

Binay Kant Mani Tripathi vs Union Of India And Others on 7 May, 1993

Equivalent citations: AIR1994SC502, (1994)IILLJ30SC, (1993)4SCC49, AIR 1994 SUPREME COURT 502, 1993 AIR SCW 3936, 1993 (4) SCC 49, 1993 SCC (L&S) 1121, (1994) 1 PAT LJR 81, (1994) 2 BLJ 352, (1994) 2 LABLJ 30, (1993) 25 ATC 462

Bench: Kuldip Singh, Yogeshwar Dayal

ORDER

1. The petitioner has challenged the appointment of D.K. Agarwal to the office of Vice-Chairman, Central Administrative Tribunal. The only point raised by the learned Counsel for the petitioner is that the appointment of Agarwal is in violation of Section 6 of the Administrative Tribunals Act, 1985 (the Act). Section 6 of the Act provides "a person shall not be qualified for appointment as the Vice-Chairman, unless he is

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

(b) has, for a period of not less than three years, held office as a Judicial Member of an Administrative Tribunal.

2. Agarwal was appointed Vice-Chairman, Central Administrative Tribunal by the order dated May 15, 1992. He had attained the age of 62 years on February 27, 1992. The precise argument is that having crossed the age of 62 years, Agarwal could not be considered for appointment as a Judge of the High Court under Article 217(1) of the Constitution of India and as a consequence he become ineligible for appointment as Vice-Chairman of the Tribunal under Section 6 of the Act.

3. We have heard learned Counsel for the parties. The point raised by the learned Counsel for the petitioner is not res integra. While interpreting Section 7(3)(c) of Industrial Disputes Act, 1947, which is similar to Section 6 of the Act, this Court in *Atlas Cycle Industries Limited v. Their Workmen* held as under at p. 1104 of AIR:

We agree that there is implicit in Article 217(1) a prohibition against appointment as a Judge of a person who has attained the age of sixty years. But, in our view, that is in the nature of a condition governing the appointment to the office - not a qualification with reference to a person who is to be appointed thereto. There is manifest on the terms and on the scheme of the article a clear distinction between requirements as to the age of a person who could be appointed as a Judge and his fitness based on experience and ability to fill the office. Article 217(1), deals with the former, and, in form, it has reference to the termination of the office and can therefore be properly

read only as imposing, by implication, a restriction on making the appointment. In strong contrast to this is Article 217(2) which expressly refers to the qualifications of the person to be appointed such as his having held a judicial post or having been an Advocate for a period of not less than ten years. We think that on a true construction of the article the prescription as to age is a condition attached to the duration of the office and not a qualification for appointment to it.

4. This Court clearly held in Atlas Cycle Industries case that the prescription as to age for the retirement of a Judge of the High Court under Article 217(1) of the Constitution of India is a condition attached to the tenure of the office and not a qualification for appointment to the said office.

5. Following the reasoning and the conclusions reached by this Court in Atlas Cycle Industries case we reject the contention of the learned Counsel for the petitioner. The age of superannuation for the office of Vice-Chairman, is 65 years and Agarwal being qualified to be a Judge of the High Court, his appointment cannot be challenged on the ground that he has crossed the age of 62 years.

6. The writ petition is dismissed. No costs.