

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1705 OF 2025

Dr. Suvendu Kumar Pati

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

...

Mr. H. G. Dharmadhikari a/w Ms. Pallavi T. Baghel a/w Ms. Minal Kanade, Advocates for petitioner.

...

**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 9th SEPTEMBER 2025.

Per, Shree Chandrashekhhar, CJ:

Aggrieved by the judgment pronounced on 6th February 2025 in Original Application No. 724 of 2019, the applicant before the Central Administrative Tribunal, Mumbai Bench has filed this writ petition.

2. Briefly stated, the petitioner was working on the post of Additional District Judge in Gunupur, District Rayagada, Orissa in the Orissa Superior Judicial Services cadre. The Department of Revenue issued an advertisement vide F.No.A.12026/09/2017-AdJC (CESTAT) dated 20th April 2017 regarding appointment to the post of Member (Judicial) in the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and the Selection Committee recommended his candidature to the Appointment Committee of the Cabinet. On approval of the Appointment Committee of the Cabinet, the President vide Office Order dated 11th April 2018 appointed the

petitioner on the said post. Meanwhile, before the appointment, the government changed the post from permanent appointment to appointment for 4 years. A challenge was laid by the other selected members in the Hon'ble Supreme Court and an interim order was passed and by virtue of that order the members continued till the age of 62 years or for 5 years. The Hon'ble Supreme Court in the final order dated 13th November 2019 confirmed the said interim order.

3. Before that, the petitioner submitted his resignation through the letter dated 27th April 2018 to the Orissa High Court under Rule 41(1)(a) of Orissa Civil Service (Pension) Rules, 1992 along with a prayer to waive off the three months' notice period. Later on, a modification in the prayer was made through a letter dated 30th April 2018 seeking replacement of the word 'Resignation' to 'Retirement'. The Orissa High Court informed the petitioner about acceptance of the retirement vide letter dated 1st May 2018 while condoning the notice period. By relinquishing the charge on 7th May 2018 at the Orissa High Court, the petitioner joined the service at the CESTAT on 10th May 2018. It came to the notice of the petitioner that in the notification dated 7th May 2018, it was wrongly mentioned as "retire voluntarily" instead of "retire". The petitioner had opted for retirement and it was never voluntary retirement. The same was informed to the Government of Orissa vide letter dated 17th September 2019 and in response, a Corrigendum dated 16th October 2019 was issued deleting the word "voluntarily".

4. The petitioner vide request letter dated 4th June 2018 applied for grant of advance for the TTA to the HOD/President of the CESTAT. A confirmation regarding such grant was given to him by

the then Deputy Registrar, CESTAT vide letter dated 10th July 2018. The petitioner submitted 3 bills vide letters dated 3rd August 2018, 2nd November 2018 and 13th November 2018 amounting to Rs. 2,74,331 for granting him the TTA. The Assistant Registrar vide letter dated 15th July 2019 to the Deputy Registrar informed that the Ministry by its letter dated 3rd June 2019 had examined the matter and the petitioner was not entitled for the TTA. Through the letter dated 3rd June 2019, the Registrar of CESTAT was informed that the guidelines on technical resignation would not be applicable to the petitioner since he had sought voluntary retirement which cannot be treated as technical retirement. Being aggrieved by the said communication, the petitioner approached the Central Administrative Tribunal by filing O.A. No. 724 of 2019 on 9th September 2019.

5. Before the Tribunal, the petitioner placed reliance on Office Memorandum, Service Rules and the decisions in “*Sree Durga Distributors v. State of Karnataka*” (2007) 4 SCC 476, “*ETA Engineering Ltd. v. Commissioner of Central Excise, Chennai*” 2004 SCC OnLine CESTAT 1244 and “*Tata Engineering and Locomotive Co(P) Ltd., Bombay v. Collector of Customs, Bombay*” 1984 SCC OnLine CEGAT 425 to challenge the legality of the order contained in the letter dated 3rd June 2019. The stand taken by the petitioner is that after taking retirement from the Government of Orissa, he joined the new post in the CESTAT at Mumbai and on his joining the new post he became entitled for TTA as he was required to relinquish his earlier post which would be in the nature of technical resignation. The learned counsel for the petitioner referred to the advertisement dated 20th April 2017 and Office Memorandum dated 24th January 2022 and submitted that on the petitioner joining the

position of Member (Judicial) in CESTAT under the Central Government after relinquishing the post in the State Government, he became entitled for TTA and, moreover, there was no such condition in the advertisement putting a bar on such claim.

6. The advertisement dated 20th April 2017 prescribed the qualifications of a Judicial Officer having experience of at least 10 years or being a Member of the Indian Legal Service and having held a post in Grade-I of that Service or any equivalent or higher post for at least three years or having been an advocate for at least 10 years to be eligible for appointment to the post of Member (Judicial) in CESTAT. This is also important to take note of one of the conditions in clause 9 of the advertisement dated 20th April 2017 which provided that the applications should be submitted through proper channel, along with Vigilance Clearance Certificate etc. Now this stipulation under the advertisement assumes significance in view of the submissions made on behalf of the petitioner that he had retired from service. As the decision dated 6th February 2025 in Original Application No. 724 of 2019 records, we find that the petitioner submitted an application on 27th April 2018 to resign from the post of Judicial Officer. Later on, he made an application seeking voluntary retirement from service and, on his request, the expression “voluntary” was deleted from the Office Order issued on his request seeking voluntary retirement. Under clause 3.4 and sub-clause (iii) to clause 4 of the Office Memorandum dated 8th April 2016, the persons who are appointed through competition and/or interview and serving under the Central Government or the State Government shall be entitled to TTA. But this shall be applicable to the employees who were in service and had a lien in the parent department and not to such employees who took voluntary

retirement or retired from service, as claimed by the petitioner. The learned counsel for the petitioner referred to the Office Memorandum dated 24th January 2022 which provides as under:-

**“North Block, New Delhi
Dated 24th January, 2022.**

OFFICE MEMORANDUM

Subject: Concession to person re-employed in Central Government service- Payment of Travelling Allowance.

The undersigned is directed to refer to this Department's O.M. No. 19030/6/2010-E.IV dated 10.02.2012 on the subject mentioned above. In view several references being received in this Department for relaxation of the conditions mentioned in the above said OM, the matter has been re-considered and it has been decided to regulate admissibility of Travelling Allowance (i.e. TA for self and family members, Composite Transfer Grant, transportation of personal effects and transportation of conveyance) in r/o persons re-employed in Central Government in the following manner.

- (i) *Where the pensioner is re-employed and TA on retirement has already been claimed by re-employed pensioner from the office/organization from where he has retired/superannuated:*
 - (a) *TA shall be allowed to him for such appointment if such appointment is made at station other than place of settlement or such appointment necessitates change of residence at place of settlement.*
 - (b) *TA shall also be allowed to him after completion of his term of re-employment.*
 - (c) *In both cases, the TA would be reimbursed by the office/ organization where the pensioner is re-employed.*
- (ii) *In case the re-employed pensioner has not claimed TA on retirement within one year of his retirement and he is re-employed under the Central Government before the expiry of one year from the date of retirement:*
 - (a) *TA shall be allowed to him for such appointment in case such appointment is made at station other than last station of duty or such appointment necessitates change of residence at last station of duty.*
 - (b) *TA shall also be allowed to him after completion of his term of re-employment.*
 - (c) *The expenditure for TA on joining such appointment shall be borne by the organization from where the*

pensioner is retired/superannuated with reference to the post held at the time of retirement. On completion of term of re-employment, the TA would be reimbursed by the office/organization where the pensioner is re-employed.

- (iii) *In case of appointment of a re-employed person from other than Central Government, TA shall be allowed to him as per the provision at Para 1(i) above.*

2. *Admissibility of TA in above cases would be subject to the following: -*

- (i) *The entitlement for TA would be w.r.t. the post last held and the last pay drawn under the Central Government at the time of retirement. In case of appointment of a re-employed person from other than Central Government, the entitlement of TA would be in accordance with the equivalence given to the post in Central Government.*
- (ii) *The provisions of SR-116 of the TA rules as admissible to Government officials on transfer in public interest, as modified from time to time, would be applicable.*

3. *This order shall be effective from date of issuance of this O.M. Past cases already settled would not be re-opened.*

4. *This is issued with the approval of Finance Secretary & Secretary (Expenditure).*

*Sd/-
(Nirmala Dev)*

Director”

7. In legal parlance the expressions “resignation”, “retirement” and “voluntary retirement” have distinct connotations. In “*BSES Yamuna Power Ltd. v. Sh. Ghanshyam Chand Sharma & Anr.*” (2020) 3 SCC 346, the Hon’ble Supreme Court observed that resignation has the effect of termination from service and the government employee loses all benefits of service, whereas voluntary retirement would have different consequences and the government employee may become entitled for benefits of service depending on the terms of appointment in the Regulations/Rules. The Office Memorandum dated 24th January 2022 which formed part of the advertisement dated 20th April 2017 provided pay protection, GPF transfer,

applicability of Pension Rules etc. for the Judicial officers or other categories of persons who were eligible for appointment as Member (Judicial) in CESTAT. It also indicates how a lien to the post can be claimed by a government servant. Under sub-clause (ii) to clause 3.2 of the Office Memorandum dated 8th April 2016, it has been made clear that only in exceptional cases where the government servant is not confirmed in the department/office where he has joined within a period of 2 years, he may be permitted to retain the lien in the parent department/office. Now this is too well known that voluntary retirement implies permanent severance from service and the employer-employee relationship comes to an end. The Tribunal reflected on the plea urged on behalf of the petitioner that his retirement from the service under the Government of Orissa was a technical resignation and held that it was not so. The Tribunal referred to the provisions under the Tribunal Reforms Act, 2021 and held that the petitioner could have availed benefit that has been provided under the Rules but not TTA. The Tribunal specifically referred to Supplementary Rules 2(xviii) and 107 which define the expression “transfer” as movement of a government servant from one headquarter station to another.

8. Therefore, we are not inclined to interfere with the order dated 6th February 2025 and Writ Petition No. 1705 of 2025 is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]