CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:NEW DELHI

REGN. No. OA 1579/87 Date of decision: 4.2.1988

Shri Subhash Wason ... Applicant

Vs.

The Administrator of Union Territory of Delhi and others ... Respondents

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member.

For the Applicant ... Shri P.P. Rao, Sr. Counsel with Shri Rakesh Tikku & Shri A.K. Gupta, Counsel.

For Respondent No. 1 ... None

For Respondent No. 2 ... Shri Kuldip Singh, Additional Solicitor General with Shri R.K. Saini, Counsel.

(Judgement of the Bench delivered by Hon'ble Mr. Justice K. Madhava Reddy, Chairman)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, hereinafter referred to as the "Act") by a member of the Delhi Higher Judicial Service calling in question the order of dismissal dated 7.8.1987 made by the Administrator of the Union Territory of Delhi (Respondent No.1 herein). The order was passed while the applicant was posted as Chief Metropolitan Magistrate, Delhi. He also prays for a direction to reinstate him in service with all consequential benefits. Pending disposal of this application, he also prays for suspension of the decision taken at the full court meeting of the High Court on 10.7.87 to award the punishment of dismissal from service and the impugned order of the Administrator, Delhi dated 7.8.1987 dismissing him from service. He prays for a further interim direction not to dispossess him from the premises No. 6/10, Ansari Road, Daya Ganj, Delhi in which he is residing. While

admitting the application, the Tribunal stayed eviction.

2. The Respondents raise a preliminary objection that the Central Administrative Tribunal("Tribunal" for short) has no jurisdiction to entertain this application. According to the Respondents, the Delhi High Court continues to be vested with the jurisdiction under Articles 226, 227 and 235 of the Constitution of India in respect of any disciplinary action taken against a member of the Delhi Higher Judicial Service. Even at the admission stage, having regard to the judgement of the Supreme Court in Chief Justice of Andhra Pradesh Vs. L.V.A. Dikshitulu & others(1), we ourselves had some reservations as to the jurisdiction of this Tribunal to entertain an application under Section 19 of the Act in respect of a service matter of a member of the Delhi Higher Judicial Service. By that judgement, the Supreme Court had disposed off the cases of two officers, one Sri L.V.A.Dikshitulu, a former employee of the High Court who was ordered to be compulsorily retired and the other Shri V.V.S. Krishnamurthy, a member of the Andhra Pradesh State Judicial Service who was ordered to be pre-maturely retired in public interest. In the State of Andhra Pradesh there is an Administrative Tribunal constituted by a Presidential order as provided by Article 371-D of the Constitution to deal with the service matters of persons holding:-

(i) posts in any Civil Service of the State; or

(1) AIR 1979 SC 193

(ii) Civil posts under the State; or

(iii) Posts under the control of any local authority within the State.

In that context, dealing with the argument that an employee of the High Court and a member of the Andhra Pradesh Judicial Service could be deemed to be holding a post in any of the Civil Services of the State or a Civil post under the State and that they were amenable to the jurisdiction of the Andhra Pradesh Administrative Tribunal, the Supreme Court observed:-

" The phrase "Civil service of the State" remains more or less an amorphous expression as it has not been defined anywhere in the Constitution. Contrasted with it, the expression "Judicial service of the State" and "District Judge", have been specifically defined in Article 236, and thus given a distinctive, definite meaning by the Constitution-makers. Construed loosely, in its widest general sense, this elastic phrase can be stretched to include the 'officers and servants of the High Court' as well as members of the Subordinate Judiciary. Understood in its strict narrow sense, in harmony with the basic constitutional scheme embodied in Chapters V and VI, Part VI, and centralised in Articles 229 and 235, thereof, the phrase will not take in High Court staff and the Subordinate Judiciary."

The Supreme Court then went on to consider the contention that the expressions 'Civil Service of the State' and 'Judicial Service of the State' have different connotations and held:-

" A choice between these two rival constructions of the phrase"civil services of the State" is to be made in the light of well settled principles of interpretation of constitutional and other statutory documents"

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possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism, having a soul and consciousness of its own."

3. Then tracing the events leading to the introduction of Article 371-D in the Constitution, the Supreme Court observed:-

"It will be seen from the above extract, that the primary purpose of enacting Article 371-D was twofold: (i) to promote "accelerated development of the backward areas of the State of Andhra so as to secure the balanced development of the State as a whole", and (ii) to provide "equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service."

4. Against that background, the Supreme Court then held:

"The Statement of Objects and Reasons does not indicate that there was any intention, whatever, on the part of the legislature to impair or derogate from the scheme of securing independence of the Judiciary as enshrined in Articles 229 and 235. Indeed the amendment or abridgment of this basic scheme was never an issue of debate in Parliament when the Constitution(32nd Amendment) Bill was considered."

5. Then the Supreme Court proceeded to consider the specific question whether the High Court staff and the Subordinate Judiciary were intended to be included in Clause(3) of Article 371-D and declared thus:-

> "Will the exclusion of the judiciary from the sweep of this Clause substantially affect the scope and utility of the Article as an instrument for achieving the object which the Legislature had in view ? The answer cannot but be in the negative. The High Court staff and members of the Subordinate Judiciary constitute only a fraction of the number of persons in public employment in the State"

> "In our opinion, non use of the phrases "judicial service of the State" and "District Judges"(which have been specifically defined in Article 236),and "officers and servants of the High Court" which has been designedly adopted in Articles 235 and 229, respectively, to differentiate them in the scheme of the Constitution from the other civil services of the State, gives a clear indication that posts held by the High Court staff or by the Subordinate Judiciary were advisedly excluded from the purview of Clause(3) of Art.371-D. The scope of the non obstante provision in sub-article(10) which gives an overriding effect to this Article is conterminous with the ambit of the preceding clauses.

> The officers and servants of the High Court and the members of the Judicial Service, including District Judges, being outside the purview of Clause(3), the non obstante provision in Clause(10) cannot operate to take away the administrative or judicial jurisdiction of the Chief Justice or of the High Court, as the case may be, under Arts.229,235 and 226 of the Constitution in regard to these public servants in matters or disputes

falling within the scope of the said Articles. Clause(10) will prevail over any provisions of the Constitution, other than those which are outside the ambit of Article 371-D, such as Articles 229 and 235. Provisions not otherwise covered by Article 371-D, cannot be brought within its sweep because of the non obstante Clause(10). It follows as a necessary corollary that nothing in the Order of the President constituting the Administrative Tribunal, confers jurisdiction on the Tribunal to entertain, deal with or decide the representation by a member of the staff of the High Court or of the Subordinate Judiciary." (emphasis supplied)

6. In that view of the matter, the Supreme Court held that the Andhra Pradesh State Tribunal had no jurisdiction to entertain a "representation" of any member, officer or servant of the High Court Service and any member of the Andhra Pradesh State Judicial Service.

7. Shri P.P.Rao, learned counsel appearing for the applicant herein at the admission stage, however, contended that the control vested in the High Court under Article 235 in respect of the members of the Judicial Service is administrative and not judicial. He argued that the fact that the members of the Judicial Service are subject to the administrative control of the High Court under Article 235 of the Constitution cannot, in any way, affect their right to move the Tribunal under the provisions of the Act. According to the learned counsel, if the jurisdiction of the High Court is barred now in respect of persons holding civil

posts under the Union or Union Territory, then members of the Delhi Higher Judiciary who also hold civil posts under the Union or Union Territory have a right to move the Tribunal under Section 19 of the Act because the jurisdiction of the High Court under Article 226 of the Constitution is now barred by virtue of Article 323A and Section 28 of the Act. This matter, therefore, required the consideration of the Tribunal and that is why the application was admitted. However, having regard to the amendment in clause(c) of Section 2 of the Act brought about by the Administrative Tribunals(Amendment) Act, 1987 (No.51 of 1987) which came into force with effect from 22.12.1987, any decision on this interesting question of law has become wholly academic.

8. Section 2 of the Act provides that the Act shall not apply to certain persons. Immediately prior to the enactment of the Administrative Tribunals(Amendment) Act, 1987(51 of 1987) that Section read as under:-

"2. Act not to apply to certain persons- The provisions of this Act shall not apply to-

(a) any member of the naval, military or air forces or of any other armed forces of the Union;

(b) omitted.

(c) any officer or servant of the Supreme Court or of any High Court;

(d) 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".

By the Amendment Act in clause(c) after the words "any High Court", the words "or courts subordinate thereto" were inserted. After the Amendment, clause(c) of Section 2 of the Act reads as under:-

> "Any officer or servant of the Supreme Court or of any High Court or courts subordinate therete."

By virtue of this amendment, the Administrative Tribunals Act would not apply to any "officer or servant" of courts subordinate to the High Court or the Supreme Court. The Court of the Chief Metropolitan Magistrate is undoubtedly a court subordinate to the High Court or the Supreme Court. A member of the Delhi Higher Judicial Service appointed as Chief Metropolitan Magistrate would be presiding over a court subordinate to the High Court or the Supreme Court. A member of the Higher Judicial Service is an officer and having been appointed to preside over a court would be an officer of that court. May be, he is a Judicial Officer and under him there are other officers and servants working; but all such other officers and servants are either administrative or ministerial or non-ministerial officers and servants.

9. The members of the subordinate judiciary, even according to the applicant, hold judicial office. Once it is conceded that they are judicial officers, it is rather difficult to accept that they are not officers of the court subordinate to the High Court or the Supreme Court. The word 'officer' is a genus and the term "Judicial

Officer" is its species. A member of the State Judicial Service, higher or subordinate, is appointed to discharge the duties of a Subordinate Judge, District Judge, Magistrate or Metropolitan Magistrate or Chief Metropolitan Magistrate or of such other judicial offices as are enumerated under the Rules governing judicial officers. As these officers discharge judicial functions, they are referred to as judicial officers as distinct from other officers of the court who perform administrative or ministerial functions. While those others would be administrative or ministerial officers, members of the Judicial Service appointed to preside over the courts, would be judicial officers. Only the functions of these several officers are different. But nonetheless all are officers of a court subordinate to the High Court or the Supreme Court.

10. It is, however, argued on behalf of the applicant that the Chief Metropolitan Magistrate who is a member of the judiciary cannot be deemed to be an officer or servant of the court subordinate to the High Court or the Supreme Court and as such he is not excluded from the purview of the Act by Section 2 of the Act. He is, therefore, entitled

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to move the Tribunal under Section 19 of the Act against the order of dismissal from service which is admittedly a service matter. Of course, a member of the Higher Judicial Service appointed as Chief Metropolitan Magistrate cannot be termed as a servant of a court subordinate to the High Court or the Supreme Court but is he not an "officer" of a court subordinate to the High Court or the Supreme Court? That is the question.

11. Learned counsel for the applicant, arguing on the preliminary objection, traced the history of appointment of Judicial Officers and officers and servants of the Courts under the Government of India Act, 1915 and the Government of India Act, 1935 as also the Punjab Courts Act extended to the Union Territory of Delhi till 1937. Section 35 of the Punjab Courts Act which was omitted in 1937 declared that the officers and servants of subordinate courts are subject to the control of the High Court. Though Section 35 itself was omitted in 1937, the High Court Rules which were framed under Section 35(3) of the Punjab Courts Act continued to govern appointment of the officers and servants of the subordinate courts. The power to appoint them continued to be vested in the Delhi High Court while the judicial officers and District Judges were appointed by the Government but were only subject to

the control of the High Court. It is also pointed out that neither in the Government of India Act, 1915 nor in the Government of India Act, 1935 nor in the Punjab Courts Act, judicial officers have been referred to as mere 'officers' of the court; they have been throughout referred to as judicial officers. The persons appointed by judicial officers are referred to as officers and servants of the subordinate courts. Even under the Constitution wherever it is intended to refer to a judicial officer, the expression "an officer holding a judicial office" is employed and not simply the word "officer". So much so, Article 217(2)(a) while referring to a person who is qualified to be appointed as a Judge of the High Court stipulates that he should have held a judicial office for at least ten years. (emphasis supplied.)

12. Attention is also drawn to Article 236 of the Constitution which defines the expressions "district judge" and "judicial service" as under:-

> "(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.
> (b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge."

13. Attention is also invited to Article 146 of the Constitution which deals with the officers and servants of the Supreme Court and Article 229 which refers to the officers and servants of the High Court. In the light of these various provisions, it is argued that even the Constitution makers and the Legislature made a clear distinction between the officers and servants of the court and the judicial officers who preside over the courts subordinate to the High Court or the Supreme Court. Therefore, when the Parliament has by way of an amendment in Section 2(c) of the Act has enacted that "the Act shall not apply to officers and servants of the Supreme Court or High Court or courts subordinate thereto", the expression "officers" cannot be stretched to include even "judicial officers" who preside over such courts.

14. As was done by the Supreme Court in L.V.A. Dikshitulu's case (1) to gather the intention of the Parliament in using the expression "officers and servants of the courts subordinate", it is necessary to examine the background in which Administrative Tribunals (Amendment) Act (Act 51 of 1987) was adopted. This amendment was brought about in fulfilment of the undertaking given by the Union of India to the Supreme Court during the hearing of the case in S.P. Sampath Kumar Vs. Union of India & others (2) in which the validity of the Act

(1) AIR 1979 SC 193

(2) A.T.R. 1987 (1) S.C. 34

was challenged on several grounds. One of the contentions raised therein was that "so far as Tribunals set up or to be set up by the Central or the State Governments are concerned, they should have no jurisdiction in respect of employees of the Supreme Court or members of the subordinate judiciary and employees working in such establishments inasmuch as exercise of jurisdiction of the Tribunal would interfere with the control absolutely vested in the respective High Courts in regard to the judicial and other subordinate officers under Article 235 of the Constitution." The Supreme Court recorded in that judgement that" after [illegible] arguments were [illegible] and Attorney General, after obtaining instructi[illegible] the Central Government, filed a memorandum [illegible] that section 2(c) of the Act would be suitably amended so as to exclude officers and servants in the employment of the Supreme Court and members and staff of the subordinate judiciary from the purview of the Act."

15. It is argued that when while giving the assurance to the Supreme Court, the Union of India also was conscious of the distinction between the expression "members of the subordinate judiciary" and "officers and servants of the courts subordinate" and now when the (Amendment) Act merely excluded the officers and servants of the courts subordinate to the High Court or the Supreme Court from the purview of the Act, there is no warrant for holding that the members of subordinate judiciary are also included within the expression "officers and servants"

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of courts subordinate thereto and to exclude them from the purview of the Act. It is true that the officers presiding over the courts subordinate to the High Court are usually referred to as judicial officers e.g. District Judge, Chief Judicial Magistrate, Subordinate Judge and not merely as officers and the employees of these courts. As rightly pointed out by the learned counsel for the applicant that the Government of India Act, 1915, the Government of India Act, 1935 and the Constitution do deal with the officers and servants of the courts subordinate to the High Court separately distinct from judicial officers presiding over courts. But what we are now required to consider such a distinction was intended to be made by Parliament in the context of investing jurisdiction in the Central Administrative Tribunal with respect to service matters. If we examine the provisions of Articles 226, 227 and 235 and the Objects and Reasons for introducing Article 323A and enacting the Administrative Tribunals Act (Act No.13 of 1985) and the background in which the Administrative Tribunals Act was amended by the Amendment Act (No.51 of 1987), the intention of the Parliament seems to be absolutely clear. So far as the officers and servants of the Supreme Court and the High Court as also the officers (other than the judicial officers) and servants of all other courts subordinate thereto are concerned, there can be no manner of doubt

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that they are excluded from the purview of the Act by virtue of Section 2(c) and are not subject to the jurisdiction of this Tribunal.

16. Accepting the contention of the applicant that judicial officers are not covered by the expression "officers of the court subordinate" would mean that while officers and servants appointed by a District Judge would be subject to the jurisdiction of the High Court, the District Judge and other Judicial Officers themselves would be subject to the jurisdiction of this Tribunal and excluded from the jurisdiction of the High Court. If control exercised by the High Court under Article 235 were to be confined to officers and servants of the court and not to extend over Judicial Officers from sitting over the subordinate courts, the control and jurisdiction vested in the High Court under Article 235 and the judicial control and jurisdiction under Article 226 of the Constitution would be considerably shaken. The administrative action taken by the High Court would be subject to judicial review by this Tribunal. That would not only create a very anomalous situation but would also strike a serious blow to the judicial wing of the State. Judiciary being one of the three wings of the State, if the object of excluding the officers and servants of the Supreme Court or the High Court is to ensure its independence, it is difficult to accept that the Judicial Officers presiding over the subordinate courts who constitute an integral and substantial segment of our judiciary and are subject to the control of the High Court under Article 235 of

the Constitution would not have been excluded from the jurisdiction of the High Court and subjected to the jurisdiction of this Tribunal. That could never have been intended by the Parliament.

17. Moreover, the Union of India having given a solemn undertaking that not only the officers and servants of the Supreme Court, High Court and courts subordinate thereto but the members of the subordinate judiciary also would be excluded from the purview of the Tribunal, the Parliament could not have intended to exclude the Judicial Officers from the expression "officers and servants" of the courts subordinate to the High Court and the Supreme Court and intended to subject them to the jurisdiction of this Tribunal in breach of that undertaking. The Parliament obviously took note of the fact that judicial officers presiding over the courts subordinate to the High Court are commonly referred to as officers of the court and not as judges. The Parliament was obviously of the view that the word "officer" being a genus of which "judicial officer" is a species, by using the word "officers and servants" of the court subordinate thereto, it was bringing the judicial officers as well as administrative and ministerial officers of courts subordinate to the High Court within the ambit of Section 2 and thus excluding them from the purview of the Act. In our opinion, in the context of Section 2(c) of the Act which excludes certain persons from the purview of the Act and against the background in which the amendment in the Act was brought about, the expression " officers and servants of the courts subordinate thereto" includes judicial officers of the courts subordinate to the High Court or the

Supreme Court. The applicant who is a member of the Delhi Higher Judicial Service and who was posted as Chief Metropolitan Magistrate/against whom an order of dismissal from service was made, is an officer of a court subordinate to the High Court. Section 2(c) declares that the Act shall not apply to such persons. The Central Administrative Tribunal has, therefore, no jurisdiction to entertain the grievance of the applicant. Consequently this application under Section 19 of the Act is not maintainable.

18. That apart, Section 14 of the Act vests jurisdiction, power and authority in the Central Administrative Tribunal in respect of recruitment and all 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 and in respect of all service matters concerning a member of any All India Service; or a person appointed to any civil service of the Union or any civil post under the Union or a civilian person appointed to any defence services or a post connected with defence. A member of the Delhi Higher Judiciary is not a member of an All India Service. The Supreme Court in L.V.A Dikshitulu's case (AIR 1979 SC 193) has laid down unequivocally that the Andhra Pradesh Administrative Tribunal constituted under Article 371-D in the State of Andhra Pradesh which had jurisdiction to deal with

service matters concerning "persons holding posts in any civil service of the State or holding civil posts under the State", had no jurisdiction to entertain the representation of the members of the Judicial Service. On the same parity of reasoning, the applicant cannot be deemed to be a member of a civil service of the Union or Union Territory or holding a civil post under the Union or Union Territory within the meaning of Section 14 of the Act. Hence, even assuming that the applicant is not excluded from the purview of the Act by Section 2(c) of the Act as amended by (Act 51 of 1987), inasmuch as the Central Administrative Tribunal has jurisdiction only to deal with the grievance of persons mentioned in Section 14 of the Act, a judicial officer not being one such person, an application under Section 19 of the Act would not lie. Only if the Central Administrative Tribunal has jurisdiction, power and authority to deal with a matter, the jurisdiction of the High Court and all other courts and Tribunals is barred under Section 28 of the Act and not otherwise. Since in view of the dicta laid down by the Supreme Court in Dikshitulu's case, this Tribunal would have no jurisdiction under Section 14 read with Section 19 of the Act in respect of the members of the judicial service, this application is not maintainable.

19. Once it is found that this Tribunal has no jurisdiction to deal with this matter, sub-section (6) of Section 29 which was also inserted by the very same Amendment Act (51 of 1987) is attracted. It makes a consequential provision for transfer of every case pending

before a Tribunal immediately before the commencement of the Administrative Tribunals(Amendment)Act, 1987, being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any court, shall, together with the records thereof, stand transferred, on such commencement to such court." If this Tribunal had no jurisdiction, both the High Court and the Civil Court had jurisdiction to entertain his grievance. The applicant had the option to move either the High Court by way of a Writ Petition under Article 226 or the Civil Court by way of a suit for the same reliefs as he is seeking in this application under Section 19 of the Act. Sub-section(6) of Section 29,however, merely declares that such matters shall stand transferred to such court; it does not authorise the Tribunal to return the same for presentation to proper court. Inasmuch as there is no provision for return of such an application and the applicant had a choice either to move the High Court or the Civil Court of competent jurisdiction, we deem it advisable to transmit the record of this case to the High Court.

20. Parties to appear before the Registrar of the Delhi High Court on 22.2.1988 for further orders as to posting. The applicant and the counsel for Respondent No.2 are present and take note of this judgement. Notice of transfer of this application to the Registry of the Delhi High Court

to be taken up on 22.2.1988 be given to Respondent No.1.

21. This application is disposed off accordingly with no order as to costs.

(KAUSHAL KUMAR)
MEMBER

(K. MADHAVA REDDY)
CHAIRMAN

4.2.1988

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"The phrase 'Civil Services of the State' remains more or less an amorphous expression as it is not defined anywhere in the Constitution. Coupled with it, the expression 'judicial service of the State' and 'District Judge' have been specifically defined in Article 236 and thus given a distinctive meaning by the Constitution-maker. Construed loosely, in its widest general sense, this elastic phrase can be stretched to include the officers and servants of the High Court as well as members of the Subordinate Judiciary. Understood in its strict narrow sense, in harmony with the basic constitutional scheme embodied in Chapters V and VI, Part VI, and centralised in Articles 229 and 235, thereof, the phrase will not take in High Court staff and the Subordinate Judiciary."

The Supreme Court then went on to consider the contention that the expressions 'Civil Service of the State' and 'Judicial Service of the State' have different connotations and held:-

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"It will be seen from the above extract, that the primary object of enacting Article 371-D was (i) to promote "accelerated development" of the backward areas of the State as a whole, and to secure the balanced development of the State as a whole", and (ii) to provide "equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service."

4. Against that background, the Supreme Court then held:

"The Statement of Objects and Reasons does not indicate that there was any intention, whatever, on the part of the legislature to impair or derogate from the scheme of securing independence of the Judiciary as enshrined in Articles 229 and 235. Indeed the amendment or abridgment of this basic scheme was never an issue of debate in Parliament when the Constitution(32nd Amendment) Bill was considered."

5. Then the Supreme Court proceeded to consider the specific question whether the High Court staff and the Subordinate Judiciary were intended to be included in Clause(3) of Article 371-D and declared thus:-

"Will the exclusion of the judiciary from the sweep of this Clause substantially affect the scope and utility of the Article as an instrument for achieving the object which the Legislature had in view ? The answer cannot but be in the negative. The High Court staff and members of the Subordinate Judiciary constitute only a fraction of the number of persons in public employment in the State"

"In our opinion, non use of the phrases "judicial service of the State" and "District Judges" (which have been specifically defined in Article 236), in respect of officers and servants of the High Court [illegible] been designedly adopted in Arts. 229 and 229, respectively, to differentiate them in the scheme of the Constitution from the other civil services of the State," gives a clear indication that posts held by the High Court staff or by the Subordinate Judiciary were advisedly excluded from the purview of Clause(3) of Art.371-D. The scope of the non obstante provision in sub-article(10) which gives an overriding effect to this Article is conterminous with the ambit of the preceding clauses.

'The 'officers and servants of the High Court' and the members of the Judicial Service, including District Judges, being outside the purview of Clause(3), the non obstante provision in Clause(10) cannot operate to take away the administrative or judicial jurisdiction of the Chief Justice or of the High Court, as the case may be, under Arts.229,235 and 226 of the Constitution in regard to these public servants in matters or disputes

falling within the scope of the said Articles. Clause(10) will prevail over any provisions of the Constitution, other than those which are outside the ambit of Article 371-D, such as Articles 229 and 235. Provisions not otherwise covered by Article 371-D, cannot be brought within its sweep because of the non obstante Clause(10). It follows as a necessary corollary that nothing in the Order of the President constituting the Administrative Tribunal, confers jurisdiction on the Tribunal to entertain, deal with or decide the representation by a member of the staff of the High Court or of the Subordinate Judiciary." (emphasis supplied)

6. In that view of the matter, the Supreme Court held that the Andhra Pradesh State Tribunal had no jurisdiction to entertain a "representation" of any member, officer or servant of the High Court Service and any member of the Andhra Pradesh State Judicial Service.

7. Shri P.P.Rao, learned counsel appearing for the applicant herein at the admission stage, however, contended that the control vested in the High Court under Article 235 in respect of the members of the Judicial Service is administrative and not judicial. He argued that the fact that the members of the Judicial Service are subject to the administrative control of the High Court under Article 235 of the Constitution cannot, in any way, affect their right to move the Tribunal under the provisions of the Act. According to the learned counsel, if the jurisdiction of the High Court is barred now in respect of persons holding civil

posts under the Union or Union Territory, then members of the Delhi Higher Judiciary who also hold civil posts under the Union or Union Territory have a right to move the Tribunal under Section 19 of the Act because the jurisdiction of the High Court under Article 226 of the Constitution is now barred by virtue of Article 323A and Section 28 of the Act. This matter, therefore, required the consideration of the Tribunal and that is why the application was admitted. However, having regard to the amendment in clause(c) of Section 2 of the Act brought about by the Administrative Tribunals(Amendment) Act, 1987 (No.51 of 1987) which came into force with effect from 22.12.1987, any decision on this interesting question of law has become wholly academic.

8. Section 2 of the Act provides that the Act shall not apply to certain persons. Immediately prior to the enactment of the Administrative Tribunals(Amendment) Act, 1987(51 of 1987) that Section read as under:-

"2. Act not to apply to certain persons- The provisions of this Act shall not apply to-

(a) any member of the naval, military or air forces or of any other armed forces of the Union;

(b) omitted;

(c) any officer or servant of the Supreme Court or of any High Court;

(d) 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".

By the Amendment Act in clause(c) after the words "any High Court", the words "or courts subordinate thereto" were inserted. After the Amendment, clause(c) of Section 2 of the Act reads as under:-

"Any officer or servant of the Supreme Court or of any High Court or courts subordinate thereto."

By virtue of this amendment, the Administrative Tribunals Act would not apply to any "officer or servant" of courts subordinate to the High Court or the Supreme Court. The Court of/Chief Metropolitan Magistrate is undoubtedly a court subordinate to the High Court or the Supreme Court. A member of the Delhi Higher Judicial Service appointed as Chief Metropolitan Magistrate would be presiding over a court subordinate to the High Court or the Supreme Court. A member of the Higher Judicial Service is an officer and having been appointed to preside over a court would be an officer of that court. May be, he is a Judicial Officer and under him there are other officers and servants working; but all such other officers and servants are/administrative or ministerial or non-ministerial officers and servants.

9. The members of the subordinate judiciary, even according to the applicant, hold judicial office. Once it is conceded that they are judicial officers, it is rather difficult to accept that they are not officers of the court subordinate to the High Court or the Supreme Court. The word 'officer' is a genus and the term "Judicial

Officer" is its species. A member of the State Judicial Service, higher or subordinate, is appointed to discharge the duties of a Subordinate Judge, District Judge, Magistrate or Metropolitan Magistrate or Chief Metropolitan Magistrate or of such other judicial offices as are enumerated under the Rules governing judicial officers. As these officers discharge judicial functions, they are referred to as judicial officers as distinct from other officers of the court who perform administrative or ministerial functions. While those others would be administrative or ministerial officers, members of the Judicial Service appointed to preside over the courts, would be judicial officers. Only the functions of these several officers are different. But nonetheless all are officers of a court subordinate to the High Court or the Supreme Court.

10. It is, however, argued on behalf of the applicant that the Chief Metropolitan Magistrate who is a member of the judiciary cannot be deemed to be an officer or servant of the court subordinate to the High Court or the Supreme Court and as such he is not excluded from the purview of the Act by Section 2 of the Act. He is, therefore, entitled

to move the Tribunal under Section 19 of the Act against the order of dismissal from service which is admittedly a service matter. Of course, a member of the Higher Judicial Service appointed as Chief Metropolitan Magistrate cannot be termed as a servant of a court subordinate to the High Court or the Supreme Court but is he not an "officer" of a court subordinate to the High Court or the Supreme Court? That is the question.

11. Learned counsel for the applicant, arguing on the preliminary objection, traced the history of appointment of Judicial Officers and officers and servants of the Courts under the Government of India Act, 1915 and the Government of India Act, 1935 as also the Punjab Courts Act extended to the Union Territory of Delhi till 1937. Section 35 of the Punjab Courts Act which was omitted in 1937 declared that the officers and servants of subordinate courts are subject to the control of the High Court. Though Section 35 itself was omitted in 1937, the High Court Rules which were framed under Section 35(3) of the Punjab Courts Act continued to govern appointment of the officers and servants of the subordinate courts. The power to appoint them continued to be vested in the Delhi High Court while the judicial officers and District Judges were appointed by the Government but were only subject to

the control of the High Court. It is also pointed out that neither in the Government of India Act, 1915 nor in the Government of India Act, 1935 nor in the Punjab Courts Act, judicial officers have been referred to as mere 'officers' of the court; they have been throughout referred to as judicial officers. The persons appointed by judicial officers are referred to as officers and servants of the subordinate courts. Even under the Constitution wherever it is intended to refer to a judicial officer, the expression "an officer holding a judicial office" is employed and not simply the word "officer". So much so, Article 217(2)(a) while referring to a person who is qualified to be appointed as a Judge of the High Court stipulates that he should have held a judicial office for at least ten years. (emphasis supplied.)

12. Attention is also drawn to Article 236 of the Constitution which defines the expressions "district judge" and "judicial service" as under:-

> "(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge and assistent sessions judge.
>
> (b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge."

13. Attention is also invited to Article 146 of the Constitution which deals with the officers and servants of the Supreme Court and Article 229 which refers to the officers and servants of the High Court. In the light of these various provisions, it is argued that even the Constitution makers and the legislature made a clear distinction between the officers and servants of the court and the judicial officers who preside over the courts subordinate to the High Court or the Supreme Court. Therefore, when the Parliament has by way of an amendment in Section 2(c) of the Act has enacted that "the Act shall not apply to officers and servants of the Supreme Court or High Court or courts subordinate thereto", the expression 'officers' cannot be stretched to include even "judicial officers" who preside over such courts.

14. As was done by the Supreme Court in L.V. A. Dikshitulu's case (1) to gather the intention of the Parliament in using the expression "officers and servants of the courts subordinate", it is necessary to examine the background in which Administrative Tribunals (Amendment) Act (Act 51 of 1987) was adopted. This amendment was brought about in fulfilment of the undertaking given by the Union of India to the Supreme Court during the hearing of the case in S.P. Sampath Kumar Vs. Union of India & others(2) in which the validity of the Act

(1) AIR 1979 SC 193

(2) A.I.R.1987(1) S.C.34

was challenged on several grounds. One of the contentions raised therein was that" so far as Tribunals set up or to be set up by the Central or the State Governments are concerned, they should have no jurisdiction in respect of employees of the Supreme Court or members of the subordinate judiciary and employees working in such establishments inasmuch as exercise of jurisdiction of the Tribunal would interfere with the control absolutely vested in the respective High Courts in regard to the judicial and other subordinate officers under Article 235 of the Constitution." The Supreme Court recorded in that judgement that" after oral arguments were over, learned Attorney General, after obtaining instructions from the Central Government, filed a memorandum to the effect that section 2(c) of the Act would be suitably amended so as to exclude officers and servants in the employment of the Supreme Court and members and staff of the subordinate judiciary from the purview of the Act."

15. It is argued that when while giving the assurance to the Supreme Court, the Union of India also was conscious of the distinction between the expression "members of the subordinate judiciary" and"officers and servants of the courts subordinate" and now when the (Amendment) Act merely excluded the officers and servants of the courts subordinate to the High Court or the Supreme Court from the purview of the Act, there is no warrant for holding that the members of subordinate judiciary are also included within the expression"officers and servants"

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of courts subordinate thereto and to exclude them from the purview of the Act. It is true that the officers presiding over the courts subordinate to the High Court are usually referred to as judicial officers e.g. District Judge, Chief Judicial Magistrate, Subordinate Judge and not merely as officers and employees of these courts. As rightly pointed out by the learned counsel for the applicant that the Government of India Act, 1915, the Government of India Act, 1935 and the Constitution do deal with the officers and servants of the courts subordinate to the High Court as a category distinct from judicial officers presiding over the courts. But what we are now required to consider is whether such a distinction was intended to be made by the Parliament in the context of vesting jurisdiction in the Central Administrative Tribunal with respect to " service matters". If we examine the provisions of Articles 226, 227 and 235 and the Objects and Reasons for introducing Article 323A and enacting the Administrative Tribunals Act (Act No.13 of 1985) and the background in which the Administrative Tribunals Act was amended by the Amendment Act (No.51 of 1987), the intention of the Parliament seems to be absolutely clear. So far as the officers and servants of the Supreme Court and the High Court as also the officers(other than the judicial officers) and servants of all other courts subordinate thereto are concerned, there can be no manner of doubt

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that they are excluded from the purview of the Act by virtue of Section 2(c) and are not subject to the jurisdiction of this Tribunal.

16. Accepting the contention of the applicant that judicial officers are not covered by the expression "officers of the court subordinate" would mean that while officers and servants appointed by a District Judge would be subject to the jurisdiction ofthe High Court, the District Judge and other Judicial Officers themselves would be subject to the jurisdiction of this Tribunal and excluded from the jurisdiction of the High Court. If control exercised by the High Court under Article 235 were to be confined to officers and servants of the court and not to extend over Judicial Officers presiding over the subordinate courts, the administrative control and jurisdiction vested in the High Court under Article 235 and the judicial control and jurisdiction under Article 226 of the Constitution would be considerably shaken. The administrative action taken by the High Court would be subject to judicial review by this Tribunal. That would not only create a very anomalous situation but would also strike a serious blow to the judicial wing of the State. Judiciary being one of the three wings of the State, if the object of excluding the officers and servants of the Supreme Court or the High Court is to ensure its independence, it is difficult to accept that the Judicial Officers presiding over the subordinate courts who constitute an integral and substantial segment of our judiciary and are subject to the control of the High Court under Article 235 of

the Constitution would not have been excluded from the jurisdiction of the High Court and subjected to the jurisdiction of this Tribunal. That could never have been intended by the Parliament.

17. Moreover, the Union of India having given a solemn undertaking that not only the officers and servants of the Supreme Court, High Court and courts subordinate thereto but the members of the subordinate judiciary also would be excluded from the purview of the Tribunal, the Parliament could not have intended to exclude the Judicial Officers from the expression "officers and servants" of the courts subordinate to the High Court and the Supreme Court and intended to subject them to the jurisdiction of this Tribunal in breach of that undertaking. The Parliament obviously took note of the fact that judicial officers presiding over the courts subordinate to the High Court are commonly referred to as officers of the court and not as judges. The Parliament was obviously of the view that the word "officer" being a genus of which "judicial officer" is a species, by using the word "officers and servants" of the court subordinate thereto, it was bringing the judicial officers as well as administrative and ministerial officers of courts subordinate to the High Court within the ambit of Section 2 and thus excluding them from the purview of the Act. In our opinion, in the context of Section 2(c) of the Act which excludes certain persons from the purview of the Act and against the background in which the amendment in the Act was brought about, the expression " officers and servants of the courts subordinate thereto" includes judicial officers of the courts subordinate to the High Court or the

Supreme Court. The applicant who is a member of the Delhi Higher Judicial Service and who was posted as Chief Metropolitan Magistrate/against whom an order of dismissal from service was made, is an officer of a court subordinate to the High Court. Section 2(c) declares that the Act shall not apply to such persons. The Central Administrative Tribunal has, therefore, no jurisdiction to entertain the grievance of the applicant. Consequently this application under Section 19 of the Act is not maintainable.

18. That apart, Section 14 of the Act vests jurisdiction, power and authority in the Central Administrative Tribunal in respect of recruitment and all 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 and in respect of all service matters concerning a member of any All India Service; or a person appointed to any civil service of the Union or any civil post under the Union or a civilian person appointed to any defence services or a post connected with defence. A member of the Delhi Higher Judiciary is not a member of an All India Service. The Supreme Court in L.V.A Dikshitulu's case (AIR 1979 SC 193) has laid down unequivocally that the Andhra Pradesh Administrative Tribunal constituted under Article 371-D in the State of Andhra Pradesh which had jurisdiction to deal with

service matters concerning "persons holding posts in any civil service of the State or holding civil posts under the State", had no jurisdiction to entertain the representation of the members of the Judicial Service. On the same parity of reasoning, the applicant cannot be deemed to be a member of a civil service of the Union or Union Territory or holding a civil post under the Union or Union Territory within the meaning of Section 14 of the Act. Hence, even assuming that the applicant is not excluded from the purview of the Act by Section 2(c) of the Act as amended by (Act 51 of 1987), inasmuch as the Central Administrative Tribunal has jurisdiction only to deal with the grievance of persons mentioned in Section 14 of the Act, a judicial officer not being one such person, an application under Section 19 of the Act would not lie. Only if the Central Administrative Tribunal has jurisdiction, power and authority to deal with a matter, the jurisdiction of the High Court and all other courts and Tribunals is barred under Section 28 of the Act and not otherwise. Since in view of the dicta laid down by the Supreme Court in Dikshitulu's case, this Tribunal would have no jurisdiction under Section 14 read with Section 19 of the Act in respect of the members of the judicial service, this application is not maintainable.

19. Once it is found that this Tribunal has no jurisdiction to deal with this matter, sub-section (6) of Section 29 which was also inserted by the very same Amendment Act (51 of 1987) is attracted. It makes a consequential provision for transfer of every case "pending

before a Tribunal immediately before the commencement of the Administrative Tribunals(Amendment)Act, 1987, being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any court, shall, together with the records thereof, stand transferred, on such commencement to such court." If this Tribunal had no jurisdiction, both the High Court and the Civil Court had jurisdiction to entertain his grievance. The applicant had the option to move either the High Court by way of a Writ Petition under Article 226 or the Civil Court by way of a suit for the same reliefs as he is seeking in this application under Section 19 of the Act. Sub-section(6) of Section 29,however, merely declares that such matters shall stand transferred to such court; it does not authorise the Tribunal to return the same for presentation to proper court. Inasmuch as there is no provision for return of such an application and the applicant had a choice either to move the High Court or the Civil Court of competent jurisdiction, we deem it advisable to transmit the record of this case to the High Court.

20. Parties to appear before the Registrar of the Delhi High Court on 22.2.1988 for further orders as to posting. The applicant and the counsel for Respondent No.2 are present and take note of this judgement. Notice of transfer of this application to the Registry of the Delhi High Court

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to be taken up on 22.2.1988 be given to Respondent No.1.

21. This application is disposed off accordingly with no order as to costs.

(KAUSHAL KUMAR)
MEMBER

(K. MADHAVA REDDY)
CHAIRMAN

4.2.1988