

**Central Administrative Tribunal
Principal Bench, New Delhi**

**O.A.No.2097/2014
M.A. No.4111/2014**

**Date of Reserve : 31.08.2015
Date of Pronouncement : 09 Sept., 2015**

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Shri P. K. Basu, Member (A)**

(Dr.) Anand Kumar Kain (Aged about 44 years)

S/o. D. R. Kain

R/o. Flat No. 776, Sector-13, Pocket-B,
Phase-II, Dwarka,
New Delhi-110 078.

.. Applicant

Working as Medical Officer Incharge, NRHM,
Seed PUHC, Mohan Garden, Delhi.

(By Advocate: Mr. M. L. Chawla with Mr. G. D. Chawla)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Secretariat, New Delhi.
2. Govt. of NCTD through its
Principal Secretary, (Health)
Health & Family Welfare Department,
9th Floor, A-Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110 002.
3. Directorate of Health Services,
GNCT of Delhi,
F-17, Swasthya Sewa Nideshalaya Bhawan,
Karkardooma, Delhi-110 032.

4. Chairman, IDHS-WD/DC(W),
Deputy Commissioner Office-West District,
Old Middle School Building, Lawrence Road,
RAMPURA, Delhi-110 085.
5. The Mission Director (NRHM)
6th Floor, 'A & B' Wing,
Vikas Bhawan-II, Near Metcaff House,
Civil Lines, New Delhi-110 054.
6. Dr. Beena Khurana (CDMO) West District,
(Mission Director-West District)
Govt. of NCT of Delhi,
O/o. Chief District Medical Officer (WD),
M.A.K. Delhi Govt. Dispensary Building,
Opp. Radha Krishna Mandir,
Maj. Ashvini Kav Marg,
A-2, Paschim Vihar, New Delhi-110 063.
7. The Nodal Officer-NRHM-West District,
District Programme Management Unit,
Integrated District Health Society-WD,
Delhi Govt. Dispensary, New Janakpuri,
2nd Floor, A-4/A Block, S.S. Mota Singh Marg,
(Near Chander Nagar) Janak Puri,
New Delhi-58. ..Respondents

(By Advocate : Mr. Amit Anand)

O R D E R

Shri P. K. Basu, Member (A) :

The applicant, who belongs to the SC Community, applied for the post of Medical Officer (on contract basis) and was appointed vide letter dated 06.02.2012. The initial contract year was up to 31.03.2012. It was thereafter extended from time to time, the last extension being vide

order dated 27.03.2014 by which order his contract period was reviewed and renewed with effect from 01.04.2014 up to 31.12.2014. Before the expiry of the period, he was issued a show cause notice (S.C.N.) dated 11.02.2014 for alleged mis-behaviour with the Mission Director, Dr. Beena Khurana. Another letter of the same date was issued to the applicant seeking his reply to the allegation by one Dr. Mridula Gupta, CMO, Nangloi that the applicant never attended the dispensary in time, leave early, avails a lot of leaves and also mis-behaved with Dr. Mridula Gupta. Later, a show cause notice dated 12.05.2014 was issued giving reference of the letter dated 11.02.2014 and other allegations were added regarding complaints against the applicant from the Residents Welfare Association, Mohan Garden, Uttam Nagar, New Delhi alleging mis-behaviour by the applicant towards patients of the area. The reply of the applicant to the show cause notice was sought within three days as to why his services may not be terminated. Finally, vide order dated 18.06.2014 with reference to the S.C.N. of 12.05.2014 and considering the applicant's reply dated 23.05.2014 the services of the applicant were terminated with immediate effect. Being aggrieved by the order the applicant has

approached this Tribunal inter alia with the following prayers:-

"Relief (S) Sought :

8.1 To summon the entire record file pertaining to appointment vis-a-vis termination including the show cause memos/notice including their reply thereto;

8.2 To restrain the respondents and direct them to maintain status quo as on 18.06.2014 and set aside the illegal impugned order at Ann. A-1 which has been done in colourable exercise and pre determined attitude;

8.3 To investigate the cause of passing illegal impugned order arbitrarily by an incompetent authority (Mission Director, Dr. Beena Khurana) whose affidavit has become a legal necessity for further necessary action against her under the Criminal Procedure of Law with the approval of Commission for SC Community"

2. The applicant has filed M.A No. 4111/2014 stating therein that despite interim relief the respondents have issued a letter dated 26.12.2014 to the applicant stating therein that the renewal of the contract with effect from 01.01.2015 has not been approved by the Chairman, IDHS-WD and hence, his contract of job is till 31.12.2014. This was heard by the Tribunal on 30.12.2014 and the operation of this communication dated 26.12.2014 was stayed till the

next date (13.01.2015) on which date both the parties were to be heard in the matter of prayer made in the M.A. Thereafter, on 25.08.2015 we heard the matter to some extent on the question of jurisdiction of the Tribunal, but, on request of the parties, it was kept for further arguments on 27.08.2015.

3. Learned counsel for the applicant tried to argue that the Society is part of the Govt. of NCT of Delhi as the funding is provided by the GNCT of Delhi. In this regard, the applicant has drawn our attention to the judgment of the Hon'ble Supreme Court AIR 1981 SC 487 - **Ajay Hasia Vs. Khalid Mujib** in which, at para 9 of the Judgment, Hon'ble Supreme Court has laid down the test for determining as to when a corporation can be said to be an instrumentality or agency of the Government culling out from the judgment of the **International Airport Authority's case** (AIR 1979 SC 1628) and the Hon'ble Supreme Court held that if on a consideration of these relevant factors it is found that the Corporation is an instrumentality or agency of the Government, it would be an "Authority" and therefore "State" within the meaning of the expression in Article 12.

4. Since the matter of jurisdiction has been raised by the respondents, it is necessary to first address that issue. The respondents have stated that Section 14 (2) of the Administrative Tribunals Act, 1985 provides as follows :-

“(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 controller by Government, not being a local or other authority or corporation [or society] controller 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 dated may be so specified under sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations [or societies].”

It is stated that the Integrated District Health Society – WD is not notified by Government under Section 14 (2) and therefore, this Tribunal does not have jurisdiction over this matter.

5. In this regard, the learned counsel for the respondents drew our attention to order dated 20.05.2014 of this Tribunal in O.A No.3016/2013 in which it has been held that the

Tribunal has no jurisdiction to entertain such matters so long as no notification is issued under Section 14 (2) of the A. T. Act, 1985. Our attention was also drawn to the judgment of the Hon'ble Rajasthan High Court dated 15.09.2001 in **Ram Kishore Meena Vs. Union of India and Ors.** In para 17 of that judgment, the Hon'ble High Court held as follows :-

"17. We have also perused the provisions of Section 14 of the Central Administrative Tribunal Act, 1985 and from the perusal of the same, we find it crystal clear that the Central Govt. may at its discretion apply the provisions of the Act, 1985 in respect of local or other authorities within the territory of India owned or controlled by the Govt. of India and also to the Corporations owned and controlled by the Government not being a local or other authorities or corporation controlled or owned by the State Government. The provisions have also been inserted under Sub-rule (2) as per which even the local or other authority controlled or owned by the State Government may be amenable to the Central Administrative Tribunal Jurisdiction, but that is only after notification and after considering subjectively and objectively the expediency for the purpose of facilitating transition to the Scheme as envisaged by this Act."

6. We have gone through the relevant judgments cited by both sides and also perused Section 14 of the A.T. Act, 1985. It is clear that the Ajay Hasia (Supra) judgment deals with the question as to when a Corporation can be said to be an instrumentality or agency of the Government. Whereas the

IDHS may satisfy the test as laid down in Ajay Hasia by the Hon'ble Supreme Court, for the Tribunal to have jurisdiction, there has to be a specific notification under Section 14 (2) of the A.T. Act, 1985 and since in this case there is no such notification, clearly this Tribunal has no jurisdiction.

7. The question of jurisdiction had come before us in OA No.3016/2013 with OA No.3057/2013 in the case of ***Surendra Kumar Kaushik and Ms. Nita Bali vs. Government of NCT of Delhi.*** The issue was whether Delhi Value Added Tax Appellate Tribunal came within the jurisdiction of this Tribunal. Relying on the order of the Division Bench of this Tribunal in the matter of ***Uttam Chand Nahta vs. Union of India & ors.*** in OA No.3486/2011 decided on 13.01.2012, it has been held that the Tribunal lacks jurisdiction to adjudicate the issue raised in these two OAs. In fact, in ***Uttam Chand Nahta's case (supra)***, the Division Bench of this Tribunal had held as follows:-

"13. Thus, we are of the view that this Tribunal has no jurisdiction to entertain the matter so long as a notification is not issued by the Central Government in exercise of the powers conferred by Section 14 (2) of the A.T. Act, 1985 in respect of CLB, thereby making

provisions of Section 14 (3) of the Act applicable from a specified date. Judicial notice can be taken of the fact that the Central Government has issued different notifications, invoking the provisions of sub sections (2) and (3) of Section 14 of the Act for inclusion of Corporations/Societies/ other Societies owned or controlled by the Government within the purview of this Tribunal, including Income Tax Appellate Tribunal, which is also a statutory body under the Ministry of Law and Justice, Central Pollution Control Board, constituted under the Water (Prevention and Control of Pollution) Act, 1974, Central Social Welfare Board, an authority controlled by the Government, Coconut Development Board, a statutory authority under the Ministry of Agriculture etc. But no such notification has been issued qua Company Law Administration constituted under the Companies Act. Accordingly, we are of the view that the present OA is not maintainable and we have got no jurisdiction, power and authority to decide the matter in terms of the provisions contained in Section 14 of the Administrative Tribunals Act, 1985....”

Further, learned counsel for the respondents also pointed out to us that in OA No.3431/2010 with MA No.2971/2010, this Tribunal vide its order dated 26.11.2010 held that the Tribunal lacks jurisdiction in the matters of Integrated District Health Society. We quote below the order of the Tribunal passed in this matter.

“Integrated District Health Society being a society registered under the Registration of Society Act is not notified under Section 14 (2) of the AT Act, 1985. We lack jurisdiction in this matter. With liberty to the applicants to assail their grievance in an appropriate forum, the OA stands disposed of. No costs.”

8. Therefore, we dismiss the O.A for want of jurisdiction. We make it clear that we have not gone into the merits of this case and it would be open to the applicant to avail of remedy available to him under the law before the appropriate forum. No costs.

(P. K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/Mbt/