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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 903
TAX No.

1986

DATE OF DECISION 3-11-1986

Shri Harish Chander

Petitioner

Shri J.P. Verghese

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Advocate for the Respondent(s)

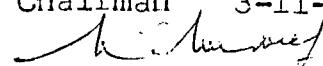
CORAM :

The Hon'ble Mr. K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
If so whether to be circulated to other Members ? Yes


(K. Madhava Reddy)
Chairman 3-11-1986


(Kaushal Kumar)
Member 3-11-1986

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

Regn. No. OA 903/86.

Shri Harish Chander
Versus

Applicant

Union of India & Another

Respondents

CORAM:

Shri Justice K. Madhava Reddy, Chairman
Shri Kaushal Kumar, Member

For petitioner

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Shri J.P. Verghese,
Counsel.

For respondents

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(Judgement of the Bench delivered by
Shri Justice K. Madhava Reddy, Chairman).

The applicant, an Assistant Sanitary Inspector (Sewer) in the office of the Municipal Corporation of Delhi, being aggrieved by the final seniority list published under order dated 29.4.1986 prays that seniority list be declared as illegal. He also prays for an order restraining the Respondents from placing 7 persons appearing at Sl. Nos. 2 to 8 above him in the said list for the purpose of promotion. He further prays for a direction not to fill up the two posts that have fallen vacant on 14.8.84 and 28.2.85 due to the retirement of Shri Tara Chand and Shri Tula Ram respectively.

The preliminary question that calls for consideration is whether this Tribunal has jurisdiction to entertain the grievances of the applicant. Section 2 of the Administrative Tribunals Act does not exclude the employees of the Municipal Corporation Delhi from the purview of the Act. But whether this Tribunal has jurisdiction to entertain the grievances of such employees has to be judged in the light of Section 14 of the Act.



It is necessary to read Section 14 which is 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

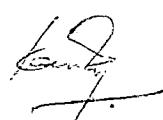
(iii) a civilian ~~not~~ being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

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 local or other authority within the territory of India or under the control of the Government of India or of 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 (ii) 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.

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



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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:

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 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, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) 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 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 such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

Sub-section(1) of Section 14 of the Act vests jurisdiction in respect of grievances of persons mentioned therein namely; members of any All India Service or members of any civil service of the Union or persons holding a civil post under the Union or a post connected with defence or in the defence services; such post being a civilian post.

The applicant is not a member of an All India Service. He is also not a member of any civil service of the Union; nor is he a civilian holding a post connected with Defence or in the Defence Services. The contention of the learned counsel of the petitioner is that he holds "a civil post under the Union" which includes Union Territory of Delhi by virtue of the

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Explanation added to sub-section (1) of Section 14.

Therefore, this Tribunal has jurisdiction to entertain his grievance. Before we consider this contention, we may take note of the fact that the petitioner is admittedly a person who is in the service of Delhi Municipal Corporation which is a local authority and is squarely covered by the provisions of sub-section (2) and (3) of Section 14. Unless a Notification is issued under sub-section(2) read with sub-section (3) of Section 14, the Central Administrative Tribunal would have no jurisdiction to entertain the grievances of such persons. Sub-section (3) of Section 14 empowers the Central Administrative Tribunal to exercise jurisdiction, power and authority in respect of recruitment and matters concerning recruitment to any service or post in connection with the affairs of such corporation and also in respect of service matters concerning persons appointed to any service or post in connection with the affairs of such corporation and pertaining to the service of such persons in connection with such affairs. Under sub-section (2) of Section 14, the Central Government may by Notification apply with effect from such date as may be specified therein, provision of sub-section (3) to local or other authorities within the territory of India. No such Notification having been issued, the grievances of any person holding any post in Municipal Corporation of Delhi which is a Local Authority is not entertainable by this Tribunal. However, as already sated, it is argued by the learned counsel that the petitioner holds a "civil post under the Union" and as such he is a person covered by sub-section(1) of Section 14 and the Central Administrative Tribunal has jurisdiction, power and authority to

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deal with his grievances with effect from the Appointed Day i.e. the moment Central Administrative Tribunal was constituted under sub-section (1) of Section 14. We are unable to agree with this contention. In our opinion, a person appointed to any service or post in connection with the affairs of a local authority or corporation unless he is a member of an All India Service or a member of any civil service of the Union and is so appointed in connection with the affairs of the Union, does not come within the purview of sub-section (1) of Section 14. The petitioner is admittedly not appointed to any post connected with the affairs of Union; he is appointed to a post in connection with the affairs of the Municipal Corporation of Delhi and belongs to a service under the Municipal Corporation of Delhi. The petitioner is admittedly an employee of the Municipal Corporation of Delhi. Municipal Corporation of Delhi is established under Section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957). It is a Corporate Body having perpetual succession and common seal with power, subject to the provision of this Act, to acquire, hold and dispose of property. It may sue and be sued in its name as laid down under sub-section (2) of Section 3. Section 89 of the Delhi Municipal Corporation Act makes provision for appointment of certain officers referred to therein. Some permanent and temporary posts mentioned in the schedule may be created by the appropriate authority from time to time. The Corporation or the Standing Committee has been vested with the power in this behalf. However, power to make appointments is vested by Section 92 of the Act in respect of certain posts

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(category 'A' posts) on Authorities detailed in clause (a) of sub-section 1 of Section 92 of the Delhi Municipal Corporation Act. In respect of posts falling in categories 'B' and 'C', power is vested in the General Manager (Electricity) or the Commissioner or the subordinate officer mentioned therein. All such employees are employees of the Corporation. The power to impose punishment on such employees is vested under Section 95 in the authorities mentioned therein, the highest authority being the Corporation. Section 99 of the Act requires Municipal Fund to be constituted and Section 105 ordains that this Fund may be applied in payment of all sums, charges and costs necessary for carrying out the provisions of the Act, the rules, the regulations and bye-laws made thereunder.

It will thus be seen that the Corporation constituted under Section 3 of the Delhi Municipal Corporation Act is an independent statutory authority having a legal personality of its own, independent of the Union of India and the Central Government and discharges statutory functions. The persons appointed to carry out these statutory functions and duties are employees of the Corporation which is a statutory body. The Corporation itself has to function in accordance with the provisions of the Act, rules and regulations framed thereunder. Though these functions may be controlled by the Government, still that control is exercised over the Corporation by virtue of the statute and not in exercise of its executive power. In discharging these functions, the Corporation may have to follow certain rules and regulations.

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Inasmuch as the Corporation has an independent personality of its own with power to sue and be sued in its own name, it cannot be deemed to be a department of the Government and its employees holding a post under the Union. The salary of these employees is paid out of the Municipal Fund and not out of the General Revenues of the Union of India. The Fund itself may comprise of taxes and fees collected and moneys raised in accordance with the provisions of the Act. It may also consist of some grants from the Government or other bodies. But nonetheless it constitutes Municipal Fund which has to be spent for discharging functions and duties imposed by statute and in accordance with the provisions as to sanction of budget. This Fund does not form a part of the Consolidated Fund of India or the Revenues of the Union. It is a Fund of the Corporation which has a separate legal entity independent of the Government. The employees receiving salary from such a Fund are employees of the Corporation. The employees appointed by the statutory authority or subordinate authority do not become employees of the Government; nor can they be considered to be holding a civil post under the Union.

It was argued by the learned counsel for the applicant that the taxes can be levied only by the Union or by the State and since Corporation levies taxes and pays its employees out of the amount so realised, they must be deemed to be employees of the Union. This argument proceeds on an erroneous premises. Article 265 only lays down that no tax shall be levied or collected except by authority of law. It does not lay down that the State alone can realise taxes; all that is necessary

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for levy of tax by any Body is, the authority of law. The authority of law for the Delhi Municipal Corporation to levy and collect taxes is the provision contained in the Delhi Municipal Corporation Act. That constitutes sufficient authority of law for the Corporation which has a legal personality of its own to levy and collect taxes. The taxes collected do not become a part of the Revenues of the Union. That amount becomes a part of the Municipal Fund envisaged by Section 99 of the Act. The fact that the salaries of the employees of the Corporation are paid out of the Fund raised by way of taxes or fees under the Delhi Municipal Corporation Act, does not make the employees of the Corporation employees of the Union Government.

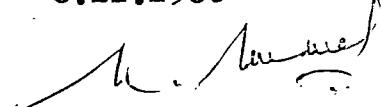
It was also contented that the Commissioner and other subordinate officers mentioned in Section 89 are appointed subject to confirmation by the Government. This fact also does not render the persons so appointed as employees of the Government. It is significant to note that sub-section (3) of Section 14 of the Administrative Tribunals Act specifically makes an exception in favour of the persons referred to in clauses (a) & (b) of sub-section (1) of Section 14 of the Act. The result of such an exception is that the persons covered under clauses (a) & (b) of sub-section (1) of Section 14 will be subject to the jurisdiction of the Tribunal even though they may be functioning under the Municipal Corporation and discharging duties connected with the affairs of the Corporation. The contention of the Applicant that the petitioner holds a civil post under the Union is, therefore, rejected. The petitioner is an employee of the Municipal Corporation of Delhi. As no Notification under sub-section (2) read with sub-section (3) of Section 14 has

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so far been issued and as the Applicant does not belong to the category of persons referred to in clauses (a) & (b) of sub-section (1) of Section 14 of the Act and the provisions of sub-section (3) have not been made applicable to any Municipal Corporation including Municipal Corporation of Delhi, the Central Administrative Tribunal has no jurisdiction to entertain the grievances of the Applicant. We, therefore, hold that this Tribunal has no jurisdiction to entertain the present Application. The Applicant must await the issuance of a Notification under sub-section (2) read with sub-section (3) of Section 14 of the Act for filing any application for the redressal of his grievance before this Tribunal. Until then this Tribunal has no jurisdiction to entertain this application. The application shall be returned to the applicant for presentation before the appropriate forum.


(K. Madhava Reddy)
Chairman
3.11.1986


(Kaushal Kumar)

Member
3.11.1986