

(2020) 09 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Recrimination Petition No. 20 Of 2020

Abdul Qayoom Chalkoo

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 08-09-2020

Acts Referred:

Administrative Tribunal Act, 1985 — Section 14, 28, 29
Jammu And Kashmir Reorganization Act, 2019 — Section 32(1), 35, 53(1)
General Clauses Act, 1897 — Section 3(58)
Limitation Act, 1963 — Section 12
Code Of Civil Procedure, 1908 — Order 15 Rule 5, Order 47 Rule 1
Transaction Of Business Of The Government Of Union Territory Of Jammu And Kashmir Rules, 2019 — Rule 47
Constitution Of India, 1950 — Article 1(3), 226, 227, 239(AA), 246, 246(4)

Citation : (2020) 09 J&K CK 0013

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : R. A. Jan, Taha Khalil

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The instant review petition has been filed by the petitioner above named seeking review of order dated 17.06.2020 passed by this Court, whereby the petition filed by the petitioner bearing WP(C) No.862/2020 stands transferred to Central Administrative Tribunal, Jammu Bench.

2) It appears that against the aforesaid order of transfer, the petitioner filed an appeal bearing LPA No.86/2020. The said appeal came to be disposed of by the Division Bench of this Court in terms of order dated 14.08.2020. The relevant observations of the Division Bench are reproduced here-under:

"2. It appears that the submission addressed before us was placed for consideration before the learned Single Judge. Let the same be placed before the

learned Single Judge.

3. In view thereof, Mr. R. A. Jan, learned senior counsel for the appellant, submit that the appellant may be allowed to withdraw the instant Letters Patent Appeal with liberty to file a review petition before the learned single Judge.

4. In view of the above narration, this appeal is disposed of as withdrawn with liberty as prayed for.

5. We make it clear that we have not expressed any opinion on the merits of the case and the contention of the appellant and the learned Single Judge would be free to take the view in accordance with law.

3. It is in the aforesaid circumstances that the petitioner has filed the instant review petition, wherein the following contentions have been raised:

(a) That the Union Territory of Jammu and Kashmir has been constitutionally structured on the pattern of Union Territory of National Capital of Delhi with its own separate legislature and, as such, the services allocated to Union Territory of Jammu and Kashmir are under the legislative and executive domain as well as administrative control of Union Territory of Jammu and Kashmir and, thus, Central Administrative Tribunal, Jammu Bench, has no jurisdiction, power or authority under Section 14 of the Administrative Tribunals Act to entertain, hear and decide the matters in respect of services rendered in connection with the affairs of Union Territory of Jammu and Kashmir;

(b) That Section 28 of the Administrative Tribunals Act, 1985, where-under jurisdiction of the Writ Court in regard to the matters over which jurisdiction is vested in the Central Administrative Tribunal under Section 14, stands struck down as unconstitutional by the Supreme Court of India in L. Chandra Kumar's case reported in AIR 1997 SC 1125;

(c) That the jurisdiction of the Writ Court under Article 226 of the Constitution of India is not ousted and continues to be available for being availed even in case where the alternate remedy is not adequate or efficacious. Since no Bench is available at Srinagar, therefore, in view of the statement of law made by the Supreme Court of India in Rojer Mathew's case (Civil Appeal No.8588/2019 decided on 13.11.2019), the remedy of approaching the Central Administrative Tribunal for the employees residing in Kashmir Province cannot be said to be efficacious.

4. I have heard learned counsel for the review petitioner. I have also gone through the grounds of the review petition and the record of the case.

5. It is a settled law that the review proceedings have to be strictly confined to the ambit and scope of Order XLVII Rule 1 of the Code of Civil Procedure, which provides that an application for review of a judgment can be maintained only on two grounds. Firstly, when the petitioner has discovered a new and important matter or evidence which, after the exercise of due diligence, was not within his

knowledge or could not be produced by him at the time when the order was made and secondly when there is a mistake or error apparent on the face of the record.

6. The scope of review has been explained by the Supreme Court of India in *S. Nagaraj and others v. State of Karnataka and another*, reported in 1993 Supp (4) SCC 595. Paras 18 and 19 of this judgment, which have been relied upon by the petitioner in the review petition, are relevant to the context and the same are reproduced here-under:

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in administrative law as in public law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order....."

"19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice...."

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality...."

7. In the light of the order dated 14.08.2020 of the Division Bench and keeping in view the aforesaid guidelines of the Supreme Court, let us proceed to consider the contentions raised by the petitioner in the Review Petition.

8. It has been contended by the learned counsel for the petitioner that the Constitutional structure of Union Territory of Jammu and Kashmir is akin to the constitutional structure of Union Territory of National Capital Territory of Delhi and unlike any other Union Territory without a legislature, as such, the services rendered by an employee of the Union Territory of Jammu & Kashmir are services relating to affairs of the Union Territory as opposed to affairs of the Union

9. So far as National Capital Territory Delhi is concerned, the same stands created under Article 239AA of the Constitution of India. As against this, the Union Territory of Jammu and Kashmir has been created by a statutory

enactment called the Jammu and Kashmir Re-organization Act, 2019. Thus the National Capital Territory of Delhi is a creation of Constitution of India whereas the Union Territory of Jammu and Kashmir and Union Territory of Ladakh are creation of a statute. In order to understand the issue whether the Union Territory of Jammu and Kashmir is akin to the National Capital Territory of Delhi, a comparison between the relevant provisions of the Jammu and Kashmir Re-organization Act, 2019 and Article 239AA of the Constitution of India becomes imperative. A comparative table of the relevant provisions of the Constitution of India and the Jammu and Kashmir Re-organization Act, 2019 is given as under:

Article 239AA of the Constitution of India.

The Jammu and Kashmir created under Re-Organization Act, 2019.

Clause (1): As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union Territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred as the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.

Section 4: Formation of Union territory of Jammu and Kashmir with Legislature: On and from the appointed day, there shall be formed a new Union Territory to be known as the Union territory of Jammu and Kashmir comprising the territories of the existing State of Jammu and Kashmir other than those specified in section 3.

Clause (2) (a): There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

Section 14 (2): There shall be a Legislative Assembly for the Union Territory of Jammu and Kashmir.

Clause (2) (b): The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

Section 14 (3): The total number of seats in the Legislative Assembly of the Union Territory of Jammu and Kashmir to be filled by persons chosen by direct election shall be 107.

Clause (3) (a): Subject to the provisions of this constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital territory with respect to any of the matters enumerated in the State List or in the concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64 65 and 66 of that List in so far as they relate to the said

Entries 1, 2 and 18.

Section 32 (1): Subject to the provisions of this Act, the Legislative Assembly may make laws for the whole or any part of the Union territory of Jammu and Kashmir with respect to any of the matters enumerated in the State List except the subjects mentioned at entries 1 and 2, namely, "Public Order" and "Police" respectively or the Concurrent List in the Seventh Schedule to the Constitution of India, in so far as any such matter is applicable in relation to the Union Territories

Clause (3) (b): Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

Section 32 (2): Nothing in sub-section (1) shall derogate from the powers conferred on Parliament by the Constitution to make laws with respect to any matter for the Union Territory of Jammu and Kashmir or any part thereof.

Clause (3) (c): If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the legislative assembly, then, in either case, the law made by parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repeating the law so made by the Legislative Assembly.

Section 35: Inconsistence between laws made by Parliament and laws made by Legislative Assembly: If any provision of a law made by the Legislative Assembly with respect o matters enumerated in the State List, in the Seventh Schedule to the Constitution is repugnant to any provision of a law made by parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or, if any provision of a law made by the Legislative Assembly with respect to any matter enumerated in the Concurrent List in the Seventh Schedule to the Constitution is repugnant to any provision of any earlier law, other than a law made by the Legislative Assembly, with respect to that matter, then, in either case, the law made by parliament, or, as the case may be, such earlier law shall prevail and the law made by the Legislative Assembly of the Union Territory shall, to the extent of the repugnancy, be void:

Provided that if such law made by the Legislative Assembly has been reserved

for the consideration of the President and has received his assent, such law shall prevail in the Union territory of Jammu and Kashmir:

Provided further, that nothing in this section shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

Clause (4): There shall be a council of Ministers consisting of not more than ten per cent of the total number of members in the Legislative Assembly, with the Chief Minister at the head of aid and advise the Lieutenant governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion:

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to given such direction in the matter as he deems necessary.

Section 53 (1): There shall be a council of Ministers consisting of not more than ten percent of the total number of members in the Legislative Assembly, with the Chief Minister at the head of aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws except in so far as he is required by or under this Act to act in his discretion or by or under any law to exercise any judicial or quasi.

Note: Rules 47 and 48 of the Transaction of Business of the Government of Union Territory of Jammu & Kashmir Rules, 2019, framed in under Section 55 of the Jammu and Kashmir Reorganization Act, 2019, are somewhat similar to the Proviso to Clause 4(a) of Article 239AA and the same read as under:

47. In case of difference of opinion between the Lieutenant Governor and the Council with regard to any matter, the Lieutenant Governor shall refer it to the Central Government for the decision of the President and shall act according to the decision of the President.

48. Where a case is referred to the Central Government in pursuance of rule 47, it shall be competent for the Lieutenant Governor to direct that action shall be suspended pending the decision of the President on such case or in any case where the matter, in his opinion, is such that it is necessary that immediate action should be taken to give such direction or take such action in the matter as he deems necessary.

Clause (5): The Chief Minister shall be appointed by the President and the other

Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.

Section 54: Other provisions as to Ministers: (1) The chief Ministers shall be appointed by the Lieutenant Governor and the other Ministers shall be appointed by the Lieutenant Governor on the advice of the Chief Minister.

(2): The Ministers shall hold office during the pleasure of the Lieutenant Governor

Clause (6): The Council of Ministers shall be collectively responsible to the Legislative assembly

Section 54 (3): The Council of Ministers shall be collectively responsible to the Legislative Assembly.

Clause (8): The provisions of article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of [Puducherry], the administrator and its Legislature, respectively; and any reference in that article to clause (1) of article 239A "shall be deemed to be a reference to this article or article 239AB, as the case may be.

Section 13: Applicability of article 239A of Constitution: On and from the appointed day, the provisions contained in Article 239A, which are applicable to "Union territory of "Puducherry", shall also apply to the "Union territory of Jammu and Kashmir".

10. A comparative analysis of the provisions contained in Article 239AA and the afore-quoted provisions of the Jammu and Kashmir Re-organization Act, 2019, reveals that the structure of Union Territory of Jammu and Kashmir is akin to the structure of National Capital Territory of New Delhi in many aspects. However, the Union Territory of Jammu and Kashmir stands created under a statute whereas the National Capital Territory of Delhi stands created under the constitutional provisions.

11. The status of National Capital Territory of Delhi came up for consideration before the Supreme Court in the case titled Government (NCT of Delhi) v. Union of India and another, reported in (2018) 8 SCC 501. The Constitution Bench of the Supreme Court, while examining the Constitutional status of National Capital Territory of Delhi, came to the conclusion that the Union Territory of Delhi is a class by itself but certainly not a State. In fact, the Court categorically affirmed that the status of National Capital Territory of Delhi continues to be that of a Union Territory. The Court while relying upon its judgment in New Delhi Municipal Council v. State of Punjab and others, reported in (1997) 7 SCC 339, held that all Union Territories under our constitutional scheme are not on the same pedestal and as far as the NCT of Delhi is concerned, it is not a State within the meaning of Article 246 or Part VI of the Constitution. The Court went on to observe that NCT of Delhi partakes a unique position after the Sixty Ninth Amendment, yet in

sum and substance, it remains a Union Territory which is governed by Article 246(4) of the Constitution and to which the Parliament, in exercise of its constituent power, has given the appellation of the National Capital Territory of Delhi. The following observations of the Supreme Court, in this regard, are relevant to the context and the same are reproduced here-under:

"200. As far as the Lieutenant Governor of Delhi is concerned, as per Article 239-AA (4), he is bound by the aid and advice of his Council of Ministers in matters for which the Delhi Legislative Assembly has legislative powers. However, this is subject to the proviso contained in clause (4) of Article 239-AA which gives the power to the Lieutenant Governor that in case of any difference between him and his Ministers, he shall refer the same to the President for a binding decision. This proviso to clause (4) has retained the powers for the Union even over matters falling within the legislative domain of the Delhi Assembly. This overriding power of the Union to legislate qua other Union territories is expounded under Article 246 (4).

201. In the light of the aforesaid analysis and the ruling of the nine-Judge Bench in NDMC, it is clear as noonday that by no stretch of imagination, NCT scheme and the status of the Lieutenant Governor of Delhi is not that of a Governor of a State, rather he remains an Administrator, in a limited sense, working with the designation of Lieutenant Governor."

16) Coming to the provisions of the Jammu and Kashmir Re-organization Act, 2019, Section 35 of the Act clearly provides that in case of repugnancy between a law made by the Legislative Assembly of the Union Territory of Jammu and Kashmir in respect of the matters under State List and the Concurrent List and the laws made by the Parliament on those matters, the law made by the Parliament has to prevail. The provision further provides that the Parliament is not prevented from enacting, at any time, any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly. Similarly, sub-section (1) of Section 32 of the Re-organization Act confers powers upon the Parliament to make laws with respect to any matter for the Union Territory of Jammu and Kashmir or any part thereof.

17) As against the above, Part VI of the Constitution of India, which relates to the States, does not contain a provision akin to the aforesaid provision of Re-organization Act. The powers of State Legislature to legislate in respect of matters under State List are exclusive, unfettered and not circumvented or overridden by the powers of the Parliament. Article 246 of the Constitution of India is relevant in this regard and the same is reproduced as under:

"246. Subject-matter of laws made by Parliament and by the Legislatures of States.-(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union

List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

18) Clause (4) of the aforesaid provision clearly provides that the Parliament has power to make laws with respect to even those matters which are enumerated in the State List for any part of the territory of India not included in a State.

19) Article 1(3) of the Constitution of India provides that the territory of India shall comprise the territories of the States, Union Territories specified in the First Schedule and such other territories as may be acquired. Therefore, Article 246(4) quoted above refers to the territories which are not the States i.e. Union Territories as mentioned in Article 1(3). So there is a marked distinction between the constitutional status of Union Territories and the States, inasmuch as the Parliament has overriding power to make laws in respect of a Union Territory even relating to a matter falling in the State List, whereas in case of a State, its Legislative Assembly has exclusive powers to legislate in the matters enumerated in the State List.

20) In terms of Section 53(1) of the Jammu and Kashmir Re-organization Act, the executive powers of the Government of Union Territory of Jammu & Kashmir is conterminous with the legislative powers of the Jammu and Kashmir Legislative Assembly which extend to all but three subjects in the State List and all subjects in the Concurrent List and thus Section 53(1) of the Act confers executive powers on the Council of Ministers over all these subjects for which the Legislative Assembly of the Union Territory of Jammu and Kashmir has legislative powers. However, the aforesaid executive power of the Union Territory Government is not unfettered. Rule 47 of the Transaction of Business of the Government of Union Territory of Jammu and Kashmir Rules, 2019, gives power to the Lieutenant Governor that in case of any difference between him and the Council of Ministers, he can refer the matter to the President for a binding decision. This Rule has retained the power for the Union even in a matter falling within the executive domain of the Council of Ministers of the Union Territory Government.

21) Having regard to the limits that have been placed on the powers of the

Legislative Assembly of Union Territory of Jammu and Kashmir and its Council of Ministers, as discussed hereinbefore, it can, by no stretch of imagination, be stated that the Union Territory of Jammu and Kashmir partakes the character of a State.

22) It has been contended by the learned counsel for the petitioner that Section 3(58) of the General Clauses Act defines a State to include a Union Territory. On this ground, it is urged that the Union Territory of Jammu and Kashmir, having regard to its peculiar statutory structure, is a State for all practical purposes.

23) I am afraid the interpretation of expression "Union Territory" sought to be given by the learned counsel for the petitioner on the strength of definition of "State" given in the General Clauses Act cannot be accepted in the facts and circumstances of the case. In the instant case, the context suggests that the word "State" cannot include a "Union Territory". The definition of an expression given in the General Clauses Act is inapplicable where the same is repugnant to the subject or the context. I am supported in my aforesaid view by the judgment of the Supreme Court in *T. M. Kannian v. Income Tax Officer Pondicherry* and another, reported in AIR 1968 SC 637.

24) In *Government (NCT of Delhi) v. Union of India* and another (supra), the Constitution Bench of the Supreme Court has noted the judgment in *T. M. Kannian's* case with approval and held that the expression "State" in Article 246(4) will not include a Union Territory and the definition given in the General Clauses Act will not apply having regard to the subject and the context of the provision. The Court went on to observe that the definition of "State" in a particular provision is not dispositive of whether or not its application would stand excluded in relation to a Union Territory and that the outcome is essentially based on the subject and context in which the word has been used.

25) Apart from what has been laid down by the Supreme Court in the aforesaid judgments, the Explanation to Section 14 of the Administrative Tribunals Act, 1985, make things crystal clear. The Explanation reads as under:

"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."

26) When confronted with the Explanation to Section 14 of the Administrative Tribunals Act, the learned Senior Counsel argued that in spite of existence of the Explanation to Section 14 of the Act, the expression "Union Territory" has to be construed to mean "State" in relation to the Union Territory of Jammu and Kashmir because the legislative and consequently the executive powers in respect of "Services other than All India Services" are within the domain of the Legislature/Government of the Union Territory of Jammu & Kashmir as the same fall in the State List.

27) In order to test the merits of the afore-noted contention of the Id. Counsel, it

is necessary to understand the object and purpose of engrafting Explanation to a provision of law. The object of an Explanation to a statutory provision is to explain the manner and intendment of the provision. It clarifies the vagueness or absurdity of the main enactment so as to make it consistent with the dominant object which the enactment seems to observe.

28) In *Jagannath v. Ram Chander Srivastava*, reported in 1982 (8) ALR 541, the Court was dealing with Order XV Rule 5 of the CPC. Through a State amendment, an Explanation had been added to it. The Explanation reads as "The expression ? first hearing? means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned the last of the dates mentioned". The Court held that in the light of the Explanation, the first hearing would be the date specifically mentioned in the summons. In arriving at this decision, the Court observed as under:

"The role of an explanation in statutory construction is to remove any ambiguity in the main section or to make explicit that may be otherwise ambiguous. Its basic function is to elucidate the main enactment. However, the construction of an Explanation must depend in the ultimate analysis upon its plain terms and the language used therein... in the ultimate analysis the object of the Explanation can best be understood by referring to the language in which it is expressed. The explanation under consideration is, in our opinion, a plain and simple definition clause enacted to define the expression ?first hearing? and in view of the language used therein, it is clear that the object was to exclude the general notions of the first hearing in a civil suit governed by the Code of Civil Procedure."

29) In *State of Bihar v. Md. Ismail and others*, reported in AIR 1966 Patna 1, the Court was dealing with the Explanation to Section 12 of the Limitation Act, 1963, which reads as "In computing under this Section the time requisite for obtaining a copy of a decree or an order, any time taken by the Court to prepare the decree or order before an application for a copy whereof is made shall not be excluded". It was held that the time taken by the Court to prepare the decree before an application for copy is made would not be excluded in favour of the appellant as time requisite. In arriving at this conclusion, the Court observed as under:

"The Parliament expressed its intention through the language of its enactment. Explanation or proviso is added to a section, generally, by way of exception to what is stated in the main section. Sometimes an explanation is appended to stress upon a particular thing which, ordinarily, would not appear clearly from the provision in the section. This artifice seems to have been adopted in drafting the explanation to Section 12.... It is well settled that when any word, phrase or expression in any enactment is explained by the legislature, the Act has to be applied with the authoritative explanation of that expression, phrase or word, as the case may be for the very object of the authoritative explanation is to enable the Court to understand the Act in the light of the Explanation, and the construction of the Explanation must depend upon its terms, and no theory or

hypothesis as to its purpose can be entertained unless it is to be inferred from the language used."

30) From the aforesaid enunciation of law, it becomes manifest that the object of an Explanation to a provision of law is to clarify an ambiguity in that particular provision. It helps the Court in understanding the relevant provision in the light of the Explanation. The construction of an Explanation depends upon plain terms and language used therein.

31) A plain reading of Explanation to Section 14 of the Administrative Tribunals Act connotes that the services for the affairs of Union Territory are to be construed as included in the services for the affairs of the Union. That being so, there is no escape to the conclusion that the provisions of the Administrative Tribunals Act including the provisions of Sections 14, 28 and 29 of the said Act are squarely applicable to the government employees of the Union Territory of Jammu and Kashmir. In spite of the fact that the structure of Union Territory of Jammu and Kashmir appears to be similar to the structure of National Capital Territory of Delhi, in many aspects, still then applicability of the provisions of Administrative Tribunals Act to the government services of Union Territory of Jammu and Kashmir cannot be wished away because the provisions of Section 14 of the Administrative Tribunals Act are applicable to the employees of the National Capital Territory of Delhi as well.

32) The Central Administrative Tribunal Principal Bench, Delhi, has, after discussing the effect of incorporation of Explanation to Section 14 vide Amendment Act of 1986, in the case of Shri N. K. Aggarwal etc. etc. v. Lt. Governor and others, reported in All India Services Law Journal 1987 (3) CAT 523, held that the services of the employees of Government of Delhi fall within the purview of the provisions contained in Section 14 of the Administrative Tribunals Act. This situation continues to hold the field even after coming into being of National Capital Territory of Delhi in terms of the Constitution (Sixty-ninth Amendment) Act, 1991. The contention raised by learned counsel for the petitioner, in this regard is, therefore, absolutely without any merit and deserves to be rejected.

33) It has been next contended by the learned counsel for the petitioner that the Supreme Court in L. Chandra Kumar's case has struck down the provisions contained in Section 28 of the Administrative Tribunals Act, 1985 and, as such, the jurisdiction of the High Court to entertain service matters is not excluded.

34) It is true that the Supreme Court in L. Chandra Kumar's case (AIR 1997 SC 1125) has struck down the provisions of Section 28 of the Administrative Tribunals Act but the same has been done only to the extent of exclusion of jurisdiction vested with the High Court under Articles 226 and 227 of the Constitution of India. The Supreme Court in the said case has observed that all decisions of the Tribunals will be subject to jurisdiction of High Courts under Article 226 and 227 of the Constitution of India before a Division Bench of the

High Court within whose territorial jurisdiction a Tribunal falls will serve two purposes. Firstly, it will save the power of judicial review of legislative action vested in the High Courts under Article 226 and 227 of the Constitution and secondly it will ensure filtering of frivolous claims through the process of adjudication in the Tribunals. The Supreme Court while making these observations has laid down law that a service dispute must be taken to the Central Administrative Tribunal as a Court of first instance and thereafter decision of the Tribunal can be subject to judicial review by the Division Bench of the High Court in exercise of its powers under Article 226 and 227 of the Constitution of India.

35) In the instant case, the petitioner could approach this Court only after having exhausted the remedy of approaching the Central Administrative Tribunal and for this reason; his writ petition has been transferred to the Tribunal in terms of Section 29 of the Administrative Tribunals Act.

36) Lastly it has been argued by learned counsel for the petitioner that the remedy of approaching the Central Administrative Tribunal, Jammu Bench, is not efficacious because the said Tribunal is located miles away from Srinagar and it has not held its sittings so far. In this regard the learned counsel has taken support from the following observations of the Supreme Court made in *Roger Mathew vs. South Indian Bank Ltd And Ors* (Civil Appeal No.8588/2019 decided on 13.11.2019):

"44. Having tribunals without benches in at least the capitals of States and Union Territories amounts to denial of justice to citizens of those States and Union Territories. It also makes the justice delivery system very metropolis centric. This has many adverse effects. The bench and the bar in smaller district towns and capitals of smaller States which were handling these matters in a competent manner are deprived of handling these types of cases. This also makes access to justice expensive for the litigants. It also leads to a situation where the bench and the bar in these areas would not have any experience of handling matters relating to jurisdictions transferred to tribunals which they used to handle earlier. Therefore, the local bench and bar will never develop and the entire bulk of work will be captured by those practicing in Delhi or in those State capitals where benches of the tribunals are set up. Instead of taking justice to the common man, we are forcing the common man to spend more money, spend more time and travel long distances in his quest for justice, which is his fundamental right.

45. The litigants cannot wait for judicial impact assessment and action by the Government which may or may not take place. Experience has shown that the judgments right from *L. Chandra Kumar* (supra) to *Madras Bar Association*, 2010 (supra) have not been complied with by the Union in letter and spirit. Citizens of this country cannot be denied justice which is the first promise made in the Preamble. Therefore, I am of the view that in whichever State/Union Territory the bench of a particular tribunal is not established or functioning, the litigants of that State will have a right to invoke the extraordinary writ jurisdiction of the

jurisdictional High Court under Article 226 of the Constitution for redressal of their grievances. They cannot be expected to go too far off distant places and spend huge amounts of money, much beyond their means to ventilate their grievances. The alternative remedy of approaching a tribunal is an illusory remedy and not an efficacious alternative remedy. The self-imposed bar or restraint of an alternative efficacious remedy would not apply. Such litigants are entitled to file petitions under Article 226 of the Constitution of India before the jurisdictional High Court. In *L. Chandra Kumar (supra)* it was clearly held that the right of judicial review is a part of the basic structure of the Constitution and this right must be interpreted in a manner that it is truly available to the litigants and should not be an illusory right."

37) In the above context, it may be noted that the Central Administrative Tribunal, Jammu Bench, stands established vide Notification No.G.S. R. 318 (E) dated 28.05.2020 and ever since the Tribunal is functional. The Notification clearly provides that the ordinary places of sitting of the Tribunal shall be Srinagar and Jammu. So it is not a case where the Tribunal cannot hold its sittings at Srinagar at all. Probably due to the prevailing situation that has arisen due to spread of coronavirus infection, the Members of the Tribunal, instead of physically holding sittings at Srinagar, are hearing the cases from Jammu through virtual mode but it is only a temporary arrangement. Even the cases of Jammu province are presently being heard by the Tribunal only through virtual mode. For that matter, most of the Courts/Tribunals of the Country are presently holding hearing of cases through virtual mode. But this does not mean that the sittings of the Bench of CAT would not be held at Srinagar once the physical hearing of cases resumes. The contention of the learned counsel for the petitioner that the remedy available to him is not efficacious is, therefore, misplaced and without any merit.

38) For the foregoing reasons, this Court has been unable to persuade itself to concur with the contentions raised by the petitioner and the Court does not find any ground to review the order passed on 17.06.2020, whereby the petition of the petitioner stands transferred to the Central Administrative Tribunal, Jammu Bench. The review petition is, accordingly, dismissed.