

(2021) 03 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 357 Of 2021

Ajoy Das

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 09-03-2021

Acts Referred:

Administrative Tribunals Act, 1985 — Section 3(q), 3(q)(iv), 3(q)(v), 14
Railway Servants (Discipline And Appeal) Rules, 1968 — Section 20, 25(2)
Constitution Of India, 1950 — Article 226

Citation : (2021) 03 GAU CK 0006

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : S. Banik, M. Chetia, A. Rashid, B. Sarma

Final Decision : Dismissed

Judgement

1. Heard Mr. S. Banik, learned counsel for the petitioner and also heard Mr. B. Sarma, learned Standing Counsel appearing for the Railways.

2. The brief fact of the case is that the petitioner was removed from service by impugned order dated 09.06.2016 pursuant to a departmental enquiry. The appeal filed by the petitioner was rejected vide order dated 29.04.2016. The petitioner, thereafter, preferred a revision petition. However, as the revision petition was time barred, the same was not forwarded to the Revising authority. The impugned order dated 03.02.2017 is reproduced below:-

"As this Revision Petition is time-barred, hence it is not considered for forwarding to Revising Authority (ADRM/RNY)."

3. Learned counsel for the petitioner submits that above impugned order dated 03.02.2017 is not a decision made with respect to a service matter as required under Section 3(q) of the Administrative Tribunals Act, 1985. He submits that the same is an administrative order and as the Revising authority did not pass the said impugned order, this Court has the jurisdiction to entertain the present writ

petition and send the petitioner's revision petition to the concerned Revising authority for his decision, who can, not only decide on the merits of the revision petition, but even whether the same is time barred. He further submits that Rule 25(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 does not provide a limitation period for filing a revision petition.

4. Mr. B. Sarma, learned Standing counsel for the Railways, on the other hand, submits that though the Revising authority did not give his decision with regard to the petitioner's revision petition, the fact that the petitioner's revision petition was declared to be time barred by the officer of the Railways has to be deemed to be a decision made in respect of the service of the petitioner, which thus comes within the provisions of Section 3(q)(iv) and (v) of the Administrative Tribunals Act. He also submits that as per Rly.Bd's E(D&A) 81 RG 6-59 dt.01.06.1983 and E(D&A) 84 RG 6/44 dt.02.12.1986 (SC 74/87, 1888/86, SE 298/86), the time limit for preferring a revision petition will be the same as provided for an appeal under Rule 20 of the Railway Servants (Discipline and Appeal) Rules, 1968, i.e. 45 days from the service of the order sought to be revised. He also submits that the Revising authority may, however, entertain the revision petition after the expiry of the period of limitation, if the petitioner has sufficient cause for not preferring the same on time. He also submits that in view of the judgment of the Seven Judges Bench of the Apex Court in the case of L. Chandra Kumar -Vs- Union of India and others, reported in (1997) 3 SCC 261, the petitioner would have to approach the Central Administrative Tribunal, Guwahati Bench with his grievance, as the same is an alternative efficacious remedy provided by law.

5. I have heard the learned counsels for the parties.

6. The only issue raised and pressed by the petitioner's counsel is that the revision petition has not been disposed of by the Revising authority. The stand of the respondents' counsel on the other hand is that the writ petition should be dismissed as there is an alternative efficacious remedy available.

7. The stand of the learned Standing counsel for the Railways is that as the petitioner was holding a Civil Post under the Railways and having regard to Section 14 of the Administrative Tribunals Act, 1985 read with the decision of the Apex Court in L. Chandra Kumar (supra), the petitioner has to approach the Central Administrative Tribunal, Guwahati Bench as it is the alternative and efficacious remedy available under the statute.

8. Section 3(q) of the Administrative Tribunals Act, 1985 reads as follows:-

"(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 7[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;"

A perusal of the above shows that service matters includes within its fold, all matters relating to the conditions of service of a person in connection with affairs of the Union or of the State or any local body, controlled by the Government and includes disciplinary matters or any other matter whatsoever. Thus even the non-forwarding of the petitioner's revision petition to the Revising Authority would be covered by section 3(q) of the Administrative Tribunals Act, 1985.

9. In the case of L. Chandra Kumar (supra), the Apex Court has held at paragraphs 93 and 99 as follows:-

"93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

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99. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the

concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

10. A reading of the law laid down by the Apex Court in *L. Chandra Kumar* (supra) shows that the Central Administrative Tribunal will continue to act like a Court of the first instance in respect of the areas of law for which they have been constituted and it would not be open for litigants to directly approach the High Court even in cases where the vires of statutory legislations is questioned. In the present case, the only issue pressed by the petitioner's counsel is that a direction should be issued to the Revising authority to consider the petitioner's revision petition, as the same had not been sent to the Revising authority by the officer of the Railways on the ground that it was time barred. Further, no limitation period was provided for filing a revision petition under Rule 25(2) of the Railway Servants (Discipline and Appeal) Rules, 1968.

11. In the case of *United Bank of India V. Satyawati Tondon*, reported in 2010 8 SCC 110, the Apex Court has held that it is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

12. In view of the law laid down by the Apex Court in *L. Chandra Kumar* (supra) and *United Bank of India V. Satyawati Tondon* (supra), this Court is of the view that the petitioner would have to approach the CAT, Guwahati Bench, Guwahati with regard to the present grievance, as the said Tribunal can take a decision as to whether there was any limitation period prescribed under Rule 25(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 and whether the revision petition should have been personally disposed of by the Revising authority, besides the obvious challenge to the petitioner being removed from service.

13. In view of the reasons stated above and as there is an alternative efficacious statutory remedy available, this writ petition is dismissed with liberty being given to the petitioner to approach the Central Administrative Tribunal, Guwahati Bench, Guwahati with his grievance.