

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3050/2008

RAM MOHAN SHARMA Petitioner
Through Mr. Mohit Choudhary & Mr. Pradeep
Chandel, Advocates.

versus

UOI & ORS Respondents
Through Mr. P.P. Malhotra, ASG with Mr. Gaurav
Duggal, Advocate for the respondent-UOI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
22.04.2008

1. The petitioner retired as Additional Secretary, Ministry of Law on 31st January, 2008. By order dated 28th February, 2006 he was appointed as a Member of the Adjudicating Authority under Section 6 of the Prevention of Money Laundering Act, 2002 as an additional charge till the post of the Member was filled up on regular basis or until further orders, whichever is earlier. Subsequently, by another order dated 12th October, 2006, the petitioner was appointed as the Chairman of the Adjudicating Authority with effect from 5th October, 2006 till the said post was filled up on regular basis or until further orders, whichever is earlier.

2. As the petitioner attained the age of superannuation as Additional Secretary, Ministry of Law on 31st January, 2008, he was by an order of the same date was informed that he ceases to hold additional charge of the post of the Chairman of the Adjudicating Authority under Section 6 of the Prevention of Money Laundering Act, 2002.

3. The petitioner apprehended the said order and had earlier filed a writ petition in this Court being Writ Petition (Civil) No. 242/2008 along with application for stay. The said writ petition came up for hearing before a Single Judge of this Court on 25th January, 2008 when it was dismissed as withdrawn. The petitioner at that time made a request that he should be permitted to refile the writ petition as he had already filed two applications before the Supreme Court in a Public Interest Litigation, wherein vires of the Act and the Rules of the Prevention of Money Laundering Act, 2002 were under challenge. It may be noted here that rules under the aforesaid Act were framed on 1st August, 2007 and stipulate that a Member on the date of his appointment to the Adjudicating Authority if he is in service of the Central Government or State Government shall seek retirement and accordingly shall be deemed to have retired. It may be noted that Section 6(8) of the Act provides that the Chairperson and other Member shall hold office as such for a term of five years as he enters upon office and provide

that the Chairperson or the Member shall hold office till he attains the age of 62 years. The above rule and the provisions of the Act were relied upon by the petitioner in the Writ Petition (Civil) No. 242/2008. The learned Single Judge of this Court accordingly dismissed the petition as withdrawn and did not specifically grant any opportunity to the petitioner to refile the same. The said order reads as under:-

“This matter came up on 22.1.2008 On that date at request of the petitioner’s counsel it was adjourned to today. Today petitioner appears in person and he states that he wishes to withdraw this petition. He states that he is withdrawing this matter because he has moved two interim applications in a public interest litigation pending in the Supreme Court of India. At the same time, he seeks liberty to refile this petition. This matter is at a preliminary stage and no notice has been issued so far. It is for the petitioner to either press the same or to withdraw it. If any right enures to the petitioner in future, the petitioner is always free to seek any remedy legally available to him at that stage. It is not for this Court to either grant or to concede any right to the petitioner to refile the matter as and when he desires in future. The petition is accordingly dismissed as withdrawn. CM No. 478/2008 and 479/2008 are also dismissed.”

4. The order merely records that the petitioner in future can always seek legal remedy if available to him at that stage and the Court while dismissing the writ petition as withdrawn is not granting or conceding any right to the petitioner to refile the matter. The petitioner, therefore, withdrew the writ

petition at his own peril and risk. As stated above, the issue and subject matter of the Writ Petition (Civil) No. 242/2008 was with reference to claim of the petitioner to continue as Chairperson even after attaining age of superannuation as Additional Secretary in view of Section 6(8) of the Act read with Rule 8 of the Rules.

5. The petitioner had also filed an application before the Supreme Court relying upon Section 6 of the Act and Rule 8. In paragraphs 3 and 9 of the said application it was stated as under:-

“3. That applicant is entitled to continue on the post of Chairperson of Adjudicating Authority till the attaining of age of 62 years or for a period of 5 years, whichever is earlier. However, the order/notification dt.12.10.2006 is being misconstrued by respondent to the effect that applicant is entitled to continue as Chairperson of Adjudicating Authority till 31.1.2008, which is the age of superannuation from the post of Additional Secretary, Law & Justice.

9. The applicant is entitled to continue as Chairperson of Adjudicating Authority till he attains the age of 62 years or complete 5 years of service on the post of Additional Secretary, whichever is earlier. Besides this, even if the order dated 10.12.2006 issued by the President of India, appointing applicant as Chairperson of Adjudicating Authority is interpreted to mean that said order is co-terminus with his superannuation from the post of Additional Secretary, applicant is entitled to continue till the regular appointments are made. Respondent Union of India cannot be allowed to say that applicant's appointment as

Chairperson of Adjudicating Authority is co-terminus with his superannuation on the post of Additional Secretary. This is contrary to the essence and spirit of order dated 12.10.2006. Besides this, the said stand taken by respondent is contrary to the directions given by this Hon'ble Court inasmuch as this Hon'ble Court has already stayed the selection and appointment of members of Adjudicating Authority by order dt.3.12.2007.”

6. The said applications were, however, dismissed by the Supreme Court vide order dated 30th January, 2008.

7. After waiting for about two months, the petitioner has now filed the present writ petition questioning the order dated 31st January, 2008. The petitioner had already made preventive challenge to the said order by filing a writ petition in this Court and by filing applications before the Supreme Court. I do not think the petitioner is entitled to re-agitate the same issue again. Decision of the Supreme Court in the case of ***Sarguja Transport Service versus State Transport Appellate Tribunal, Gwalior and Others*** reported in AIR 1987 SC 88 is applicable. Even on merits, I find that the appointment of the petitioner was not made after following any selection procedure. It was merely a case wherein additional charge was given to the petitioner as he continued to work and function as Additional Secretary, Ministry of Law. The two appointment orders dated 28th February, 2006 and 12th October, 2006 specifically stipulated that the

appointment to the post was till it is filled up on regular basis and until further orders, whichever is earlier. I do not think petitioner can claim any vested right to appointment either as Member or as Chairman of the Adjudicating Authority. I may also note here that the Government had taken out an advertisement dated 26th October, 2007 asking for applications for appointment to the post of Members. The said Memorandum dated 26th October, 2007 has been stayed by the Supreme Court in Writ Petition (Civil) No. 634/2007 titled ***Pareena Swarup versus Union of India***. The petitioner was, therefore, very much aware and conscious of the fact that the posts may be filled up after following the proper selection procedure.

8. In view of the above, I do not find any merit in the present writ petition and the same is accordingly dismissed in limine. It is, however, clarified that the question of appointment of respondent No. 3, Mr. P.K. Malhotra, Joint Secretary, Ministry of Law and Justice as Chairperson is left open. I do not think the petitioner has any justification or locus standi to question and challenge his appointment as he has already retired as Additional Secretary, Ministry of Law on 31st January, 2008. I may note that the appointment in the case of the petitioner was similar to the appointment as has been made in the case of respondent No. 3.

SANJIV KHANNA, J.

APRIL 22, 2008
VKR