

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 585/92 199 Dy No. 3419/92

DATE OF DECISION 23.4.92

K Muraleedharan _____ Applicant (s)

M/s VR Ramachandran Nair _____ Advocate for the Applicant (s)

Versus

Mr S Padmakumar, I.A.S Respondent (s)
Chief Secretary to Government
of Kerala, Thiruvananthapuram
and others

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV Krishnan, Administrative Member
and

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? ~
4. To be circulated to all Benches of the Tribunal? ~

JUDGEMENT

Sh NV Krishnan, A.M

The maintainability of this application was heard on 10th April, 1992.

2 The applicant seeks to challenge the validity of the order dated 7.2.1992 (Annexure-A) issued by the Government of Kerala, Respondent-2, retaining in service Shri S Padmakumar, I.A.S, Chief Secretary to the Government of Kerala, Respondent-1, for a period of one year beyond 29.2.92, which is the date of his superannuation, the retention beyond 31.8.92 being made subject to the sanction of the Central Government.

3 The applicant states that he is a citizen of the country and that he pays tax to the Government of Kerala and claims that he is aggrieved by the impugned order because, according to him "the

continuance of the Respondent-1 is so much injurious to public interest including the interest of the applicant". It is also claimed that the impugned order is in violation of Rules 16(1) of the All India Service (Death-cum-Retirement Benefits), Rules 1958 as it does not disclose the "public grounds" on which it has been passed and admittedly, the sanction of the Central Government has not been taken for extension in service after superannuation beyond six months.

4 The question whether the application is maintainable was heard. The learned counsel for the applicant argued forcefully and invited our attention to the provision of Sub-section (i) of Section 19 of the Administrative Tribunals' Act of 1985 - (Act, for short) which, without the Explanation, reads as follows:

He
"19. Application to Tribunals -(1) Subject to/other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance".

He contended that the underlined portions of this Sub-section are wide enough to enable even a person, who is not in Government service, to approach this Tribunal with an application challenging the validity of an order which, according to him, *prima facie*, contravenes the relevant rules and is prejudicial to public interest.

5 We have carefully considered this issue. The question is whether a rank outsider, like the applicant, can be permitted to approach this Tribunal under Section 19 of the Act on the alleged ground that he is aggrieved by

the Annexure A order. As this Tribunal is established under this Act, it is clear that an answer to this question has to be found only from its provisions.

6 Section 14 of the Act which is relevant reads as follows:

"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 (* * * 20) in relation to-

- (a) recruitment, and matters concerning recruitment to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning -
 - (i) a member of any All India Service; or
 - (ii) a person (not being a member of an All India Service or a person referred to in clause (c)) appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian (not being a member of an All India Service or a person referred to in clause (c)) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation 21(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 21(or society) or other body, at the disposal of the Central Government for such appointment.

22(Explanation- For the removal of doubts, it is hereby declared that reference to "Union" in this sub-section shall be construed as including references also to a Union territory).

20. Omitted by Act 19 of 1986 S.11 w.e.f. 22.1.1986
21. Ins. by Act 19 of 1986, S.11. w.e.f. 22.1.1986
22. Ins. by Act 19,of 1986 S.11, and shall be deemed to have been inserted w.e.f. 1.11.1985.

"(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 21 (or societies) owned or controlled by Government, not being a local or other authority or corporation 21(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) 21.

"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 21 (or society), all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court (***) 20) 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 21(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)21 and pertaining to the service of such person in connection with such affairs."

Thus, the jurisdiction, powers and authority which all Courts' except the Supreme Court had on the " appointed day" (i.e., 1.11.85) ~~xxx~~, in respect of recruitment and service matters - as stated in clauses a, b & c of became Section 14(1) -~~xxx~~ exercisable by the Central Administrative Tribunal from that date, if some one invokes that jurisdiction or power or authority.

7 Section 14 by itself does not disclose as to who the can invoke jurisdiction or power of the Tribunal. We are here concerned only with a service matter and not

The expression
a matter relating to recruitment /" Service matters"
has been defined in Section 3(q) of the Act as follows:

"(q) "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".

It relates to a person who is employed by the Govt. of India or the State Government or is under its control in the manner referred to in clause (b) & (c) of Sub-section (i) of Section 14. Thus, if a penalty of dismissal from service is imposed on 'A' by the Govt. of India, it becomes a service matter in relation to 'A' and 'A' can invoke the Tribunal's jurisdiction and powers under Section 14. Likewise, if in a case of promotion, 'A' is promoted by superseding 'B', the promotion of 'A' is a service matter, as also the supersession of 'B'. Therefore, 'B' can invoke the jurisdiction of the Tribunal in regard to this 'service if he is aggrieved by his supersession. matter' / In other words, only a person who is affected by an order of Government relating / his 'service matter' can invoke the jurisdiction of the Tribunal under Section 14. The applicant, admittedly, is not such a

person. The grievance against the order at Annexure-A, which is in favour of the first respondent, is not a "service matter" in relation to the applicant. Hence, this application is not maintainable before this Tribunal.

8 No doubt, the impugned Annexure-A order is a service matter, but that is so in relation to the first respondent only. It is not a service matter in relation to the applicant to entitle him to any relief by invoking the jurisdiction of the Tribunal under Section 14. For, properly construed, the relief, if granted by the Tribunal, should also be in respect of a service matter concerning the applicant, because it is only then that the Tribunal can have jurisdiction in terms of Section 14 of the Act. Another illustration will make this clear. If 'X' an IAS Officer is promoted to officiate as a Collector, Ernakulam, 'Y', another officer, may have a grievance that his claim has been overlooked and hence, he may file an application under Section 19 of the Act, because the grievance relates to a service matter and if relief is granted it will have the attributes of a 'service matter' as defined in Section 3(q) of the Act.

On the contrary, 'Z', a citizen and tax payer, may have a grievance that the posting of 'X' as Collector, Ernakulam is thoroughly improper, as it is his home district and he has many relations and friends in the district and cannot be expected to function impartially.

W
L where he has a lot of property
U

or discharge his duties with detachment. May be, this is a genuine and weighty grievance. But, merely on that ground, 'Z' cannot approach the Tribunal for the because it is grievance, is not in relation to a 'service matter' concerning him and the relief if granted, would also not in so far as it concerns Z. be of that nature. That being so, the jurisdiction under Section 14 cannot be invoked by 'Z' as is clear unmistakeably from the provisions of that section. That argument holds good for this applicant also.

9 There are other provisions in the Act which point out to the same conclusion. These can be referred to briefly.

10 Section 2 of the Act relates to the applicability of the Act. Instead of declaring in positive terms as to who are the persons to whom the Act will apply, its provisions are in negative terms, stating that the Act will not apply to -

- "(a) any member of the naval, military or air forces or of any other armed forces of the Union.
- (b) any officer or servant of the Supreme Court or of any High Court 3a (or courts subordinate thereto);
- (d) any person appointed to the secretarial staff of either House of Parliament or to the Secretariat staff of any State Legislature or a House thereof or, in the case of a Union territory having a Legislature, of that Legislature."

The exclusion is of three kinds of government employees.

It can thus be inferred with certainty that the whole, from which the aforesaid exceptions are made (i.e., the persons to whom the Act will apply) are also similarly placed persons, i.e., Government employees. Keeping in view the provisions of Section 14 relating to recruitment, the provision can also apply to prospective employees

candidates for employment. If section 2 had also stated for example, that the Act will not apply to any complaint made by a Member of the Legislative Assembly or Parliament, one would have been led to infer that the Act also applies to certain classes of complaints made by outsiders other than employees, but excludes complaints made by certain persons. That is not the case. Hence ~~by rank outsiders~~ Section 2 indicates that the application ~~is not~~ maintainable. under the Act.

11 This is made more clear by Section 19 of the Act, sub-section (i) of which has been extracted in para-4 supra. To file an application, one has to be "aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal". That takes us back to Section 14. On the facts of this case, the item in respect of which jurisdiction can be invoked is a service matter. No doubt, the impugned Annexure-A order concerns a service matter of the first respondent. Only a person who is aggrieved by this order in so far as it adversely affects him as his 'service matter' - as defined in Section 3(q)-could have made an application under Section 19 of the Act. In the present case, the applicant is not a government employee. Obviously, he is not aggrieved in the sense in which the expression is used in Section 19 in relation to matters in regard to which the Tribunal's jurisdiction may be ~~invoked~~ ^{this} invoked and hence, the application is not maintainable.

12 That such is the case is further established by Section 20 which states that an application shall not be u

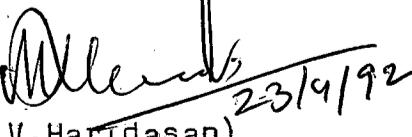
ordinarily admitted" unless it is statisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to the redressal of grievances". In other words, the persons who apply under Section 19 of the Act are normally governed by certain service rules. If those service rules also provide an alternate remedy, - as defined in Rule 2(r), - that remedy should have been exhausted ~~in~~ ^{& this} first. The applicant does not fall in ~~the~~ category and hence he cannot either file a representation to ~~the~~ ^{concerning} Government as a grievance ~~in~~ ^{of} his service matter or file an application before this Tribunal.

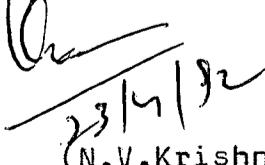
13 We should not be considered to have declared that only persons in Government service can invoke the Tribunal's jurisdiction and powers. Considering the scope of Section 14, there are a few instances where a person other than members of any service or persons appointed to any service or post, in connection with the affairs of the Union or State can file an application under Section 19 of the Act. The first is a candidate for employment who is aggrieved by some steps taken in regard to the recruitment to a post or service. He can invoke the jurisdiction of the Tribunal relating to clause (a) of Section 14(i) of the Act. The second is a pensioner who has ceased to be in service and ceased to hold a post. He can invoke the jurisdiction of the Tribunal in regard to service matters because conditions of his service can cover

matters relating to pension under item (v) of Clause (q) of Section 3. The third case is that of a legal representative of a deceased person who while alive, was a member of a service or had held a post, in regard to which a grievance in regard to a service matter is made out. All these persons can apply under Section 19 of the Act. The last is the case of Government itself as it can file an application, if it is aggrieved by an award granted by an Industrial Tribunal or a Labour Court to a member of a service or a person appointed to a service or post. For obvious reasons, that cannot be an application under Section 19 because the applications thereunder are against orders of Government. The application by Government is directly made under Section 14. Though no provision has been made for this purpose, Government may invoke the jurisdiction of the Tribunal under Section 14, in such cases, by preferring an application which is similar to the one mentioned in Section 19.

14. Barring such instances, we are clear in our mind that under Section 19 of the Act, only a member of a service or a person appointed to a service or a post as stated in clauses (b) and (c) of Section 14(1) can file an application for adjudication, if they are aggrieved by an order passed by Government. In the circumstance, we hold that this application is not maintainable and does not deserve to be admitted. Hence it is rejected under Section 19(3) of the

Administrative Tribunals Act.


(A.V. Haridasan)
Judicial Member


(N.V. Krishnan)
Administrative Member