 1965.

11. Therefore, in our opinion, the Tribunal has not erred in concluding that the CMSDS is an establishment governed by the Administrative Tribunals Act and that the claim of the Respondent for regularisation is a "service matter" of a person appointed to a post connected with defence. There is no dispute that the work conducted by the CMSDS is at the behest of the DRDO. Therefore, the petitioners have taken an unsustainable stand that the Central Administrative Tribunal had no jurisdiction to entertain the application.

12. The writ petition is dismissed with costs quantified at Rs. 10,000/- .

13. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.

Mookherjee, J. - I agree.