

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.907/2002

Date of decision: 22.5.2003

Ram Kishore Prasad

..

Applicant

(By Advocate: In person)

versus

Union of India & Others

..

Respondents

(By Advocates: Sh. A.K.Bhardwaj and Sh. M.M.Sudan)

CORAM:

The Hon'ble Sh. G.S. TAMPI, Member(A)

Sh. Shanker Raju, Member(J)

1. To be referred to the reporter or not? Yes ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? Yes ✓

S. Raju  
(Shanker Raju)  
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.907/2002

New Delhi this the 22<sup>nd</sup> day of May, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMN)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Ram Kishore Prasad,  
S/o Sh. Jagannath Prasad,  
R/o H. No.S-38,  
Argora Housing Colony,  
P.O. Doranda,  
Distt. Ranchi, Jharkhand. -Applicant

(Applicant in Person)

-Versus-

1. Union of India through  
the Secretary,  
Deptt. of Personnel & Training,  
Ministry of Public Grievances and  
Pensions, Govt. of India,  
North Block, New Delhi-110 001.
2. Mr. Pradeep Kumar Deb,  
Joint Secretary,  
Deptt. of Personnel & Training,  
Govt. of India, North Block,  
New Delhi-110 001.
3. Director (AT), Deptt. of Personnel  
and Training, Govt. of India,  
North Block, New Delhi-110 001.
4. Secretary, Ministry of Home Affairs,  
Govt. of India, North Block,  
New Delhi-110 001.
5. Director, Intelligence Bureau,  
Govt. of India, North Block,  
New Delhi-110 001. -Respondents

(By learned A.S.G. Sh. K.K. Sud with Sh. A.K. Bhardwaj,  
Advocate for respondents 4-5 and Sh. M.M. Sudan, learned  
Senior Counsel for Respondent 1-3.)

ORDER

By Mr. Shanker Raju, Member (J):

Applicant in this OA has prayed for the following  
reliefs:

- i) Show cause notice may be issued to the  
respondents that as to why relief sought by  
applicant be not granted.
- ii) In relation to applicant call for the entire  
file of Judicial Member CAT with File of

Appointment/Selection No.11013/41/2001 of the year 2001 from DOPT to verify the fraud bungling corrupt arbitrary mala fide without jurisdiction action colourbale exercise of power used by the Joint Secretary DOPT, Mr. P.K. Deb and Secretary, DOPT by giving noting against the decision of High Powered Committee headed by the Hon'ble Judge of Supreme Court of India nominated by the Chief Justice of India.

- iii) To direct the Union of India to appoint the applicant on the post of Judicial Member CAT on the basis of selection of the year 2001 made by the High Powered Committee presided by the Hon'ble Judge of Supreme Court of India as nominated by the Hon'ble Chief Justice of India and good IB Report of 2001.
- iv) To direct the Union of India to give Rs.50 Lacs by way of damage on the character assassination, mental torture, agony harassment of the applicant for false reporting in the year 2000 by IB officials and also fraud bungling corrupt practice by giving misleading noting to the authorities concerned in the matter of applicant's case by Mr. P.K. Deb, Joint Secretary DOPT and Secretary, D O P T by ignoring the decision as reported in AIR 2001 SC 1369.
- v) To direct the Union of India, Secretary Home, Director, IB, to take suitable departmental action for major punishment against the officials named who submitted the false report against applicant an innocent person in the year 2000 and misleading noting given by Mr. P.K. Deb, Joint Secretary, DOPT and Secretary DOPT Govt. of India in the file to the authorities concerned in the matter of appointment of the applicant on the post of Judicial Member CAT against 2001 vacancies so that in future they could not commit such type of grave offence for destroying the career and life of a innocent person i.e. applicant for no fault.
- vi) To award cost of the application to the applicant Rs.25,000/- (Rupees twenty five thousand)."

2. Briefly enumerated, Ministry of Personnel, Public Grievances and Pensions through its Secretary called applications through the High Courts and other agencies for seven vacancies of Judicial Member of Central Administrative Tribunal vide notification dated 16.2.2001.

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Application filed by applicant, who is a practising Advocate in High Court of Jharkhand, was forwarded by the High Court through Registrar General on 12.3.2001. Earlier to this applicant had also responded to vacancies for Judicial Member pertaining to the year 2000 and after being selected was placed in the waiting list.

3. Applicant was placed at 6th position out of the seven selectees by the Selection Committee headed by Hon'ble Judge of Supreme Court. Being aggrieved by non-issuance of appointment letter, present OA has been filed.

4. Applicant who appeared in person contended that his offer of appointment has not been issued in spite of his good IB report of the year 2001 due to bungling/fraud committed by the then Joint Secretary, DOPT, Sh. P.K. Deb, who has been impleaded as R-2 herein. In this conspectus it is stated that in the year 2000 as per DO letter dated 28.8.2000 applicant was placed in the waiting list and on requisition of IB report officials, viz. Subhash Chandra Mani Tiwary, ACIO and Sh. J.M. Demta, Joint Dy. Director, I.B. visited residence of applicant and demanded Rs.10,000/- as illegal gratification for giving a good report and having failed to oblige them, a false report of extra marital relation was given against him which deprived applicant of his appointment as Judicial Member in Central Administrative Tribunal (CAT).

5. It is contended that the selection committee is headed by a nominee of the Chief Justice of India, before whom all relevant material had been placed including

(4)

character and antecedents certificate issued by the local police as well as certificate issued by Justice of High Court of Patna and thereafter a decision has been taken to select applicant. In this furtherance it is stated that respondent No.2 acted above the decision of the selection committee ignoring the IB report of 2001, which cannot be countenanced as once the High Powered Committee has taken a decision to select applicant, it cannot be undone by a subordinate authority without any jurisdiction and competence.

6. Being aggrieved by the aforesaid action applicant addressed representations to various authorities, including Chairman, CAT, but without any avail.

7. Applicant contended that the action of respondents is arbitrary, malafide without jurisdiction and in colourable exercise of powers and also violative of Articles 14, 16 and 21 of the Constitution of India as well as principles of natural justice.

8. According to applicant once decision on selection by the nominee of the Hon'ble Chief Justice of India is available, it is not open for respondent No.2 to make any noting over the decision of the High Powered Committee and before cancelling his selection he should have been afforded a reasonable opportunity to defend and for this he has cited; A. Manik Rao v. Director, Defence Metallurgical Research Laboratory, Hyderabad and others, 1985 (1) SLR 165 (AP) and Kumari Shrilekha Vidvarthi v. State of U.P., (1991) 1 SCC 212.

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9. Applicant further stated that as the fresh report was received in 2001 it was incumbent upon respondents No.1 and 2 to enquire from the concerned Ministry/IB to ascertain the facts and in the event that any doubt existed about the IB report of 2000 cancellation of applicant's selection cannot be sustained. He alleges legal malafides against the respondents.

10. In response to the OA respondents 1-3 filed their reply, questioning the jurisdiction of this court to entertain the grievance of applicant.

11. Orders have been reserved after hearing the parties on 25.10.2002 but by an order dated 5.11.2002 on re-examination it was felt necessary to go into the merit aspect of the case also. Accordingly, respondents have been directed to file their reply on merits.

12. By an order dated 28.2.2003, despite sufficient opportunities accorded to respondents to file reply on merits, by way of indulgence, subject to payment of cost of Rs.2,000/- last opportunity was accorded to respondents to respondents 1-3 to file their reply on merits, failing which it was observed that their right would be forfeited.

13. On 8.4.2003 MAs 823-24/2003 have been filed by respondents for recalling our order dated 5.11.2002 and to decide the issue and also to waive the cost imposed.

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14. On the next date of hearing, i.e., 21.4.2003 Shri K.K.Sood, learned A.S.G. appearing alongwith Sh. A.K. Bhardwaj, learned counsel and Sh. M.M. Sudan, learned Senior Counsel tendered their arguments and also produced the record pertaining to the selection held in 2001 for the posts of Judicial Member, CAT.

15. In the light of the production of original record of selection MA-824/2003 is allowed. Order dated 28.2.2003 is recalled, cost of Rs.2,000/- imposed upon respondents is waived.

16. In so far as MA-823/2003 matter has been reserved for orders and more particularly on the issue of jurisdiction, same is allowed.

17. The provisions of the Administrative Tribunals Act relevant for adjudication in the present OA are referred to as under:

Preamble of the Act and the statement of objects and reasons provide for adjudication by Administrative Tribunal of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government in pursuance of Article 323-A of the Constitution of India. Section 3 (q) of the Act defines the service matter as under:

"(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation {or society} owned or controlled by the Government, as respects--

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;"

18. In so far as qualifications for appointment as Judicial Member and the procedure for selection, Section 6 [(3) of the Act ibid provides as under:

[(3) A person shall not be qualified for appointment as Judicial Member unless he--

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

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years."

19. In so far as jurisdiction, powers and authority of the CAT are concerned, same have been provided under Section 14 of the Administrative Tribunals Act, 1985 as under:

14. Jurisdiction, powers and authority of the Central Administrative Tribunal. - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction,

powers and authority exercisable immediately before that day by all courts (except the Supreme Court [\*\*\*] in relation to -

- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning-
  - (i) a member of any All-India Service; or
  - (ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
  - (iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any state or of any State or of any local or other authority within the territory of India or under the control of the Government of India or any corporation [or society] owned or controlled by the Government;

- (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause 9ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

3[explanation.- For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of

India or under the control of the Government of India and to corporations 2[or societies] owned or controlled by Government, not being a local or other authority or corporation 2[or society] controlled or owned by a State Government.

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations 2[or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation 1[or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (excepts the Supreme Court 2 [\*\*\*]) in relation to -

- (a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation 1[or society]; and
- (b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of sub local or other authority or corporation 1[or society] and pertaining to the service of such person in connection with such affairs.

#### COMMENTS

(i) Where before the conclusion of enquiry and without referring to the charges, against a Government servant, an order of termination of service is passed, it is merely a cloak for the order of punishment; *Om Prakash Goel v. Himachal Pradesh Tourism Development Corporation Ltd.* AIR 1991 SC 1490.

(ii) This section confers no jurisdiction, power and authority on the Tribunal to deal with service matters of employees like teachers of secondary schools; *Union of India v. Tejram Parashramji Bombhali*, AIR 1992 SC 570."

20. Applicant by referring to a Full Bench decision in Bhalchandra Chintamani Gadgil v. Union of India & Ors., 1997 (2) ATJ 303 contended that Tribunal has jurisdiction to entertain and decide the dispute raised by any Member of the Tribunal in regard to the service matter. Further relying upon another Full Bench decision of Madras Bench of this Tribunal in V. Ganesh v. Union of India & Others, OA No.855/2001 decided on 13.9.2002, he contended that Members of Railway Claims Tribunal have been found to have their service condition amenable to the jurisdiction of this Tribunal as they are appointed to service in connection with the affairs of the Union. On the same analogy, claim of applicant who has been selected and which claim pertains to recruitment falls within the jurisdiction of this Tribunal under Section 14 of the Administrative Tribunals Act, 1985.

21. Moreover, by resorting to Full Bench decision of Madhya Pradesh High Court in Dr. Usha Narwariya v. State of M.P. and others, 1993 LAB IC 2300 it is contended that recruitment and matter concerning recruitment to any civil post or service under the Union covers all steps starting from notifying vacancies, inviting application etc. culminating in appointment, dispute to such steps, Tribunal will have jurisdiction under Section 14 of the Administrative Tribunals Act, 1985 having an authority conferred by Article 323-A of the Constitution of India.

22. Applicant relying upon the following decisions contended that an issue of fact and law, cannot be tried as a preliminary issue and this applies to an issue of jurisdiction also and where the question in dispute is one of the mixed fact and law, the parties cannot insist that it should be tried as a preliminary issue.:

i) Bairagi Das v. Kartik Chandra Das, AIR 1982 Orissa 272.

ii) Usha Saltes Ltd. v. Malcolm Gomes and Others, AIR 1984 Bombay 60.

23. By referring to a decision of Apex Court in A.K. Doshi v. Union of India, AIR 2001 SC 1369 it is contended that the claim of a Member was entertained who was unduly favoured and selected by selection committee on merit list, depriving rights of others.

24. By referring to a Constitutional Bench decision of the Apex Court in L. Chandra Kumar v. Union of India & Others, AIR 1997 SC 1125 it is contended that jurisdiction of CAT has been observed to be akin to the jurisdiction of High Court under Article 226 of the Constitution of India and competent and jurisdiction to entertain and service dispute in regard to service matter barring cases where vires of the Administrative Tribunals Act, 1985 is in question. In this view of the matter it is contended that applicant's grievance falls within the jurisdiction of this Court.

25. Shri M.M. Sudan, learned senior counsel appearing for respondents 4 & 5 took a preliminary objection of jurisdiction and stated that as per Article 323-A of the Constitution of India Administrative Tribunals Act provides adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service and post in connection with the affairs of the Union. According to him Section 14 (1)(a) deals with recruitment and matters concerning recruitment in All India Services or Civil Services of Union or a civil post under them, whereas 14 (1) (b) deals with service matters of Members of All India Services, person appointed to any civil service of Union or held any civil post under Union and a civilian appointed to any defence service. As applicant is neither holder of civil post nor belongs to All India Services or Civil Service of the Union his claim cannot be entertained under Section 14 (5) (a) and (b). Sh. Sudan, however, contended that any service matter which pertains to service in connection with the affairs of the Union concerning a person appointed to any service the service matters which have been defined under Section 3 (q) within its ambit does not cover the matters regarding recruitment and concerning recruitment and it applies to conditions of service which come into force after a person is appointed to the post. In a nut shell what has been argued is that the service matters connote post-appointment conditions of service. By referring to the decision of the Apex Court in Union of India v. K.B. Khare and Anr. (1994) SCC (supp) (3) 502 where the grievance pertained to the retiral benefit of a Member of the Tribunal, jurisdiction of the Tribunal has been excluded by holding

that a person appointed cannot be deemed to be employed on a post in connection with the affairs of the Union Government.

26. Referring to a Division Bench decision in V. Radhakrishnan v. Union of India & Others, OA No.1576/1999 decided on 17.8.2000 it is contended by him that the grievance of an ex-Member (Admnv) of the Tribunal pertaining to the retiral benefits has not been entertained for want of jurisdiction.

27. However, on merits as well, learned counsel of respondents produced the relevant record pertaining to the selection of Judicial Members for the year 2001 and contended that as per the provisions contained in Section 6 (7) of the Act no appointment of a person possessing the qualification of a Member shall be made except after consultation with the Chief Justice of India. In the aforesaid conspectus it is contended that the selection committee which has not recommended the case of applicant and only proposed appointment of seven Judicial Members to the Tribunal, the Chief Justice of India was consulted and his concurrence was sought.

28. Sh. K.K.Sud, learned A.S.G. vehemently supported the preliminary objection and stated by referring to the decision of the Apex Court in A.K. Doshi's case (supra) where the grievance raised by a member of Company Law Board, referring to the observations made by the Apex Court contended that in so far as jurisdiction is concerned, post of a Member of Company Law Board is not a

civil post. However on the ground of jurisdiction having reservation the matter was disposed of in the facts and circumstances of that case.

29. Further, referring to the decision of Apex Court in Canara Bank v. Nuclear Power Corporation of India Ltd. & others, 1995 (3) (supp.) SCC 81 it is contended that as the Tribunal has been entrusted with the judicial functions, it is a court having independent existence. While referring to the powers conferred upon the Tribunal of contempt of courts it is stated that the Tribunal perform judicial functions and in view of decision in Canara Bank's case (supra) Member of a Company Law Board has not been found to be holder of a civil post. The same analogy applies to the present case and as decision of Canara Bank (supra) and A.K. Doshi (supra) of Apex Court have not been considered by the Full Bench in V. Ganesh's case (supra) which is per incuriam and cannot be relied upon to hold that this court has jurisdiction to entertain the grievance putforth by applicant. By referring to the various provisions in the Administrative Tribunals Act, 1985 learned ASG has demonstrated that for all purposes the constitution of the Tribunal was for adjudication of service matters relating to a civil post and what has been conferred on it is the judicial power and all work conducted in the Tribunal by the Judicial Member is judicial in nature.

30. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as object of the Tribunal is concerned, it is not disputed, it provides adjudication of disputes in

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respect of recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the union in pursuance of Article 323-A of the Constitution of India. Apex Court in a Constitutional Bench decision in L. Chandra Kumar's case (supra) made the following observations as to the status of the Tribunal and its jurisdiction:

"92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

93. Before moving on to other aspects, we may summarise our conclusions of the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases, alone, the concerned High Court may be approached directly. All other decisions of these Tribunals rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Court. We may add that

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the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this we mean that it will not be open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislations (except as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal."

31. In a decision by a three-Judge Bench of the Apex Court in V.S. Malimath v. Union of India, (2001) 4 SCC 31, where the issue pertained to denial of monetary benefits to the petitioner who was Member of the National Human Rights Commission, who had earlier retired as Chief Justice of Kerala High Court and thereafter as Chairman, CAT, it was held as follows:

"4. Mr. T.L.V. Iyer, learned Senior Counsel appearing for the petitioner contends that the post of Chief Justice of a High Court is a constitutional post and, therefore, services rendered as the Chief Justice of a High Court cannot be held to be a service under the Government. Since proviso to Rule 3(b) of the Conditions of Service Rules stipulates that pension received by a Member in respect of any previous service under the Government of Union or Government of a State could be deducted from the salary, the pension which the petitioner was receiving as Chief Justice will not come within the sweep of the proviso to Rule 3(b) and, therefore, the petitioner was entitled to receive the salary equal to the salary of a Judge of the Supreme Court and no deduction could be made. The stand of the Union Government, on the other hand, is that the word "Government" in the proviso to Rule 3(b) should not be interpreted narrowly to mean the executive Government but should be interpreted in a broader sense to include the three organs of the State, namely, the executive, the legislature and the judiciary and such an interpretation being given the pension received by the petitioner as Chief Justice of the Kerala High Court has to be deducted from the salary receivable as a Member of the Commission in terms of the proviso to Rule 3(b). Mr. Iyer appearing for the petitioner relied upon the decision of this Court in Union of

India v. Pratibha Bonnerjea where this Court has held that the Judge of a High Court is a holder of constitutional office and not a government servant. In the aforesaid case one Pratibha Bonnerjea, who retired as a Judge of the Calcutta High Court with effect from 16-2-1989 was appointed as a Vice-Chairman of the Central Administrative Tribunal on 3.3.1989 and relinquished the said post on 16.2.1992, the question for consideration was for the aforesaid period from 3.3.1989 till 16.2.1992 what would be her pension. While she had claimed that she was entitled to pension admissible under Part I of the First Schedule to the Act, it was the contention of the Union Government that pension would be admissible under Part III of the First Schedule to the Act. The salary and allowances of the Vice-Chairman and Member of the Central Administrative Tribunal is determined under a set of Rules, called, the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Member) Rules, 1985. Rule 15-A provides that the conditions of service and other perquisites available to the Chairman, Vice-Chairman of the Central Administrative shall be the same as admissible to a serving Judge of the High Court as contained in the High Court Judges (Conditions of Service) Act, 1954, and the High Court Judges (Travelling Allowances) Rules, 1956. Under the High Court Judges (Conditions of Service) Act, 1954 a Judge of a High Court is entitled to pension under Chapter III of the Act and Section 14 provides that every Judge on retirement be paid a pension in accordance with the scale and provisions in Part I of the First Schedule provided he is not a member of ICS or has not held any other pensionable post under the Union or the State. Section 15, however, provides that a Judge who is not a member of ICS but has held any other pensionable civil post under the Union or the State, shall, on retirement be paid a pension in accordance with the scale and provisions in Part III of the First Schedule. On interpretation of the aforesaid provisions this Court held that the provisions of Part III would apply to a Judge who has held any pensionable post under the Union or State but is not a member of ICS and who has not elected to received the pension payable under Part I. Pratibha Bonnerjea having been appointed as a Judge of a High Court from the Bar, on her retirement she became

entitled to pension under Part I of the First Schedule. When she was appointed as Vice-Chairman of the Central Administrative Tribunal she was already drawing pension as Judge of the High Court under Part I of the First Schedule. The question for consideration was whether for the services rendered as Vice-Chairman of the Tribunal she would get pension under Part I or Part III. It was the contention of the Union Government that since she was holding a pensionable post under the Union/State at the time when she retired as Vice-Chairman of the Tribunal her case would be governed by Part III. This contention, however, was rejected by this Court and the Court held that it cannot be said that a Judge of the High Court holds a post under the Union or the State. The Court then went on to examine the scheme of the Constitution and how the Constitution-makers were keen to ensure that the judiciary was independent of the executive and an independent, impartial and fearless judiciary is our constitutional creed. The Court also took note of Articles 233 to 237 and pointed out how even the subordinate judiciary has been insulated from any executive influence and ultimately came to the conclusion that there is relationship of master and servant between the Government and the Judges of the High Court, and consequently, it cannot be said that a Judge of the High Court holds a post under the Union/State. Though certain broad observations made in the aforesaid case might support the contention of Mr. Iyer, but we find it difficult to accept the contention of Mr. Iyer that the pension received by a Judge of the High Court shall not be taken into account for determining his salary as a Member of the Human Rights Commission as the services of a Judge of the High Court by no stretch of imagination, even though pensionable, can at all be intended to be excluded for determining the salary which such member on retirement as a Judge or Chief Justice of a High Court is entitled to receive under Rule 3(b) of the Rules. In Pratibha Bonnerjea case this Court on interpreting Articles 50, 214, 217, 219 and 221 of the Constitution did come to the conclusion that a Judge of a High Court belongs to the third organ of the State, which is independent of the other two organs namely, the executive and the legislature it is in that sense the court further observed that a Judge of the High Court occupies a unique position under the Constitution. But conferring that

status to a judge of the High Court, so as to enable him to discharge his duties without fear or favour, affection or ill-will, has got nothing to do in interpreting a particular provision of the Rules governing the service conditions of the Chairman and Members of the Human Rights Commission, when such Judge on retirement as Chief Justice, is appointed as a Member of the Human Rights Commission. We are also not in a position to accept the contention that by interpreting that pension received by a retired Chief Justice of High Court is to be deducted from the salary which he is entitled to, as a Member of the Human Rights Commission, under the proviso to Rule 3(b) would in any way affect the independence of the judiciary nor would it affect the constitutional scheme and the unique position a Judge occupies under the Constitution as discussed in Pratibha Bonnerjea case. It would be appropriate at this stage to notice an earlier judgement of this Court in Pashupati Nath Sukul v. Nem Chandra Jain where the court was considering the question whether the Secretary of a State Legislative Assembly can be held to be qualified to be appointed as Returning Officer for election to Rajya Sabha and it is in that context Articles 102(1)(a), 191(1)(a) and several other relevant provisions came up for consideration before the Court. The word "Government" in Article 102(1) a and Article 191(1)(a) of the Constitution was construed by the Court and it was held that the expression "an officer of Government" in Section 21 of the Representation of the People Act, 1951 should be interpreted liberally so as to include within its scope the legislature, the executive and the judiciary and the Court further observed that an officer of the State Legislature, is still an "officer of Government" in the sense the expression "Government" is used in Article 102(1)(a) and 191(1)(a). In the aforesaid case, this Court had observed that all the three organs, the legislature, the executive and the judiciary are concerned with the governance of the country and in this sense, all the three organs together constitute the Government at their respective level. The Court had also noticed the fact that the Comptroller and Auditor-General of India, though is assigned an independent status, is an officer under the Union Government, as was held in the case of Guru Gobinda Basu v. Sankari Prasad Ghosal. The Court further observed that the Comptroller and

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Auditor-General of India and the Judges of the Supreme Court and of a High Court are not eligible to contest elections to Parliament and the State legislatures in view of Article 102(1)(a) and Article 191(1)(a) of the Constitution, as the case may be, because they are serving in connection with the affairs of the Union [see Article 360(4)(b) of the Constitution] and are, therefore, holding offices of profit under the Central Government. The expression "Government" used in proviso to Rule 3(b) has, therefore, to be construed in the wider sense and the services rendered by a Judge or Chief Justice of a High Court must be held to be a service in connection with the affairs of the Union and as such the proviso to Rule 3(b) of the Rules would govern the case of such retired Judge or Chief Justice in determining the salary, which he would be entitled to, on being appointed as a Member of the Human Rights Commission. The question can also be considered from yet another angle. Under the provisions of the Human Rights Commission Act, 1993, the Chairperson would be one who has been a Chief Justice of the Supreme Court and a Member could be appointed who is or has been a Judge of the Supreme Court and another member, who is or has been the Chief Justice of the High Court. In the Rules, when the rule-making authority provided for a salary to be paid to a Member under Rule 3(b), a proviso was inserted for deduction from such salary, the amount of pension other than disability or would pension, which such Member was in receipt of, in respect of any previous salaries. The intention of the rule-making authority is crystal clear that any pension when a Member has been in receipt of, for the services rendered earlier, has to be deducted from the salary, which under the Rules has been indicated to be equal to the salary of a Judge of the Supreme Court. The contention of the petitioner to the effect that the previous service as Chief Justice of a High Court not being one under the Government of Union, must be held to be not covered by the proviso cannot be accepted, reading the Rules as a whole. We have, therefore, no hesitation in coming to the conclusion that the proviso to Rule 3(b) would apply to the retired Chief Justice of India or the retired Chief Justice of a High Court and the pension which they are in receipt of, apart from the disability or would pension, has to be deducted from their salary, which they are entitled to under

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the Rules. The contention of Mr. Iyer appearing for the petitioner, on this score, therefore cannot be sustained."

32. As per the aforesaid ratio service rendered by a Judge or as Chief Justice of a High Court has been held to be service in connection with the affairs of the Union. In K.B. Khare's case (supra) decision of the two-Judge Bench of the Apex Court dealing with the grievance of a retired Member of CAT pertaining to his retiral benefits observed as under:

"17. In our considered view, the High Court has gone wrong in considering the service in CAT as re-employment in connection with the affairs of the Union. On the contrary, an independent judicial service, the appointment in the CAT is on tenure basis. The pension relating to such post is clearly governed by Rule 8 of the Rules quoted above and at the risk of repetition, we may state it exhaustive in nature. If that be so, there is no scope for resort to Rule 16 at all. If the first respondent had to resign from Judicial Service because of the statutory requirement under Rule 5 of the Rules (quoted above), we are unable to see as to how both the services namely senior District Judge in the State Judicial Service and a Member in the CAT could be clubbed. Such a clubbing is not contemplated at all. From this point of view, we find it difficult to accept the reasoning of the High Court that the matter of option to club the two services for pension is a subject on which the Rules are silent and the residuary provision in Rule 16 of the Rules intends to fill the gap by supplementing the Rules by rules applicable to the Secretary to the Government of India."

33. A Full Bench of this Tribunal in in Bhalchandra Chintamani Gadgil's case (supra) held as follows:

"It was held therein that the Tribunal did have jurisdiction to entertain an application filed by a retired Vice-Chairman of the Tribunal. The Judges of the High Court and

Supreme Court are constitutional functionaries and therefore are not Government servants. Their appointment and service conditions are regulated by the provisions made in the Constitution of India. As against this, the provisions pertaining to appointment, terms and conditions of appointment and the mode of resignation and removal of the Members, Vice-Chairmen and Chairman of the Tribunal are provided in the Sections 6 to 9 of the Administrative Tribunals Act, 1985. They cannot, therefore, claim to be constitutional functionaries. Their mode of appointment, mode of removal and conditions of service are such as may be equated to any other Government employees of the Centre. Under the circumstances, it was held that this Tribunal has jurisdiction to entertain and decide disputes raised by any Chairman, Vice-Chairmen or Members of the Tribunal in regard to service matters."

34. Another Full Bench of this Tribunal in V. Ganesh's case (supra), while dealing with the service conditions of Members of Railway Claims Tribunal and the issue whether the CAT has jurisdiction to entertain their grievance and whether they are appointed to any civil service of the Union taking note of the decision of the Apex Court in Malimath's case (supra) and also distinguishing K.B. Khare's case (supra) held as follows:

"9. Under our constitution, judiciary is independent since it is one of the organs of the Constitution. As was held in V.S. Mallimath's case, the unique position of a Judge has nothing to do in interpreting a particular provision of the rules governing the service conditions. For the purpose of service conditions, we cannot hold that such services are of judicial nature, it is outside the affairs of the Union. In V.S. Mallimath's case it was held that the expression "Government" used in proviso to Rule 3 (b) to be construed in the wider sense and the services rendered by a Judge or Chief Justice of a High Court must be held to be a service in connection with the affairs of the Union. If that interpretation is the law, we have to hold that Members of the Railway Claims Tribunal also come within our jurisdiction.

9. The learned counsel for the respondents relied on the judgment of the Supreme Court in the case of Dr. A.K. Doshi v. Union of India, (2001 (4) SCC 43). On going by the judgment, we do not think that judgment have any relevance to the matter in issue before us.

10. We answer our reference in the following terms:

"We hold that Members of the Railway Claims Tribunal, i.e., their service conditions will come within the jurisdiction of this Tribunal since they are appointed to services in connection with the affairs of the Union"

35. In A.K. Doshi's case (supra) Apex Court has held as follows:

"15. It was also submitted that the Central Administrative Tribunal had no jurisdiction to entertain the petition of the 2nd respondent. It was submitted that the Appellant had already become a Member of the Company Law Board. It was submitted that by virtue of Section 14 of the Central Administrative Tribunal Act, 1955, the Central Administrative Tribunal could only exercise jurisdiction, powers and authority in respect of an All India Service or to any Civil Service of the Union or a Civil Post under the Union or to a post connected with Defence or in the Defence Services, being a post filled by a civilian. It was submitted that the post of a Member (Technical), Company Law Board was neither an All India Service nor a Civil Service of the Union nor a civil post under the Union. Reliance was placed upon the authority in the case of Canara Bank v. Nuclear Power Corporation of India Ltd. reported in 1995 Supp. (3) SCC 81. In this case it was held that the Company Law Board was a Court. Based on this authority it was submitted that since the Company Law Board is a Court, its Members could not be holding civil posts under the Union. It was submitted that both the Central Administrative Tribunal and the High Court erred in holding that the post of a Member, Company Law Board was a civil post.

16. Both the Central Administrative Tribunal and the High Court have relied upon various Rules, notably Rules 6,7,10 and 13 of the said Rules and concluded that these Rules indicated control by the Government. It was held that as the Government had control, thus the post was civil post. It must be mentioned that we have reservation in accepting this view.

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However, for all these years the post has lain vacant. Even if we were to hold in favour of the Appellant no useful purpose would be served. The 2nd respondent would have to be given time to challenge in a proper forum. On facts set out hereinabove the end result would be the same. The selection of the Appellant would be set aside. The post would then lie vacant for the period it takes to dispose of that matter. The only sufferer would be the litigating public. As in this case the facts are very gross, we see no reason to interfere. We leave this question open to be decided in an appropriate matter."

36. A Full Bench of the Madhya Pradesh High Court in Dr. Usha Narwariya's case (supra) observed as under:

"26. Having interpreted the term 'recruitment' as we have done, consistently with the law laid down by the Supreme Court, we are of the opinion that we see no justification in carving out jurisdiction to the courts from the jurisdiction of the Central Administrative Tribunals by drawing a distinction between 'pre-recruitment matters' and 'recruitment matters' for such a distinction would be not real, but merely a distinction without any difference. What has been called 'pre-recruitment' disputes in some of the decisions is nothing but a 'dispute concerning recruitment' within the meaning of the Act and the 'dispute or complaints with respect to recruitment' within the meaning of Art. 323-A of the Constitution. Such a dispute would lie within the jurisdiction of the Administrative Tribunals."

37. At the outset, relevant issues for our consideration are as under:

(i) whether a Member/Vice-Chairman in post or retired can be said to be appointed to a post pertaining to service in connection with the affairs of the Union?

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(ii) Whether a Member/Vice-Chairman appointed in the Central Administrative Tribunal is amenable to the jurisdiction of the Tribunal in so far as enforcement of the service conditions or any grievance relating to the service matters?

(iii) Whether a selectee or an aspirant to the post of Member or Vice-Chairman, who is still to be appointed can approach the Tribunal in respect of a grievance relating to his recruitment and matter concerning recruitment?

38. In so far as issue No. (i) is concerned, learned ASG fervently contended taking resort to the decision in Canara Bank's case (supra) that the three organs, i.e., Legislature, Executive and Judiciary are concerned with the governance of the country and as a Tribunal which is a world of wide import embracing within it the judicial powers in all forums and having been entrusted with adjudication of the controversy presented before it and with the entrustment of power of contempt it is difficult to see how the Tribunal can be said to be any thing other than a court. In this view of the matter what has been put-forth is that being an independent judicial body, i.e., court, Member of a Tribunal which has all the powers and functions of a Judge cannot be brought within the purview of the Administrative Tribunals Act, 1985 (A.T. Act) and as being a Member not holder of a civil post as well as not belonging to All India Service Section 14 excludes jurisdiction in respect of a Member of the Tribunal in respect to service matters and also recruitment and matter concerning recruitment. In so far as Full Bench

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decision in V. Ganesh's case (supra) is concerned, it is contended that as the same has not been taken note of the decision of the Apex Court in Canara Bank's case (supra) and A.K. Doshi's case (supra) the same is per incuriam and reliance cannot be placed on it.

39. The aforesaid submission of the learned A.S.G. is manifestly unfounded. The Apex Court in Union of India v. Pratibha Bonneriea, (1995) (6) SCC 765 held that a Judge of a High Court is holder of a constitutional office and not a government servant. The case related to a retired Judge of the Calcutta Bench who was later on appointed as Vice-Chairman of C.A.T. who sought entitlement to pension admissible under Part-I of the First Schedule to the Act. Though after interpreting Articles 50, 214, 217, 219 and 221 of the Constitution of India a conclusion has been arrived at by the Apex Court that a Judge of the High Court belongs to the third organ of the State which is independent of other two organs, viz. Legislature and Judiciary, the decision was not accepted and further relying upon an earlier judgement in Rashupati Nath Sukul v. Nem Chandra Jain & Ors., (1984) 2 SCC 404 where the word "Government" was interpreted in the context of whether Secretary of State Legislative Assembly can be qualified to be for election to Rajya Sabha and further in Guru Gobinda Basu v. Sankari Prasad Ghosal and Ors., AIR 1964 SC 254 where Comptroller and Auditor General of India was not found eligible to contest election to the Parliament as serving in connection with the affairs of the Union.

40. The aforesaid controversy was dealt with by a three-Judge Bench of the Apex Court in Malimath's case (supra) and after taking into consideration the decision in Pratibha Bonneriea's case (supra) while interpreting rule 3-B of National Human Rights Commission Chairperson and Members (Salaries, Allowances and Other Conditions of Service) Rules, 1993 the earlier service rendered by a Member as a Judge or Chief Justice of High Court has been treated as service in connection with the affairs of the Union. In that case Justice Malimath on his retirement from High Court was appointed as Chairman of CAT and thereafter on his retirement from CAT was appointed in NHRC. The controversy related to interpretation of maximum of leave encashed. The Apex Court with reference to Rule 3-B *ibid*, which provides previous service under the Government of Union in clear terms held that "service rendered by a Judge or Chief Justice of a High Court must be held to be a service in connection with the affairs of the Union". In A.K. Doshi's case (supra) where the issue was appointment of petitioner as Member, Company Law Board (CLB) though the Bench of two Judges in so far as jurisdiction of the Tribunal taken note of the submissions made by respondents that post of Member (Technical) CLB is neither an All India Service nor a civil service of the Union nor a civil post under Union, but in view of the consistent view of the CAT as well as High Court as to control of Government and post being a civil post had observed their reservation in accepting the view and left the question open to be decided in an appropriate matter. It is relevant to note that the decision in Canara Bank (supra) referred to by the learned ASG was also considered in the aforesaid decision.

41. As the issue of jurisdiction has been left open and no finding has been recorded by the Apex Court whether a member of CLB is holder of a civil post or not the issue was not adjudicated upon and for these reasons the decision in A.K. Doshi's case would have no application in the conspectus of the present case.

42. In so far as decision in Canara Bank (supra) is concerned, which was with reference to CLB, being designated as a court the issue regarding amenability of a Member before the Tribunal for redressal of his grievance was not a issue therein. What has been held is that CLB is a court for the purposes of Section 9-A of the Special Court Act the aforesaid decision apart from declaring CLB as a court has not laid down any proposition of law in so far as jurisdiction of Member, CLB in relation with his service matter to the Tribunal. Accordingly the same is distinguishable.

43. In so far as Apex Court's decision in K.B. Khare (supra) where member of CAT who had sought retirement from service in the State as a District Judge was disallowed clubbing of service for the purposes of pension, the Apex Court over-turned the view of the High Court as to service rendered in CAT as re-employment as in connection with the affairs of the Union. What has been held is that it is an independent judicial service.

44. Full Bench of this Tribunal in V. Ganesh's case (supra) while dealing with the amenability of Member of Railway Claims Tribunal as to enforcement of service

conditions in so far as jurisdiction is concerned, having considered the decision in K.B. Khare's case (supra) relying upon the decision in Malimath's case (supra) held that Member of Railway Claims Tribunal to be amenable to the jurisdiction of CAT. In the process of answering reference the decision in A.K. Doshi's case (supra) was also considered. Earlier to the Full Bench in V. Ganesh's case (supra) Full Bench of this Tribunal in Bhalchandra Chintamani Gadgil (supra) held the jurisdiction of this Court with respect to retired Vice-Chairman of the Tribunal holding that they are not constitutional functionaries.

45. However, a Division Bench of this Court in V. Radhakrishan (supra) strongly relying upon K.B. Khare (supra) in so far as relief of a retired Member of CAT ruled out the jurisdiction.

46. In so far as Judges of the High Courts are concerned, they are holders of constitutional posts and member of one of the three organs i.e., Judiciary and different from other two, i.e., Executive and Legislature have been held to be serving in connection with the affairs of the Union. The decision in Malimath's case (supra) is by a three-Judge Bench. If the ratio arrived at in that case is kept in mind the same analogy in pari materia extends to the Member and Vice-Chairman of the Tribunal. Though there is no denial from the fact as held by the Constitutional Bench in L. Chandra Kumar's case (supra) having regard to the Statement of Object of Administrative Tribunals envisaged under Article 323-A on establishment of the A.T. Act, 1985 the Tribunal has been observed to act as a Court of first instance and to function as a

supplementary body whose decisions are to be scrutinized before the concerned Division Bench of respective High Court. Under Section 17 of the Administrative Tribunals Act, 1985 Tribunal has been entrusted with the power to punish for contempt and while doing so to exercise the same jurisdiction, powers and authority as provided under the provisions of Contempt of Courts Act, 1971. Section 22 (3) of the A.T. Act provides discharge of functions and powers by the Tribunal in pari materia powers vested in a Civil Court under CPC. Section 30 provides all proceedings before the Tribunal as judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code. From the perusal of the aforesaid with all functions of a court and powers vested is a court within its meaning.

47. Though the decision in K.B. Khare's case (supra) has ruled out re-employment in Tribunal on a civil post under the Union but having regard to the decision of larger Bench consisting of three Judges in Malimath's case and on the corollary and analogy that the retired High Court Judge or Chief Justice is said to be in service in connection with the affairs of the Union, the aforesaid decision mutatis mutandis extends to the Member of the Tribunal and once holder of constitutional post and belonging to an independent organ of the system, i.e., Judiciary a High Court Judge has been said to be in service in connection with the affairs of the Union Tribunal being a Judicial Body the Member and Vice-Chairman cannot be treated differently.

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48. Moreover a decision in Malinath's case (supra) case is binding precedent under Article 141 of the Constitution of India, a decision of three-Judges Bench of the Apex Court over-rules the decision by two-Judge Bench. The doctrine of precedent has been well defined by a Constitutional Bench of the Apex Court in Pradip Chandra Paria & Others v. Pramod Chandra Patnaik & Ors. (2002) 1 SCC 1 with the following observations:

"6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgement of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to Bench of three learned Judges setting out as has been done here, the reasons why it could not agree with the earlier judgement. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgement of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified."

49. As per the decision of Full Bench of this court in V. Ganesh's case (supra) Members of the Railway Claims Tribunal, which is also a court within the meaning as defined in Canara Bank's case (supra) have been held to be amenable to the jurisdiction of the Tribunal where the decision in K.B. Khare's case (supra) has not laid down any proposition of law as to the jurisdiction and in the light of decision in Malinath's case (supra) once the services of High Court Judges have been found to be in connection with the affairs of the Union for the purpose of service conditions merely because the service of Member and Vice Chairman of the Tribunal are of judicial nature would

not exclude the jurisdiction. The contention put-forth by learned ASG that the decision in A.K. Doshi (supra) has not been considered and the decision in Full Bench is per incuriam of Canara Bank's case (supra) is concerned, the Full Bench has considered the decision, therefore, the contention put-forth by the learned ASG is rejected. We agree with the answer to the reference in V. Ganesh's case (supra) as if the Member of the Railway Claims Tribunal is amenable to our jurisdiction, Vice-Chairman and Member of CAT cannot be treated otherwise.

50. In the result in answer to issue No.(i) we hold that Members and Vice-Chairmen appointed in the Tribunal are appointed to service in connection with the affairs of the Union and are covered under Section 14(c) of the Administrative Tribunals Act and are amenable to the jurisdiction of this court in so far as their service matters are concerned on being appointed to such service.

51. As regards issue No. (ii) in the light of our answer to issue No. (i) we have no hesitation to hold that Members and Vice-Chairmen on being appointed in the Tribunal and those who retired from service are amenable to the jurisdiction of the Tribunal as per provisions of Section 14 (c) of the Act.

52. In so far as issue No. (iii) is concerned, the contention put-forth by applicant in person relying upon a Full Bench decision of M.P. High Court in Usha Narwariva's case (supra) that recruitment used in Article 323-A covers all the steps starting from notifying vacancies culminating in appointment and any dispute

relating to such steps Tribunal will have jurisdiction as the Act cannot travel beyond the scope and authority conferred through Article 323-A is concerned, we are not persuaded by the aforesaid contention. On establishment of the Tribunal the Statement of Object includes under Article 323 of the Constitution of India adjudication or trial by an Administrative Tribunal of the dispute and complaints with respect to recruitment and conditions of service of persons appointed to a public service and a post in connection with the affairs of the Union. However, Section 14 in so far as recruitment and matters concerning recruitment are concerned, is applicable to a person aggrieved when such a matter concerns All India Service or any Civil Service of the Union or a Civil Post under the Union or post connected with the defence and Defence Services field by a civilian.

53. By negative covenant Section 2 of the Act excludes jurisdiction of any Member of the naval, military or air forces or of any other armed forces of the Union or any officer or servant of the Supreme Court or of any High Court or any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a Legislature of that Legislature.

54. However, service matters as defined in Section 3 (q) construe and includes within the definition of matters relating to the conditions of service in connection with the affairs of the Union respecting remuneration, pension and other retirement benefits; tenure including confirmation, seniority, promotion,

reversion, premature retirement and superannuation; leave of any kind; disciplinary matters; or any other matter whatsoever. From the perusal of Section 3 (q) and 14 (a) and (b) in respect of recruitment and matter concerning recruitment in order to be amenable to the jurisdiction of this court it has to be as a pre-condition or qualification a person aggrieved who belongs to All India Service or any Civil Service of the Union or holder of a civil post under the Union. A person who serves in connection with the affairs of the Union has been explicitly excluded from challenging and raising a grievance regarding recruitment and matter concerning recruitment before the Tribunal. In so far as persons not belonging to All India Service and appointed to Civil Service of the Union or serving in connection with the affairs of the Union can raise a grievance before the Tribunal with respect to the service matters on being appointed to any service.

55. At this stage before adjudicating the aforesaid issue we have to keep in mind the cardinal rules regarding interpretation of Statute. The Apex Court in District Mining Officer v. Tata Iron and Steel Company (2001) 7 SCC 358 held as follows:

"A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature. The function of the court is only to expound and not to legislate. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends

the mischief and its remedy to which the enactment is directed. It is also a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same status, but its preamble, the existing state of law, other statutes in pari materia and the mischief which the statute was intended to remedy. (Para 18).

The most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject-matter, the effects and consequences, or the spirit and reason of intended to be done or not to be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication. But the whole of what is enacted "by necessary implication" can hardly be determined without keeping in mind the purpose or object of the statute. A bare mechanical interpretation of the words and application of legislative intent devoid of concept or purpose will reduce most of the remedial and beneficent legislation to futility. The courts, however, are not entitled to usurp legislative function under the disguise of interpretation and they must avoid the danger of determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted."

56. While holding the said principles of interpretation the Apex Court made following observations in Dadi Jagannadham v. Jammulu Ramulu, (2001) 7 SCC 71:

"The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly, if there is a defect or an omission in the words used by the legislature, the court would not go its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

57. In so far as contextual construction is concerned, the Apex Court made following observations in Union of India v. Elphinstone Spg. and Wvg. Co. Ltd., (2001) 4 SCC 139:

"When the question arises as to the meaning of a certain provision in a statute it is not only legitimate but proper to read that provision in its context. The context means the statute as a whole, the previous state of law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy.

Although the court would be justified to some extent in examining the materials for finding out the true legislative intent engrafted in a statute, but the same would be done only when the statute itself is ambiguous or a particular meaning given to a particular provision of the statute would make the statute unworkable or the very purpose of enacting statute would get frustrated. But it is not open for a court to expand even the language used in the Preamble to extract the meaning of the statute or to find out the latent intension of the legislature in enacting the statute. (Para) Union of India v. Elphinstone Spg, and Wvg. Co. Ltd., (2002) 4 SCC 139: AIR 2001 SC 724: (2001) 105 Comp Cas 309."

58. When a Statute is clear and unambiguous the golden rule for interpretation is to give prima facie ordinary meaning, as held by the Apex Court in Dental Council of India v. Hari Prakash, 2001 (8) SCC 61.

59. As we find from the reading of various provisions that matters regarding recruitment and matter concerning recruitment in respect of a person in service in connection with the affairs of the Union the jurisdiction does not lie before the Tribunal. Although what has been stated by applicant in person is the object of the Act which provides adjudication of recruitment and matter concerning recruitment of a person in service in connection

with the affairs of the Union. When the provisions of a Statute or an Act are clear, unambiguous they have to be given their literal meaning and resort to the object of the Act would render the provisions negatory. This has been found illegal by the Apex Court with the following observations in Bharathidarshan University v. All India Council for Technical Education, (2001) 8 SCC 676:

"When the legislative intent finds specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory by giving undue importance to the so-called object underlying the Act or the purpose of creation of a body to supervise the implementation of the provisions of the Act, particularly when the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy or other statutory bodies, having their own assigned role to perform. Merely activated by some assumed objects or desirabilities, the courts cannot adorn the mantle of the legislature. It is hard to ignore the legislative intent to give definite meaning to words employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent aim and object underlying the various other provisions of the Act. Even in endeavouring to maintain the object and spirit of the law to achieve the goal fixed by the legislature, the courts must go by the guidance of the words used and not on certain preconceived notions of ideological structure and scheme underlying the law."

60. Taking resort to the legislative intent and the Statement of Objects and reasons of the statute is permissible only when the same is necessary and there is an imperative need to appreciate the appropriate intent of the legislature. It cannot be used as a thumb rule. The following observations which substantiate the aforesaid

conclusion made by the Apex Court in Gurudevudatta VKSSS Marvadit v. State of Maharashtra, (2001) 4 SCC 534 is relevant and are reproduced below:

"It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusages, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

61. In our considered view service matters as defined in Section 3 (q) applying the cardinal principle of literal and contextual construction service matters are those matters which relate to the conditions of service. Apex Court in state of M.P. and Others v. Shardul Singh, 1970 (1) SCC 108 defined conditions of service as under:

"9. The expression 'conditions of service' means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension, etc."

62. If one has regard to the service matters clause 3 (q), which inter alia incorporates any other matter whatsoever cannot be read in isolation. Had there been an intention of the Legislature to include recruitment

and matter concerning recruitment in service matters the same would have been specifically incorporated as such. In the absence of these matters being included in the definition of service matters we cannot import recruitment and matters concerning recruitment within the definition of "any other matter". If such a meaning is assigned to any other matter Section 3 (q) where the service matters are defined would be rendered nugatory. In so far as holder of a civil post or person of All India Service recruitment and matters concerning recruitment would apply to them and they can raise a grievance before this Tribunal pertaining to their recruitment. No doubt recruitment includes pre-recruitment process as also which is not res integra in view of the Full Bench decision of the M.P. High Court in Usha Narwariya's case (supra). Moreover the Apex Court in Narayanan & Others v. State of Karnataka & Others, 1996 Supp. (1) SCC 44 held that "recruitment according to dictionary means enlist. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment selection, promotion and deputation are all well known methods of recruitment." The contention put forth by applicant taking strength of Full Bench decision of M.P. High Court in Usha Narwariya's case (supra) would have limited application as to recruitment. The recruitment is inclusive and covers all steps starting from notifying vacancies. But the same would not hold good for a person in service in connection with the affairs of the Union, i.e., those aspiring for the posts of Member/Vice-Chairman.

63. Section 14 (c) talks of post appointment grievances, i.e., the service matters in relation to conditions of service and a grievance pertaining to recruitment or non-appointment to the post of Member cannot be treated as a service matter for want of any provision to this regard under Section 14 of the A.T. Act, 1985.

64. Moreover, recruitment is an initial process which may eventually lead to an appointment. These are two separate concepts<sup>l</sup> and are not synonymous<sup>h</sup>. The word "recruitment" must not be understood in relation to a completed appointment, as where the appointment is still under consideration and is being processed ultimately leading to appointment in service.

65. Having regard to the aforesaid we hold that the grievance of a person pertaining to recruitment and matter concerning recruitment either on the post of Member or Vice-Chairman in CAT is beyond the jurisdiction, as envisaged under Section 14 (c) of the Administrative Tribunals Act, 1985.

66. However, we must regard the ratio laid down by the Apex Court in L. Chandra Kumar's case (supra) where except dealing with the vires of the Parent Act, this Court has been observed to be amenable in so far as jurisdiction to the service matters are concerned, but the issue regarding amenability of a Member to pre-appointment dispute has not been dealt with. Accordingly, the aforesaid decision would be of no help to applicant.

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67. In the result, for the foregoing reasons, we hold that Members and Vice-Chairmen of the Tribunal are amenable to the jurisdiction of the Tribunal under Section 14 (c) pertaining to service matters in service in connection with the affairs of the Union and also the retired Members and Vice-Chairmen. This would not, however, apply so far as persons who have a grievance pertaining to recruitment and matter concerning recruitment to the post of Member or Vice-Chairman are concerned. This Tribunal has no jurisdiction to entertain their grievance as they do not have any service matter to agitate. They are at liberty to approach the appropriate forum for redressal of their grievance in accordance with law.

68. With the following observations OA is dismissed for want of jurisdiction. The same is returned back to applicant to pursue his remedy before an appropriate forum. No costs.

*S. Raju*  
 (Shanker Raju)  
 Member (J)

*Govindan S. Tampi*  
 Member (A)

"San."

