
Rakesh Pandey and Another Vs Union of India (UOI) and Others

Writ Petition No. 3085 of 2000

Court: Madhya Pradesh High Court

Date of Decision: Aug. 7, 2000

Acts Referred:

Administrative Tribunals (Amendment) Act, 1987 " Section 6#Administrative Tribunals Act, 1985 " Section 6(1), 6(6), 6(7)#Constitution of India, 1950 " Article 14, 323A

Citation: (2002) 1 JLJ 131 : (2000) 4 MPHT 490

Hon'ble Judges: Bhawani Singh, C.J; A.K. Mishra, J

Bench: Division Bench

Advocate: Ravindra Shrivastava and G.P. Kekre, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Bhawani Singh, C.J.

The petitioners have challenged the appointment of Shri N.S. Sethi as Chairman, State Administrative Tribunal,

Madhya Pradesh. It is submitted that Shri N.S. Sethi was an I.A.S. Officer. He was appointed Vice-Chairman of State Administrative Tribunal,

Madhya Pradesh. On relinquishment of office of Chairman by Justice R.P. Awasthi on 3-7-1999, Shri Sethi was appointed Acting Chairman

pending appointment of Chairman of the State Administrative Tribunal. By order dated 1-9-1999, Shri Sethi has been appointed Chairman for a

period of five years from the date of taking charge of the post or till he attains the age of 65 year or whichever is earlier.

2. The petitioners submit that Shri N.S. Sethi has no legal or otherwise any judicial training so as to cloth him with any judicial discipline. It is only a

judicial member with two years minimum experience on the post of Vice-Chairman who alone is eligible to be appointed on the post of Chairman

of the Tribunal. Merely because Shri Sethi worked for a minimum period of two years as Vice-Chairman of the Tribunal, that would not qualify

him to be appointed as Chairman of the Tribunal. This appointment is in total disregard of the observations of Apex Court in S.P. Sampath Kumar

and Others Vs. Union of India (UOI) and Others, , that ordinarily a retiring or a retired Chief Justice of the High Court or when such a person is

not available, a senior Judge of proved ability either in office or retired should be appointed. Provisions relating to appointment of Chairman

contained in Sub-section (1) of Section 6 of the Administrative Tribunals Act, 1985 have not been interpreted in the light of observations in

Sampat Kumar"s case and that there has not been meaningful or effective consultation with the Governor of the State or the Chief Justice of India

while appointing Shri Sethi to the post of Chairman of the Tribunal. He was sponsored by the Chief Minister, the file processed through the office

of the Governor without the aid and advice of the Council of Ministers since it was never put up before it, therefore, the appointment is contrary to

the provisions contained in Sub-sections (6) and (7) of Section 6 of the Administrative Tribunals Act. Alternatively, it is submitted that provisions

contained in Section 6(1) of the Administrative Tribunals Act, as amended by Act No. 51 of 1987 pursuant to the decision in Sampat Kumar"s

case are ultra-vires the provisions of Articles 14 and 323A of the Constitution since they do not carry out the solemn assurance given to the Apex

Court by the Union of India in Sampat Kumar"s case and the pious hope expressed by their Lordships of Supreme Court that sitting or retired

Judge would be appointed Chairman of the Tribunal.

3. We are not impressed by the submissions raised by the petitioners. The petitioners could not advance any justifiable ground for the delay in

approaching this Court. Shri Sethi was appointed Chairman by order dated September 1, 1999. Continuously, he is working till date apart from

working as Vice-Chairman for some time before taking up this assignment. Therefore, the petition is liable to be dismissed on this ground.

4. Examining the case on merits, we quote Section 6(1) of the Administrative Tribunals Act, 1985 as it stood before amendment :

6 (1) A person shall not be qualified for appointment as the Chairman unless he--

(a) is or has been, a Judge of a High Court,

(b) has for atleast two years, held the office of Vice-Chairman,

(c) has for atleast two years held the post of Secretary to the Government of India or any other post under the Central or the State Government

carrying a scale of pay which is not less than that of a Secretary to the Government of India.

Thereafter, amendment was made to Section 6 by Act No. 51/87 from 22-12-1987. Section 6(1), as amended, is as under :--

6. Qualification for appointment of Chairman, Vice-Chairman or other Members.--

(1) A person shall not be qualified for appointment as the Chairman unless he--

(a) is, or has been a Judge of a High Court; or

(b) has, for atleast two years, held the office of Vice-Chairman,

(c) (omitted).

By this amendment, Clause (c) of Sub-section (1) of Section 6 which was declared invalid in Sampat Kumar's case, has been deleted. However,

no invalidity was found in Clause (b) of Sub-section (1) of Section 6 of the Act under which a person holding the office of Vice-Chairman for

atleast two years is qualified for appointment as Chairman. This means Shri M.S. Sethi who had held the office of Vice-Chairman of M.P. State

Administrative Tribunal for more than two years was qualified to be appointed as Chairman. Therefore, it can not be said that Shri N.S. Sethi was

not qualified to be appointed as Chairman of the State Administrative Tribunal.

5. Further contention that only Chief Justice of High Court or when such a person is not available, a senior Judge of proved ability either in office

or retired should be appointed as Chairman, can not be appreciated since we are concerned in this case whether Shri Sethi was eligible to be

appointed as Chairman of the M.P. State Administrative Tribunal having held the office of Vice-Chairman of the Tribunal to which he was

appointed from administration. The Apex Court has not held in Sampat Kumar's case (supra) that a Vice-Chairman can not be appointed

Chairman of the Tribunal. We do not find any invalidity in Clause (b) of Sub-section (1) of Section 6 of the Administrative Tribunals Act, 1985 on

grounds contended by the petitioners.

6. Further, consultation with Chief Justice of State High Court is not provided. However, it is expected that looking to the nature of office and the

duties to be performed by Chairman of the State Administrative Tribunal, the State would develop convention of consulting the Chief Justice of the

State High Court in future appointments in case this was not done in the present case, though we believe that there may have been formal

consultation with Chief Justice of State High Court.

7. Similarly, we do not appreciate the contention that the case was not processed in accordance with law, namely, that the Council of Ministers

was not consulted to advise the Governor in the matter since such matters are looked after by the Chief Minister under the business allocation rules

and which amounts consultation with Council of Ministers. Above all, under Sub-section (7) of Section 6, no appointment of a person possessing

the qualifications specified in Section 6(1) of the Act, can be made as Chairman except after consultation with the Chief Justice of India.

Obviously, therefore, it has to be presumed that all relevant considerations were examined before the appointment was approved.

No further contention was raised.

8. There is no merit in this petition and the same is dismissed in limine.