

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.798/2004
with
O.A.NO.799/2004
O.A.NO.800/2004

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New Delhi. this the 14th day of July, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

O.A.No.798/2004:

Dr. Alok Gupta
s/o Late Sh. B.N.Gupta
aged about 36 years
r/o 10/17, SF-2, Adharshila Apartments
Sec-3, Rejender Nagar
Sahibabad (UP). and working as
Research Associate in National Centre for
Disaster Management, Indian Institute
of Public Administration now
redesignated as National Institute of Disaster
Management, New Delhi. .. Applicant

(By Advocate: Sh. S.S.Tiwari)

Versus

1. Union of India through
Home Secretary
Ministry of Home Affairs
North Block
New Delhi.
2. Joint Secretary
National Disaster Management Division
Ministry of Home Affairs
North Block
New Delhi.
3. Executive Director
National Institute of Disaster Management
IIPA Campus, I.P.Estate, Ring Road
New Delhi. ... Respondents

(By Advocate: Sh. Madhav Panikar)

O.A.No.799/2004:

Sh. Harsh Vardhan Kalra
s/o Sh V.K.Kalra
aged about 28 years
r/o 32/62, West Patel Nagar, New Delhi-8
and working as Computer Programmer in
National Centre for
Disaster Management, Indian Institute
of Public Administration now
redesignated as National Institute of Disaster
Management, New Delhi. .. Applicant

(By Advocate: Sh. S.S.Tiwari)

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New Delhi.
3. Executive Director
National Institute of Disaster Management
IIPA Campus, I.P.Estate, Ring Road
New Delhi. ... Respondents

(By Advocate: Sh. Madhav Panikar)

O.A.No.800/2004:

Shr. Kuldip Singh Antil
s/o Sh. Sarup Singh
aged about 40 years
r/o H.No.1009-C, Ward No.18, Navjeevan Nagar
Sonapat, Haryana
and working as
Research Associate in National Centre for
Disaster Management, Indian Institute
of Public Administration now
redesignated as National Institute of Disaster
Management, New Delhi. .. Applicant

(By Advocate: Sh. S.S.Tiwari)

Versus

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(By Advocate: Sh. Madhav Panikar)

ORDER

(9)

Justice V.S. Aggarwal:-

By this common order, we propose to dispose of the three Original Applications, namely. O.A.No.798/2004 (Dr. Alok Gupta), O.A.No.799/2004 (Sh. Harsh Vardhan Kalra) and O.A.No.800/2004 (Sh. Kuldip Singh Antil). All the aforesaid applications involve a common question and, therefore, they can conveniently be taken up together.

2. By virtue of the aforesaid applications, the applicants seek to set aside the order of 25.3.2004 which is to the following effect:

"The term of Dr. Alok Gupta, Research Associate, NIDM is expiring on 31.3.2004 (A.N).

I am directed to convey that the Review Committee, after careful consideration of his performance based on the duties and responsibilities entrusted to Dr. Alok Gupta Research Associate has decided not to extend his tenure of appointment beyond 31-3-2004 (AN).

Sd/
Accounts Officer
(Admn & Finance)"

Applicants further seek direction to the respondents to treat them as regular in terms of the bye-laws under which they were recruited.

3. The short question that came up for consideration was as to if this Tribunal has the jurisdiction to entertain the applications or not.

4. To the above said controversy, we take advantage in referring to some of the basic facts from OA No.798/2004. The applicant had joined services

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with National Centre for Disaster Management in the Indian Institute of Public Administration. His grievance is that he was appointed regularly but extension was given on year to year basis. According to the applicant, now it has been re-designated as National Institute of Disaster Management and is under the control and management of Respondent No.1 and therefore, this Tribunal has the jurisdiction to entertain the application.

5. Respondents' plea is that the applicants joined in the Indian Institute of Public Administration. The service bye-laws as applicable to the temporary staff of IIPA specifically provided that they will not in any manner be construed to be Government servants. The National Institute of Disaster Management is funded by Government of India by means of the 'Grant-in-aid'. Mere receipt of 'Grant-in-aid' from Ministry of Home Affairs will not give the staff a Government servant status.

6. We have heard the parties' counsel and seen the relevant record. It was not in dispute that though earlier it was the Indian Institute of Public Administration which had appointed the applicant in the project of National Centre for Disaster Management but a decision had been taken and National Centre for Disaster Management was re-designated as National Institute of Disaster Management vide the Office Memorandum of 16.10.2003 which has been placed on the record. The power of the Head of the Department stands delegated to the Executive Director. The

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Institute is to function under the control of Ministry of Home Affairs, and Home Secretary is the Chairman of the same. (17)

7. Relying on these facts, it was contended that this clearly shows that, according to the learned counsel, this Tribunal will have the jurisdiction.

8. The learned counsel strongly relied on the decision of the Supreme Court in the case of SRI R.N.A. BRITTO v. THE CHIEF EXECUTIVE OFFICER & ORS., 1995 (2) SLR 699. Perusal of the cited decision clearly shows that the question came up for consideration before the Supreme Court was as to if Secretary of a Panchayat established under the Act would be a State Government servant and State Government servant is entitled to invoke the jurisdiction of the Tribunal to decide upon the matter of termination of his service. It was on the provisions of the Panchayat established under the provisions of Act that the Supreme Court was called upon to adjudicate the controversy and it held:

"11. What we have stated, being the general scheme of the Act as to the establishment of Panchayat, properties, the administrative control of the Government over the Panchayat, sub-section (1) of Section 80 of the Act requires that every Panchayat shall have a Secretary who shall be appointed the Commissioner in accordance with such rules as may be prescribed. Karnataka Panchayats (Secretaries) (Cadre and Recruitment) Rules, 1970 - "the Rules" are those Rules prescribed by sub-section (1) of Section 210 of the Act. Rule 2 of the Rules states that the Panchayat Secretaries Cadre shall be a district-wise cadre and the scale of pay of the Panchayat Secretaries shall be such as the Government may, from time to

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time, by order, specify. Sub-rule (1) of Rule 5 of the Rules provides for selection for appointment as Panchayat Secretaries by a committee consisting of the Deputy Commissioner of the District, the District Development Assistant to the Deputy Commissioner, the District Social Welfare Officer, and the Assistant Commissioner of the Revenue Sub-Division concerned. Sub-rule (2) thereof states that the Deputy Commissioner shall be the Chairman of the Committee. Sub-rule (3) thereof provides for calling for applications from persons eligible under Rule 4 for appointment as Panchayat Secretaries and the Committee shall select persons found suitable for appointment and prepare a list of selected candidates and forward it to the Commissioner. Sub-rule (4) provides that the Commissioner shall, if he approves the list, publish it in the official Gazette and make appointment from the list so published in the order in which the names of persons selected are arranged. Rule 6 provides that every person appointed under Rule 5 as Panchayat Secretary shall be on probation for a period of two years and during the period of probation he should pass such tests and should successfully undergo such training envisaged thereunder. Rule 8 says that a person appointed under these Rules to any Panchayat shall be liable to be transferred to any other Panchayat in the district. Then comes Rule 9 which says except in respect of matters for which provision is made in these Rules, the provisions of the Karnataka State Civil Services (General Recruitment) Rules, 1957 shall be applicable for purposes of these Rules. Again Rule 10 says that the Karnataka Civil Services Rules, the Karnataka Civil Services (Conduct) Rules, 1966 and other rules for the time being in force regulating the conditions of service of Government servants made under the proviso to Article 309 of the Constitution in so far as they are not inconsistent with the provisions of these Rules shall be applicable to persons to whom these Rules shall apply.

12. Another significant provision is sub-section (2) of Section 80 of the Act which says that subject to the provisions of rules made under the proviso to Article 309 of the Constitution, the qualifications, powers, duties, remuneration and conditions of service including disciplinary matters of such Secretary shall be such as may be prescribed."

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9. Perusal of the above said facts and findings clearly show that it has a little application to the facts of the present case.

10. Herein there is no Act by virtue of which the applicant has been appointed or could be described to be a public servant. Thus, we have no hesitation in holding that the decision is distinguishable.

11. Attention was further drawn towards a decision of the Andhra Pradesh High Court in the case of R. BHASKARA RAO AND ANOTHER v. HYDERABAD METROPOLITAN WATER-SUPPLY AND SEWERAGE BOARD, HYDERABAD AND OTHERS, 2001(5) SLR 615. Therein the point came up for consideration was as to if the Hyderabad Metropolitan Water Supply and Sewerage Board is a Local Authority within the meaning of Section-15 of the Act. In the present case before us, there is nothing like a Local Authority nor is there any Act that has been so passed and even the cited decision must be held to be not applicable to the facts of the present case.

12. The Central Administrative Tribunal is a creation of the Administrative Tribunals Act, 1985 which draws all its powers and strength and even jurisdiction to entertain the application from the provisions of the Act. Section 3(a) of the Administrative Tribunals Act, 1985 defines the 'service matters' in the following terms:



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

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever."

13. The Act had been enacted to provide for the adjudication or trial by Administrative Tribunals all disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services. It was an alternative forum to provide expeditious disposal of applications pertaining to service matters. The Act specifically provided as to under what circumstances, this Tribunal was to have jurisdiction. Section 14 of the aforesaid Act explains as to in which matter, the Central Administrative Tribunal has the jurisdiction. It reads 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-

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(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 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 [or society], 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."

It clearly shows that besides other things, the Central Administrative Tribunal has only jurisdiction to deal with service matters of those who are appointed to any civil service of the Union or any civil post under the Union. In the present case before us, it is not clear as to how any civil post is being held or any such post under the Union has been held by the applicant.

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14. The Tribunal, as already pointed above, is not a depository of all the powers like High Courts. If the Act does not provide or give jurisdiction, the application cannot be entertained.

15. No notification or order even has been issued confirming jurisdiction of this Tribunal to take up matters of the Indian Institute of Disaster Management.

16. We need not delve into the provisions of sub-sections (2) and (3) of Section 14 of the Act because when the same is read with clauses (b) and (c) to sub-section (1) to Section 14, it clearly shows that this Tribunal has no jurisdiction to entertain the applications pertaining to employees of local or other authorities or other autonomous bodies unless a notification in this regard is issued. A Full Bench of this Tribunal in the case of **K.K.Singh etc.etc. v. Union of India & Ors. etc.etc.** in OA No.93/1997 decided on 20.11.1998 and reported as (1997-2001) A.T.F.B.J 257 had considered this question and held:-

"19. In the result the reference is answered as under:

"Excepting those specifically covered by clauses (b) and (c) of Section 14(1) A.T.Act, the CAT has no jurisdiction to entertain applications from employees of local or other authorities within the territory of India or under the control of the Govt.of India and to corporations or societies owned or controlled by Govt. (not being a local or other authority or corporation or society controlled or owned by a State Govt.) unless the same have been notified under Sec. 14(2) A.T.Act"

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17. At this stage, we refer with advantage to the decision of the Chandigarh Bench of this Tribunal, which pertains to Bharat Sanchar Nigam Limited in the case of Phuleshwar Prasad Singh v. Union of India & Ors. in OA No.1116-CH-2002 and OA No.1128-CH-2002 rendered on 5.5.2003 (reported as 2003 (2) Administrative Total Judgments 297). The Chandigarh Bench was concerned with many questions and one of those was as is before this Bench. It was held:

"The persons directly recruited, appointed and absorbed by/in BSNL are in fact the employees of BSNL and, in the absence of a Notification under Section 14 (2) of the Act, this Tribunal has no jurisdiction, power or authority to entertain and adjudicate their disputes with regard to their service matter even though it pertains to the period prior to their absorption. This category of the employees undoubtedly falls beyond the ambit of the jurisdiction of this Tribunal."

18. The Bombay High Court in the case of Bharat Sanchar Nigam Limited.v. A.R.Patil and Ors., 2003 (1) SLR 386, had also the occasion to consider the said controversy. We are conscious of the fact that the facts before the Bombay High Court were little different but still the High Court did express themselves in this regard. It held that this Tribunal should not have entertained the petition of the employees absorbed in the BSNL. We take liberty in reproducing the said observations from the judgment of the Bombay High Court.:

"From the above it will be abundantly clear that the respondents are employees of BSNL and they being officers shall continue to be subject to all rules and regulations as are applicable to Government servants. These clauses clearly meant that they will be employees of BSNL and BSNL will have the

right to transfer them as employees but that transfer will be subject to the rules and regulations that are applicable to the Government of India. Even the employees have contended in the transfer applications that their transfers are against P and T Manual. In para 7 of the memorandum it is very clearly observed:

"(vii) The management of Bharat Sanchar Nigam Limited shall have full powers and authority to effect transfers of all the staff at all levels working under it."

In the face of this the Tribunal could not have held that it has the jurisdiction.

12. There is yet another aspect which has to be looked into and that is taking judicial notice of Government decisions known to have been taken and acknowledged by authorities judicial and quasi judicial decisions to convert the department of Telecommunications into BSNL was made publicly. It was known to one and all. Existence of BSNL is a fact of which judicial notice can be taken and has been taken by the Central Administrative Tribunal in its Calcutta Bench as also its Bombay Bench while dealing with two different cases. Once its therefore recognized and acknowledge by the Tribunal itself that BSNL is a legal entity it has become into existence. The Tribunal should have resisted exercise of jurisdiction. It should have avoided unwarranted exercise of jurisdiction in transfer matters."

The Delhi High Court in the case of **Ram Gopal Verma v. Union of India & Anr.**, 2002 (1) SLJ 352 also considered the said controversy. Before the Delhi High Court, there was no dispute that the Mahanagar Telephone Nigam Ltd. (MTNL) was a company incorporated under the Companies Act and had a distinct legal entity. The only fact admitted before the Delhi High Court was that the employees were not covered by the provisions of sub-section (1) to Section 14 of the Act. The Delhi High Court referred to sub-sections (2) and (3) of Section 14 and held that necessarily a notification had to be issued



before this Tribunal would have jurisdiction to deal with the matter. The findings of the Delhi High Court read :

"6. A combined reading of the two provisions shows that provision of sub-section 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 was admittedly issued till date to extend jurisdiction of Tribunal to MTNL. That being so, was Tribunal still obliged to entertain petitioner's OA challenging his suspension order which was passed by General Manager of MTNL and which was not endorsed to have been approved by General Manager of MTNL and which was not endorsed to have been approved by DOT. The answer in our view was in negative because petitioner was challenging suspension order passed by the Chief General Manager of MTNL suspending him from the post of SDE (Cables), a post under MTNL and not from any post under DOT. It is true that petitioner maintained his lien to the TES Group B service in DOT but that was of no avail to him because his challenge was directed against suspension from the post of SDE (Cables) in MTNL and passed by the Competent Authority of MTNL. His service status enjoyed by him in DOT would not confer jurisdiction on Tribunal which otherwise was not admittedly vested in it for want of requisite notification under Section 14 (2). Therefore, even when he held a lien on the post of TES Officer, his grievance directed against order suspending him from the post of SDE (Cables) in MTNL was not entertainable by Tribunal for lack of jurisdiction. It is also not the case that impugned order of his suspension was a composite order passed with the approval of DOT which could perhaps provide some basis for Tribunal's jurisdiction. This order was passed by the Chief General Manager on his own and it is not for us to examine whether it was passed validly or otherwise."

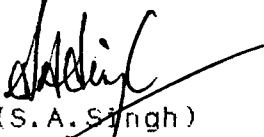
19. From the aforesaid, it is clear that even if there was a Government Company, necessarily there has to be a Notification under Sub-Section (2) to


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Section 14 before this Tribunal could entertain the matter. Admittedly, till date, no such notification even has been issued.

20. Merely because the aid is being granted by the Government will not make it holding of civil post and necessarily, we must hold that this Tribunal has no jurisdiction to entertain the applications.

21. Resultantly, for these reasons, the applications must fail and are dismissed. However, we make it clear that nothing said herein is an expression of opinion with respect to the merits of the matter.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/