
(1991) 08 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No's. 2801.3063 of 1990, 713, 756, 1581, 2012 and 2057 of 1991

Gangaram Topaji Hupade

APPELLANT

Vs

Digamber Sadashio Kanwale and another

RESPONDENT

Date of Decision : 16-08-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 15, 19, 20, 21
Constitution of India, 1950 — Article 136, 14, 16, 162, 212
Limitation Act, 1963 — Section 29, 5

Citation : (1991) 93 BOMLR 486 : (1992) 2 LLJ 408 : (1991) 1 MhLj 1204

Hon'ble Judges : V.A. Mohta, J; M.B. Ghodeswar, J

Bench : Division Bench

Judgement

V.A. Mohta, J.—This order disposes of preliminary objections to maintainability of these 7 writ petitions under Articles 226/227 of the Constitution of India in this Court, in view of the establishment of the Administrative Tribunals (AT) under the Administrative Tribunals Act, 1985 (the AT Act).

2. In Writ Petitions Nos. 2801 of 1990 and 713 of 1991 is sought the relief of (i) quashing the appointment of respondents as Village Police Patil, under the Maharashtra Village Police Act, 1976 (the MVP Act) and (ii) appointments of the petitioners in their places. In Writ Petition No. 3063 of 1990 is sought the relief of issuance of appointment order to the civil posts of unskilled labours by persons selected and kept on waiting list. In Writ Petition No. 756 of 1991 is sought the relief of promotion to the next higher post in a reserved category by a government servant. In Writ Petition No. 1581 of 1991 is sought the relief of appointment to the civil post of Mechanical Supervisor by a person selected by the Regional Selection Board. In Writ Petitions Nos. 2012 of 1991 and 2057 of 1991 is sought the relief of absorption in the regular civil posts of Mustering Assistants by persons employed on work charge establishment.

3. Broadly, the questions to be determined, which ultimately relate to the extent

of exclusion of jurisdiction of High Court in matters relating to public services and civil posts after establishment of the AT, are whether the AT Act would not apply -

(i) where the dispute and complaint relate to the "recruitment" by a person not appointed.

(ii) where no "order" as contemplated u/s 19 of the Act is passed.

(iii) to a case relating to Village Police Patil.

4. We have heard lucid arguments of learned counsel for the parties. In our judgment, the above questions will have to be answered in the negative and the preliminary objections will have to be sustained, for the reasons that follow.

5. We will first deal with questions (i) and (ii). Controversy centers round the expression "recruitment and conditions of service of persons appointed" used in Article 323-A of the Constitution which is the source of legislative power of the Parliament to enact AT Act, and so also used in the AT Act. Article 323-A inserted by the Constitution (42nd Amendment) Act, 1976, has brought about a radical change in the constitutional law relating to the "Services" since it takes out the adjudication of disputes relating to the recruitment and conditions of service of the public services of the Union and States from the Civil Courts and the High Courts and places it before the AT. Its historical background is "High Courts in India were overburdened with all varieties of litigation. Cases relating to government services were also fast increasing and all this resulted in increasing delay in adjudication of those disputes. With a view to find out ways and means to tackle these problems, the Government of India appointed a Committee under the Chairmanship of Supreme Court Judge Shri Justice J. C. Shah. This Committee recommended setting up of a separate Tribunal. The Administrative Reforms Committee also took a note of this alarming situation and recommended setting up of a Civil Services Tribunal to decide appeals of Government servants against disciplinary matters. However, it was discovered that major portion of the disputes related to matters other than disciplinary action and hence it was thought to have a comprehensive source of legislation giving power to the Parliament to provide for adjudication machinery for deciding disputes relating to services.

6. The AT Act was brought into force on October 2, 1985 by establishing a Central Administrative Tribunal (CAT). We may also note at this stage that the Maharashtra Administrative Tribunal (MAT) has been established recently on July 8, 1991. The material portion of Statement of Objects and Reasons to the AT Act reads thus :

"The establishment of Administrative Tribunal under the aforesaid provision of the Constitution has become necessary since matters are pending before the various Courts. It is expected that the setting up of such Administrative Tribunal to deal exclusively with service matters would go to a long way in not only reducing the burden of various courts and thereby giving them more time to deal

with other cases expeditiously, but would also provide to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances."

Its preamble reads thus :

"An Act to provide for the jurisdiction or by Administrative Tribunals of disputes and complains with respect to recruitment and conditions of service of persons appointed in public services and posts in connection with the affairs of the Union or any State or by any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society or controlled by the Government in pursuance of Article 323-A of the Constitution and for matters connected therewith or incidental thereto."

7. Material provisions of the AT Act are Sections 3(q), 14, 15, 19, 20, 21 and 28. Section 3(q) defines the expression "service matters" as under :

"3(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 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."

Sections 14 and 15 deal with jurisdiction, powers and authority of the CAT and the State Administrative Tribunal (SAT). These two provisions are almost identical. Chapter IV (Sections 19 to 27) relates to the procedure. Section 19 deals with the manner of filing applications before the Tribunal by a person aggrieved by an "order" pertaining to matters within its jurisdiction in a prescribed form. Section 20 specifies that the application should not be admitted unless other remedies are exhausted and Section 21 specifies the limitation for filing applications. Section 28 deals with exclusion of jurisdiction of Courts except the Supreme Court. We extract Section 14(1)(a) and (b) and Section 28 for ready reference :

"14. Jurisdiction, power and authority of the Central Administrative Tribunal. - 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 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 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 local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned by the Government.

28. Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution - 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 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 of such service matters."

8. Submission is that since Article 323-A takes away a very valuable right of a citizen to move the High Court under Articles 226/227 of the Constitution, the ouster of this jurisdiction should be very strictly constructed. The expression "recruitment and conditions of service of persons appointed" should be read as one inseparable whole and the word "recruitment" cannot be read disjunctively. In other words, it is contended that Article 323-A authorises the Parliament to make law relating to the grievance only of the persons actually appointed in public services and civil posts and consequently disputes and complaints relating to "recruitment" of persons not appointed were not intended to be brought in the net of the AT Act. The submission which is based only on the use of the word "and", though attractive in the first blush, cannot be accepted keeping in view the whole context and the object behind the Constitution amendment.

9. We have already noticed the historical background behind inserting Article 323-A in a newly added Part XIV-A to the Constitution. Part XIV deals with the topic of "Services under the Union and the States". Close scrutiny of Articles 309, 212,

312-A, 318 and 320 placed in Part XIV would leave no manner of doubt that "recruitment" and "conditions of service" have been treated as identifiably two distinct concepts. Though not defined either in the Constitution or the General Clauses Act, these two phrases have acquired definite meanings in service jurisprudence all over. As the Supreme Court has recently observed in the case of *K. C. Joshi and others v. Union of India* 1991 (2) A I SLJ 42 , there is a distinction between "rules of recruitment" and "conditions of service". Recruitment connotes and clearly signifies enlistment, acceptance, selection or approval for appointment as has been pithily put in the case of *Basant Lal Malhotra Vs. State of Punjab and Others*, . In the case of *State of Madhya Pradesh and Others Vs. Shardul Singh*, , the phrase "condition of service" is held to mean all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in matters like pension etc.

10. A bare look at Articles 309 and 323-A will make it clear that scissor and paste operation has been done in the matter of the expression "the recruitment and conditions of service of persons appointed". It is sure that the two commas placed after the words "recruitment" and "persons appointed" in Art. 309 do not find place in Article 323-A but this difference in punctuation cannot change the meaning of the expression which is otherwise clear. Role of punctuation in construction of statutes is well crystallized. It is minor and not controlling in the case of *Dadaji alias Dina Vs. Sukhdeobabu and Others*, , it is observed :

"It is well-known that punctuation marks by themselves do not control the meaning of a statute when its meaning is otherwise obvious."

When expression in the same statute is identical except as to variation in punctuation, that variation in itself will not be indicative of any Legislature change in intention. As held is the case of *Pope Appliance Corporation v. Spanish River Pulp and Paper Mills Ltd.* (AIR) 1929 PC 38, it is very improbable that displacement of comma is meant to alter the law. In the case of *Gurumukh Sing v. Commissioner of Income tax, Lahore* AIR 1944 Lah 353, it is held Provisions as punctuated if leads to absurd result or conflicts with some other provision of the statute punctuation must yield to reasonable and consistent interpretation."

Maxwell on The Interpretation of (Twelfth Edition) at page 14 observed :

Where it is necessary to give a provision a particular construction which is at variance with the way in which the section is punctuated, it may be read as though there were in fact punctuations none appears on the face of the Act."

Applying these principles, Article 323-A will have to be read as if the commas existed after the words "recruitment" and "persons appointed" and the relevant expression given the same meaning as given to it in Article 309. Incidentally it may be mentioned that in the marginal note of Article 309 there is no comma after the word "recruitment" and before the words "and service conditions".

11. Part XIV of the Constitution is a total conspectus, a total scheme of services under the Union and the States and the sole object of establishment of AT by amending the Constitution was to take out the cases relating "services" from the jurisdiction of High Courts and to put them under the jurisdiction of a separate forum where they could be dealt with more quickly and hence conjunctive reading of the two expressions will defeat the very object of Article 323-A and give rise to bifurcation of jurisdiction in regard to matters pertaining to "services". Unimpeachable material will be required to hold that Article 323-A intended to create altogether new concept by fusion of the two distinct concepts contained in Part XIV. It is only after culmination of process of "recruitment" that, "appointment" takes place and therefore the word "recruitment" cannot be understood only in relation to a completed appointment. The word "appointed" in the expression "recruitment" and conditions of service of persons appointed" would relate only to the phrase "conditions of service" and not to the phrase "recruitment" which is a distinct stage prior to appointment. Indeed, cases where there can be disputes or complaints in relation to "recruitment" of persons actually appointed would be extremely rare.

12. In this context some of the decisions of the Supreme Court may be noticed. In the case of S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, the validity of the AT Act was upheld though on certain conditions. Following observations of the Supreme Court made therein are to the point : (Para 8, p. 133) :

"The debates and deliberations spread over almost two decades for exploring ways and means for relieving the High Courts of the load of backlog of cases and for assuring quick settlement of service disputes in the interest of the public servants as also the country cannot be lost sight of while considering this aspect. It has not been disputed before us-and perhaps could not have been that the Tribunal under the scheme of the Act would take over a part of existing backlog and share of the normal load of the High Courts. The Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice. To provide the Tribunal as an additional forum from where parties could go to the High Court would certainly have been a retrograde step considering the situation and circumstances to meet which the innovation has been brought about."

There was a debate in various High Courts on the question whether the AT has jurisdiction to declare a Service Rule as being violative of Articles 14 and 16. The controversy was set at rest in the case of J.B. Chopra and Others Vs. Union of India (UOI) and Others, wherein it was observed : (Para 2, p 256) :

It accordingly follows that the Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the Constitutional validity or otherwise of such laws as offering Articles 14 and 16(1) of the Constitution."

In the case of Union of India v. Parma Nanda, 1989 II LLJ-57 , the observations are : (Para 17 at p. 61) :

The Act thus excludes the jurisdiction, power and authority of all Courts except the Supreme Court and confers the same on the Tribunal in relation to recruitment and service matters."

13. It is well settled cannon of constitution of Statutes that the words "and" and "or" are easily interchangeable where context so requires and where to do so is to make the provisions consistent with legislative intent. In our view, the word "and" used in Article 323-A between the words "recruitment" and "conditions of service" will have to be read as "or" and the two phrases treated as distinctive and not conjunctive. Therefore, the submission that Article 323-A does not permit legislation on the subject of "recruitment" prior to actual appointment will have to be repelled. Such power to legislate in the Parliament is ample.

14. Has that legislative power been in fact exercised in making the AT Act ? Close scrutiny of the historical background, the scheme and object if the Act would reveal in no uncertain terms that it has the definition of the term "service matters" is in relation of a "person" and the term means all matters relating to "the conditions of service". It is neither in relation of a government servant nor relating to the "recruitment". Section 14 and 15 (which confer jurisdiction upon AT) refer to the exercise of all the jurisdiction so far exercisable by all Courts (except the Supreme Court) in relation to (a) recruitment and matters concerning recruitment and (b) all service matters. The two phrases have thus been separately mentioned in two different sub-sections (a) and (b) read in Sections 14(1) and 15(1). Section 28 (which excludes the jurisdiction of Courts except the Supreme Court) uses these two terminologies disjunctively by using the word "or" in between the expression "recruitment and matters concerning recruitment to any service or post" and the expression "service matters concerning members of any service or persons appointed to service or post". The expression "recruitment and conditions of service of persons appointed" used in Article 323-A is not used in any provisions of the AT Act. It is to be found only in the preamble. All these factors throw flood light on the clear legislative intention of transferring to AT the entire jurisdiction to deal with matters also pertaining to "recruitment" where actual appointment has not taken place. It is pertinent to notice that Section 28 refers to the retention of the entire jurisdiction of the Supreme Court in matters relating to service. In our view, it also takes away the entire jurisdiction of Courts including the High Court. In case only partial jurisdiction was intended to be taken away it would have been mentioned in the said provision. Contrary interpretation would lead to absurdity, anomaly, division of jurisdiction, multiplicity of proceedings and consequent hardship to the aggrieved person including the government servants. It is well settled that when on a construction of a statute, two views are possible, one which results in an anomaly and the other not, it is the duty of a Court to adopt the latter and not the former, seeking consolation in the thought that the

laws bristles with anomalies.

15. The terminologies "in relation to" used in Sections 14(1) and 15(1) and "recruitment, and matters concerning recruitment" used in sub-section (a) thereof are of wide amplitude and will have to be given larger meaning and not narrower meaning. In this connection following observations of the Supreme Court though in the context of the terminology "in matters relating to employment" used in Article 16(1) in the case of *The General Manager, Southern Railway Vs. Rangachari*, , are to the point (Para 16) :

"If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment".

16. Chapter IV deals with procedure. Section 19 provides for filing of an application in a prescribed form by a person aggrieved relating to matters falling within the ambit of AT. In the Explanation the meaning of the "order" is given. Section 20 ordains that such application shall not normally be admitted unless all remains available under the relevant Service Rules are availed of. Section 21 prescribes limitation for filing such application and the starting point of limitation. Form I prescribed for making an application provides for mentioning place of employment or last employed. Submissions based on the above general scheme are that : (i) unless there was an order passed, the AT's jurisdiction cannot be invoked (ii) only "in service" person can invoke the jurisdiction of the AT; and hence where there is no order passed or the grievance is by a person not in actual service, High Court's jurisdiction is not ousted. For variety of reasons, the above submissions cannot be accepted. In the first place, these provisions cannot be read in isolation and will have to be read together with all other provisions of the AT Act so that the provisions are made consistent and object-oriented. Secondly, procedural provisions cannot be allowed to diminish or control the substantive provisions. They always call for liberal interpretation and interpretation in a manner as to render the enforcement of substantive rights effective. (See : *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*, . Moreover, Section 19 itself is "subject to the other provisions of this Act" and it uses the word "person aggrieved" and not a government servant. We have already referred to substantive provisions of Sections 14, 15 and 28 of the AT from which conferral of jurisdiction in all matters pertaining of "services" on AT and ouster of High Court's jurisdiction on that subject appears to be total and clear. Well established principle of interpretation of statute is that every power for effective exercise of the clear jurisdiction must be implied in the authority endowed with jurisdiction. The above procedural provisions appear to cover not the whole but only part of jurisdiction of the AT viz. cases where an order is passed against a government servant. Where complaint or grievance is not against an order but against - say for example some inaction - an application could still be made u/s 14/15 of the AT Act. To such an application, Section 20 or

21 also would not apply. But this does not mean that the basic usual principles (which govern the exercise of jurisdiction under Articles 226/227) like laches, gross delay, acquiescence, existence of effective alternative remedy would not apply before the AT. In appropriate cases, the AT may decline to exercise jurisdiction on those grounds. Thus, the AT has ample jurisdiction to deal with complaints and grievance even when there is no order.

17. For almost the same reasons, existing relationship of master and servant does not appear to be a sine qua non for exercise of jurisdiction by the AT. To hold otherwise would lead to absurd results. For example that would oust the jurisdiction to deal with the grievances of a retired person. Form I prescribed under the Central Administrative Tribunal (Procedure) Rules, 1987 for making an application u/s 19 speaks not only of the place of employment but also of place last employed. Contrary view, if adopted, would render clause (a) in Section 14(1) and 15(1) otiose leaving no occasion whatsoever for its application.

18. It was argued before us that since mode of exercise of jurisdiction is expressly laid down in Chapter IV of the AT Act, it can be exercised only by that mode or not at all. Submission is clearly based on the well known maxim "Expression unius est exclusio alterius". But that maxim is often described as a valuable servant but a dangerous master and is treated as subservient to the basic principle that interpretation of statute should always be object-oriented. Moreover, the above maxim-which is a rule of prohibition by necessary implication-applies only where the specific procedure is prescribed. We have already held that the whole field of jurisdiction conferred on the AT is not occupied by Chapter IV. In this connection useful reference may be made to the case of Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., . Our attention was invited to the case of Bhagwantibai v. Damodhar, 1990 Mh. I.J. 1907 . The ratio of that decision has no application to the controversy before us. It only lays down that House Rent Control Order is not a self contained enactment on the question of computation of the period of limitation and therefore, provisions of Section 5 of the Limitation Act would apply to appeals in view of the provisions of Section 29(2) of the Limitation Act. The ratio of the case of Union of India (UOI) Vs. Jyoti Prakash Mitter, , is also not relevant to the controversy before us. Therein, it is held that there can be judicial review of the order passed by the President under Article 217(3) of the Constitution even though the Article makes the order final.

19. One of the submissions made before us was that AT will have no jurisdiction when the dispute relates to recruitment and the conditions of service not regulated by the appropriate legislature as contemplated under Article 309. We see no reason to take such a restrictive view and to read in Article 323-A what does not exist there. Article 162 deals with the extent of executive power of State over the matters with respect to which the Legislature of the State has power to make laws. This executive power of the State Executive is co-extensive with that of the State Legislature and hence administrative order or rule made

under Article 162 can operate upon the field not occupied by law made by the legislature. Such administrative orders/Rules often govern the recruitment and service conditions and there is reason to hold that unnecessary division of jurisdiction on that basis was at all intended.

20. In the field of case law there does not appear unanimity on the issues. The view which we have adopted finds support from the following decisions :

In *H. Saleem v. The Deputy Collector (P and E), Cochin*, 1988 (2) SLR 555, dispute was relating to the recruitment to the civil post of a Sepoy. Kerala High Court held that the AT and not the High Court had jurisdiction.

In *Sundhanshu Tripathi v. Union of India* 1988 (2) SLR 688, challenge was to the examination held for recruitment. Allahabad High Court held that High Court's jurisdiction was ousted in the matter.

Case of *Pratap Chandra Rout v. State of Orissa* 1987 Lab. I.C. 104, related to the grievance of persons selected for civil posts but not given appointment order. Orissa High Court held that its jurisdiction was ousted.

In the case of *A. B. Banerjee v. The State of Maharashtra*, 1986 (2) All India Service Law Journal 384, a Single Judge of this Court has observed that the AT has jurisdiction to deal with disputes relating to recruitment as well as the condition of service and that exclusion of High Court's jurisdiction was not partial.

In the case of *Rekapally Laxminarayana Rao Naidu Vs. Union of India and others*, , a Division Bench of this Court followed the above decision though in a different context.

In *K. Naga Raja and Others Vs. The Superintending Engineer, Irrigation Department, Irrigation Circle, Chittoor and Another*, , expression "matters relating to appointment" used in A.P. Administrative Tribunal Order made under Article 371-D is held to include also earlier process of recruitment in view the object of the Order.

21. Before dealing with the two decisions (i) of Madras High Court and (ii) of the M.P. High Court, which have taken a contrary view, we would notice the case of *Padma Sharma v. State of Himachal Pradesh* 1991 Lab. I.C. 490, wherein Full Bench of Himachal Pradesh High Court was dealing with the question as to whether grievance relating to admission to Junior Basic Training Condensed Course meant to acquire eligibility for appointment to the post of a trained teacher could be entertained by the High Court. It was held that grievance related to pre-recruitment stage which cannot be treated as a matter concerning recruitment within the meaning of clause (a) of Section 15(1) of the AT Act. It was observed :

"An attempt was made to urge that the requisition of eligibility for being considered for recruitment, by admission to the J.B.T. Condensed Course, was one of the "matters concerning recruitment" within the ambit of clause (a). It is

difficult, however, to accept this submission. Merely because the Condensed Course had been started to enable ineligible persons to become eligible for appointment as trained teachers and had been started by the Government with a view to enable such persons to be considered for recruitment, though not necessarily leading to their appointment, the admission to the Condensed Course cannot be treated as a matter concerning recruitment within the meaning of clause (a). If the submission made on behalf of the respondents is accepted, it would amount to giving a meaning to the word, "recruitment", which would not be in consonance with the accepted meaning of that term as understood in the service jurisprudence."

We are not, in the matters at hand, faced with a situation like the one present in the above case but it seems clear to us that the High Court has proceeded upon the assumption that if the matter pertains to recruitment it would lie within the jurisdiction of the AT u/s 15(1)(a). Hence, the above decision does not at all militate against the view taken by us.

22. Now, the two decisions which have struck a different note. First, the decision of Madras High Court in the case of *Chairman, Railway Recruitment Board Vs. S. Ruban Peter and others*, . A decision to hold second written test for preparing a Select List of persons for being appointed to certain posts in Railway was challenged in High Court under Article 226 of the Constitution. Objections to the maintainability of the petition were overruled on the grounds that grievance related to pre-recruitment stage and was not raised by an "in-service" person. Here are some of the observations which we quote in extenso with a view to notice the reasoning in the exact words employed. (pp. 98-101) :

"The use of the expression "recruitment and matters concerning recruitment", in our opinion, would imply that the "in-service" candidates can raise disputes before the Tribunal even in respect of matters relating to recruitment, but no person who is not "in-service" can approach the Tribunal for redressal of any grievance. Various clauses of Section 3(q) (supra) unmistakably show that the types of disputes referred therein can only be raised by persons "in-service" as they relate to none else The consideration of the expression "recruitment" and matters concerning recruitment" occurring in Section 14(1)(a) of the Act, divorced from the context in which it appears and without examining the provisions of other sections of the Act, can lead to absurdities. If the argument of learned counsel for the appellant were to be accepted that the Tribunal can be approached even by persons who are not in service provided they have a grievance against "recruitment and matters concerning recruitment", then it would imply that even a person who is not personally aggrieved would also be entitled to maintain an application under the Act in public interest. This is not possible The expression "person aggrieved" occurring in Section 19 of the Act implies any such person who is already in service and whose rights have been violated by an order pertaining to any matter within the jurisdiction of the Tribunal. A person who is not "in-service" cannot be said to be "a person

aggrieved" within the meaning of Section 19 of the Act. A person can be said to be "aggrieved" only if he has suffered a legal grievance in the sense that his interest recognized by law, has been directly and prejudicially affected. A person who is disappointed only of a benefit which he might have received if the order had been made differently, unless the denial of the benefit violates his legal right or infringes some interest inhering in him, cannot be called an "aggrieved person".

... The application for raising a matter before the Tribunal in Form I as framed under s 19 of the Act goes to show that dispute can be raised only by "in-service" candidates and not by persons who are not in "in-service". The applicant has, in paragraph 1 of the Form to give the designation of the office in which he is employed and in paragraph 2 has to provide the particulars of the order against which the application is made. He has also to declare in paragraph 9 that he has availed of all the remedies available to him under the relevant Service Rules before approaching the Tribunal. The application form, also, thus supports and fortifies our view that the jurisdiction of the High Court has not been excluded in respect of persons within the meaning of Section 19 of the Act and that the jurisdiction of the Tribunal is limited only to resolving the disputes raised by any aggrieved person in respect of matters covered by Section 14 of the Act read with Section 3(q) of the Act and that such disputes can be raised only by or against the "in-service" candidates.

In order to determine whether the High Court has jurisdiction to entertain a petition under Articles 226/227 of the Constitution of India after January 11, 1985, what is to be examined is, firstly whether the dispute is the one raised by in service candidate and is covered by the provision of the Act; secondly, whether the application is made by an "aggrieved person" in respect of an order covered by Section 19, and thirdly whether the grievance relates to a service matter as contemplated by Section 3(q). In case the answer to all the three questions is in the affirmative, then, and then alone, the High Court's jurisdiction is excluded and the Tribunal shall have the jurisdiction to deal with such matters

A plain reading of Art. 323-A of the Constitution (supra) shows that the Parliament was authorised to create Administrative Tribunals to adjudicate disputes and complaints not only with regard to conditions of service of the persons appointed and working under the Central Government or the State Government or other authorities etc. but also the Tribunals would hear and adjudicate matters relating to recruitment of persons appointed to public services and posts in connection with the affairs of the Union etc."

In the above decision, heavy reliance is placed upon the ratio of the case of Padma Sharma (supra) with relation to the pre-recruitment stage.

23. Second case is Vijay Singh v. State of M. P. 1989. MPLJ 255. It related to daily rated casual workers. While laying down that matter pertaining to daily rated casual workers cannot be entertained by the AT-a proposition over which

there is no debate-it is observed :

"The Tribunal has no jurisdiction u/s 19 when no "order" is passed though the applicant may be still "aggrieved" or when the application made is time-barred according to Section 20 and is not entertained by the Tribunal on that account. High Court's jurisdiction to act is not ousted u/s 28 in such cases."

24. With respect, for the reasons already recorded and which need not be repeated, we find it difficult to adopt the views taken in the above two decisions to the effect that (i) only "in-service" person can approach the AT (ii) AT can entertain applications only when an "order" is actually passed and (iii) matters which otherwise fall within the ambit of AT can be agitated in the High Court when the application is not entertained by the At as barred by time. Question pertaining to purely pre-recruitment stages does not arise in any of the matters before us. Question as to whether public interest litigation can be entertained by the AT or not, also does not arise. If AT is intended to be a real substitute of the High Courts in matters relating to services, there is, prima facie, no reason to hold that public interest litigation can in no case be entertained by the AT. But since there has been no detailed debate, we need not make any final pronouncement on that subject. But that aspect of the matter cannot have decisive impact on the scope of jurisdiction vested in the AT u/s 14/15 of the AT Act. The legal position thus boils down to this :

This expression "recruitment and conditions of service of persons appointed" as used in Art. 309 of the Constitution recognizes "recruitment" and "appointment" as two distinct concepts. In the same sense the said expression is used in Article 323-A. The AT Act also specifically treats these two concepts as distinct. The above expression used in Article 323-A is not at all used in the provisions of the AT Act. It finds place only in the preamble, which cannot be used to interpret unambiguous provisions. Even if it is used it will have to be assigned the same meaning. "Recruitment" in the AT Act, therefore, is not restricted to recruitment of persons already in service. Existence of an "order" is not always a must for exercise of AT's jurisdiction.

25. This takes us to question No. (iii), viz. whether Village Police Patil appointed under the Maharashtra Village Police Act (MVP Act) is-(i) a government servant, (ii) a holder of a civil post under the State. Post of a Police Patil is created by the MVP Act. Police Patil is appointed u/s 5 of the MVP Act for performing duties specified in Section 6, most of which relate to State functions. Section 5(3) states that the recruitment, remuneration and other conditions of service of Police Patil shall be such as may, from time to time, be determined by the State Government by general or special order. Section 9 refers to penalties for neglect of duties by a Police Patil. Section 11 empowers District Magistrate and other officers competent to make appointment of a Police Patil, to suspend him pending a departmental enquiry. The Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968 (the Order) is framed u/s 5(3). Clause 3 of the said order speaks about eligibility and

clause 4 about the term of office, age of superannuation and the power to terminate the services at any time for specified reasons. Clause 5 specifies the selection process which is by inviting applications from eligible candidates from public. Clause 7 speaks about his remuneration which now is Rs. 300/- per month. Clause 8 permits him to cultivate land or engage in local business or trade in village, in such manner as is not detrimental to the performance of his duties as Police Patil, but prohibits him from undertaking any full-time occupation elsewhere. Clause 9 speaks about casual leave and leave of absence. Clause 10 provides for appeals against disciplinary action and the penalty imposed. Clause 12 provides that State Government may, by an order in writing, apply to Police Patil such of the provisions of the Bombay Civil Services Rules or the Bombay Civil Services Conduct, Discipline and Appeal Rules, as are not inconsistent with the MVP Act and the Rules made thereunder. Clause 13 specifies that the benefits available to full time permanent Government servants cannot be claimed by Police Patils.

26. Sub-rule (3) of Rule 1 of the Maharashtra Civil Services (Conduct) Rules, 1979, reads as under :

"Except as otherwise provided by or under these rules, these rules (and also any rules and orders in relation to matters covered by these rules duly approved by Government from time to time and not inconsistent with provisions of these rules) apply to all persons appointed to civil services and posts in connection with the affairs of the State of Maharashtra :

Provided that, only rules 2, 3, 5, 6, 11, 15, 19, 29 and 30 shall apply to persons appointed as Police Patils under the Maharashtra Village Police Act, 1967,"

27. The Bombay Village Panchayats Act, 1958 is also relevant. Section 14(i) of the said Act provides that no person shall be a member of a panchayat or continue as such, who "is a servant of the Government or a servant of any local authority". Explanation 3 provides that for the purposes of the above provision Police Patil shall be deemed to be a government servant.

28. The term "Government Servant" is not defined either by the Constitution or by the AT Act or by the General Clauses Act and hence recourse to the basic concepts of the relationship between master and servant is inevitable. On the total conspectus of all the above provisions, it seems clear to us that all the attributes of that relationship exist in ample measure between a Police Patil and the Government and that he is clearly a holder of a civil post under the State created by the statute for performance of State functions and which exists apart from its holder. State selects and appoints him, exercises administrative and disciplinary control over him and his work, and pays his remuneration. The only features which, it is said, militate against the relationship and status of the post, are about his meagre remuneration described as honorarium (Clause 7 of the Order) and his right to cultivate land or engage in local business or trade in the village in such manner as is not detrimental to the performance of his duties

(Clause 8 of the Order). In our view, these features are not decisive of the matter. Settled legal position is that a post outside regularly constituted services need neither carry regular salary nor be a whole time employment. In this connection the case of State of Assam and Others Vs. Shri Kanak Chandra Dutta, , may be noticed. It related to a Mauzadat (revenue contractor) in Assam Valley, appointed and governed under the State's Revenue Regulations. His duties appear to be an admixture of duties of a Police Patil and a Patwari in the Maharashtra State. Peculiar features are that his successor is ordinarily selected from among the members of his family and if suitable heir is minor, the post may be kept open for him for certain period during which an agent can be appointed to perform the duties. Mauzadat is not in whole time employment, he draws no fixed salary but is entitled to only commission. Despite these features, the Supreme Court held that he is a Government Servant holding a civil post. The ratio of that decision, therefore, applies with grater rigour to a Police Patil.

29. Before parting we may record that to avoid inconsistent stands of different levels, places and times, we had required the Central and State Governments to disclose their official stand. The stand is that all these matters are covered by jurisdiction of the AT.

30. Conclusion : All these petitions are not maintainable in this Court. Writ Petition No. 3063 of 1990 is against Central Government and since it is filed after establishment of CAT, it cannot be transferred u/s 29 of the AT and will have to be dismissed as such. Rest of the Writ Petitions be transferred to MAT since they were pending when MAT was established.

31. No costs.