

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 170 of 2003
 Original Application No. 171 of 2003
 Original Application No. 172 of 2003

Jabalpur, this the 14th day of August, 2003

Hon'ble Shri J.K. Kaushik, Judicial Member
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

1. Original Application No. 170 of 2003 :

Vinod Kumar, I.A.S. aged about 33
years, S/o. Shri S.N. Prasad, the
then Collector Rewa, presently
Director, Backward Class and Minorities
Welfare, Govt. of Madhya
Pradesh, Bhopal, R/o. D-28, Chariali,
Bhopal (M.P.).

... Applicant

(By Advocate - Shri N.S. Kale, Sr. Advocate with Shri Abhijit
Bhowmik)

V e r s u s

1. Union of India, through Secretary,
Department of Personnel and Public
Grievances, New Delhi.

2. State of Madhya Pradesh, through
the Secretary, Department of General
Administration, Govt. of M.P.,
Mantralaya, Bhopal.

3. Election Commission of India,
New Delhi.

... Respondents

(By Advocate - Shri Om Namdeo for respondent No. 1,
Shri Raj Kumar Verma for respondent No. 2 and
Shri K.K. Trivedi with Shri P.K. Asati for
respondent No. 3)

2. Original Application No. 171 of 2003 :

Smt. Alka Upadhyaya, W/o. Shri
Ashish Upadhyaya, Aged about 36
years, Collector, Khargone, M.P.,
R/o. Collector Bungalow,
Khargone, M.P.

... Applicant

(By Advocate - Shri Rajendra Tiwari, Sr. Advocate with Shri
Udayan Tiwari, Shri Deepak Panjwani)

V e r s u s

1. Union of India, through
Secretary, Department of
Personal and Public Grievances,
New Delhi.

2. State of Madhya Pradesh,
Through the Secretary,
Department of General
Administration, Govt. of M.P.,
Mantralaya, Bhopal.

3. Election Commission of India,
New Delhi. ... Respondents

(By Advocate - Shri Om Namdeo for respondent No. 1,
Shri Raj Kumar Verma for respondent No. 2 and
Shri K.K. Trivedi with Shri P.K. Asati for
respondent No. 3)

3. Original Application No. 172 of 2003 :

A.K. Shah, I.A.S., aged about 40
years, S/o. Shri Vishwanath Shah,
the Collector, Shahdol, (M.P.). ... Applicant

(By Advocate - Shri R.K. Gupta, Sr. Advocate)

V e r s u s

1. Union of India, through Secretary,
Department of Personnel and Public
Grievances, New Delhi.

2. State of Madhya Pradesh, through
the Secretary, Department of General
Administration, Govt. of M.P.,
Mantralaya, Bhopal.

3. Election Commission of India,
New Delhi. ... Respondents

(By Advocate - Shri K.N. Pethia for respondent No. 1,
Shri Raj Kumar Verma for respondent No. 2 and
Shri K.K. Trivedi with Shri P.K. Asati for
respondent No. 3)

O R D E R

By J.K. Kaushik, Judicial Member -

Shri Vinod Kumar, Smt. Alka Upadhyaya and Shri A.K. Shah
have filed original Application Nos. 170 of 2003, 171 of 2003
and 172 of 2003 respectively under Section 19 of the
Administrative Tribunals Act for issue of a writ in the nature
of certiorari quashing the letter dated 06.03.2003 (Annexure
A-1) and also to declare that the respondents have no autho-
rity to take any disciplinary action against the applicant in
pursuance with the said order. The cause of action in all
these Original Applications are based on the same set of facts,

the impugned orders are same and the reliefs claimed are also same. They also involve identical question of law. Hence it is considered expedient to dispose of all these Original Applications through a single order.

2. As far as the facts and grounds including the legal issue are concerned, involved in the present case, the same have been narrated in the order dated 01.04.2003 which was passed while making the interim order as absolute. In para 36 this Bench of the Tribunal has observed as under :

"36. We also take cognizance of the fact that the letter written by the Commission has been forwarded to the State which has sought certain clarifications and also required documents to further process the case have not yet come out with their reply and the material so called has not yet been furnished to them. Explanations sought from applicants by the State though responded but not disposed of on this count alone, it would be in the interest of justice and proper adjudication of the cases that a detailed reply of the respondents, i.e. State of M.P. is called for."

3. Subsequently a detailed reply has been filed on behalf of the respondent No. 3 as well as on behalf of Union of India. In the reply filed on behalf of the Union of India the law position has been elucidated. As far as the reply filed on behalf of the respondent No. 3 is concerned they have stressed the point on preliminary objection regarding the maintainability of the Original Application as per Section 19 of the Administrative Tribunals Act. All the other facts are almost repetition to the facts mentioned in their short reply.

4. The State Government has not chosen to file reply. However the learned counsel for the respondents made an oral submission and wanted to apprise with certain subsequent developments especially in regard to the subordinate staff who were entrusted the work of preparation of the Electoral Rolls. However no such information has been furnished. While examining the case of the applicants for grant of interim relief the aforesaid objection was made and it was considered that for proper

adjudication the detailed reply of the State of Madhya Pradesh was called for. Unfortunately we find that no such reply is forth-coming and there is no subsequent material in the matter so as to add something to the order which was passed by this Bench of the Tribunal on 01.04.2003. However since a very specific plea has been taken regarding maintainability of these original Applications, we would like to deal with the same in the next paragraph.

5. The learned counsel for the respondent No. 3 has submitted that the Original Applications are pre-mature and the Election Commission has only requested for certain action to be taken by the State Government. Firstly we find from the perusal of paragraph 27 of the order dated 01.04.2003 that this Tribunal has held that the letter of the Commission dated 06.03.2000 an OM of 2000 is nothing but a decision to place the applicants under suspension. If that be so the Original Applications are very much maintainable. However examining the matter from the other angle this Tribunal has got the powers which are available to the High Court under Article 226 and 227 as per one of the celebrity judgment of the Hon'ble Supreme Court in the case of L. Chandra Kumar Versus The Union of India & Others reported in JT 1997 (3) SC 589, and one can file even a Writ Petition before the Hon'ble High Court in case there has been a threat only and the right has not been actually infringed. This proposition of the law has been laid down by a Constitution Bench of the Hon'ble Supreme Court in the case of State of Madhya Pradesh and another versus Bhailal Bhai and others reported in AIR 1964 SC 1006, wherein their lordships have observed as under :

"(15) We see no reason to think that the High Courts have not got this power. If a right has been infringed- whether a fundamental right or a statutory right-and the aggrieved party comes to the court for enforcement of the right it will not be giving complete relief if the court merely declares the existence of such right or the fact that that existing right has been infringed. Where there has been only a threat to infringe the right, an order commanding the Government or other statutory authority

not to take the action contemplated would be sufficient. It has been held by this Court that where there has been a threat only and the right has not been actually infringed an application under Art. 226 would lie and the courts would give necessary relief by making an order in the nature of injunction. It will hardly be reasonable to say that while the court will grant relief by such command in the nature of an order of injunction where the invasion of a right has been merely threatened the court must still refuse, where the right has been actually invaded, to give the consequential relief and content itself with merely a declaration that the right exists and has been invaded or with merely quashing the illegal order made."

Keeping in view the aforesaid statement of law the Original Application is very much maintainable and the objection of the respondent No. 3 stands repelled.

6. While we have heard the elaborate arguments advanced by learned counsel on behalf of all the parties, patiently and at a great length, we find that all the contentions have already been dealt with in the order dated 01.04.2003 passed in this Original Application itself at interim relief stage. Keeping in view the aforesaid position and the detailed discussion made in by this Tribunal vide order dated 01.04.2003 passed in these cases, we abstain from repeating the discussion again and have absolutely no hesitation in following the same and adopting the conclusions arrived therein. We can only assert that if we were to examine the controversy independent of the said decision, we would have also reached to the same conclusion. In this view of the matter we pass the order as under :

The Original Applications are hereby allowed. The impugned order dated 06.03.2003 (Annexure A/1) is hereby quashed and the applicants shall be entitled to all consequential benefits. There shall be no order as to costs.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

J.K. Kaushik
(J.K. Kaushik)
Judicial Member