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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.859 OF 2006

ALLAHABAD THIS THE 11th DAY OF MAY, 2007

HON'BLE DR. K.B.S. RAJAN, J.M.
HON'BLE MR. P.K. CHATTERJI, A.M.

Union of India & Others
..... Applicants

By Advocate: Shri A. Mohiley

Versus

Dr. Vishwa Veer Singh
..... Respondent

By Advocate : Shri C.S. Kumar

ORDER

BY DR. K.B.S. RAJAN, MEMBER-J

The applicant is the Union of India in this O.A., while the respondent is an officer functioning in the Respondent's organization.

2. In 1977 when the respondent was transferred from Kanpur to Ambajhari, he preferred a representation for his retention in Kanpur for a period of 2 years, which was turned down by the applicant. The respondent was relieved by the Ordnance Factory, Kanpur but as the relieving order was not entertained by the respondent, service by affixture at his residence was effected. For about two years since the respondent was stated to be 'absconding', the applicant chose to issue a charge sheet under Rule 14 of the CCS(CC&A) Rules, 1965 and

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inquiry conducted. Agreeing with the Inquiry Authority's findings, penalty of removal from service was imposed upon the respondent on 05-04-1982.

3. Respondent filed civil suit No. 561/82 before the XI Additional Munsif Kanpur and the suit was allowed, and consequently, the applicant Union of India filed appeal before the Addl. District Judge, Kanpur, who, however, dismissed the appeal on the ground that before removal order was passed, the UPSC was not consulted. This led to the filing by the applicant Union of India of a Second Appeal No. 2305/1985 before the High Court. This was filed on 20-12-1985. Stay was obtained against the judgment of the lower Courts.

4. The Administrative Tribunals Act 1985 was passed and to administer the said Act, the Central Administrative Tribunal came into existence w.e.f. 01-11-1985. Thus, the Second Appeal was filed by the applicant before the Hon'ble High Court was after the constitution and coming into existence of the Central Administrative Tribunal.

5. One of the provisions of the said Act is Section 29 and 29-A. Section 29 and 29-A are reproduced below:

29. Transfer of pending cases. (1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

(2) Every suit or other proceeding pending before a court or other authority immediately before the

date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation (or society), being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

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(3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the States for which it is established, has or have a State Tribunal or State Tribunals, all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

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(4) Where any suit, appeal or other proceeding stands transferred from any court or other authority to a Tribunal under sub-section (1) or sub-section (2),—

(a) the court or other authority shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an application under Section 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

(5) Where any case stands transferred to a Joint Administrative Tribunal under sub-section (3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred.

(6) 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.

(7) Where any case stands transferred to a court under sub-section (6), that court may proceed to deal with such case from the stage which was reached before it stood so transferred.

29-A . Provision for filing of certain appeals. Where any decree or order has been made or passed by any court (other than a High Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie

(a) to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986 receives the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or

(b) to any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order, whichever is later.

6. When the Second Appeal came up for hearing noting that the appeal was filed posterior to the establishment of the C.A.T., the Hon'ble High Court had dismissed the second appeal as not maintainable. Thus, the applicant Union of India has moved this OA with condonation of delay.

7. The respondent raised preliminary objection. According to him, since the appellate order was passed by the Addl. District Judge, Kanpur, the same

cannot be agitated against before the C.A.T and the only remedy available to the applicant is to file civil writ petition against the order of the Addl. District Judge, Kanpur.

8. Counsel for the applicant submitted that the Hon'ble High Court by a comprehensive order, after analyzing the provisions of Sec. 14, 29 and 29-A of the Administrative Tribunals Act, 1985 held that the second appeal was not maintainable. As such, the only remedy is filing of OA, which the applicant has filed.

9. Arguments were heard and the case was reserved on maintainability of the OA. The Apex Court had occasion to deliberate on the above issue i.e. Whether an appeal against the order of the lower court lie before the C.A.T. in the case of **Krishan Prasad Gupta v. Controller, Printing & Stationery, (1996) 1 SCC 69**, wherein the following observations have been made by the Apex Court.

"15. Reverting back to Section 14, we may immediately notice the striking feature that this section begins with the words Save as otherwise expressly provided in this Act which constitute an extremely significant expression as they purport to constitute a "Saving Clause. This expression has also been used in the opening part of sub-section (3) of Section 14.

16. What is intended to be saved is indicated in Section 28 which, incidentally, also purports to exclude the jurisdiction of almost all the courts in service matters. Section 14 and Section 28 have, therefore, to be read together to find out the real intent of the legislature as to the extent of jurisdiction retained or excluded.

17. The jurisdiction which is transferred to and vested in the Tribunal is the jurisdiction of all the courts except the Supreme Court which is expressly excluded.

18. The matters in respect of which this 'jurisdiction' is to be exercised are also indicated

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in this section. That is why it is provided in Section 19 that any person aggrieved by an order [defined in the Explanation appended to sub-section (1) of that section] pertaining to any matter within the jurisdiction of the Tribunal may approach the Tribunal for the redressal of his grievance. While Section 19 operates subject to other provisions of the Act, the field of operation of Section 14 is limited by the use of the words save as otherwise expressly provided in this Act. These words control and regulate whole of the section not only in respect of jurisdiction but also the matters specified therein. This constitutes the original jurisdiction of the Tribunal.

19. The appellate jurisdiction of the Tribunal is indicated in Sections 29 and 29-A of the Act. While all appeals pending in various courts, except those pending in the High Court on the date from which Tribunal became functional stand transferred to the Tribunal by the force of the Act, the appeals in all cases which were decided prior to the establishment of Tribunals, are required to be filed before the Tribunal, if they had not already been filed provided the cause of action on which the case was based is cognizable by the Tribunal.

20. **The appellate jurisdiction of the Tribunal is extremely limited and was conferred on the Tribunal so that the judgment, if any passed, for example, by a Munsif or Civil or Subordinate Judge in a civil suit relating to a service matter (decided before the establishment of the Tribunal) may be challenged before the Tribunal notwithstanding that the judgment passed in that suit is not covered by the word order defined in the explanation appended to sub-section (1) of Section 19.** Except the appeals, which are transferred to the Tribunal or the appeals which may be filed before the Tribunal in the above circumstances, no other appeal would lie before the Tribunal."

10. In the instant case, the crucial point is as to the date of filing of the second appeal before the High Court. It is admittedly posterior to the establishment of the Tribunal. As such, on and from 01-11-1985, no appeal against any order of the Civil Courts relating to service matters of the Central Government Employees could be filed before any

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appellate or High Court as the jurisdiction to try such appeal is available with the Tribunal and by virtue of Sec. 28 of the Act, the jurisdiction of other courts, save the Supreme Court has been ousted. It would have been a different matter, if the second appeal was filed anterior to the establishment of the Tribunal, for in that event, on the date of establishment of the Tribunal, the second appeal becomes a "pending appeal" and the proviso under Sec. 29(2) of the Act bars appeals pending before the High Court from being transferred to the Tribunal. In the case of **Navodaya Vidyalaya Samiti v. T.C.S. Naidu**, (2001) 9 SCC 403, a similar situation occurred in that an appeal was pending when by way of a notification, the Navodaya Vidyalaya came to be within the purview of the C.A.T. in respect of disputes on service matters. The Apex Court has held,

4. The short question that arises in this case is whether pending appeals were liable to be transferred to the Central Administrative Tribunal on issue of notification under sub-section (2) of Section 14 of the Act. Section 29(2) of the Act reads as thus:

29. Transfer of pending cases .(1) * * *
(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation or society, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

5. We are of the opinion that in view of proviso to sub-section (2) of Section 29 of the Act, the appeal was required to be decided on merits by the High Court. Under such circumstances, we set aside the order under challenge and send the case back to the High Court to be decided on merits.

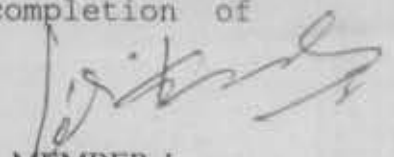
11. In view of the above, it is clear that since the second appeal filed before the High Court is posterior to the date of establishment of the

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Tribunal i.e. 01-11-1985, the High Court having rejected the second appeal on maintainability, the only forum where the applicant could agitate against the appellate order of the Addl. District Judge is the Tribunal. Thus, the OA is maintainable.

12. Let reply to the MA for condonation of delay and the main OA be filed by the respondent within a period of four weeks. Rejoinder if any, may be filed by the applicant within two weeks thereafter. List before Registrar on 10.8.2007 for completion of pleadings.


MEMBER-A


MEMBER-J

GIRISH/-