

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.2015 of 2018

Orders reserved on maintainability of OA on 22.05.18

Orders pronounced on maintainability of OA on : 01.06.18

**Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. K.N.Shrivastava, Member (A)**

1. Central Engineering Service Group 'A'
(Direct Recruits) Association,
Through its Additional Secretary,
Shri Mukesh Kumar, Executive Engineer (C),
Group 'A', aged 32 years,
S/o Shri Mohar Singh Saini,
R/o 7, CPWD Officers Transit Hostel-Cum Guest House,
Jor Bagh Lane, Aliganj, New Delhi-110003.
2. Ram Kumar Chaudhary,
Aged 47 years, Group 'A',
Executive Engineer (Civil),
S/o Shri Ram Karan Chaudhary,
R/o G-5, M-11, Abhay Khand,
3, Indrapuram, Ghaziabad.

....Applicant

(By Advocate : Shri Ashish Nischal)

VERSUS

1. Union of India
Through it's Secretary,
Ministry of Housing and Urban Affair,
Nirman Bhawan, New Delhi-110108.
2. Union Public Service Commission,
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110069.

.....Respondents

(By Advocate:Sh. Hanu Bhaskar for R-1 and Sh. R.V. Sinha for R-2)

ORDER

Justice Dinesh Gupta, Chairman :

Heard Shri Ashish Nischal, learned counsel for the applicant and Shri Hanu Bhaskar, learned counsel for respondent no.1 and Shri R.V. Sinha, learned counsel for respondent no.2 on the issue of maintainability of this OA, as raised by the respondents at the time of admission of this OA.

2. The applicant no.1, Central Engineering Group 'A' (Director Recruits) Association, consisting of Group 'A' Engineers from Civil stream of CPWD has been represented through the Additional Secretary of the Association, namely, Shri Mukesh Kumar (duly authorised by the association by its resolution) and applicant no.2 working as an Executive Engineer with respondent no.1, have filed this OA for seeking the following reliefs:-

- “i. Quash and set aside the Impugned Notification dated 16.5.2018;
- ii. Respondent no.1 be directed to issue a combined seniority list, for the feeder grade of Special Director Generals, as on 01.04.2018, for promotional grade of Director General;
- iii. Respondent no.1 be directed to notify the recruitment rules and combined seniority list, for the feeder grade of Special Director Generals, as on 01.04.2018, for promotional post of Director General (Planning);
- iv. pass any other Order(s) which this Hon'ble Tribunal deems fit.”

3. The applicants grievance is that vide notification dated 16.5.2018 (Annexure A-1), the respondent no.1 has temporarily upgraded one post of Special Director General (Civil) in HAG+ pay scale to Director General (Planning), for a period of two years and

the UPSC was going to hold DPC meeting on 21.5.2018 for the post of Director General and Director General (Planning). Being aggrieved by the said notification, the applicants made representations dated 17.5.2018 (Annexure A-2 Colly.) to both the respondents.

4. The contention of the applicants is that the post of Director General, Central Public Works Department, is the promotional post for Special Director General. The promotion to the post of Director General is to be made on selection basis, i.e., seniority-cum-merit. There are three disciplines in the grade of Special Director General, i.e., Director General, i.e., Civil (five posts), Electrical (one post) and Architectural (one post).

5. Another contention of the applicants is that in the impugned notification, it has been termed as upgradation, but in fact it amounts to creation of a new post of Director General (Planning) and abolition of one post of Special Director General (Civil) as the two posts belong to two different services.

6. When this matter came up for admission, learned counsel for the respondents has raised objection of maintainability of this OA on the ground that by filing this OA the applicants are challenging the notification dated 16.5.2018 vide which, with the approval of Appointment Committee of the Cabinet vide DOP&T's communication dated 9.5.2018, sanction of the President is accorded for temporary upgradation of one post of Special Director General in HAG+ pay scale (Level 16 of the Pay Matrix in terms of 7th CPC) in the Civil stream, to the grade of Director General

(Planning) in Apex Scale, (Level 17 of the Pay Matrix in terms of 7th CPC) in Central Public Works Department, for a period of two years with effect from the date of issuance of the said notification or until further order, whichever is earlier and have raised certain grounds in the OA which are basically based on the apprehensions of the applicants only. He further submits that a bare perusal of the instant OA, it can be said that the same is in the nature of Public Interest Litigation, which is not maintainable before this Tribunal in view of provisions of Sections 14 and 19 read with Section 3(q) of the Administrative Tribunals Act, 1985 and is accordingly liable to be dismissed in *limine* on that ground alone.

7. Counsel for the applicants submitted that by the impugned notification, the respondents have abolished one post of Special Director General, which adversely affects their promotional avenues. He further submits that the respondents have not finalised the seniority list for determination of zone of consideration to the post of Director General. He further submitted that instant OA is very much maintainable before this Tribunal as the applicants are aggrieved by the impugned notification.

8. In view of the aforesaid rival submissions, it is necessary to examine certain provisions of the Central Administrative Tribunals Act. Sections 2, 3(q), 14 and 19 of Administrative Tribunals Act, 1985, which read as under:

“2. Act not to apply to certain persons : The provisions of this Act shall not apply to-

(a) any member of the naval, military or air forces or of any other armed forces of the Union;

(b) Clause (b) omitted by Act 19 of 1986, sec. 3 (w.r.e.f. 1.11.1985).

(c) Any officer or servant of the Supreme Court or of any High Court [or courts subordinate thereto;

(d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof of, in the case of a Union Territory having a Legislature, of that Legislature.”

“3.(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;”

“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 service, 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 controller 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 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].

(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) 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."

"19. Applications to Tribunals - (1) Subject to the 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.

Explanation - For the purposes of this sub-section, order means an order made -

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or

by any corporation [or society] owned or controlled by the Government ; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) [in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government].

[(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.] (4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.”

9. The examination of the aforesaid provisions would take us to the inescapable conclusion that the present OA is not maintainable for the reason that as per Section 3(q) of the Act, ‘service matters’ means, in relation to a person, all matters relating to the conditions of his service. Moreover, from the perusal of the impugned notification, we find that by the impugned notification, one post of Special Director General was upgraded temporarily to the grade of Director General (Planning) and that too for a period of two years and also the grounds raised in the OA by the applicants are based on their apprehensions, which cannot be entertained at this stage without any cogent reasons thereof.

10. Further a bare reading of Section 19(1) of the Act makes it clear that only "a person aggrieved by an order" pertaining to any

matter within the jurisdiction of a Tribunal may make an application to the Tribunal for "redressal of his grievance". The words 'a person aggrieved' and 'his grievance' are of utmost importance, which show that it is not any Tom, Dick and Harry who can approach the Tribunal in respect to any service matter relating to the Government of India, though he himself is not aggrieved and has no grievance of his own. The Tribunal being a creation of the statute, has limited jurisdiction to exercise its power strictly within the four corners of the statute whereunder it has been created. It cannot exercise inherent jurisdiction which is outside the purview of the Act. It is true that Section 14 lays down jurisdiction, powers and authorities of the Tribunal, but who can file application before the Tribunal is provided under Section 19 of the Act and the Tribunal cannot entertain an application filed by a stranger. If an application under Section 19 is not filed in the manner provided in the Act *ibid*, the Tribunal has no authority to entertain such an application. Since the present OA filed by the applicants is in the nature of PIL, the Tribunal cannot entertain the same being outside the purview of its jurisdiction.

11. The contention of the learned counsel for the applicants that the Central Administrative Tribunal shall have to exercise all the jurisdiction, powers and authority exercisable by all Courts, before the notified date, under Section 14 of the Act, is untenable, since the same is subject to the pre-fix of the said Section i.e. 'Save as otherwise expressly provided in this Act'. An application in the nature of Public Interest Litigation is not permissible under the Act.

In ***B. Srinivasa Reddy v. Karnataka Urban Water Supply and***

Drainage Board Employees Association & Others, (2006) 11

SCC 731, the Hon'ble Apex Court held that in service matters, only the non-appointees can assail the legality or correctness of the action and that third party has no *locus standi* to canvass the legality or correctness of the action. Further In ***Dr. Duryodhan Sahoo and Others v. Jitendera Kumar Mishra and Others***, (1998) 7 SCC 273, the Hon'ble Apex Court while answering a question that 'whether an Administrative Tribunal constituted under Administrative Tribunals Act, 1985 can entertain a Public Interest Litigation (PIL),' while holding that a Public Interest Litigant is not a person aggrieved, in terms of Section 19 of the Administrative Tribunals Act, 1985, held that 'Administrative Tribunal constituted under the Act cannot entertain a PIL at the instance of a total stranger'.

12. For the aforesaid reasons and in view of the legal dicta referred to above, the OA is dismissed, being not maintainable, under the Administrative Tribunals Act, 1985 and the Rules made thereunder. There shall be no order as to costs.

(K.N.Shrivastava)
Member (A)

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(Justice Dinesh Gupta)
Chairman