

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2073/2016

Order Reserved on: 07.09.2016
Order pronounced on 15.09.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri K. N. Shrivastava, Member (A)

R.S.Rana
S/o Sh. S.P.S.Rana
Assistant Director (Ministerial)
SA&GR, Vikas Sadan, New Delhi – 110 023.
R/o – C-54, DDA Flats
Old Rajinder Nagar, New Delhi – 110 060. .. Applicant

(By Advocate: Shri Malaya Chand)

Versus

1. Union of India
Through its Secretary, Ministry of Home Affairs
North Block, New Delhi – 03.
2. Director, Personnel & Vigilance/CVO
Ministry of Home Affairs
North Block, New Delhi – 03.
3. Central Forensic Science Laboratory
Through its Director
C.G.O.Complex, Block-4
4th Floor, Lodhi Road, New Delhi-110 003.
4. Dr. Reeta Rani Gupta
SSO_II (Documents)
Central Forensic Science Laboratory
Block-4, 4th Floor, C.G.O.Complex

Lodhi Road

New Delhi – 110 003.

... Respondents

O R D E R

By V. Ajay Kumar, Member (J):

Heard the learned counsel for the applicant.

2. The applicant, an Assistant Director (Ministerial) in the Delhi Development Authority, has filed this OA, seeking the following relief(s):

“A) Quash and set aside the impugned order dated 04.05.2016.

B) A suitable direction to respondent no.1 to 3 to initiate departmental inquiry against respondent no.4 for preparing such report dated 02.04.2013.

C) Declare the report submitted by Committee constituted of Shri D.K.Tanwar, SSO-I & Sh. Jeet Singh, SSO-II, CFSL to eye wash and to give undue benefits to respondent no.4 (ignoring the fact that respondent no.4 hails to the same post as that of the one member of the committee and known to each other and has dealt with the case of applicant prior to report dated 02-04-2013) as null and void.

D) Call for the records of the case.

E) Any other direction as deemed fit and proper in the given facts and grounds of the OA.”

3. The applicant, by way of this OA, is seeking quashment and setting aside of an Order of the 3rd Respondent-Central Forensic Science Laboratory (in short, CFSL), dated 04.05.2016 (Annexure A1) whereunder, the CFSL, answering the complaint dated 20.02.2016 of the applicant seeking action against the 4th Respondent, who is the SSO-II (Documents) of the CFSL, has given certain clarifications to the applicant. Further, the applicant has sought issuance of a suitable

direction to respondents No.1 to 3 to initiate departmental inquiry against Respondent No.4 for preparing a report dated 02.04.2013.

4. It is the case of the applicant that while he was working as Senior Stenographer, his employer, i.e., Delhi Development Authority (in short, DDA), vide Establishment Order No.425 dated 16.03.2012, appointed the applicant to the post of Assistant Director (Ministerial) w.e.f. 24.01.2006, the date on which his junior was appointed through a departmental examination held in July, 2005, and accordingly assigned his seniority. The DDA modified the said EO, by making it subject to clear VCR at the point of time when promotion orders of successful candidates were issued, vide EO No.421 dated 15.03.2012.

5. However, the DDA vide the Establishment Order No.654 dated 11.05.2012 noticing the flaw in reevaluating the English Paper of the applicant, declared the aforesaid EO No.421 dated 15.03.2012 and EO No.425 dated 16.03.2012, as null and void, and withdrew the same.

6. The DDA vide Annexure A4 letter dated 01.10.2012 addressed to the 3rd Respondent CFSL and enclosing therewith the original answer sheet dated 31.07.2005 of Paper Subject-IV (Precis and Drafting and Grammar) of the applicant, requested for its verification as to whether there are additions/cutting, etc. in it, and if so, then the various additions/cuttings, etc. are of the original date/time or have been carried out at a later date. The 4th Respondent, in her capacity as SSO-II (Documents) of the 3rd Respondent-CFSL, conveyed the refusal of the competent authority of the CFSL to accept the case for

examination, vide Annexure A5 letter dated 16.11.2012 addressed to Senior Accounts Officer, DDA.

7. Apprehending and alleging that the 4th Respondent did some mischief in writing the Annexure A5 letter dated 16.11.2012, the applicant sent numerous and voluminous representations/letters to the respondents No.1 to 3 as also to various investigating authorities. He also made applications under Right to Information Act, vide Annexure A7, A8 (Colly.). Again alleging that the 3rd Respondent failed to take any departmental action against the 4th Respondent, who is an employee of the 3rd Respondent and questioning the Annexure A1 letter, the applicant has filed the OA.

8. The learned counsel for the applicant has relied on the following Judgements in support of his claim made in the OA:

- a) V.D.Trivedi v. Union of India, 1993 SCC (L&S) 324
- b) Union of India & Others v. P. Gunasekaran, (2015) 2 SCC 610.
- c) Rajesh Nahata v. The Union of India & Others, OA No.91/2010 of Jodhpur Bench of the CAT at Jodhpur, decided on 10.09.2012.

9. All the above cases were filed by the concerned petitioners questioning various orders passed by their respective employers in respect of various disciplinary actions taken against them, and in no case an employee of one authority filed an OA seeking direction to another authority to take action on its employee. Hence, the aforementioned Judgements are no help to the applicant.

10. We are not examining or giving any finding in this OA, as to whether there is any substance in the complaints or allegations of the applicant against the 4th or 3rd Respondent. The question that falls for our consideration is as to whether the OA filed under Section 19 of the Administrative Tribunals Act, 1985 is maintainable, in the present form.

11. Admittedly, the applicant is an employee of the Delhi Development Authority. The OA has been filed without impleading the DDA as a respondent. Further, admittedly, the applicant has not questioned either Annexure A3-Establishment Order dated 11.05.2012 of the DDA whereunder the promotion of the applicant as Assistant Director (Ministerial) and the seniority granted to him in the said post were declared null and void and were withdrawn or any other order of the DDA. The 3rd Respondent-CFSL, whose order, the applicant is seeking to be quashed and to whom he is seeking issuance of certain directions, is neither his employer nor having any administrative control over DDA.

12. Similarly, the 4th Respondent is neither the employee of the DDA nor the DDA has any control over her. The applicant is not claiming any seniority, promotion, parity, etc. vis-à-vis the 4th Respondent either. Hence, the subject matter of the OA cannot be termed as a "Service matter" and as such this Tribunal would not be having any jurisdiction over the same.

13. In **Arun Agarwal v. Nagreeeka Exports (P) Ltd.**, (2002) 10 SCC 101, it was held that the question regarding the jurisdiction of Court is required to be decided as a preliminary issue. Therefore, Court is obliged to decide the question of jurisdiction first without compelling the parties to undergo the stress of a regular hearing on merits. We would, therefore, deal with the jurisdictional aspect, first. Section 14 of the Administrative Tribunals Act defines the jurisdiction of the Central Administrative Tribunal. Relevant part of Section 14 is 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-

(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 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.

Further, the Administrative Tribunals Act, 1985, defines the words "Service matters" as under:

(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; (r) "service rules as to redressal of grievances", in relation to any matter, means the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act, of any grievances in relation to such matters;"

14. In our considered view, in the aforesaid fact situation, the subject matter of this O.A., cannot be treated as "service matter".

15. In the circumstances and for the aforesaid reasons, the OA is dismissed. However, it is made clear that this order shall not preclude the applicant from availing any legal remedy in respect of the subject matter of this OA, if so advised, before any other appropriate forum/Court or Authority, in accordance with law. No costs.

(K. N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/