

(1986) 11 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 441 of 1986

Ajeet Singh Singhvi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-11-1986

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 19, 28, 29, 3
Constitution of India, 1950 — Article 226, 323A

Citation : (1987) 1 WLN 352

Hon'ble Judges : Mahendra Bhushan Sharma, J

Bench : Single Bench

Judgement

Mahendra Bhushan Sharma, J.—The short question is as to whether in view of the provisions of the Administrative Tribunals Act. 1985 (for short, the Act) this writ petition should be transferred to the Central Administrative Tribunal (for short, the Tribunal) u/s 29 of the Act as this Court ceased to have jurisdiction ?

2. The petitioner, Ajeet Singh Singhvi, though a member of Rajasthan Administrative Service, claims to have acquired a right to be treated as a substantive member of the Indian Administrative Service (Senior Scale) (for short, IAS) with effect from March 8, 1984 on the ground that he was selected by the selection committee for promotion to the IAS in its meeting held on December 22, 1980, and the Union Public Service Commission conveyed its approval of the select list on April 3, 1981. In pursuance of the select list of 1981 the petitioner was promoted to IAS by an order of the respondent No. 3 dated March 3, 1984, Annx. 2. But no order under Regulation 9 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (for short, the Regulations) has been issued. The petitioner seeks a direction that the Union of India, respondent No. 1, be directed to issue order under Regulation 9 of the Regulations with effect from March 8, 1984 in favour of the petitioner and others selected by the respondent No. 2, Union Public Service Commission, and the respondents be restrained from changing the position of the petitioner in the cadre of IAS.

3. I will refrain from expressing any opinion on the merits of the case as the only question is as to whether these proceedings should be transferred to the Tribunal u/s 29 of the Act, but in passing it may be observed that in the order Annexure 2 under which the petitioner claims to have been appointed to the IAS at serial No. 13 the name of the petitioner appears, it has been clearly mentioned there in that the petitioner is RAS. That apart unless an order under Regulation 9 of the Regulations is issued in favour of a person, the mere appearance of the name of the person RAS in the select list which contains double the number of vacancies, prima facie, does not confer any right.

4. The contention of Mr. Singhvi, learned Counsel for the petitioner is that the present case cannot be transferred u/s 29 of the Act to the Tribunal because in the present proceedings no order of the Central Government or any other authority has been challenged and u/s 19 of the 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, and because no order pertaining to any matter within the jurisdiction of the Tribunal is under challenge in the present proceedings, the Tribunal has no jurisdiction in the matter and therefore, the present proceedings cannot be transferred because in the present proceedings the petitioner has sought a declaration. He further contends that pre-recruitment matters to the IAS are beyond the jurisdiction of the Tribunal and only matters which are post-recruitment, lie within the jurisdiction of the Tribunal. Article 323A of the Constitution of India stipulates that the Parliament may by law, provide for adjudication or trial by the Administrative Tribunal of disputes and complaints with respect to recruitment and condition of service of persons appointed to public services and posts 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 owned or controlled by the Government. Therefore, the law under Article 323A of the Constitution of India can be made by the Parliament providing for adjudication or trial by the Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and the word "recruitment" will indicate the post recruitment matters. It cannot be said that so for pre-recruitment matters to the public services and post in connection with the affairs of the Union or any State are concerned, an authority other than the Tribunal shall have the jurisdiction, so far as the post recruitment matters are concerned, the Tribunal shall have the jurisdiction. A look at the preamble of the Act will show that it has been enacted to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State.

5. "Service matters" has been defined in Section 3(q) of the Act and in relation to a person, means 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 what so ever. Thus, all the matters as respects subjects referred to above including promotion, are service matters. A Tribunal is established u/s 4 of the Act to exercise the jurisdiction, power or authority conferred on it by or under the Act. By virtue of Section 14 of the Act save as otherwise expressly provided in the Act the 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 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 (ii)... (iii)... and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State. It will therefore, be clear that by virtue of Section 14(1) of the Act all the jurisdiction, power or authority exercisable immediately before the appointed day by all courts which includes this Court, except the Supreme Court, in relation to recruitment and other matters concerning recruitment to the IAS and others has been conferred on the Tribunal. In other words a special jurisdiction has been conferred on the Tribunal in the aforesaid matters to the exclusion of all courts except the Supreme Court. This is all the more clear from a perusal of Section 28 of the Act which reads as under:

28. Exclusion of Jurisdiction of Courts except the Supreme Court.-On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any Service or persons appointed to any service or post, no court except:

(a) the Supreme Court, or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

6. u/s 29(1) of the Act every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under the Act being a suit or proceeding the cause of action where on it is based in such that it would have been if it had arisen after such establishment, within the jurisdiction of such Tribunal shall stand transferred on that date to such the Tribunal. "Proceeding" has not been defined under the Act but the term in the context of what has been provided in Article 323A(1)(e) of the Constitution

would include the writ petition also. The Supreme Court in the case of Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar Vs. Associated Rubber Industry Ltd., Bhavnagar and Another, refused to stay the transfer of the writ petitions under Article 226 of the Constitution in various High Courts. Thus, a writ petition has to be transferred u/s 29(1) of the Act.

7. So far as the contention of Mr. Singhvi, learned Counsel for the petitioner that u/s 19 of the Act only an application will lie against any order and because no order of the respondents is under challenge, in the present writ petition, the Tribunal has no jurisdiction and therefore the present writ petition cannot be transferred, is concerned, I am of opinion that this has no relevance to the question whether the proceeding should be transferred or not. I have already said earlier that the subject-matter of the writ petition is the recruitment under the Regulation to the IAS and not only it is a service matter u/s 3(q) of the Act, but u/s 14 read with Section 19 of the Act all jurisdiction, power and authority exercisable immediately before the appointed day by all courts including this Court, except the Supreme Court and the industrial court or labour court is conferred on the Tribunal and the jurisdiction of this court has been excluded. Presently we are concerned as to whether the proceeding should be transferred or not, and not as to whether on any application before the Tribunal, could or could not have entertained the application u/s 19 of the Act on the ground that no order was under challenge. Therefore, consideration of Section 19 of the Act is irrelevant for the present purpose and the pending proceeding has to be transferred to the Tribunal u/s 29 of the Act. That apart, the jurisdiction of this Court, being excluded, I am of the opinion that even in cases where there may be no order, the parties will have only a remedy to go to the Supreme Court and not to this Court as the jurisdiction of this court in the matters of recruitment etc. is excluded.

8. Consequently, I am of the opinion that the proceedings should be transferred to the Central Administrative Tribunal, Jodhpur, u/s 29 of the Act.

9. I hereby direct that the Additional Registrar will transfer this case to the Central Administrative Tribunal, Jodhpur.