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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 3rd May, 2023
 + **W.P.(C) 16933/2022 & CM APPL.53665/2022**
R N SINGH Petitioner

Through: Mr. Rajshekhar Rao, Senior Advocate
 with Ms. Gauri Puri and Mr. Areeb
 Amanullah, Advs. (M: 9899339554)

versus

UNION OF INDIA & ANR. Respondents
 Through: Mr Mukul Singh CGSC, Mr Amit
 Acharya GP, Ms Ira Singh (Adv) for
 R-UOI (M: 9971359512)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner - Mr. R.N. Singh was appointed as a judicial member of the Central Administrative Tribunal (hereinafter 'CAT') vide appointment order dated 3rd July, 2018, which reads as under:

"1. The President is pleased to appoint Shri R.N. Singh, Advocate as Judicial Member in the Central Administrative Tribunal (CAT) in the scale of pay of Rs. 2,25,000/- (fixed) for a period of 05 years from the date of assumption of the charge of the post, or till the age of 65 years, whichever is earlier.

2. The conditions of service of Shri R.N. Singh as Judicial Member in the Central Administrative Tribunal shall be governed by the provisions of the Administrative Tribunals Act, 1985 and the rules made there under, as amended from time to time.

3. On the recommendation of Chairman, CAT

initial place of posting of Shri R. N. Singh shall, be CAT, Mumbai Bench. Sh. R. N. Singh is required to join the CAT, Mumbai Bench within thirty days from the date of issue of this order failing which the above appointment shall be treated as cancelled.

4. This order issues in compliance with the order of the Appointment Committee of the Cabinet vide OM No.6/13/2018-EO (SM II dated 23.06.2018)."

3. As per the above appointment order, the term of the Petitioner was for a period of five years from the date of assumption of charge or till the age of 65 years, whichever is earlier.

4. The above appointment of the Petitioner was governed by the provisions of the Administrative Tribunals Act, 1985. Section 8 of the said Act, prescribes the term of office of a Member as under:

"8. Term of office. - (1) *The Chairman shall hold office as such for a term of five years from the date on which he enters upon his office:*

Provided that no Chairman shall hold office as such after he has attained the age of sixty-eight years.

(2) A Member shall hold office as such for a term of five years from the date on which he enters upon his office extendable by one more term of five years:

Provided that no Member shall hold office as such after he has attained the age of sixty-five years.

(3) The conditions of service of Chairman and Members shall be the same as applicable to Judges of the High Court."

5. As per the above provision, the term of office was for a period of five years from when the appointee enters upon the office. The age limit was,

however, fixed as 65 years. The Petitioner is currently 62 years of age. Thus, the initial term of appointment for the Petitioner as a member of CAT, would have been between 12th July, 2018 - when he took the charge, till 11th July, 2023. The term was extendible by another term of five years.

6. While the Petitioner continued to function as a judicial member, the Tribunal Reforms Act, 2021 ('TRA,2021 ') was enacted in which the term of office of the chairperson and members at Tribunals was amended. In terms of Section 5 of the TRA, 2021, the term of a Member was restricted to four years or the age of 67 years, whichever is earlier. The said provision is relevant and is extracted herein below.

“5. Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, —

(i) the Chairperson of a Tribunal shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier;

(ii) the Member of a Tribunal shall hold office for a term of four years or till he attains the age of sixty-seven years, whichever is earlier;

Provided that where a Chairperson or Member is appointed between the 26th day of May, 2017 and the notified date, and the term of his office or the age of retirement specified in the order of appointment issued by the Central Government is greater than that which is specified in this section, then, notwithstanding anything contained in this section, the term of office or age of retirement or both, as the case may be, of the Chairperson or Member shall be as specified in his order of appointment, subject to a maximum term of office

of five years.”

7. The Petitioner was also eligible to be considered for re-appointment in terms of Rule 5 of the Tribunal (Conditions of Service) Rules, 2021. The said rule is extracted hereinbelow.

“5. Selection for re - appointment. — (1) *An application for re-appointment shall be considered in the same manner as that for the original appointment, preferably, alongwith all the persons shortlisted in response to the vacancy circular or otherwise.*

(2) *While making its assessment for suitability to a post, the Committee shall give additional weightage to the persons seeking re-appointment for their experience in the Tribunal and while doing so, shall take into account, the performance of the person while working as a Member or a Chairman in the Tribunal.”*

8. An advertisement was issued for the selection of judicial members in the CAT vide vacancy circular dated 4th April, 2022, which also permitted serving members of CAT for re-appointment. The relevant clause of the vacancy circular is also set out below:

“5. Selection for re-appointment: *The Member of Central Administrative Tribunal shall be eligible for re-appointment in the same manner as that for the original appointment, preferably, alongwith all the persons shortlisted in response to the vacancy circular or otherwise under the Tribunal Reforms Act 2021, While making its assessment for suitability to a post, the Committee shall give additional weightage to the persons seeking re-appointment for their experience in the Tribunal and while doing so, shall take into account, the performance of the person while working as a Member in the Tribunal.”*

9. In terms of the vacancy circular which was issued, the Petitioner applied for re-appointment. His application was successful and vide appointment order dated 5th August, 2022, of the Appointments Committee of the Cabinet ('ACC'), the Petitioner was appointed for a period of four years from the date of assumption of charge or till the age of 67 years, whichever is earlier.

10. Upon the ACC approving the Petitioner's appointment, the Respondent called upon the Petitioner to report to the CAT, Principal Bench within 30 days from the date of issuance of the order i.e. within 30 days from 6th August, 2022. The said order would be of importance and is set out below:

*"The President is pleased to appoint Shri R.N. Singh as Judicial Member in the Central Administrative Tribunal (CAT) in the pay scale of Rs. 2,25,000/- (fixed) **for a period of 04 years from the date of assumption of charge of the post, or till attaining the age of 67 years, whichever is earlier.***

*2. The conditions of service of Shri R.N. Singh as Judicial Member in the Central Administrative Tribunal shall be governed by the provisions of the **Tribunals Reforms Act, 2021** and Rules framed there -under.*

3. Shri R.N. Singh is advised to report to CAT, Principal Bench within 30 days from the date of issue of this order failing which the above appointment shall be treated as cancelled. Order for place of posting will be issued by CAT, PB.

4. This issues in compliance with the order of the Appointments Committee of the Cabinet vide

communication No. 6/17/2022-EO (SM.II.) dated 05.08.2022”

11. In response to this order which was passed, the Petitioner took charge. However, vide letter dated 16th August, 2022 written to the Secretary of the Department of Personnel and Training (‘DoPT’), the Petitioner made it clear that he is already working as a judicial member and that his appointment has been for a period of five years which culminates on 11th July, 2023. Accordingly, he assumed charge with the condition that the re-appointment should take effect only when the earlier term comes to an end. The relevant extract of the said letter reads:

“Subject: Acceptance for appointment as Judicial Member in CAT in pursuance of Order No.11013/2021-AT dated 6.8.2022

Respected Sir

I thankfully acknowledge Order No.11013/2021-AT dated 6.8.2022 (copy enclosed) appointing me as Judicial Member in the Central Administrative Tribunal with effect from the date of assumption of charge of the post. The said Order advises me to report to CAT, Principal Bench within 30 days from the date of issue of the said Order failing which the appointment shall be treated as cancelled.

In this regard, I wish to submit that I am already working as Judicial Member of the Central Administrative Tribunal w.e.f. 12.7.2018 pursuant to my appointment to the said post for a period of five years. The said period of five years shall culminate on 11.7.2023. Hence, my present appointment shall be deemed to be re-appointment in accordance with the provisions of Section 6 of the Tribunals Reforms Act, 2021. Accordingly, I would request that my date of joining as Judicial

Member of the Central Administrative Tribunal in pursuance of aforesaid Order dated 6.8.2022 be extended till 11.7.2023. Pursuant to this extension, no vacancy of Member shall be caused in the Tribunal as I am already holding the position and shall continue to hold the same.
With warm regards”

12. The said stand of the Petitioner was also supported by the Chairperson of the CAT, Principal Bench, Delhi vide his communication dated 17th August, 2022. However, by the impugned order dated 26th August, 2022, the DoPT held that the request of the Petitioner to complete the existing tenure till 11th July, 2023 has not been agreed to. The said impugned order is set out below.

“I am directed to refer to Chairman (CAT)'s DO No. PB/04/15/M(J)/2018-JA dated 17.08.2022 on the above cited subject and to inform that the proposal of CAT related to extension of joining time to Sh. R.N. Singh to take over the charge of the post of Judicial Member till completion of his existing tenure as JM in CAT on 11.07.2023, has not been agreed.
2. This issues with the approval of the competent authority.”

13. Mr. Raj Shekhar Rao, Id. Senior Counsel appearing for the Petitioner submits that Section 5 of the TRA, 2021 is clear to the effect that the existing term of office would not be affected in respect of those persons, who have been appointed between 26th May, 2017 to 4th April, 2021 i.e. when the TRA, 2021 was notified.

14. It is Mr. Rao's submission that the curtailment of the Petitioner's tenure in this manner is not contemplated in the TRA, 2021. In fact, Sec.5

clearly protects the tenure for which the Petitioner was appointed. It is also submitted that the curtailment of the tenure in this manner would also be discriminatory, inasmuch as those persons, who were already serving, are all being permitted under the proviso to Section 5 to complete their entire term of office and the Petitioner, having been re-appointed, cannot be put to a disadvantageous position. Thus, it is his submission that the first tenure of five years ought not to be curtailed in view of the Proviso to Section 5.

15. Mr. Mukul Singh, Id. counsel for the Respondent, on the other hand, submits that under Section 5, the earlier law under the Administrative Tribunals Act, 1985 ('ATA 1985') would no longer have any effect and would be overridden by the provisions of TRA, 2021. Further, the Proviso only extends benefit for those persons, who would be retiring and not to those persons who would be seeking re-appointment.

16. According to Mr. Singh, the Petitioner having applied for re-appointment and his candidature having been successful, he would be bound by the ACC's communication, which clearly held that the tenure would be for a period of four years from the date of assumption of charge.

17. Thus, he submits that the earlier tenure of five years cannot be acceded to by the Respondent and the term would now be strictly in terms of the re-appointment order alone.

18. The Court has considered the matter.

19. As per Section 5 of the TRA, 2021, the term of a member was curtailed to four years unlike Section 8(2) of the ATA, 1985 where the term was five years. The age bar has also changed from 65 years to 67 years. However, the proviso to Section 5 stipulates certain conditions upon which the order of appointment under the 1985 Act, would take precedence over

the age limit prescribed in Section 5. The said provision commences with the phrase '*Notwithstanding any contained*'. However, the Proviso prescribes the conditions in which Section 5 would not apply. Thus, while the main provision is notwithstanding any other law i.e., even the ATA 1985, the Proviso is an exception to the main section. Thus, if the conditions under the proviso are satisfied, the ATA 1985 would continue to apply. The said conditions to be satisfied are as under:

- i) The appointment had to have been made between 26th May, 2017 and 4th April, 2021;
- ii) The term of office is greater than what is specified in Sections 5(1) and 5(2).

20. If the above two conditions are satisfied, irrespective of the age limit prescribed in Section 5, the order of appointment under ATA 1985, would take precedence, so long as the term does not exceed five years.

21. Ld. Counsel seeks to rely upon the phrase '*age of retirement*' to argue that the proviso applies only in case of retirement and not reappointment. This interpretation is however not borne out from the reading of the Sec. 5 which clearly stipulates the '*term of his office*' or '*the age of the retirement*' shall be as provided in his order of appointment. Thus, the term of office of the Petitioner ought to be as provided in his order of appointment i.e., 3rd July, 2018 which clearly fixed the term as five years.

22. Section 5 of the TRA, 2021 is notwithstanding any law for the time being in force. However, the proviso is an exception to those persons who have been appointed during a specified period. The Petitioner was appointed during the said period i.e. between 26th May 2017 to 4th April 2021. Thus, the Petitioner's case would be governed by Section 8(2) of the ATA, 1985

insofar as the first tenure of five years is concerned.

23. The Petitioner was serving as a judicial member in the CAT when the vacancy circular was issued on 4th April, 2022. The Petitioner's original date of appointment being 3rd July, 2018 and he having assumed charge on 12th July, 2018, his case would clearly fall within the period as stipulated in the proviso of Section 5. Even after re-appointment was made, the Petitioner had made it clear that his reappointment tenure would commence after the initial period of five years had culminated on 11th July, 2023. The case of the Petitioner has also been supported by the Chairperson of the CAT.

24. The Respondent's stand that the initial tenure of the Petitioner of five years would stand curtailed from the date he takes charge in terms of the ACC's order does not find the favour of the Court, inasmuch as the Petitioner cannot be discriminated against with other similarly placed persons, who had been appointed under the provisions of the ATA, 1985.

25. All those persons, who may not have sought reappointment have been protected under the Proviso to Section 5 in the sense that the five years tenure or attainment of 65 years, whichever is earlier, would be enjoyed by the said persons.

26. If the manner, in which the Respondent is interpreting the said provisions, is accepted, the same would be discriminatory to the Petitioner and violative of the rights of the Petitioner under Article 14 of the Constitution of India.

27. Moreover, this Court takes notice of the fact that there are a large number of vacancies, which continue to exist in various Tribunals across the country. Under such circumstances, the curtailment of the Petitioner's

tenure would also not be in the interest of dispensation of justice as well.

28. Mr. Mukul Singh, apprises the Court that insofar as the vacancies are concerned, the process of appointment is already underway for the year 2022-23 and the matter is pending before the Supreme Court. However, in the present case, this Court is not dealing with issues relating to filling up of vacancies.

29. In view of the above discussion, the Petitioner's first term of appointment would, therefore, be permitted to continue till 11th July, 2023 and the reappointment shall take effect from the date when the first tenure ends i.e. from 11th July, 2023. Thus, insofar as the Petitioner is concerned, the date of assumption of charge, in terms of the ACC's order dated 5th August, 2022, for the second term, shall be taken as 11th July, 2023.

30. The Petitioner would be entitled to all the consequential benefits in view of the above order and any orders to the contrary including the orders dated 14th October, 2022 and 19th October, 2022 are set aside.

31. The petition is allowed in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 3, 2023/dk/rp

(corrected & released on 10th May, 2023)