

CASE NO.:
Writ Petition (civil) 552 of 2001

PETITIONER:
DURGADAS PURKYASTHA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 22/07/2002

BENCH:
S. RAJENDRA BABU, P. VENKATARAMA REDDI.

JUDGMENT:

J U D G M E N T

RAJENDRA BABU, J. :

By an order made on August 30, 1996 the Government of India appointed the petitioner, who was District and Sessions Judge in West Tripura, Agartala, as a Judicial Member in the Central Administrative Tribunal [hereinafter referred to as 'the Tribunal']. It was indicated in the said order that the appointment of the petitioner will be for a period of five years from the date of joining or till he attains the age of sixty two years whichever is earlier. The petitioner made a representation that he is eligible for re-appointment after expiry of the term of five years until he attains the age of sixty two years as has been indicated by this Court in Sampath Kumar etc. vs. Union of India & Ors., 1987 (1) SCR 435. The Department of Personnel informed the petitioner of the amended provisions of the Administrative Tribunals Act, 1985 [hereinafter referred to as 'the Act'] to the effect that a person whose term has expired will be eligible for consideration for re-appointment.

On 22.3.2001, the petitioner represented to the Chairman, CAT and the Secretary, DOPT for consideration of his re-appointment as Member with effect from 7.10.2001. He also made similar further representation on 1.5.2001 and 14.5.2001 to the Chairman, CAT and to the Secretary DOPT on 18.5.2001, 3.7.2001 and 4.7.2001. He made a demand on 1.8.2001 to the similar effect. The petitioner filed an application under Section 19 of the Act claiming that he is entitled to continue to hold the office as a Judicial Member until he attained the age of sixty two years and sought for various incidental reliefs. At a stage when the matter was heard and reserved for orders, that application came to be withdrawn to the file of the Principal Bench of the Tribunal by an order made by the Chairman. Challenge to the transfer of the petition made in the High Court of Calcutta was dismissed for want of jurisdiction.

In the meanwhile, the High Court of Andhra Pradesh in W.P. No. 21329/97 (R.V. Mallikarjuna vs. Union of India) and W.P. No. 21439/97 (P. Suresh Reddy vs. Union of India & Ors) held that the period of five years should be read in such a manner as to indicate that the Chairman and Vice-Chairman shall hold the office till sixty five years of age and Member, both Judicial and Administrative, shall hold the office till the age of sixty two years from the date of the assumption of office and Section 8 of the Act to the extent of fixing appointment only for a period

of five years as unconstitutional. Hence the petitioner has filed this petition under Article 32 of the Constitution challenging the validity of Section 8 of the Act.

The contention put forth on behalf of the petitioner is that the provisions of Section 8 of the Act providing the term of five years and thereafter re-appointment amounts to curtailing the period of superannuation at 62 years and is, therefore, void. It is submitted that this provision is contrary to the observations made in Sampath Kumar's case [supra]. Reliance is also placed on the decision in Gurdev Singh Sidhu vs. State of Punjab & Anr., 1964 (7) SCR 587. The learned Attorney General brought to our notice, while refuting the contentions urged on behalf of the petitioner, that the case of the petitioner was considered for re-appointment twice by a selection committee headed by a Judge of this Court but his name was not recommended for another term.

This Court while noticing that the Act, as originally framed, provided for a term of five years from the date on which the Chairman, Vice-Chairman or other Member enters upon his office or until he attains the age of sixty five years in case of Chairman and Vice-Chairman and sixty two years in case of other Member, observed in Sampath Kumar etc. (supra) as follows :

"Section 8 of the Act prescribes the term of office and provides that the term for Chairman, Vice-Chairman or members shall be of five years from the date on which he enters upon his office or until he attains the age of 65 in the case of Chairman or Vice-Chairman and 62 in the case of member, whichever is earlier. The retiring age of 62 or 65 for the different categories is in accord with the pattern and fits into the scheme in comparable situations. We would, however, like to indicate that appointment for a term of five years may occasionally operate as a dis-incentive for well-qualified people to accept the offer to join the Tribunal. There may be competent people belonging to younger age group who would have more than five years to reach the prevailing age of retirement. That fact that such people would be required to go out on completing the five years period but long before the superannuation age is reached is bound to operate as a deterrent. Those who come to be Chairman, Vice- Chairman or members resign appointments, if any, held by them before joining the Tribunal and, as such, there would be no scope for their return to the place or places from where they come. A five year period is not a long one. Ordinarily some time would be taken for most of the members to get used to the service-jurisprudence and when the period is only five years, many would have to go out by the time they are fully acquainted with the law and have good grip over the job. To require retirement at the end of five years is thus neither convenient to the person selected for the job nor expedient to the scheme. At the hearing, learned Attorney-General referred to the case of a member of the Public Service Commission who is appointed for a term and even suffers the disqualification in the matter of further employment. We do not think that is a comparable situation. On the other hand, membership in other high-powered Tribunals like the Income Tax Appellate Tribunal or the Tribunal under the Customs Act can be referred to. When amendments to the Act are undertaken, this aspect of the matter deserves to be considered, particularly because the choice in that even would be wide leaving scope for proper selection to be made."

The principle stated in Gurdev Singh Sidhu case (supra) is that if a rule provides for compulsory retirement at any time, without providing for a minimum period of service after which only compulsory retirement can be ordered, that rule itself must be held to be void for contravention of

Article 311(2) of the Constitution, because such compulsory retirement, in the case of a permanent Government servant, amounts to removal; that the rule under which the order has been made is unconstitutional and invalid (i) when that rule does not fix any age of superannuation but enables the Government to retire a Government servant at any time, without payment of full pension, and (ii) when the age of superannuation has not been reasonably fixed and is unnecessarily short.

In the present case, the position is entirely different. The qualifications required for appointment of Chairman, Vice-Chairman and other Members of the Tribunal are as prescribed under Section 6 of the Act. A person is not qualified to be appointed as Chairman unless he is or has been a Judge of a High Court or has, for at least two years, held the office of Vice-Chairman. A person is not qualified to be appointed to the post of Vice-Chairman unless he is or has been or is qualified to be a Judge of a High Court or has, for at least two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; or has, for at least five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or has, for a period of not less than three years, held office as a Judicial Member or an Administrative Member. The cases of permanent public servants who had a general rule of superannuation and a different rule was to be applied in case of compulsory retirement at a very early stage of their career were considered in Gurdev Singh Sidhu case. In the case on hand, Chairman, Vice-Chairman and other Members have held the respective offices in one capacity or the other earlier and by the time they are appointed in the Tribunal they would have reasonably spent sufficient number of years of service in those posts. Therefore, the concept of security of tenure of service in respect of those whose term is reduced will not be appropriate. Further if a post is a tenure post, the incumbent in such post will go out of office on completion of his tenure. The provision cannot be assailed on the ground of arbitrariness having the effect of jeopardising the security of tenure of public servants beyond reasonable limits.

The observations made by this Court in Sampath Kumar etc. case were taken note of by the Government and amendments were made in Section 8 of the Act which now reads as follows :-

"Section 8. Term of Office : The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years;

Provided that no Chairman, Vice-Chairman or other Member shall hold office as such after he has attained

- (a) in the case of the Chairman or Vice-Chairman, the age of sixty-five years; and
- (b) in the case of any other Member, the age of sixty-two years."

An option is reserved to the Government to reappoint a member on the expiry of the term beyond the first term of five years, the outer limit being that he should be within the age of sixty five years in case of Chairman and Vice-Chairman and sixty two years in case of other Members. Thus, it would not be in every case that the Government would put an end to the term of office at the end of five years and such Chairman, Vice-Chairman and other Member would become eligible for re-appointment for another period of five years after consideration by a Committee headed by a Judge of the Supreme Court and two other Members, one of whom will be the Chairman of the Tribunal. In these

circumstances, we do not think that the provisions now made will in any way dilute the effect of or are contrary to the observations made by this Court in Sampath Kumar etc. case.

In B. Ramanjini & Ors. vs. State of Andhra Pradesh & Ors., 2002 (4) SCALE 197, the decision of the High Court of Andhra Pradesh in W.P. No. 21329/97 (R.V. Mallikarjuna vs. Union of India) is reversed and it is held that the direction issued by the High Court of Andhra Pradesh was totally uncalled for and the High Court ought not to have made an order of the nature in question.

In the light of what we have stated above, it is unnecessary to consider other contentions urged by the parties. In the result, this writ petition is dismissed.

JUDIS