

M. B. Majumdar

Vs

Union of India

Writ Petition (Civil) No. 960 of 1987

(M. M. Punchhi, J. S. Verma, K. Jayachandra Reddy JJ)

22.08.1990

JUDGMENT

J. S. VERMA, J. -

1. This writ petition under Article 32 of the Constitution by a Judicial Member of the Central Administrative Tribunal purports to be a sequel of this Court's decision in *S. P. Sampath Kumar v. Union of India* ((1987) 1 SCC 124 : (1987) 2 ATC 82). The petitioner contends that the decision in *Sampath Kumar* case equates the Central Administrative Tribunal with the High Court and therefore, its Chairman has to be equated with the Chief Justice of a High Court and the Vice-Chairmen and Members must be equated with the sitting Judges of the High Court in all respects. It is contended that while the Vice-Chairmen have been equated with sitting Judges of the High Court, the Members have not been so equated in their pay and other conditions of service. It is further contended that a distinction has been made in the conditions of service, particularly the pay and age of superannuation between the Vice-Chairmen and the Members, which is arbitrary and therefore, the Members also should be given the same pay as the Vice-Chairmen and their age of superannuation should also be the same i.e. 65 years as that of the Vice-Chairmen. It is urged that the Judicial functions discharged by the Vice-Chairmen and the Members of the Central Administrative Tribunal are the same and therefore, the principle of "equal pay for equal work" applies. Violation of Article 14 of the Constitution is alleged on this basis.

2. Part XIV-A containing Articles 323-A and 323-B were inserted in the Constitution of India by the Constitution (Forty-second Amendment) Act, 1976 enabling the setting up of Administrative Tribunals and Tribunals for other matters by legislative enactments.

3. The Central Administrative Tribunal has been constituted under Section 4 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') with a Chairman, Vice-Chairmen and Members - judicial and administrative. The qualifications for appointment of Chairman, Vice-Chairmen or other Members are prescribed by Section 6 of the Act. Section 7 provides that the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the appropriate government may, by notification, authorise in this behalf, shall act as the Chairman in the event of any vacancy in the office of the Chairman for any reason whatsoever, or when the Chairman is unable to discharge his function for any reason. Section 8 prescribes the term of office of the Chairman, Vice-Chairman or other Member as five years from the date on which he enters upon his office with eligibility for re-appointment for another term of five years provided that no Chairman or Vice-Chairman shall hold the office after he has attained the age of 65 years and any other Member, the age of 62 years. Section 10 of the Act provides for the salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairmen and other Members to be such as

may be prescribed by the Central Government. Section 17 confers on the Tribunal the same jurisdiction. Powers and authority in respect of contempt of itself as a High Court has under the Contempt of Courts Act, 1971. But for this specific provision, the Tribunal would not have the power of the High Court in this behalf. Section 18 provides for distribution of business amongst the benches of the Tribunal. Section 28 excludes the jurisdiction of courts except the Supreme Court or any Industrial Tribunal, Labour Court or other authority, constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force in relation to matters over which the Tribunal has been conferred jurisdiction. Section 35 contains the rule-making power of the Central Government while Section 36 gives power to the appropriate government to make rules to carry out the provisions of the Act and particularly, for the matters specified therein. The specified purposes for which the Central Government can make rules specified in Section 35 (2)(c) include the salaries and allowances payable to, and the other terms and conditions of the Chairman, Vice-Chairmen and other Members. The rules framed under the Act are to be laid before the Parliament. It is not necessary to give further details of the Administrative Tribunals Act, 1985, the provisions of which were considered at length in Sampath Kumar case ((1987) 1 SCC 124 : (1987) 2 ATC 82) and now stand amended in accordance with the observations of this Court in that decision.

4. The Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1985 (hereinafter referred to as 'the Rules') were framed in exercise of the powers conferred by Section 35 (2)(c) of the Administrative Tribunals Act, 1985. Rule 3 therein, as it now exists, specifies Rs. 9000 p.m. as the pay of the Chairman; Rs. 8000 p.m. as the pay of the Vice-Chairman, and the pay scale of Rs. 7300-100-7600 per mensem for a Member. As earlier indicated, the age of superannuation prescribed in Section 8 of the Act for the Chairman and Vice-Chairman is 65 years and for any other Member, 62 years. The petitioner's grievance is that the pay of any other Member of the Tribunal and his age of superannuation should be Rs. 8000 p.m. and 65 years respectively as in the case of Vice-Chairmen, since the Members and Vice-Chairmen discharge identical judicial functions. The question is : whether the principle of "equal pay for equal work", relied on by the petitioner, is applicable to this situation or there is any hostile discrimination against the Members of the Central Administrative Tribunal, as alleged by the petitioner. If the petitioner's contention be correct, then would arise the question of relief which can be granted. The prayer made in this petition is to direct an amendment in the Administrative Tribunals Act, 1985 and the rules framed thereunder, to prescribe the same pay and age of superannuation for the Members as in the case of the Vice-Chairman.

5. The argument of Shri B. A. Masodkar and Shri G. L. Sanghi in support of the petition is that the Members and the Vice-Chairman of the Central Administrative Tribunal belong to the same class since they discharge identical judicial functions and there is no rational nexus of the classification made between them with the object sought to be achieved. It is urged that the Tribunal is one entity comprising of the Chairman, Vice-Chairmen and Members which has been substituted for the High Court in respect of the Jurisdiction conferred on the Tribunal and therefore, there is no justification for discriminating between them in the matter of pay and other conditions of service.

6. In the counter-affidavit of the respondent, it has been stated that all the functions of the Vice-Chairman and the Members are not same inasmuch as the Vice-Chairman, in addition to filling the casual vacancy in the office of the Chairman, also discharges certain administrative functions entrusted to him by the Chairman while no such administrative function is discharged by any Member. It is stated that the office of the Vice-Chairman and any other Member cannot, therefore, be treated as the same or in one class. Shri V. C. Mahajan, learned Counsel for the respondent

contended that Sampath Kumar case ((1987) 1 SCC 124 : (1987) 2 ATC 82) does not lend any support to the petitioner's contention and in this context the observations made therein actually negative the petitioner's stand. It was also urged that the relief claimed for a direction to amend the aforesaid Act and the rules framed thereunder cannot be granted, which alone is the relief claimed in the writ petition.

7. It was rightly not disputed by learned counsel for the petitioner that the relief specifically claimed in the petition of a direction to amend the Administrative Tribunals Act, 1985 and the rules framed thereunder to equate the Members of the Tribunal with the Vice-Chairman in the matter of pay and age of superannuation cannot be granted. For this reason, it was urged on behalf of the petitioner that the relief may be suitably moulded to grant the same benefit for the Members of the Tribunal if the allegation of hostile discrimination is accepted. It is not necessary for us to deal further with this aspect since we have no doubt that the plea of violation of Article 14 of the Constitution, raised by the petitioner, is untenable and must fail.

8. The sheet-anchor of petitioner's case is the decision of this Court in Sampath Kumar case ((1987) 1 SCC 124 : (1987) 2 ATC 82). We will presently show that the decision in Sampath Kumar case ((1987) 1 SCC 124 : (1987) 2 ATC 82) does not support the petitioner's claim in this petition. It is significant to note that the age of superannuation of High Court Judges is 62 years while that of the Chairman and Vice-Chairman of the Tribunal is 65 years and of any other Member is 62 years. No attempt has been made on behalf of the petitioner to justify the fixation of age of superannuation of the Chairman and the Vice-Chairman as 65 years if they are to be equated with the Chief Justice and sitting Judges of the High Court who retire at the age of 62 years only. In respect of the age of superannuation, the Members of the Tribunal are at par with the Chief Justice and the Judges of the High Court. Obviously, it is for this reason that an attempt was made to claim the equality with the Vice-Chairman of the Tribunal who gets Rs. 8000 p.m. as pay like a High Court Judge but retires at the higher age of 65 years. This disparity itself indicates that the Chairman, Vice-Chairmen and Members of the Tribunal are not equated with the Chief Justice and Judges of the High Court for all purposes which, in substance, is the foundation of the petition.

9. The contention of Shri B. A. Masodkar, learned counsel for the petitioner, is that the Administrative Tribunal being a substitute for the High Court for adjudicating disputes relating to service matters the Members of the Tribunal should be equated with the High Court Judges for all purposes including their pay and age of superannuation. He contends that the lower pay and age of superannuation of the Members of the Tribunal is discriminatory and violates Article 14 of the Constitution. His argument is that the Members should be equated in this behalf with the Vice-Chairman whose pay is equal to that of a puisne Judge of the High Court. However, no attempt was made to justify on this reasoning the higher age of superannuation of the Vice-Chairman being 65 years against 62 years of a High Court Judge. Shri G. L. Sanghi supported the petition and contended that the Tribunal being one body, the persons constituting it cannot be bifurcated into separate categories and the pay and age of superannuation of all of them should be the same. He adds that the Members and the Vice-Chairman should have the same pay and age of superannuation while the slightly higher pay of the Chairman was justified as in the case of the Chief Justice vis-a-vis the puisne Judges of the High Courts.

10. In substance, the contention of Shri. Masodkar is for equating the Members of the Tribunal with puisne Judges of the High Courts in the matter of pay on the assumption that the Tribunal is equated with the High Court and with the Vice-Chairman of the Tribunal in the matter of age of superannuation on the basis of equal work. The contention of Shri G. L. Sanghi is slightly different.

He argues that the Tribunal being one entity there is no reason to treat its Members differently when all of them perform the same judicial function, the only difference being that the Chairman has additional administrative functions to discharge.

11. Part XIV-A of the Constitution of India containing Articles 323-A and 323-B provides for the constitution of administrative and other tribunals for the purpose of adjudication or trial by these tribunals of disputes relating to matters specified therein. Article 323-A deals with administrative tribunals to be constituted for adjudication of disputes with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the union or of any State or of any local or other specified authority. The law enacted by the Parliament for this purpose may provide for all matters relating to the constitution and functions of the Administrative Tribunals as well as for exclusion of jurisdiction of all courts, except the jurisdiction of the Supreme Court of India, with respect to the matters required to be adjudicated by the Administrative Tribunal. It is for this purpose that the Administrative Tribunals Act, 1985 has been enacted and Section 28 therein excludes the jurisdiction of all courts except the Supreme Court or any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force in relation to matters which the Administrative Tribunal is empowered to adjudicate. The Act also provides for transfer of all pending cases as provided in Section 29 of the Act.

12. In the first place, the assumption in the argument on behalf of the petitioner that the Tribunal is equated with the High Court is fallacious. It is not only the service matters required earlier to be adjudicated by the High Court but also those by the subordinate courts which are now to be adjudicated by the Administrative Tribunals. That apart, Article 323-A itself clearly contemplates that the Administrative Tribunals constituted thereunder are distinct from the High Courts and it is the law enacted by the Parliament providing for establishment of an Administrative Tribunal which is to provide for all matter relating to the jurisdiction, powers, procedure and all supplemental, incidental and consequential matters relating to the Administrative Tribunal. It is, therefore, the law enacted by the Parliament constituting the Administrative Tribunal which has to be first seen for the purpose of ascertaining the real nature and status of the Tribunal and the persons constituting it. There is no ambiguity in the provisions of the Administrative Tribunals Act, 1985 and the exact status and service conditions of the Chairman, Vice-Chairman and Members of the Administrative Tribunal together with the qualifications for appointment to these offices have been clearly spelt out in the Act. This Act provides expressly for the term of office of the Chairman, Vice-Chairman and Members in Section 8 and for the salaries and allowances and other terms and conditions of service by Section 10 read with Section 35 (2)(c) and the rules framed thereunder. The Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 1985 have been framed in exercise of the powers conferred by Section 35(2)(c) to provide for the salaries and allowances etc. The scheme of the Act and the rules framed thereunder is quite clear and their enactment is in the manner laid down in Article 323-A of the Constitution. The term of office and the age of superannuation, pay and allowances and other service conditions of the Chairman, Vice-Chairman and Members are specifically provided in this manner and from the scheme it is evident that the Chairman, Vice-Chairman and Members are not treated as one class for this purpose by the every enactment which provides for the establishment of the Tribunals. Such elaborate provisions were unnecessary if the Tribunal was equated with the High Courts and its Members with High Court Judges. Similarly, a higher age of superannuation could not have been prescribed for the Chairman and Vice-Chairman of the Tribunal. Article 323-A of the Constitution itself envisages different provisions in this behalf and not the same as that of the High Courts which is the assumption made in the petitioner's contention. In fact, the provisions of

the Act indicate that there is no intention of equating the Chairman, Vice-Chairman and Members of the Tribunal with the Chief Justice and Judges of the High Courts for purposes other than those expressly provided in respect of jurisdiction, power etc. Section 17 of the Act is a significant indication. By Section 17, the Tribunal has been given the power to punish for contempt of itself and it is provided that for this purpose the Tribunal shall have, and exercise, the same jurisdiction, powers and authority as the High Court and the references in the Contempt of Courts Act, 1971, to a High Court shall be construed as including a reference to such Tribunal. It is obvious that the need for enacting such a provision arose only because in the absence of such a provision conferring on the Tribunal the jurisdiction and power of a High Court for the purpose of the provisions of the Contempt of Courts Act, 1971, the Tribunal would not have the same jurisdiction or power while adjudicating those very matters which earlier were to be adjudicated by the High Court. Similarly, Section 30 of the Act provides that all proceedings before a Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, 1860. This provision also is unnecessary if the petitioner is right in contending that the Tribunal is equated with the High Court for all purposes and must be treated as a deemed High Court with all the logical consequences.

13. It is, therefore, not possible for the Administrative Tribunal to shed off or abandon its heritage and substitute its genes with those of its choice of a different heritage. In our opinion, this alone is sufficient to indicate that the petitioner's assumption is fallacious and his attempt to be treated as a deemed High Court Judge cannot be accepted. Apart from the obvious fallacy already indicated, the petitioner's claim, if accepted, would result in appointment of some deemed High Court Judges contrary to the express provision made in the Constitution for appointment of High Court Judges.

14. During the course of hearing, it was pointed out that mere substitution of a different forum for adjudication of a dispute does not result in conferring on the new forum the status of the substituted forum for purposes other than the jurisdiction and power to adjudicate that dispute unless their status be otherwise equal. To illustrate, Section 115 CPC by amendment in some States empowers the District Courts instead of the High Court to decide revisions thereunder, but that does not equate the District Court with the High Court. No attempt was made on behalf of the petitioner to answer this.

15. The slightly modified argument of Shri G. L. Sanghi for achieving the same purpose also does not bear close scrutiny. The Administrative Tribunals Act, 1985, itself makes a distinction between the Chairman, Vice-Chairman and Members. The age of superannuation of the Chairman and Vice-Chairman is 65 years while that of the Members is 62 years. Similarly, there is difference in their salaries. They are not treated to be in one class for this purpose by the Act itself. It cannot, therefore, be said that all of them constitute one class since the Tribunal is one. The case of the Chairman was distinguished by learned counsel on the basis that his position was akin to that of the Chief Justice of the High Court. However, the age of superannuation of the Chief Justice and the puisne Judges of the High Court is the same which pattern is not maintained in the Act. A provision is made in the Act for discharge of certain administrative functions of the Chairman by the Vice-Chairman and not by the Members and similarly, there is provision only for the Vice-Chairman to fill a casual vacancy. The foundation of initial equality on which the argument of discrimination is based, is non-existent. The parent statute itself shows that they were not born equals.

16. There is also no merit in the casual argument that there is a proposal for higher pay and age of superannuation for Members of Tribunals for other matters constituted in accordance with Article 323-B of the Constitution. The basic fact to be remembered is that Articles 323-A and 323-B

themselves require the law constituting these Tribunals to provide for the pay and other conditions of service of its Members and, therefore, the same would be governed in the case of each Tribunal by the provisions of the statute giving birth to the Tribunal. These statutes being different, the provisions therein in this behalf can also be different which has been left to the legislative wisdom to decide.

17. Considerable emphasis was laid on behalf of the petitioner on Sampath Kumar case ((1987) 1 SCC 124 : (1987) 2 ATC 82), to contend that the Tribunals constituted under Article 323-A have been equated with the High Courts. It is sufficient to say that in Sampath Kumar case ((1987) 1 SCC 124 :(1987) 2 ATC 82), the question before us in the present petition did not arise for consideration and the observation therein cannot be torn out of context. On the contrary, certain observations in para 22 of the judgment indicate that the retiring age of 62 years or 65 years, for the Members, Chairman and Vice-Chairman was treated to be in accord with the pattern of the enactment on the basis that the Members and Chairman or Vice-Chairman were in different categories. Equation of the Tribunal with the High Court therein was only as the forum for adjudication of disputes relating to service matters and not for all purposes such as the one arising for decision in the present case. We are unable to accept that the decision of this Court in Sampath Kumar ((1987) 1 SCC 124 : (1987) 2 ATC 82) supports the contention before us in this petition.

18. As a result of aforesaid discussion, we have no hesitation in holding that the equality claimed by the Members of the Administrative Tribunal with the Judges of the High Courts or even the Vice-Chairman of the Tribunal in the matter of pay and age of superannuation does not exist being contrary to the pattern and scheme of the parent statute establishing the Tribunal and, therefore, the very foundation for the argument of discrimination being non-existent, the petition must fail.

19. Consequently, the petition is dismissed In the circumstances of the case, the parties will bear their own costs.

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