
(2014) 11 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : SWP No. 1178 Of 2007 and CMA Nos. 1670 Of 2007 and 3366/2014

Anju Tuli

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2015) 2 JKJ 98

Hon'ble Judges : Tashi Rabstan, J.

Bench : Single Bench

Advocate : C.M. Koul, Advocate, for the Appellant

Judgement

Tashi Rabstan, J.â?"It is contended that in the year 2001, petitioner was posted as Postal Assistant in Jammu Division. After establishment of

office of Director Accounts (Postal) at Jammu, options were invited from the Postal Assistants working in different Divisions of the Department of

Posts in the State of Jammu and Kashmir. Accordingly, the petitioner gave her option and being found suitable and meritorious was absorbed in

the office of Director Accounts (Postal) at Jammu and in terms of order dated 15.01.2001, her services were directed to be utilized in the office of

Director Accounts (Postal), Jammu. The present writ petition has been filed by the petitioner seeking quashment of Order/Memo No.

Admn/PAO-JT/I-84/Tr-136 dated 18 01 2007 to the extent it pertains to petitioner and respondents 4 and 5 pursuant to which said respondents

have alleged to have been shown absorbed in the office of Director Accounts (Postal) earlier than the petitioner. It is contended that respondent

No. 4 did not belong to State of Jammu and Kashmir as she belongs to State of Himachal Pradesh wherefrom she came to be appointed.

Respondent No. 4 came to the State of Jammu and Kashmir on deputation in terms of Para-38 of Postal Manual Vol. IV, therefore, she was required to be figured at the tail end of the impugned order in the State of Jammu and Kashmir in the grade/cadre of Postal Assistants. Perusal of order to which respondent No. 4 came to be shifted from Himachal Pradesh to the State of Jammu and Kashmir in unequivocal terms provides that respondent No. 4 had been sent on deputation alone and had not been adjusted in any of the postal divisions of the Department of Posts in the State of Jammu and Kashmir. It is further contended that respondent No. 4 was never transferred to the State of Jammu and Kashmir, therefore, she is not entitled to be absorbed in the office of Director Accounts (Postal), Jammu as she is not the employee of any of the postal divisions of the State of Jammu and Kashmir.

2. In so far as respondent No. 5 is concerned, she came to be attached in the office of Director Accounts (Postal) and joined her duties in the said office on 20.06.2001. It is contended that respondent No. 5 even otherwise also cannot be placed senior to the petitioner in the grade/cadre of Junior Accountants. The seniority list in respect of Postal Assistants has been issued wherein the petitioner figured at S. No. 180 and respondent No. 5 at S. No. 230. Hence, instant writ petition on the grounds taken in it.

3. Respondents 1 to 3 have filed objections and refuted the allegations as projected in the writ petition.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the respondents argued that this petition is not maintainable in view of equal and efficacious remedy available to the petitioner. It is contended that Hon'ble Division Bench of this Court vide order dated 19.05.2009 passed in LPA(SW) No. 56/2009 titled Harjeet Singh and Others v. Union of India and others, while dealing with the issue with respect to the maintainability of the writ petition has observed in the following manner:--

The appellants are Central Government employees. In a writ petition, which stands dismissed by judgment and order under appeal, the appellants challenged their position in the seniority list. By the judgment and order under appeal, that has been decided against the appellants on merit. We think that having regard to the position of law as it stands today, the writ court

at the first instance was incompetent to entertain the writ petition and, accordingly, was incompetent also to go into the merits of the case.

We, accordingly, allow the appeal and set aside the judgment and order under appeal but, at the same time, dismiss the writ petition reserving the liberty of the appellants, if they are so advised, to approach the Central Administrative Tribunal.

6. The core question for consideration before this Court is as to whether writ petition filed by a person appointed on a civil post under the Union

Government is maintainable or not? The answer has to be in negative for the following reasons.

7. From the narration of the facts mentioned above, it is evident that the petitioner is an employee of Postal Department, and thus is a person

appointed on a civil post under the Union. Therefore, in view of the provision of Section 14 of the Administrative Tribunal Act, 1985, the Central

Administrative Tribunal has jurisdiction to deal with service matters concerning the petitioner.

8. In *L. Chandra Kumar Vs. Union of India and others*, , their Lordships of the Supreme Court have held that the Tribunals constituted under the

Administrative Tribunals Act, 1985 Act are "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 legislation (except

where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

9. The dispute raised in this writ petition, admittedly, relates to service conditions of the employees of Central Government, i.e., Department of

Posts and, as such, in terms of Section 29 of the Central Administrative Tribunal Act, 1985 and the settled position of law as enunciated in *L.*

Chandra Kumar v. Union of India and others reported in AIR 1997 SC 1127 this Court is not a right forum to file writ petition seeking

enforcement of conditions of service concerning members of any service or person appointed to any service or post under the Union Government.

The petitioner being employee of Central Government cannot approach this Court directly in the first instance and has equally efficacious remedy

available to her under the Central Administrative Tribunal Act, 1985 by filing an

appropriate petition before it. The petitioner with a view to satisfy

this Court that this Court is competent to adjudicate upon the dispute relating to recruitment and conditions of service of Central Government

employees relied upon several judgments including judgment of Full Bench of this Court delivered in case titled *Kuldip Khuda v. Masood*

Choudhary and others reported in SLJ 1994 287 : 2010 (7) JKJ 736 IHC]. It may be pointed out that after the decision of *L. Chandra's* case all

these similar issues which have been agitated by learned counsel for the petitioner have been duly considered and the Hon'ble Court after staking

note of special status to the State of Jammu and Kashmir enjoined by it under Article 370 of the Constitution of India came to the conclusion that

this Court would not entertain any writ petition pertaining to the recruitment and service conditions of the Central Government employees for which

Central Administrative Tribunal would be the Court of first instance. That being the position of law, there is no scope to argue that this Court can

still entertain writ petition directly pertaining to recruitment and service conditions of services of Central Government employees.

10. I am also fortified by the view taken by the Apex Court in *Kendriya Vidyalaya Sangathan and Another Vs. Subhash Sharma etc. and R.D.*

Vishwakarma and Others, wherein it is held that matters pertaining to recruitment and service conditions of services of Central Government

employees come under the jurisdiction of the Central Administrative Tribunal. It would be profitable to reproduce Paragraph No. 19 of the

aforesaid judgment here as under:--

19. I must say that the decision in *Chandra Kumar* case is a produce of judicial craftsmanship and a landmark in the development of constitutional

law in our republic. Even if this judgment does not ipso facto apply to the J&K State Constitution, there is no apparent reason why the ratio of this

judgment should not be applied to the exercise of jurisdiction by the J&K High Court under Sections 103 and 104 of the J&K Constitution. The

wholesome principle evolved by this Court in *Chandra Kumar* could be extended to Sections 103 and 104 as well; otherwise it would lead to an

anomalous result of the Central government servants/employees of the Central Government-controlled corporations etc. working in J&K being left

with the option of bypassing the Tribunal, without falling in lien with their

counterparts working elsewhere.

20. As regards the territorial operation of the Administrative Tribunals Act, as my learned brother has pointed out, it extends to whole of India

including Jammu and Kashmir. The Full Bench of the High Court has also recognised this position and clarified that the Tribunal will function as an

additional or alternative forum without affecting the Constitutional jurisdiction of the High Court. Therefore, the contention that the machinery under

the Administrative Tribunals Act to decide the disputes or complaints specified therein cannot function within the State of J&K does not deserve

further consideration. However, it is clarified that in the light of the pronouncement in Chandra Kumar's case, Section 28 of the Act does not have

the effect of affecting the power of judicial review of Constitutional Courts. At the same time, as laid down in CHANDRA KUMAR, the High

Court ought not to permit the aggrieved person to bypass the remedy of moving the Administrative Tribunal in the first instance.

In view of the law laid down by the Apex Court, the judgments relied upon by the learned counsel for the petitioner, particularly judgment passed

by the Full Bench of this Court in Kuldeep Khuda's case, cannot be of any help to the petitioner. Thus, this Court is of the considered view that

instant writ petition is not maintainable before this Court at this stage as the appropriate remedy for the petitioner is to first approach the Central

Administrative Tribunal under the Administrative Tribunals Act, 1985 for redressal of her grievance as projected in the writ petition. However,

keeping in view the facts that this writ petition is pending on the docket of this Court since 2007, it would be inequitable and harsh for the petitioner

if writ petition is dismissed at this stage. This Court, therefore, deems it appropriate to transfer this petition from the file of this Court to Central

Administrative Tribunal, Chandigarh Bench, for its disposal in accordance with law. Ordered accordingly. Accordingly, Registry is directed to

transfer the records of this petition to the Central Administrative Tribunal, Chandigarh Bench for disposal in accordance with law, which on receipt

of File shall issue notice to the parties, for further process under law.