

(1991) 01 GAU CK 0012
In the Gauhati High Court
Case No : Civil Revision No. 283 of 1990

Union of India

APPELLANT

Vs

Sukesh Chandra Chakraborty

RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(1), 14(1), 29, 29

Citation : (1991) 1 GLJ 136

Hon'ble Judges : R.K.Manisana Singh, J

Bench : Single Bench

Advocate : N.Dhar, B.K.Sharma, A.K.Roy, Advocates appearing for Parties

Judgement

1. This revision petition arises from an order of the District Judge Karimganj made on 20.7.90 rejecting the prayer for transferring the appeal pending before him to the Central Administrative Tribunal (Railway Tribunal).

2. The plaintiff instituted M. S. No. 10 of 1983 against the Union of India and others in the Court of the Assistant District Judge Karimganj for recovery of a sum of Rs, 14,500/ as his gratuity. The case of the plaintiff is that he was a railway employee and retired on 1.7.80. His gratuity had been sanctioned by the authority, but the defendants had refused to pay the same. The Assistant District Judge decreed the suit by a decree dated 5.3.86. Being aggrieved by the decree, the Union of India and others filed Money Appeal No. 3 of 1986 before the District Judge Karimganj. The appeal is pending before the District Judge after remand by the High Court under its order dated 4.10.90 made in Second Appeal No. 145 of 1989. After the remand, the Union of India filed an application for transferring the appeal to the Central Administrative Tribunal on the ground that the subject in dispute is within the jurisdiction of the Central Administrative Tribunal. The District Judge rejected the prayer, as already stated, and fixed the case for hearing. Hence this appeal.

3. The question which arises for consideration is whether the subject matter of

dispute is within the jurisdiction of the Central Administrative Tribunal. The Central Administrative Tribunal Act, 1985, for short "the Act", came into force on and from 1.11.85. Subsection (1) of section 14 of the Act, provides, inter alia, that save as otherwise provided in the Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, power and authority exercisable immediately before that day by all Courts (except the Supreme Court under Article 136 of the Constitution) in relation to all "service matters" concerning a person [not being a member of an All India Service or a person referred to in clause (c) of subsection (1)] appointed to any civil service of the Union or any civil post under the Union. Clause (c) is not relevant in the present case. The expression "service matter" is defined in section 3 (q) of the Act to include "remuneration (including allowances, pension) and other retirement benefits". The dispute is about the nonpayment of gratuity for the reasons stated in the plaint. The case of the plaintiff is that gratuity had been sanctioned after his retirement. Therefore, I am of the view that gratuity is retirement benefit/pension under Rule 2302 (10) of the Railway Pension Rules, and as such, the dispute is within the meaning of "service matter". In such a situation, the subject matter in dispute is within the jurisdiction of the Tribunal.

4. The next question which arises for consideration is whether the appeal pending before the District Judge shall be transferred to the Central Administrative Tribunal. Mr. B.K. Sharma, the learned counsel for the petitioner has contended that under section 29 read with section 33 of the Act, appeal pending before the District Judge Kariroganj is to be transferred to the Administrative Tribunal. Mr. N. Dhar, the learned counsel for the respondent, has contended that section 29 does not contemplate an appeal pending before the District Judge and, therefore, the appeal is not to be transferred.

5. Sub section (1) of section 29 provides:

Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereof is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal :

Provided that nothing in this subsection shall apply to any appeal pending as aforesaid before a High Court or the Supreme Court." (Emphasis added)

6. Section 33 reads

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

7. The next question then is Whether an appeal pending before any Court other than a High Court and the Supreme Court is included under section 29. The words "suit" and "expression" have been used in the main section, but the word

"appeal" is there. The clause "any appeal pending as aforesaid before a High Court or the Supreme Court" is of great importance. Ordinarily, the proviso to a section is intended to take out a part of the main section for the special treatment. But in some enactments, the proviso may be so embodied in the main section itself to become an integral part of it. However, the golden rule is to read the whole section inclusive of the proviso for a harmonious construction. But the phrase "any appeal pending as aforesaid" occurring in the proviso

qualifies the main enactment and the proviso is embodied in the main section itself to become an integral part of it to include any appeal pending before any Court other than the appeal pending before the Supreme Court or a High Court. That apart, the appeal is nothing but a continuation of a suit. In that view of the matter, the appeal is to be transferred.

8. The last contention of Mr. Dhar is that the suit was decreed in the original Court on 5.3.86 after the commencement of the Act. The Union of India did not raise the plea as to the jurisdiction when the suit was pending before the trial Court and, therefore, the plea cannot be entertained. It is settled that where the Court is inherently lacking in jurisdiction, the plea as to jurisdiction may be raised at any stage even if it was not raised in the trial Court. If any authority, I may refer to a decision of the Supreme Court in *Chandrika vs. Bhaiyalal*. AIR 1973 SC 2391. In that view of the matter, the contention of Mr. Dhar cannot be accepted.

9. In the result, the petition is allowed, and it is ordered and directed that the learned District Judge Cachar shall transfer the appeal in question to the concerned Administrative Tribunal.