Shanker Raju vs Union Of India on 4 January, 2011

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Bench: D.K. Jain, H.L. Dattu

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 311 OF 2010

Shanker Raju ..... Petitioner

Versus

Union of India .....Respondent

JUDGMENT

H.L. Dattu, J.

1) Since the petitioner purports to invoke the jurisdiction of this Court under Article 32 of the Constitution of India, it is necessary to note the relevant facts and reliefs sought for in the petition.

2) The material facts which are essential to mention are very few and they lie within a narrow compass. Shri Shanker Raju, the petitioner, was appointed as a Judicial Member of the Central Administrative Tribunal (in short, "the Tribunal") on 10.12.2000. After completion of his five-year term, he was reappointed for another term of five years and was due to complete his second term of five years on 09.12.2010. In April, 2010, in response to an advertisement issued by the respondent regarding vacancies of Members in the Tribunal, Principal Bench, Delhi, he made application for the post of Judicial Member of the Tribunal, the post which he had held for nine and a half years at the time of making application. Though the petitioner was eligible for the appointment in terms of his qualification, the respondent refused to consider his claim for appointment for the vacancy, for the

reason that the petitioner would complete his second term of 5 years on 09.12.2010 as a Judicial Member of the Tribunal vide the impugned communication dated 12-08-2010. The main premise of the petitioner's challenge of the said communication is that after completion of a tenure of 10 years, he is eligible to apply for the post afresh and must be considered on merits for his appointment as a Member of the Tribunal and should not be disqualified for appointment merely because he has completed 10 years in that office. The petitioner seeks appropriate writ from this Court mainly in respect of the communication dated 12.08.2010 and for a direction to the respondent to consider his case for appointment to the post of Member (J) in Tribunal advertised vide D.O. No.A1103/9/2010-AT dated 20.04.2010 on its own merit sans eligibility.

3) The Administrative Tribunals Act, 1985 [hereinafter referred to as `the Act'] was amended in the year 2006 by the Administrative Tribunals (Amendment) Act 2006. The amendments were made effective from 19.02.2007. Some of the principal changes brought about, which are relevant for the purpose of the case are, the abolition of the post of Vice-Chairman; changes in the terms of office in the form of increase in the age of superannuation of the Chairman from 65 years to 68 years and that of the other Members from 62 years to 65 years; the term of the Members was fixed to 5 years, extendable by another term of 5 years; and, incorporation of Section 10A as a savings clause, for saving the term of office of the Chairman, Vice- Chairman and Members, who were appointed prior to the coming into force of the Amendment Act.

4) It was just a few months ago, a Bench of three learned Judges of this Court had the occasion to consider the legislative competence and validity of the Administrative Tribunals (Amendment) Act, 2006 in the case of A.K. Behra v. Union of India, (2010) 5 SCALE 472. The reliefs prayed for by the petitioner in that writ petition were:

> (i) Quash and set aside the decision of the respondent to abolish the posts of Vice-Chairman in the Central Administrative Tribunal as reflected in the Administrative Tribunal (Amendment) Act 2006 and direct the respondents to restore the said posts of Vice-Chairman in Central Administrative Tribunal forthwith;
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> (ii) Declare that the newly inserted Section 10A of the Administrative Tribunals Act, 1985 to the extent it postulates different conditions of service for the Members of the Central Administrative Tribunal on the basis of their appointment under the Un-amended Rules and under the Amended Rules as unconstitutional, arbitrary and not legally sustainable;
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> (iii) Direct the respondents to accord the conditions of service as applicable to the Judges of the High Court to all the Members of the Central Administrative Tribunal irrespective of their appointment under the Un-amended or amended Rules;
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> (iv) Declare that the newly inserted Section 10A of the Administrative Tribunals Act is further unconstitutional to the extent it stipulates that the total term in office of the Members of the Tribunal shall not exceed 10 years;

(v) Direct the respondents to continue all the Members appointed under the un-amended or amended rules till they attain the age of superannuation of 65 years;

(vi) Declare the newly inserted qualifications for appointment as Administrative Members as reflected in the Amended Section 6(2) as arbitrary and unsustainable in the eyes of law and quash the same;

(vii) Quash and set aside the newly added Sec. 12(2) of the Act which impinges upon the independence of judiciary;

(viii) Pass any other order or direction which this Hon'ble Court thinks fit and proper in the facts and circumstances of the case."

5) In the case of A.K. Behra (supra), two learned judges (K.G. Balakrishnan, CJI and J.M. Panchal, J.) upheld the validity of the impugned amendment and dismissed the writ petition, whereas, the other learned Judge (Dalveer Bhandari, J.) allowed the writ petition and struck down the impugned amendment as being arbitrary and violative of Fundamental Rights guaranteed under the Constitution.

6) In A.K. Behra's case (supra), the court has noticed, apart from others, one of the reliefs sought for by the petitioner. It is relevant to notice the prayer made and discussion on that issue by the Court. They are as under:-

"to declare that newly inserted Section 10 A of the Administrative Tribunals Act, 1985 as unconstitutional to the extent it stipulates that the term of office of the Member of the Central Administrative Tribunal shall not exceed 10 years."

The Court while considering the said relief has concluded:

"15. The plea that Section 10A, which restricts the total term of the Member of the Administrative Tribunal to ten years should be regarded as unconstitutional has also no substance at all. The age of retirement of a Government servant has been raised from 58 years to 60 years. Initially under the unamended provisions of the Act a retired Government servant had a tenure of only two years as a Member of the Tribunal and it was noticed that he was not able to contribute much while performing duties as a Member of the Tribunal. It was felt necessary that every Member of the Tribunal should have a tenure of five years. Therefore, the provisions relating to term of office incorporated in Section 8 of the Act were amended in the year 1987 and provision was made fixing term of office of Chairman, Vice-chairman and Members at five years period. This Court, in S.P. Sampath Kumar v. Union of India and others [(1987) 1 SCC 124], expressed the view that the term of five years, for holding the posts mentioned in Section 8 of the Act was so short that it was neither convenient to the person selected for the job nor expedient to the scheme. This Court found that it became a disincentive for well qualified people as after five years, they had no scope

to return to the place from where they had come. The constitutional validity of the provisions of Section 8, fixing term of office of Chairman, Vice-chairman and Members of the Tribunal at five years period was upheld by this Court in Durgadas Purkyastha v. Union of India and others [(2002) 6 SCC 242]. Therefore, now provision is made for extension of term of office by a further period of five years. Thus the Government has decided to provide for extension in term of office by five years of a Member so that he can effectively contribute to speedy disposal of cases, on merits after gaining expertise in the service jurisprudence and having good grip over the subject. Under the unamended provisions of the Act also the term of Vice-Chairman and Member was extendable by a further period of five years and under the unamended provisions also a Member of the Bar, who was appointed as Judicial Member of the Tribunal, had maximum tenure of ten years. It is not the case of the petitioners that the unamended provisions of the Act, which prescribed total tenure of ten years for a Member of the Bar was/is unconstitutional. The provisions of Section 8 fixing maximum term of office of the chairman at sixty eight years and of a Member of the Tribunal at 10 years, cannot be regarded as unconstitutional because concept of security of tenure does not apply to such appointments. Said provision cannot be assailed as arbitrary having effect of jeopardizing security of tenure. An Advocate practising at the Bar is eligible to be appointed as Member of Tribunal subject to his fulfilling required qualifications. In all, such a Member would have term of office for ten years. On ceasing to hold office, a Member, subject to the other provisions of the Act, is eligible for appointment as the Chairman of the Tribunal or as the Chairman, Vice- chairman or other Member of any other Tribunal and is also eligible to appear, act or plead before any Tribunal except before the Tribunal of which he was Member. Under the circumstances, this Court fails to appreciate as to how the amended provisions restricting the total tenure of a Member of the Tribunal to ten years would be unconstitutional. The unamended Section 6 of the Administrative Tribunals Act, 1985 indicated that the Chairman, Vice-Chairman and other Members, held respective offices in one capacity or the other, had reasonably spent sufficient number of years of service in those posts before they were appointed in the Tribunal and, therefore, the concept of security of tenure of service in respect of those whose term was reduced was not regarded as appropriate. The impugned provision, therefore, cannot be assailed on the ground of arbitrariness having the effect of jeopardizing the security of tenure of Members of the Bar beyond reasonable limits. An option is reserved to the Government to re-appoint a Member on the expiry of the first term beyond five years. The outer limit for the Member is that he should be within the age of 65 years. Thus, it would not be in every case that the Government would put an end to the term of the office at the end of five years because such Chairman or Member is eligible for appointment for another period of five years after consideration of his case by a committee headed by a Judge of the Supreme Court to be nominated by the Chief Justice of India and two other Members, one of whom will be the Chairman of the Tribunal. Under the circumstances, it is difficult to conclude that the provision restricting the total tenure of a Member to ten years is either arbitrary or illegal."

7) The decision of the aforesaid Bench of this Court is binding on us and is clearly applicable to the case before us. However, out of respect to the learned senior counsel, who pressed the contentions very seriously, we may briefly and independently examine the question in this case also.

8) Before we turn to the facts of the present petition, we would like to make certain general observations and explain the legal position with regard to them.

The Doctrine of Stare Decisis

9) It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim "stare decisis et non quieta movere", which means "to stand by decisions and not to disturb what is settled." Lord Coke aptly described this in his classic English version as "those things which have been so often adjudged ought to rest in peace." The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible. This has been aptly pointed out by Chandrachud, C.J. in Waman Rao v. Union of India, (1981) 2 SCC 362 at pg. 392 thus:

> "40. ... for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis."

10) In Manganese Ore (India) Ltd. v. Regional Asstt. CST, (1976) 4 SCC 124, at page 127, it was opined that the doctrine of stare decisis is a very valuable principle of precedent which cannot be departed from unless there are extraordinary or special reasons to do so.

11) In Ganga Sugar Corpn. v. State of U.P., (1980) 1 SCC 223 at page 233, this Court cautioned that, "the Judgments of this Court are decisional between litigants but declaratory for the nation." This Court further observed:

> "28. ... Enlightened litigative policy in the country must accept as final the pronouncements of this Court... unless the subject be of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of later thought that it is wiser to be ultimately right rather than to be consistently wrong. Stare decisis is not a ritual of convenience but a rule with limited exceptions."

12) In Union of India v. Raghubir Singh, (1989) 2 SCC 754, at page 766, this Court has enunciated the importance of doctrine of binding precedent in the development of jurisprudence of law:

> "8. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.
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> 9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

13) In Krishena Kumar v. Union of India, (1990) 4 SCC 207, at page 233, this Court has explained the meaning and importance of sparing application of the doctrine of Stare Decisis:

> "33. Stare decisis et non quieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it."

14) In Union of India & Anr. v. Paras Laminates (P) Ltd, (1990) 4 SCC 453 at pg. 457, this Court observed as under :-

> "9. It is true that a bench of two members must not lightly disregard the decision of another bench of the same Tribunal on an identical question. This is particularly true when the earlier decision is rendered by a larger bench. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of tribunals or courts have a right to expect that those exercising judicial functions will follow the reason or ground of the judicial decision

> in the earlier cases on identical matters".

It has been opined that in the absence of a strict rule of precedent, litigants would take every case to the highest court, in spite of a ruling to the contrary, in the hope that the decision may be overruled.

15) In Hari Singh v. State of Haryana, (1993) 3 SCC 114, at page 120, this Court stated the importance of consistent opinions in achieving harmony in Judicial System:

> "10. It is true that in the system of justice which is being administered by the courts, one of the basic principles which has to be kept in view, is that courts of coordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on a question of law. If courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy."

16) In Tiverton Estates Ltd. v. Wearwell Ltd., (1975) Ch 146 at page 371, Sorman L. J., while not agreeing with the view of Lord Denning, M.R. about desirability of not accepting previous decisions, said as follows:

> "I decline to accept his lead only because I think it damaging to the law to the long term--though it would undoubtedly do justice in the present case. To some it will appear that justice is being denied by a timid, conservative adherence to judicial precedent. They would be wrong. Consistency is necessary to certainty--one of great objectives of law."

17) The second observation we wish to make is, the doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions. The pronouncement of law by a larger Bench of the this Court is binding on a Division Bench of this court, especially where the particular determination by this Court not only disposes of the case, but also decides a principle of law. We further add that it would be inappropriate to reagitate the very issue or a particular provision, which this Court had already considered and upheld.

18) Faced with this situation, Shri. P.S. Narasimha, learned senior counsel appearing for the petitioner, submits that the issue before this Court in the present writ petition is different from the issue raised and canvassed in A.K. Behra's case (supra) by pointing out that the relief sought for in the two cases are not identical. He contends that the case of A.K. Behra (supra) was limited to the challenge to Constitutional validity of the Administrative Tribunal (Amendment) Act, 2006, and further in that case, the question, whether a Member of the Tribunal appointed under the Act, prior to its amendment, is eligible for re-appointment after completion of a term of ten years, was neither argued, nor considered by this Court. It is further contended by Shri Narasimha that this Court was not called upon to decide the validity of Section 8 and Section 10A of the Act. It is contended that in A.K. Behara's case (supra), this Court did not deal with the question of appointment of a member afresh after completion of his term under Section 8 or of the appointment of the existing members protected under Section 10 of the pre-amended Act. According to the learned senior counsel, a

person who is appointed as a Member of the Tribunal, is appointed for a term of five years, which is extendable by one more term of five years by the Government, if such person is found to be suitable and effective for the job, and there is no embargo for such a person to re-apply again after completion of his term of 10 years and such person can be appointed again on a fresh term, if the eligibility criteria prescribed in Section 6(2)(b) are met, till he attains the age of 65 years. The learned senior counsel further submits that the "Terms of Office" for a Member as prescribed in Section 8, and Section 10A is merely a transitory provision meant only to save the terms and conditions of service of existing members, as on the date of amendment and not a substantive provision that regulates the eligibility for fresh appointment. In sum and substance, the argument of Shri Narasimha is that a person is eligible for appointment as a Member as many times as he is selected and appointed, but after a term of 10 years, he has to seek fresh appointment. He states that this can be done by a member till such time, he attains the age of 65 years.

19) Ms. Indira Jaising, learned Additional Solicitor General, per contra, would submit that Section 8 of the Amended Act is clear and unambiguous. The Legislature clearly declares the term of office for a member of the Tribunal as 10 years and, therefore, petitioner is ineligible for fresh appointment. However, on a pointed query by the Court, the learned ASG submits that a person, who has completed term of 10 years, is eligible for appointment as Chairman of such other Tribunal, but not member of the Tribunal. The learned ASG states that the Amended Act has put in clear terms that there is a limitation of 10 years for a person to hold office as a Member, and this amendment made explicit what was implicit earlier. In a nut- shell, the argument of the learned ASG is that once a person has completed 10 years in office as Member of the Tribunal, he is not eligible for re-appointment.

20) This Court was also assisted by Shri R. Venkataramani, learned senior counsel, in his role as Amicus Curiae. Shri Venkataramani, submits that the interpretation of Section 10A of the Amended Act did not come up for consideration before this Court in the case of A.K. Behra (supra.). He further submits that Section 10A of the Act was in the form of a transitory provision, which was made applicable to those persons who had been appointed prior to Amendment Act (Act No.1 of 2007). He further submits that the persons who are appointed after coming into force of the Amendment Act of 2006, Section 10A will have no application.

21) In order to appreciate the contentions urged, it will be necessary to have regard to some of the relevant provisions of the Act. Section 3(ia) defines `Member' to mean a Member (whether Judicial or Administrative) of a Tribunal, and includes the Chairman. Section 6 of the Act prescribes qualification for appointment as Chairman, Vice- Chairman and other Members. We may now trace somewhat vacillating steps by which Section 8 reached its present form. For immediate reference, we may set out Section 8 of the Act prior to and after its amendment by Act 1 of 2007. We may set out the two Sections in juxta position. :

Section 8 (Before Amendment)	Section 8 (After Amendment)
8. Term of office. - The	8. Term of office. - (1) The

Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his	Chairman shall hold office as such for a term of five years from the date on which he enters upon his office:

office, but shall be eligible Provided that no Chairman for re-appointment for shall hold office as such after another term of five years: he has attained the age of sixty-eight years.

Provided that no Chairman, Vice-Chairman or other	(2) A Member shall hold

Member shall hold office as office as such for a term of such after he has attained, - five years from the date on which he enters upon his

(a) in the case of the office extendable by one Chairman or Vice- more term of five years:

> Chairman, the age of sixty-five years, and Provided that no Member shall hold office as such after
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> (b) in the case of any he has attained the age of other Member, the sixty-five years.

age of sixty-two years. (3) The conditions of service of Chairman and Members shall be the same as applicable to Judges of the High Court.

22) Since some emphasis was laid on Section 10A of the Amended Provision by the Amendment Act of 2006, we notice that provision also and it reads as under:

> "10A. Saving terms and conditions of service of Vice- Chairman. - The Chairman, Vice-Chairman and Member of the Tribunal appointed before the commencement of the Administrative Tribunals (Amendment) Act, 2006 shall continue to be governed by the provisions of the Act, and the rules made thereunder as if the Administrative Tribunals (Amendment) Act, 2006 had not come into force:
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> Provided that, however, such Chairman and the Members appointed before the coming into force of Administrative Tribunals (Amendment) Act, 2006, may on completion of their term or attainment of the age of sixty-five or sixty-two years, as the case may be, whichever is earlier may, if eligible in terms of section 8 as amended by the Administrative Tribunals (Amendment), 2006 be considered for fresh appointments subject to the condition that the total term in office of the Chairman shall not exceed five years and that of the Members, ten years."

23) Section 8 of the Act, prior to its amendment, provided for the term of office of Chairman, Vice Chairman and other Members of the Tribunal. By virtue of this provision, they would hold the office as such for a term of five years from the date they enter upon such office. However, they are eligible

for re-appointment for another term of five years. The proviso that is appended to the Section, provides some sort of restriction of `age bar' in the case of Chairman, Vice-Chairman and Members. The Chairman and Vice Chairman shall not hold their offices as such after they have attained the age of sixty five years and in the case of any other Member, he shall not hold office after the age of sixty-two years.

24) Section 8 was amended by Act 1 of 2007. The amended provision also provides the "Term of Office" of the Chairman and Members of the Tribunal. From the language employed in the Section, what we can decipher is that the Chairman of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office. The proviso appended to the Section is couched in the negative language. It states that a person appointed as a Chairman cannot hold office as such after he has attained the age of sixty eight years. Sub section (2) of Section 8 speaks of the term of office of a Member of the Tribunal. It only says that a person appointed as a Member of the Tribunal, if he is found eligible for the post in terms of Section 6, shall hold office, for a term of five years. In the normal course, this term of five years is extendable by a term of another five years, giving a person a total term of ten years. Continuation from 5 years to 10 years appears to be as a matter of course subject to exceptions as provided in service law jurisprudence. Further, if such person has attained the age of 65 years, then he will have to retire, irrespective of whether he has completed ten years in office as a Member or not.

25) Prior to and after its amendment, Section 8 speaks of "Term of Office". In our view the Legislature has used this expression consciously. The expression `Term' signifies a fixed period or a determined or prescribed duration. The word `term' when used in reference to the tenure of office, means ordinarily a fixed and definite time. There is a distinction between the words `term' and `tenure' as applied to a public officer or employee. The `term', as applied to an office, refers to a fixed and definite period of time. The word `tenure' has more extended meaning than the word `term' and `tenure' of an office means the manner in which the office is held especially with regard to time.

26) The learned counsel Shri Narasimha submits that the Legislature, while amending Section 8 of the Act, has not placed any bar or embargo or any outer limit of number of years that can be served by a Member of the Tribunal. Therefore, a Member of the Tribunal who has served for ten years as a Member is still eligible to apply and participate in the selection process for being appointed as a Member. Though the argument advanced looks attractive, but on a deeper consideration, we find no merit in the contention canvassed by the learned counsel. In our view, the language employed in the Section does not admit any ambiguity. The language of the Statute is clear and unambiguous. Section 8(1) of the Act provides the term of office of Chairman of the Tribunal, which shall be five years from the date he assumes his office. The proviso qualifies and carves out an exception to the main enactment. The exception is, though a Chairman can hold office as such for a term of five years, he cannot hold such office after he attains the age of sixty-eight years. Sub-section (2) of Section 8 of the Act provides the "Term of Office" of a Member of the Tribunal. First part of the Section envisages that a member of the Tribunal shall hold the office for a `term of five years'. The term as applied to an office, refers to a fixed and definite period of time that an appointee is authorised to serve in office. Alternatively, it can be said that the term of office that is used by the

Legislature could only mean the period or limit of time during which the incumbent is permitted to hold the office. The second part of the Section gives discretion to the appointing authority to extend the term of office of a member of the Tribunal to one more term of five years. The expression `extendable', that finds a place in the sub-section, could only mean that the term of office of an incumbent as a member of the Tribunal can be extended if the parties agree. The proviso appended to the sub-section again carves out an exception to the main provision and restricts a member for holding office after he has attained the age of sixty five years. The proviso takes care of a situation where a member whose term of office is extended for a further period of five years cannot hold such office if he has attained the age of 65 years during the extended period of five years. A combined reading of both parts of Section 8(2) of the Act clearly demonstrates that a member of a Tribunal can hold such office for a fixed and definite period of time, i.e. for a period of five years from the date on which he enters upon his office and that period may be extended for one more term of five years. What is contended before us by the learned counsel for the petitioner is that there is neither prohibition nor any embargo for a member who has completed 10 years as Member to participate in the selection process for being appointed as a Member of the Tribunal for another term of five years. This, in our opinion, is impermissible since the total term that a person can hold the office of the Member of the Tribunal is only for a period of 10 years. In our view, if the office is created by the Legislature under due authority, it may fix the term and alter it. We can understand the heart burn of a person who has served as Member of the Tribunal for ten years and thereafter, is ineligible for being appointed as a Member of the Tribunal. We cannot help this situation. In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact either in express words or by reasonable and necessary implication. It is apt to remember the words of Lord Salmon in IRC Vs. Ross Minister Ltd. (1979) 52 TC 160 (HL). It is stated, "however, much the courts may deprecate an Act, they must apply it. It is not possible by torturing its language or by any other means to construe it so as to give it a meaning which Parliament clearly intend it to bear." We may also add that where the Legislature clearly declares its intent in the scheme of a language of Statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy and without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of legislature. Hardship or inconvenience cannot alter the meaning employed by the Legislature if such meaning is clear on the face of the Statute. If the Statutory provisions do not go far enough to relieve the hardship of the member, the remedy lies with the Legislature and not in the hands of the Court.

27) Section 10 A of the Amended Act is the saving clause. By virtue of this Section, the Chairman, Vice-Chairman and Members of a Tribunal appointed prior to the commencement of the Administrative Tribunals (Amendment) Act, 2006, are to be governed by the provisions of the unamended Act, and the rules made thereunder, thereby their conditions of service are protected. The proviso appended to the Section fell for discussion at the time of hearing of the petition. According to Shri Venkataramani, learned Amicus and Shri Narasimha, proviso to Section 10A of the Act provides that the Chairman and Members appointed prior to coming into force of the Amendment Act may, on completion of their term or attainment of the age of sixty five or sixty two years, as the case may be, be considered for a fresh appointment, provided they are eligible in terms of Section 8 of the Amendment Act. The other condition that requires to be satisfied is that the total term in the office of the Chairman shall not exceed five years and that of the members ten years.

According to the learned counsel, reference of Section 8 in the proviso to Section 10A merely refers to the tenure and does not create any ineligibility in a Member only because he has once completed the tenure prescribed thereunder. We cannot agree with this contention. The proviso, if read plainly, the only conclusion that could be reached is that the Chairman and Members appointed prior to Amendment Act 1 of 2007 on completion of either their term of service or on attainment of 65 years in the case of Chairman or 62 years in the case of Members of the Tribunal, whichever is earlier, may be considered for fresh appointment. If they are eligible in terms of Section 8 of the Amended Act that only means if a member has not completed 10 years term as a member of the Tribunal, he is eligible for fresh appointment, provided he has not completed 65 years of age. The proviso makes it abundantly clear that such fresh appointment could be done provided they satisfy the criteria prescribed under the amended Section 8 of the Act and further, it is made subject to the condition that the total term of office of the Chairman shall not exceed 5 years and that of the Member, ten years.

28) Section 6 of the Act provides for qualification for appointment as Chairman, Vice-Chairman and other Members. Section 8 of the Amended Act provides for "Term of Office". These provisions require to be read harmoniously. However, the learned counsel for the petitioner wants us to read both these Sections separately, if so read according to him, since the petitioner satisfies all the conditions prescribed under Section 6(2)(b) of the Amended Act, the requirements of Section 8 of the Act should not be put against the Petitioner and make him ineligible for fresh appointment. It is difficult for us to accept this argument. In our view, if the argument now put forward is accepted, it would mean that the amendment achieved no purpose whatsoever. Undoubtedly, the words of the amendment, on their plain reading, are sufficient to hold that the term of office of a Member of a Tribunal is 10 years and after completion of 10 years, he does not superannuate but he goes out of the office. In our view, the language of Section 10A is plain and unambiguous, hence there is no need to call in aid any of the rules of construction. We wish to add that the Constitutional validity of the proviso to Section 10A pertaining to the eligibility of a Member for being considered for a fresh appointment after completing his term of office as a member was specifically pleaded in A.K. Behra's case (supra) and the Constitutional validity of the said proviso has been upheld by the said decision in para 16 of the Judgment.

29) Shri Narasimha, learned senior counsel, contends that a member, who has completed a term of five years, can get an extension of another term of five years. Even after completing a term of ten years in office, he is still eligible for fresh appointment and this can continue till such person attains the age of 65 years. He contends that the embargo, if any, is on the tenure of a Member and not on the person applying for the post of Member. The only embargo on such person is the age limit prescribed by Section 8 of the Act. In support of his contention, Shri Narasimha pointed out to the Court that one Shri J.S. Dhaliwal was re-appointed as a Member of the Tribunal for a fresh term, after completion of his 10 year tenure. However, the learned ASG was quick to point out that the case of Shri Dhaliwal was the only a stray case in which this had happened, and attributed this to administrative lapses, rather than accede to the interpretation that a Member was eligible for fresh appointment after completion of 10 years. We are inclined to agree with the learned ASG that the appointment of Shri Dhaliwal for another term after completion of his 10 year tenure is an exception and not the rule as Shri Narasimha has put forth before us.

30) If we have to accept the construction suggested by Shri Narasimha, then it would lead to a situation where a person who has been a Member of the Tribunal for 10 years would have to start at the bottom of the ladder as a fresh appointee. In that circumstance, those persons who are appointed as Members such as the Petitioner, who were till the previous day junior to persons such as the Petitioner, would suddenly become senior to Members such as the Petitioner. This would lead to an anomalous situation where a person who would have presided over a Bench in the Tribunal for years, would suddenly become the junior Member on the same Bench. This certainly cannot be the intention of the Legislature. A statute is designed to be workable, and the interpretation thereof by Court should be to secure that object unless crucial omission or clear direction makes that end unattainable. [see Nelson Motis Vs. Union of India & Anr. (1992) 4 SCC 711, Oswal Agro Mills Ltd. Vs. CCE, 1993 Supp. 3 SCC 316, Omvalika Das Vs. Hulisa Shaw, (2002) 4 SCC 539, Natni Devi Vs. Radha Devi Gupta, (2005) 2 SCC 271].

31) This principle is stated in the case of Holmes v. Bradfield Rural District Council, (1949) 1 All ER 381 at pg. 384, in which Finnemore, J. held:

> "The mere fact that the results of a statute may be unjust or absurd does not entitle this Court to refuse to give it effect, but, if there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things."

32) In the case of Tirath Singh v. Bachittar Singh,(1955) 2 SCR 457, this Court observed:

> "5. ...But it is a rule of interpretation well-established that, "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence....."

33) In the case of Nasiruddin v. STAT, (1975) 2 SCC 671, this Court held:

> "27. ...If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain the Court would not make any alteration."

34) Before we conclude, we intend to notice the statement made by learned senior counsel that we need to place our interpretation on the provisions of the Amended Act, which further principles of Judicial independence. Reference is made to a passage from the book of an American author, Laurence H. Tribe named "Constitutional Choices". The author, while offering his views on the topic "Entrusting Federal Judicial Power to Hybrid Tribunals", has stated:

> "The independence of the federal judiciary is at least as important a constitutional value today as it was when Hamilton articulated the need for it in Federalist 78 and 79:
>
> "{A}s liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments;...{permanence in office} may therefore be justly regarded as an indispensable ingredient in its constitution, and, in great measure, as the citadel of the public justice and the public security.: Next to life tenure, Hamilton argued, "nothing can contribute more to the independence of judges than a fixed provision for their support..... [A] power over a man's subsistence amounts to a power over his will."

35) In our view, firstly, the passage from the book, referred to by the learned senior counsel, pertains to the legal system in American Courts and Hybrid Tribunals, which has nothing to do with our legal system. Secondly, the statement relied on by the learned senior counsel is an extract from the book of a jurist, which in our view has neither any persuasive value nor legal binding on us. If the suggestion made by an American author suits our legal system, it is for the Legislature to take note of it and at any rate not for us. This Court, in the case of Kashmir Singh vs. Union of India (2008) 7 SCC 259 at page 273, has observed that "the doctrine of `independence of judiciary' has nothing to do when the tenure is fixed by a statute". We are in agreement with this view.

36) In view of the above discussion, we do not see any merit in this writ petition filed under Article 32 of the Constitution of India.

37) Before parting with the case, we place on record our deep appreciation for the assistance rendered by Shri Venkataramani, the learned Amicus Curiae in understanding and appreciating the nuances of the controversy involved in this petition.

38) For the foregoing reasons, we dismiss the petition. No order as to costs.

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.....J. [D.K. JAIN] .....J. [H.L. DATTU] New Delhi, January 04, 2011.