

(2016) 06 GUJ CK 0070

In the Gujarat High Court

Case No : Special Civil Application No. 4528 of 2016

Yuvrajsingh Dilipsingh Zala

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 6
Constitution of India, 1950 — Article 226

Citation : (2017) 1 GLR 730

Hon'ble Judges : Mr. M.R. Shah and Mr. A.S. Supehia, JJ.

Bench : Division Bench

Advocate : Mr. Anand B. Gogia, Mr. B.B. Gogia and Ms. Muskan A. Gogia,
Advocates, for the Petitioners No. 1; Notice Served, for the Respondent Nos. 1 to 3

Final Decision : Dismissed

Judgement

Mr. M.R. Shah, J. (Oral) - By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order and/or direction to quash and set aside the impugned judgement and order passed by the learned Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as "the learned tribunal" for short), in O.A. No.120 of 2015, by which the learned tribunal has returned the Original Application to the petitioner herein - original applicant to present it before the appropriate Court/ Forum having jurisdiction.

2. Facts leading to the present Special Civil Application in nutshell are as under :-

2.1. That applications were invited by the Western Railway Recruitment Cell vide Employment Notice No.2 of 2012 (Open Market) dated 27/9/2012 inviting applications from the eligible candidates of India for filling up 2249 posts in Pay Band-I of Rs. 5200-20200 with Grade Pay of Rs. 1800 in various regions, divisions and workshops of the Western Railway.

2.2. In response to the said employment notice dated 27/9/2012, the petitioner herein - original applicant submitted his application.

2.3. That the petitioner herein appeared in the Written Examination held on 27/10/2013 at Gurukul Vidhyalaya, Vadodara pursuant to the call letter issued by the respondent. He also appeared before the Authority/Committee on 25/3/2008 at the appointed day and place.

2.4. According to the petitioner, thereafter and after verification of the documents, he was sent to the Railway Health Unit for medical examination, however, thereafter the original applicant - petitioner herein received letter/communication dated 2/7/2008 from the Railway Recruitment Cell informing that since no vacancies were notified for the category of OH-OA (Orthographically Handicapped - One Arm Affected) in the said employment notice dated 27/9/2012, he is not found suitable for any post against the same.

2.5. Being aggrieved by the same, the petitioner submitted an appeal before the Chief Medical Director on 21/7/2008, which came to be rejected vide order dated September, 2008 stating that there is no ground for re-medical examination.

2.6. Feeling aggrieved and dissatisfied with the aforesaid two orders dated 2/7/2008 and subsequent communication of the Chief Medical Director, petitioner filed the aforesaid Original Application before the learned tribunal.

2.7. A preliminary objection was raised with respect to maintainability of the Original Application before the learned tribunal on the ground that as per clause 11 of the employment notice dated 27/9/2012, with respect to any dispute, jurisdiction will be with Central Administrative Tribunal, Mumbai and High Court, Mumbai only.

2.8. Relying upon Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as "the Rules" for convenience), it was submitted on behalf of the original applicant-petitioner herein that as the cause of action has arisen within the jurisdiction of the Central Administrative Tribunal, Ahmedabad Bench, Original Application would be maintainable.

2.9. Accepting the preliminary objection raised by the respondents, vide impugned judgement and order the learned tribunal has returned the Original Application to the applicant-petitioner herein to present it before the appropriate forum having territorial jurisdiction and jurisdiction of the subject matter.

2.10. Feeling aggrieved and dissatisfied with the impugned order passed by the learned tribunal, original applicant has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Mr. Gogia, learned advocate appearing on behalf of the petitioner has vehemently submitted that in the facts and circumstances of the case, the learned tribunal has materially erred in not entertaining and not considering the Original Application on merits and has materially erred in returning the Original

Application to the petitioner to present it before the appropriate forum having territorial jurisdiction.

3.1. Relying upon Rule 6 of the Rules, Mr. Gogia, learned advocate appearing on behalf of the petitioner has vehemently submitted that when the cause of action/part cause of action has arisen within the territorial jurisdiction of the Central Administrative Tribunal, Ahmedabad Bench, the learned tribunal ought to have entertained and considered the Original Application on merits. It is submitted that as per Rule 6, an application can be filed by an applicant with the registrar of the Bench within whose jurisdiction the cause of action, whole or in part, has arisen. It is submitted that the petitioner applied for the post in question within the territorial jurisdiction of the bench and even the petitioner was called for the interview at Vadodara and he appeared before the Committee at Vadodara, it can be said that the cause of action has arisen within the territorial jurisdiction of the Bench and therefore, the learned tribunal ought to have entertained and considered the application on merits.

3.2. Mr. Gogia, learned advocate appearing on behalf of the petitioner has further submitted that even otherwise in light of the decision of the coordinate bench dated 14/8/2015 in O.A. No.418 of 2008, by which similar contention of the railway authority was rejected and though the said decision was pressed into service by the petitioner and the learned tribunal was bound by the said decision of the coordinate bench and therefore, the learned tribunal ought to have referred the matter to the larger bench.

3.3. Mr. Gogia, learned advocate appearing on behalf of the petitioner has further submitted that even otherwise, considering sections 19 and 20 of the Central Administrative Tribunal Act, the Original Application will be transferred to the forum having jurisdiction and therefore, instead of returning the Original Application to the applicant-petitioner herein to present it before the appropriate forum, the learned tribunal ought to have transferred the said Original Application to the forum having jurisdiction. Making above submissions, it is requested to admit/allow the present petition.

4. Heard Mr. Gogia, learned advocate appearing on behalf of the petitioner herein - original applicant at length.

4.1. At the outset, it is required to be noted and it is not in dispute that the petitioner applied for the post in question pursuant to the employment notice dated 27/9/2012. The petitioner accepted all the terms and conditions mentioned in the said employment notice including clause 11 of the aforesaid notice and applied for the post in question. Clause 11 of the employment notice reads as under :-

"11. Legal Disputes : For any legal dispute, the jurisdiction will be at Central Administrative Tribunal, Mumbai and High Court, Mumbai only."

Thus, as per the employment notice, more particularly clause 11, if for any legal

dispute the jurisdiction will be at Central Administrative Tribunal, Mumbai and High Court, Mumbai only. Therefore, once the petitioner herein applied for the post in question pursuant to the said employment notice and accepted all the terms and conditions mentioned in the employment notice including clause 11, thereafter it will not be open for the petitioner to contend that the petitioner still can approach any other forum other than the forum mentioned in clause 11 of the employment notice. As such the petitioner is bound by the terms and conditions mentioned in the said employment notice pursuant to which he applied for the post in question. It is an admitted position that the petitioner never challenged the terms and conditions of the employment notice more particularly clause 11 of the employment notice and therefore, now the petitioner cannot contend that despite clause 11 of the employment notice, Central Administrative Tribunal, Ahmedabad Bench, would have jurisdiction.

4.2. Now, so far as the submission on behalf of the petitioner that in light of the decision of the Central Administrative Tribunal, Ahmedabad Bench dated 14/8/2015 in O.A. No.415 of 2008, by which the similar contention of the railway authority was rejected by the tribunal and therefore, the tribunal being coordinate bench was bound by the same and if not agreeable, the matter could be referred to the larger bench, is concerned, it is required to be noted that as such by passing the impugned judgement and order, the learned tribunal has relied upon decision of the Patna High Court and Karnataka High Court Bench, confirmed by the High Court of Karnataka. Therefore, as such the decision of the Karnataka High Court was also binding upon the learned tribunal.

4.3. Even otherwise, we have considered the issue involved in the petition on merits. There is a logic behind clause 11 in the employment notice. As such, it cannot be disputed that both, Central Administrative Tribunal, Ahmedabad Bench and Central Administrative Tribunal, Mumbai Bench have jurisdiction to decide and consider the dispute between the parties with respect to the appointment arising out of employment notice dated 27/9/2012. However, in view of the specific ouster clause No.11 in the employment notice dated 27/9/2012, the question posed for consideration is, whether the Original Application before the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad is required to be entertained or not and/or the petitioner is required to be relegated to approach the appropriate forum namely Central Administrative Tribunal, Mumbai Bench and/or High Court, Mumbai in view of the specific ouster clause 11 of the employment notice dated 27/9/2012 restricting territorial jurisdiction at the Central Administrative Tribunal, Mumbai Bench and High Court, Mumbai only.

4.4. In the case of ABC Laminart Pvt. Ltd. v. A.P. Agencies, Salem reported in (1989) 2 SCC 163, the Hon''ble Supreme Court has considered the question with respect to ouster of jurisdiction in a case where more than one Court having jurisdiction and the contract to vest jurisdiction in one of them and the Hon''ble Supreme Court has held that such a contract and ouster of jurisdiction is not against public policy. It is held by the Hon''ble Supreme Court that there may be

two or more competent Courts, which can entertain a suit consequent upon a part of cause of action having arisen there within, if the parties to the contract agreed to vest jurisdiction in one such court to try dispute which might arise between themselves the agreement would be valid. In para 21 of the said decision of the Hon"ble Supreme Court has observed as under :

21. From the foregoing decisions it can be reasonably deducted that where such an, ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other Courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like "along" "only" "exclusive" and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim *expressio unius est exclusio alterius* - expression of one is the exclusion of another may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention not to exclude all others from its operation may in such cases be inferred. It has therefore, to be properly construed.

4.5. Again the same proposition of law has been pronounced by the Hon"ble Supreme Court in the case of *Rajasthan State Electricity Board v. Universal Petrol Chemicals Limited* reported in (2009) 3 SCC 107.

4.6. Considering the fact that it was a centralised recruitment and the applications were invited from all over the country, with a view to see that there may not be different proceedings in different Courts/High Courts, the aforesaid clause 11 is provided conferring the jurisdiction only in the tribunal/Court in Bombay. Therefore, it appears that there is valid reason to provide ouster clause 11.

4.7. Now, so far as the reliance placed upon Rule 6 of the Rules is concerned, it is required to be noted that even if part cause of action might have arisen within the territorial jurisdiction of the Central Administrative Tribunal, Ahmedabad Bench, still the question is whether in light of the ouster clause 11 of the employment notice referred to herein above, any legal proceedings arising out of and/or in respect to the employment notice, the jurisdiction would vest only with the Central Administrative Tribunal, Mumbai Bench or High Court, Mumbai only.

5. In view of the above and for the reasons stated above, it cannot be said that the learned tribunal has committed any error in returning the Original Application to the petitioner herein to present it before the appropriate forum/court having jurisdiction and jurisdiction over the dispute. We see no reason to interfere with the same. As such, we are in complete agreement with the view taken by the learned tribunal. Under the circumstances, present petition deserves to be dismissed and is accordingly dismissed.