

CENTRAL ADMINISTRATIVE TRIBUNAL

JAMMU BENCH, JAMMU

Order reserved on 03.09.2020

Order pronounced on 14.09.2020

HON'BLE MRS AJANTA DAYALAN , MEMBER – A

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

OA No.62/631/2020

MA No.62/817/2020

1. Shabir Ahmad Gilkar s/o Mohammad Akram Gilkar r/o
S.K.Bagh, Nowgam, Srinagar, age 51 years.
2. Tariq Ahmad Lone s/o Ghulam Qadir Lone r/o Islam Yarbali,
Srinagar, age 51 years.

..... Applicants

(By Advocate: Mir Manzoor Ahmad)

Versus

1. Union Territory of Jammu and Kashmir through
Commissioner/Secy to Govt. Housing & Urban Development
Department Civil Sectt. Jammu/Srinagar.
2. Commissioner Department Civil Sectt. Jammu/Srinagar.
3. Saiqa Nabi, I/C Junior Engineer, Srinagar Municipal Corporation,
Karan Nagar Srinagar.

..... Respondents

(By Advocate: Rajesh Thappa)

O R D E R

Per - Rakesh Sagar Jain, Member (J)

1. The present O.A. has been filed by applicant Shabir Ahmad Gilkar and Tariq Ahmad Lone against Srinagar Municipal Corporation (hereinafter referred to as 'Corporation') regarding their service matter. Mr. Rajesh Thappa, learned AAG has raised a preliminary objection that Central Administrative Tribunal does not have the jurisdiction to try the present case in terms of provisions of the Central Administrative Act, 1985 (hereinafter referred to as the 'Act').
2. It be noted that the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi, in exercise of powers conferred by sub-section (1) of section 18 of the CAT Act, issued Notification G. S. R. 267(E) dated 29.04.2020 extending the jurisdiction of the Central Administrative Tribunal, Chandigarh Bench, *inter alia*, to the Union Territories of Jammu and Kashmir, and Ladakh. Subsequently, notifications were issued by the government setting up the Bench for the two Union Territories (UTs) and a Bench thereof stands established at Jammu for the two UTs.
3. Learned AAG for respondents submitted that the Corporation can be brought within the jurisdiction of Tribunal only by way of a notification

to be issued by the Central Government under Sec. 14(2) of the Act and so long as this notification is not issued, this Tribunal cannot assume jurisdiction in respect of any service matter under name of corporation. It is stated that the Corporation is not notified by Government under Section 14 (2) of the Act and therefore, this Tribunal does not have jurisdiction over the subject matter of the present O.A. It was also argued by learned AAG that the Corporation employees are holders of corporation posts and they are not holders of civil posts under the government of Union Territory or erstwhile State of J&K within the meaning of Section 14(2) of the Administrative Tribunals Act.

4. It was also submitted by the learned AAG that the Administrative Tribunals Act, 1985 in the matter of taking away the jurisdiction of ordinary constitutional Courts has itself maintained a distinction between the employees directly employed by the State and serving under it and those employees working in local authorities although under control under various enactments of the State. It cannot be held that the entire jurisdiction with regard to such corporation employees would vest in the Tribunal in the absence of issuance of due notifications under Section 14(2) and (3) of the Act. Therefore, this application is to be dismissed since the same does not lie within the jurisdiction of this Tribunal.

5. There is no dispute that the Corporation has been created by J&K Municipal Corporation Act, 2000 and as per Section 4 (1), the Corporation is a body corporate having perpetual succession and common seal with powers subject to the provision of the Act, to acquire, hold and dispose of property and may be the said name sue and be sued and is therefore a distinct and legal entity not covered by provisions of Section 14(2) of the Act and can be brought within the jurisdiction of this Tribunal only through a notification to be issued by Central Government. This sub-section reads thus: —

“(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions Of subsection (3) to local or other authorities within the territory of India and to corporations (or societies) owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government.

(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 (or society), all the Jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to-

(a)

(b)

6. A combined reading of the two provisions shows that provisions of subsection (3) could be applied to local or other authorities under the control of the Government and to Corporations or societies owned and controlled by the Government by a Notification to be issued by the Central Government. No such notification has been admittedly issued till date to extend jurisdiction of Tribunal to the Corporation.
7. On the question of jurisdiction of the tribunal, the Hon'ble Rajasthan High Court in judgment dated 15.09.2001 in Ram Kishore Meena Vs. Union of India and Others held that: -

“17. We have also perused the provisions of Section 14 of the Central Administrative Tribunal Act, 1985 and from the perusal of the same, we find it crystal clear that the Central Govt. may at its discretion apply the provisions of the Act, 1985 in respect of local or other authorities within the territory of India owned or controlled by the Govt. of India and also to the Corporations owned and controlled by the Government not being a local or other authorities or corporation controlled or owned by the State Government. The provisions have also been inserted under Sub-rule (2) as per which even the local or other authority controlled or owned by the State Government may be amenable to the Central Administrative Tribunal Jurisdiction, but that is only after notification and

after considering subjectively and objectively the expediency for the purpose of facilitating transition to the Scheme as envisaged by this Act.”

8. The question of jurisdiction arose in the OA titled Uttam Chand Nahta vs. Union of India & ors. in OA No.3486/2011 decided on 13.01.2012 by Principal Bench, it has been held that the Tribunal lacks jurisdiction to adjudicate the issue raised in the O.A. for the reason as under:

“Thus, we are of the view that this Tribunal has no jurisdiction to entertain the matter so long as a notification is not issued by the Central Government in exercise of the powers conferred by Section 14 (2) of the A.T. Act, 1985 in respect of CLB, thereby making O.A 2097/14 provisions of Section 14 (3) of the Act applicable from a specified date. Judicial notice can be taken of the fact that the Central Government has issued different notifications, invoking the provisions of sub sections (2) and (3) of Section 14 of the Act for inclusion of Corporations/Societies/ other Societies owned or controlled by the Government within the purview of this Tribunal, including Income Tax Appellate Tribunal, which is also a statutory body under the Ministry of Law and Justice, Central Pollution Control Board, constituted under the Water (Prevention and Control of Pollution) Act, 1974, Central Social Welfare Board, an authority controlled by the Government, Coconut Development Board, a statutory authority under the Ministry of Agriculture etc. But no such

notification has been issued qua Company Law Administration constituted under the Companies Act. Accordingly, we are of the view that the present OA is not maintainable and we have got no jurisdiction, power and authority to decide the matter in terms of the provisions contained in Section 14 of the Administrative Tribunals Act, 1985.”

9. We may also refer to order dated 03.06.2020 passed by the Hon'ble High Court of J&K at Srinagar in WP (C) No. 913/2020 connected with WP (C) No. 908/2020 titled Abhishek Gupta v/s Jammu and Kashmir Bank Ltd. wherein the question of jurisdiction of the CAT to try the case pertaining to the Service matters of the employees of JK Bank came up for adjudication and the Hon'ble High Court has held that:-

“It is not that the Central Government has not issued any notification in exercise of the powers under sub-section 2 of Section 14 of the Act applying the provision of sub-section (3). Certain documents / notifications issued by the Central Government, from time to time, in exercise of such power under sub-section (2) of Section 14 have been placed before the Court which depict that so far nearly 214 organizations, by their name, have been brought under the purview of sub-section (3) of Section 14 of the CAT Act; the J&K Bank, in any case, is not one amongst them.

17. Viewed in the above context, it cannot be said that sub-section (3) of Section 14 of the CAT Act applies to the Bank or the instant recruitment process of the Bank.

18. This answers the point in issue raised by the learned Advocate General and Mr. Sunil Sethi, learned senior counsel, for respondents 1 and 2. Resultantly, it is held that the CAT does not have the jurisdiction under Section 14 in relation to the subject matter of controversy in the instant case; and, further, that this Court continues to have the jurisdiction in relation thereto to entertain this petition.”

10. In the present case, since Corporation has not been brought within the jurisdiction of this Tribunal by a notification to be issued by the Central Government under Sec. 14 (2) of the Act and therefore, so long as this notification is not issued, the Tribunal cannot assume jurisdiction in respect of any service matter pertaining the Corporation under the Act. We accordingly hold that this Tribunal is not vested with any jurisdiction to entertain any petition related to any service dispute in the Corporation.

11. Therefore, we dismiss the O.A for want of jurisdiction. We make it clear that we have not gone into the merits of this case and it would

be open to the applicant to avail of remedy available to him under the law before the appropriate forum. No costs.

(Rakesh Sagar Jain)
Member (J)

(Ajanta Dayalan)
Member (A)

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