



**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH JAMMU**

Dated: This day of 28th of July 2020

(Orders reserved on 23rd of July, 2020)

**HON'BLE Dr. BHAGWAN SAHAI, MEMBER – A
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J**

O.A. No.062/00059/2020

Syed Showkat aged 50 years S/o Syed Mohammad Yaseen
R/o HMT Mustafabad Zainakote Srinagar.

.....Applicant

By Advocate: Mr. Qazi Ayaz

Versus

1. Union Territory through Commissioner/Secretary, Industries and Commerce Department, Civil Secretariat, Jammu.
2. Managing Director, J & K Minerals Ltd. Ground Floor, Sanat Gar Srinagar.
3. Director Finance J & K Minerals Ltd. Ground Floor, Sanat Gar Srinagar.
4. Secretary J & K Minerals Ltd. Ground Floor, Sanat Gar Srinagar.
5. Agent Coal Mines Kalakote, Jammu.
6. Promod Khajuria, C/o Managing Director, J & K Minerals Ltd. Ground Floor, Sanat Gar Srinagar.
7. Mir Sajad C/o Managing Director J & K Minerals Ltd. Ground Floor, Sanat Gar Srinagar.

.....Respondents

By Advocate: Mr. Amit Gupta, AAG

ORDER**Per Rakesh Sagar Jain, Member (J)**

1. Applicant Syed Showkat has filed the present OA seeking relief with regard to his service dispute with respondent J&K Minerals Ltd. regarding his grade, release of salary and allowances, seniority, promotion and apply "The Rights of Persons with Disabilities Act, 2016" to his case. The preliminary question arises whether this Tribunal has the jurisdiction to hear the present Original Application.

2. We have heard and considered the arguments of the learned counsel for the applicant and learned AAG for the respondents. We have also perused the written arguments of learned counsel for the applicant and gone through the material on record.

3. Learned counsel for applicant argued that though Central Government has not issued any notification under Section 14(2) of the Administrative Tribunals Act, 1985 (herein after referred to as the 'Act') to bring J&K Mineral Ltd (hereinafter referred to as the 'Company') within the jurisdiction of the Tribunal, it is not required in the present case because the Company is part of the Government of Union Territory of J&K as its funding and officers are provided by the Government and it is an Authority and State within the



meaning of the expression in Article 12 of the Constitution of India.

4. Elaborating further, learned counsel for applicant has relied upon *Ajay Hasia Vs. Khalid Mujib*, AIR 1981 SC 487 wherein Hon'ble Supreme Court has laid down the test for determining as to when a corporation or such like organization can be said to be an instrumentality or agency of the Government and held that if on a consideration of the relevant factors it is found that the corporation is an instrumentality or agency of the Government, it would be an Authority and therefore State within the meaning of the expression in Article 12 of the Constitution of India and therefore amenable to the jurisdiction of this Tribunal.

5. Learned AAG for respondents, on the contrary, submitted that respondent J&K Mineral Ltd, a Government Company 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, Tribunal cannot assume jurisdiction in respect of any service matter under name of the Company. It is stated that the Company is not notified by Government under Section 14 (2) and therefore, this Tribunal does not have jurisdiction over this matter.



6. It was further argued by learned AAG that the Corporation does not come under the ambit of the Act as the said Corporation is neither owned nor controlled by the Government of UT or erstwhile State of J&K. Therefore, this Tribunal does not have jurisdiction qua the service matters of respondent-organization. It was also argued by learned AAG that the Company employees including the applicant are holders of Company 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.

7. Learned AAG further contended that the service conditions of employees of J&K Minerals Ltd. Are governed by J&K Minerals Employees' Service Regulations (Annexure – A 11) and it is clear from the provisions contained in Section 14 of the Act, that the Administrative Tribunals are constituted with a specific purpose to decide cases on service matters of specific categories of employees. The Administrative Tribunals Act, 1985 in the matter of taking away the jurisdiction of ordinary constitutional Courts had 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 the control under various enactments of the State. It cannot be held that the entire jurisdiction with regard to such company employees would vest in the Tribunal even 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.

8. There is no dispute that the Corporation/company being a Government company is a distinct, legal entity but it is not covered by provisions of Section 14(2) of the Act and could be brought within Tribunal jurisdiction only through a notification to be issued by Central Government. This subsection 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)"

9. 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.

10. 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.”

11. It is clear that the Ajay Hasia (Supra) judgment deals with the question as to when a corporation etc can be said to be an instrumentality or agency of the Government and even if the respondent may satisfy the test as laid down in Ajay Hasia by the Hon’ble Supreme Court, for the Tribunal to have jurisdiction, there has to be a specific notification under Section 14 (2) of the Act and since in this case there is no such notification, clearly this Tribunal has no jurisdiction.

12. 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.”

13. Applicant has averred in the O.A. that “applicant is employee of the Jammu and Kashmir Minerals Department” and “.That the applicant came to be appointed as



Residential trainee mining engineer on 23.10.1999 vide order No. Est/PF/99/2887/92 issued by respondent department ...". Perusal of the appointment order (Annexure I) reveals that applicant has been appointed by J&K Minerals Ltd. Since the applicant is an employee of J&K Minerals Ltd. and not a State/UT Government Employee of J&K, his service conditions are governed by J&K Minerals Service Regulations, 1969 and not by J&K Civil Service Regulations. As per Rule 3 of J&K Minerals Service Regulations, 1968, these rules shall apply to all employees of the corporation whether permanent or temporary but shall not apply to employees of the Central Government or State Government etc. . . ."

14. In the present case, applicant is an employee of the respondent (J&K Minerals Ltd.) and the corporation/Company 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 to the respondent-Company 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/company.



15. 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)

(Dr. Bhagwan Sahai)
Member (A)

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