

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2516 OF 2003

New Delhi, this the 21st day of May, 2004

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

1. Bhagwan Din
S/o Shri Chhote Lal,
R/o IIMC Staff Quarters,
Aruna Asaf Ali Marg,
JNU New Campus,
New Delhi-110067.

2. Nanak Chand
S/o Shri Edal Singh,
R/o IIMC Staff Quarters,
Aruna Asaf Ali Marg,
JNU New Campus,
New Delhi-110067.

....Applicants
(By Advocate : Shri Sushil Sharma for Shri S.N. Anand)

Versus

1. Union of India through
Secretary, Ministry of Information and
Broadcasting, Shastri Bhawan,
New Delhi.

2. The Director
Indian Institute of Mass Communication,
Aruna Asaf Ali Marg,
JNU New Campus,
New Delhi-110067.

....Respondents
(By Advocate : Shri K.C.D. Gangwani)

ORDER (ORAL)

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER :-

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed seeking a direction to set aside the order dated 30.6.2003 (Annexure A) by which the applicants have been informed that higher pay scale cannot be granted to him.

2. Without going into the factual details, it is relevant to refer to the preliminary objections

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raised by the respondents in their reply. The respondents have stated that the Indian Institute of Mass Communication ('IIMC' for short) in which the applicants are employed has not been notified under Section 14 of the Administrative Tribunals Act, 1985. Therefore, this Tribunal has no jurisdiction.

3. In view of the preliminary objection raised by the respondents this issue of jurisdiction was heard at the initial stage of arguments. Learned counsel of the applicants stated that the respondent No.2 organisation, i.e., IIMC was set up in 1965 as Department of Ministry of Information and Broadcasting, Govt. of India. Later it was registered as a autonomous organisation under the Societies Registration Act on 22.1.1966. The Institute receives funds for its recurring and non-recurring expenditure as grant-in-aids from the Govt. of India through the Ministry of Communication and Broadcasting. According to the learned counsel, funds as well as activities of the IIMC are controlled and managed by the Govt. Referring to the Annual Report of 2000-2001, it was pointed out that the IIMC Society and Executive Council were reconstituted on 9.11.2000. It was also mentioned in this annual report that consequent upon his transfer as Joint Secretary (B), Shri Rakesh Mohan relinquished the additional charge of the Director, IIMC. Shri Sudhir Sharma, who joined the Ministry of Information and Broadcasting as Joint Secretary (P) took over the additional charge of Director, IIMC with effect from

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22.2.2001. He also referred to several correspondents in which the Ministry has been requested to communicate their decision on the reference made related to the applicants. The learned counsel also invited attention to order of this Tribunal dated 5.5.2003 in OA No.2133/2002 in the case of Vijay Kumar Vs. Union of India and Ors., decided on 5.5.2002 wherein this Tribunal held that in respect of a composite order passed with the approval of Department of Telecommunication in respect of any employee of MTNL, the Tribunal has jurisdiction. While deciding that case, this Tribunal has taken into account the observations of the Hon'ble Delhi High Court in the case of Shri Ram Gopal Verma Vs. Union of India and Anr., 2002 (1) AISLJ 352. Placing reliance on another judgement of the Hon'ble Supreme Court in the case of Kendriya Vidyalaya Sangathan & Anr. Vs. Subhash Sharma etc., 2002(2) ATJ 202, it was urged that this Tribunal has jurisdiction under Section 14 of the Administrative Tribunals Act, 1985.

4. The learned counsel of the respondents invited attention to the additional affidavit filed on behalf of respondent No.2 on 12.4.2004. In this affidavit, it has been stated that the Institute has its own recruitment rules. The recruitment rules are approved by the Institute's Governing Body and thereafter these are adopted. The Institute being an Autonomous Body, it has its own recruitment rules and service Bye-laws independent in character. However, in case of any revision/financial liabilities on the Ministry, the Institute seeks advice from the

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Ministry. In case of any doubt, the Institute makes reference to the Ministry on specific issues and Ministry gives guidance and advice to the Institute. It was further stated that the case law relied upon by the learned counsel of the applicants does not apply on the facts of this case. He further stated that there is no notification as per the provisions contained in Section 14 (2) of the Administrative Tribunals Act, 1985. Therefore, this Tribunal has no jurisdiction in respect of the service matters of the employees of IIMC.

5. We have heard the learned counsel of the parties and perused the material available on record.

6. Section 14 of the Administrative Tribunals Act, 1985 provides 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 [***] 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 State or of any local or other authority within the territory of India or under the control of the Government of India or 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].

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(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 1[or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (excepts the Supreme Court 2 [***]) 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 1[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 sub local or other authority or corporation 1[or society] and pertaining to the service of such person in connection with such affairs."

7. It is admitted position that IIMC in which the employees are working is registered as an autonomous body under the Societies Registration Act. There is also no dispute that Institute receives funds for its activities. However, it has its own recruitment rules and the Governing Body to regulates its functions. So far as claims of the applicants are concerned, they had made a representation to the Director, IIMC for grant of higher pay scale on the analogy of similar employees working in Central Public Works Department. Advice on their representations was sought from the Ministry as can be seen from the correspondence addressed to Shri Kulwant Rai, Deputy Secretary (Admn.II), Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi on 21.3.2002 which states as under:-

(Signature)

Sub: Demand for grant of higher pay scale of Rs.3050-4590 by Assistant Pump Operators (E&M) in IIMC.

Sir:

This Institute has two Assistant Pump Operators initially appointed in the scale of pay of Rs.800-1150 w.e.f. December 1990. After the implementation of 5th Pay Commission Recommendations their pay scale was revised by the Institute to Rs.2650-4000.

The incumbents holding the post of Assistant Pump Operators have represented for grant of higher scale of pay of Rs.3050-4090 at par with the pay scale adopted by CPWD for their Operators (E&M) by revising the existing scale of Rs.800-1150 to Rs.950-1500 (pre-revised) as per Arbitration Award by Hon'ble Delhi High Court Judgment dated 28.1.92 Judgement dated 19.11.96 in a Writ Petition filed by the work-charged staff of CPWD (copy enclosed).

The nature of duties and qualifications etc. prescribed for appointment to the post of Assistant Pump Operator in IIMC and Operators (E&M) in CPWD are enclosed. It is proposed to revise the pay scale of Assistant Pump Operators in IIMC from the existing scale of pay of Rs.2650-4000 to Rs.30500-4590. It is also clarified here that IIMC has implemented ACPs for its employees as per guidelines issued by the Ministry and the above category of staff will be eligible for upgradation of their pay scale on completion of prescribed service of 12 years by them.

The Ministry may kindly give its advice in the matter at the earliest."

8. From the perusal of the above, it is seen that IIMC proposed to revise the pay scale of the applicants. However, they sought advice of the Ministry. It is clear that the Ministry is not the authority to take a final decision so far as expenditure relating to the applicants was concerned. Their object was only to give an advice as sought by IIMC. As a matter of fact, the IIMC could very well incur the expenditure with or without advice of the

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Ministry. It is, therefore, clear from the facts that it is not a case where the decision was to be taken by the Government. In the circumstances, it cannot be said that the applicant's case is covered under the provisions contained in sub-section (1) of Section 14 of the Administrative Tribunals Act, 1985.

9. The learned counsel has made much emphasis on the observations of the Hon'ble Delhi High Court in the case of Ram Gopal Verma (supra) wherein the desire was requiring jurisdiction of the Tribunal in respect of employees belonging to TES Group 'B' Service in Department of Telecommunication ("DOT") while on deputation to MTNL, he was chargesheet on some irregularities and finally placed under suspension vide order passed by the Chief General Manager, MTNL. It was urged before the Hon'ble Delhi High Court that the Tribunal was to examine petitioner's service grievance who was admittedly holding a civil post in DOT and figured in the seniority list of TES Group B Officers. "Apart from this, his order of suspension though passed by the Chief General Manager, MTNL, was to be approved by DOT also making it a composite order in the process which was cognizable by Tribunal." The Hon'ble Delhi High Court while deciding that this Tribunal had no jurisdiction for want of notification under Section 14 (2) of the Administrative Tribunals Act had observed as follows:-

"His service status enjoyed by him in DOT would not confer jurisdiction on Tribunal which otherwise was not admittedly vested in it for want of requisite notification under Section 14(2). Therefore, even when he held a lien on the

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post of TES (Cables) in MTNL was not entertainable by Tribunal for lack of jurisdiction. It is also not the case that impugned order of his suspension was a composite order passed with the approval of DOT which could perhaps provide some basis for Tribunal's jurisdiction. This order was passed by the Chief General Manager on his own and it is not for us to examine whether it was passed validly or otherwise."

10. The learned counsel of the applicants led much stress that in the present case the revision of the pay scale of the employees was to be on account of composite order passed by the Ministry as well as the respondent No.2, i.e., IIMC. Therefore, this Tribunal had jurisdiction. In our considered view, the claims made by the learned counsel is not in proper appreciation of the facts of this case. It was not that the pay scale of the employees was to be decided by the Ministry. The respondent No.2 organisation was an autonomous body governed by its own rules and executive and governing body. Therefore, it cannot be said that merely because the respondent No.2 sought some 'advice' from the Ministry in an order passed in respect of the applicants was a composite order.

11. The learned counsel also relied on the decision in the case of Kendriya Vidyalaya Sangathan (supra) and stated that this Tribunal had jurisdiction in respect of Kendriya Vidyalaya Sangathan's employees even before notification under Section 14 (2) of the Administrative Tribunals Act, 1985 conferred such jurisdiction in respect of Kendriya Vidyalaya Sangathan's employees was issued. In our view, the interpretation given by the learned counsel is not proper inasmuch as the Hon'ble Supreme Court held that



in the light of pronouncement in L. Chandra Kumar v. Union of India and Others, 1997 (3) SCC 261, Section 28 of the Act ibid does not have the effect of affecting the power of judicial review of constitutional courts. At the same time, as laid down in L. Chandra Kumar, the High Court ought not to permit the aggrieved person to bypass the remedy of moving the administrative tribunals in the first instance. The Hon'ble Supreme Court had taken note of the provisions contained in Section 14 of the Act ibid including notification issued by the Govt. under Section 14(2) of the Act conferring jurisdiction on the Tribunal in respect of Kendriya Vidyalaya Sangathan's employees and had decided accordingly. Therefore, that decision of the Hon'ble Supreme Court is not applicable in the present case. In any case, the applicants do not get any support from that decision.

12. In the decision of this Tribunal in the case of Vijay Kumar (supra) is also on the facts of that case where the applicant's appeal before the DOT authorities was decided. Since that was an order passed by the Ministry, this Tribunal held that it had jurisdiction to decide the same.

13. In view of what has been discussed hereinbefore, we are of the considered view that the dispute regarding service matters in respect of the employees of IIMC cannot be entertained by this Tribunal for want of jurisdiction under Section 14 of the Administrative Tribunals Act, 1985. The IIMC has

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not yet been notified under Section 14 (2) of the Act ibid. Therefore, the present Original Application is dismissed for want of jurisdiction. However, the applicants will be at liberty to prosecute their grievances before the competent forum in accordance with law.

14. In the result, this OA is dismissed as aforesaid without any order as to costs.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER


(SHANKER RAJU)
JUDICIAL MEMBER

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