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**(2009) 03 DEL CK 0070**

**In the Delhi High Court**

**Case No : WP (C) No's. 4459, 4464 and 5894 of 2008**

Jitender Singh Aulakh, PPS and Another

APPELLANT

Vs

Arun Kumar Mittal and Others

RESPONDENT

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**Date of Decision : 13-03-2009**

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 12, 14, 14(1), 19, 25  
Arbitration and Conciliation Act, 1996 — Section 11, 11(6)  
Civil Procedure Code, 1908 (CPC) — Section 10  
Constitution of India, 1950 — Article 227  
General Clauses Act, 1897 — Section 19

**Citation : (2009) 5 ILR Delhi 274**

**Hon'ble Judges : Suresh Kait, J;A.K. Sikri, J**

**Bench : Division Bench**

**Advocate :** Gurminder Singh and Nikhil Jain, for the Appellant; Aditi Gupta and Amita Choudhary for respondent No. 1, R.V. Sinha and R.N. Singh for Respondent No. 2/UOI, S.K. Das and Ajay Bansal for respondent No. 3/State of Punjab and Subramaniam Prasad, for the Respondent

**Final Decision : Allowed**

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## **Judgement**

A.K. Sikri, J.—A fierce battle waged between the parties in these three writ petitions relate to the choice of forum that should hear three OAs filed by them. As noted in detail hereinafter, one OA is filed in the Central Administrative Tribunal, Principal Bench, New Delhi whereas other two OAs are filed in the Chandigarh Bench of the Central Administrative Tribunal. Whereas the applicants in OAs pending in the Chandigarh Bench of the CAT want transfer of OA filed before the Principal Bench, New Delhi to Chandigarh Bench, the applicant of OA in Principal Bench, New Delhi wishes otherwise. All of them filed transfer petitions u/s 25 of the Administrative Tribunal Act (in short the "Act") for this purpose. The Vice-Chairman has passed orders transferring the OAs pending in Chandigarh Bench to Delhi. Essentially this is the order under challenge before us in WP(C) No. 4459/2008 and WP(C) No. 4464/2008. In the third petition a related issue is raised. With this background explaining the controversy between

the parties in nutshell, we proceed to discuss the factual matrix in little detail so that issues are understood and appreciated in their proper perspective. To avoid confusion, we shall refer to the parties as they appear in WP(C) No. 4459/2008.

2. Petitioners in this writ petition are the Punjab Police Service Officers (PPS) serving in the State of Punjab who are directly recruited to the post of DSP through the Punjab Police Service Commission. Respondent No. 4 is serving Punjab Police in the capacity of Senior Superintendent of Police (SSP). Before joining PPS he worked for some period in the Indian Army. He is aspirant for induction into the Indian Police Service. In order to fulfill the eligibility condition relating to length of service in the State Police Service, the respondent No. 4 wants that the service rendered by him in the Army should be taken into consideration and on that basis he should be brought in the select list for IPS. He had earlier filed OA No. 1055-PB of 1996 before the Chandigarh Bench which had been rejected by the said Bench. It, however, appears that he had made certain representations to the Government of Punjab seeking to grant him the deemed date of seniority. The Government of Punjab recommended his case for convening of Review Selection Committee for the select list of 1995-96 vide letter dated 8.10.2007 granting him deemed date of seniority after including the service rendered by him in the Indian Army. This letter was addressed to the Ministry of Home Affairs for onward transmission to the UPSC for convening of the Review Selection Committee. The Ministry forwarded the said request to the UPSC vide covering letter dated 8/13th November, 2007 for examining the said request in view of existing Regulations. The UPSC considered the same and rejected the claim of the respondent No. 4 vide its communication dated 28.11.2007 on the ground that there was no Regulation under which the UPSC could suo moto convene a Review Selection Committee meeting.

3. Aggrieved by the aforesaid rejection of the UPSC, the respondent No. 4 has filed OA No. 253/2008 before the Principal Bench seeking quashing of the said communication/orders dated 28.11.2007. In this OA, some of the persons who are similarly situated as the petitioner in this petition have moved miscellaneous application for their impleadment. The petitioners herein have also filed such an application in the said OA No. 253/2008.

4. The petitioners, on the other hand, filed two OAs, namely, OA No. 235/PB/2008 titled as Jatinder Singh Aulakh and Anr. v. Union of India and Ors. and OA No. 236/PB/2008 titled as Arun Kumar Mittal and Anr. v. Union of India. In these two OAs the petitioners have challenged the decision dated 8.10.2007 of the State of Punjab recommending deemed date of seniority to the respondent No. 4. In the said two OAs, Chandigarh Bench has also passed interim orders which have the effect of staying the recommendation of the Government of Punjab in favour of the respondent No. 4. They did not want that case of the respondent No. 4 be reconsidered by convening Review Selection Committee, as according to them that would affect their prospects. They are, thus, supporting the stand taken by the UPSC in its decision dated 28.11.2007.

5. It is obvious from the subject-matter of the OAs in the Principal bench as well as Chandigarh Bench that the questions are common and predicated on same facts involving similar legal issues. Naturally, therefore, all the parties are unanimous that these be heard together by one Bench. Which Bench? The parties differ on that.

6. u/s 25 of the Act power is given to the Chairman of the CAT to decide transfer applications. Therefore, the transfer applications were listed before the Chairman, CAT. For certain reasons the learned Chairman did not want to hear those applications and therefore, he passed the order delegating the matter to the Vice-Chairman (J) of the Principal Bench to decide. The Vice-Chairman (J) accordingly heard these applications and passed orders dated 29.5.2008 as indicated above, namely, transferring the two OAs pending in Chandigarh Bench to Delhi to be heard along with OA No. 235/08 filed by the respondent No. 4 herein. Challenging this order applicants in both those OAs filed before the Chandigarh Bench have moved two writ petitions, namely, WP(C) Nos. 4459 and 4464/2008.

7. To complete the narration of facts, we may point out that when these two writ petitions were listed on 23.7.2008, on application for interim relief filed by the petitioners this Court passed the orders restraining the CAT from passing any final orders in the two OAs which had been transferred from Chandigarh Bench to Principal bench, Delhi till further orders. This order was brought to the notice of the Bench which was hearing the OAs on transfer. Thereupon the Principal Bench passed orders dated 24.7.2008 postponing the hearing in all three OAs in view of the stay granted by this Court. However, at the same time the stay order granted by the Chandigarh Bench in the two OAs filed by the petitioners was also vacated. Challenging the vacation of the stay order, third writ petition, i.e., WP(C) No. 5894/2008 is filed by the petitioners.

8. Having noted this factual matrix, we proceed to advert to the main controversy between the parties that relates to the impugned orders of transfer passed by the Tribunal u/s 25 of the Act. We extract below paras 10 to 12 of that order from which thought process of the Vice-Chairman (J) while passing the impugned order can be discerned:

10. In the matter of transfer, Section 25 of the Act provides that on an application of any of the parties and after notice to the concerned, it is within the jurisdiction of the competent authority to transfer the case pending before one Bench for disposal to any other Bench. Rule 6 of the procedure rules, 1987 refers to the place of filing of the applications, and even though normally the application is to be filed in a Bench within whose jurisdictions the application is posted for the time being, it may be possible to file the application before a Bench, if the cause of action wholly or in part arose there. So viewed, OA 253/2008 was competent and the trial of the above, would have been proper in all respects. When the private respondents had submitted impleading applications, they were expressing their consent for participating in the hearing,

but of course. It has to be, however, noticed that they were normally expected to approach the Chandigarh Bench alone when an order passed by the Government of Punjab had been subjected to challenge. But since issues are interlinked, the applicant was within his rights to file an application for transfer and PT 109/2008 and PT 110/2008 were, therefore, maintainable. This is because only if the order of the State of Punjab is sustained, then alone the relevance of an adjudication about OA 253/2008 arises.

11. In the aforesaid background, the views of the official respondents had been ascertained. On behalf of the UPSC, it had been submitted that they oppose the application for transfer of OA 253/2008 TO Chandigarh especially since the pleadings had been complete and the matter was part heard. State of Punjab is represented by Sh. Ajay Bansal, Standing Counsel. He too had expressed the wish of the Government that the matter may be continued to be heard by the Principal Bench. For want of instructions, Mr. R.V. Sinha appearing for the Union of India could not give a definite answer. It had been pointed out by the applicant that there was no objection raised in the counter statement filed in OA 253/2008 about the maintainability of the applications.

12. In view of the inter connection of the disputes and the nature of the submission which have been made, I am of the view that the three original applications have to be heard together. The only issue is about the venue where the adjudication is to be carried out. When the official respondents are of the view that OA 253/2008, could be heard and disposed of by the Principal Bench, expediency requires that the other two applications now pending before the Chandigarh Bench also be clubbed together and the matter finally disposed of by the Principal Bench. Of course, the applicant and private respondents are resident of Chandigarh. If the orders of the Tribunal were proposed to be taken up further, it would have been convenient for them to opt for a hearing at Chandigarh. But that is only one of the circumstances. In matters of litigation, parties will have to invest money and time, and would have to suffer inconvenience, it is well known. As pleadings in the first OA were complete, and hearing itself had commenced, I am of the opinion that these cases are to be adjudicated by the Principal Bench. Consequently, PT 109/2008 & PT 110/2008 are allowed. The office is directed to call for the records from the Chandigarh Bench pertaining to OA 235/2008 & 236/2008 forthwith. PT 127/2008 stands dismissed.

9. It is clear from the reading of the order that Vice-Chairman (J) accepted the following position:

(a) The basic orders stem from the Punjab Government which had decided to grant the deemed date of seniority to the respondent No. 4 by taking into consideration the service rendered by him in the Army. Since the petitioners have challenged this order, the only appropriate Bench where it could be challenged was the Chandigarh Bench.

(b) The respondent No. 4, on the other hand, had challenged the action of UPSC in not acceding to the request of Punjab Government and since orders by UPSC were passed in Delhi, the OA filed by the respondent No. 4 before the Principal Bench was also competent.

(c) The parties are in Punjab Police and residents of Punjab. They are also posted in Punjab and therefore, normally they are expected to approach the Chandigarh Bench of the CAT.

(d) The Vice-Chairman was conscious of the fact that the applicant and the private respondents are residents of Chandigarh. He also opined that if the orders of the Tribunal were proposed to be taken up further, it would be convenient for them to opt for hearing at Chandigarh.

10. Still, the learned Vice-Chairman decided to transfer the matters pending in the Chandigarh Bench to the Principal Bench, Delhi and while doing so, swayed by the following considerations:

i. The views of official respondents had been ascertained. UPSC opposed the application for transfer of OA No. 253/2008 to Chandigarh specially when pleadings were complete in this OA and the matter was part heard. Counsel for the State of Punjab also expressed the wish of the Government that the matter may be continued to be heard by the Principal Bench. However, counsel for the Union of India could not make any statement for want of instructions. The official respondents, therefore, wanted the matter to be heard by the Principal Bench.

ii. Pleadings in OA No. 253/2008 were complete and hearing had commenced.

iii. The consideration of convenience of the parties to litigate at Chandigarh was whittled down with the observations that in the matter of litigation, parties will have to invest money and time and also suffer inconvenience.

11. Learned Counsel for the petitioner challenged the impugned order on merits and also raised the plea that it was without jurisdiction. In so far as the latter plea is concerned, his submission was that Section 25 of the Act gives power only to the Chairman of the CAT. He is the persona designata and there is no power to delegate this power. Therefore, it is only the Chairman who could deal with the transfer applications and Vice-Chairman (J) was not empowered to pass any orders thereon. Impugned orders were, therefore, without jurisdiction. He dilated his submission by referring to the definition of "Chairman" as it appears in Section 3(g), which was distinct from that of the "Tribunal" as defined in Section 3(d) of the Act. He further argued that the only provision under which delegation was permissible was Section 7 of the Act. However, even if it was applicable, for that purpose appropriate notification had to be issued which was not done in the instant case. He referred to various other Sections in his endeavour to bring home the point that Chairman as persona designata was the only authority competent to deal with transfer applications.

12. We shall deal with this preliminary submission in the first instance:

It would be of relevance to state that when the applications for transfer were listed before the Chairman, on the very first date he had indicated that he would not like to hear these matters. However, notice was issued by him limited to the question as to whether he could delegate this function to the Vice-Chairman (J) as he was recusing from the case. As none of the parties had produced the orders which he subsequently passed authorizing Vice-Chairman to deal with these application, we had summoned the records of the transfer application. From these records we find that the Chairman had passed the orders dated 22.5.2008 holding the view that the Chairman had the power to authorize a Member to hear these applications and accordingly he had directed the transfer petitions be listed before Justice (Retd.) M. Ramachandran, the senior most Vice-Chairman (J) in the Principal Bench. He also passed general order fixing such cases/applications/matters which the Chairman may not like to hear before the same Vice-Chairman (J) and in his absence before Sh. L.K. Joshi, the other Vice-Chairman (Admn.). Perusal of this order shows that the Chairman has taken umbrage u/s 5 of the Act which impliedly empowers the Chairman of the Central Administrative Tribunal, by general or special orders, authorizing a Member to hear and dispose of applications. The relevant discussion appears in paras 10 to 14 of the said order which is reproduced below:

"10. Perusal of Sub-section (6) of Section 5 would manifest that notwithstanding anything contained in the provisions of Section 5(1)(2) & (4) [sub-sections (3) and (5) have been deleted], it shall be competent for the Chairman or any other Member authorized by the Chairman in this behalf to function as a bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify. "Tribunal" has been defined u/s 3(d) to mean the Central Administrative Tribunal or State Administrative Tribunal or Joint Administrative Tribunal. Chairman is thus competent to function as a Bench consisting of single Member and exercise jurisdiction, powers and authority of the Tribunal. Chairman can also authorize a Member to function as a Bench and exercise jurisdiction, powers and authority of the Tribunal. The authorization by the Chairman to a Member is not limited to any case. Surely, the authorization may even extend to matters including transfer petitions.

11. Original Applications are filed u/s 19 of the Administrative Tribunals Act, 1985. Section 25 of the Act deals with power of the Chairman to transfer cases from one bench to another, which says that on the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

12. Section 5(6) does not exclude, not even by implication, cases covered u/s 25 of the Act, and that being so, the Chairman of the Central Administrative Tribunal by general or special orders can authorize a Member to hear and dispose of the

application moved u/s 25 of the Act.

13. Provisions of the Act as mentioned above and in particular Sub-section (6) of Section 5, clearly vest powers with Chairman to authorize a Member to function as mentioned above. It may, however, be mentioned that if the Chairman may not like to hear a particular case or a transfer application, there has to be a way out. That being so, doctrine of necessity would require transfer of cases including transfer applications. The law has to be interpreted to avoid bottlenecks. The show must go on.

14. In view of my observations made above, these two transfer petitions be listed before Justice M. Ramachandran, the seniormost Vice Chairman (Judicial) in the Tribunal. As a general order, it is further directed that Registrar would put up all such cases/applications/matters, which the Chairman may not like to hear, before Justice M. Ramachandran, the seniormost Vice Chairman (Judicial) and in his absence before Sh. L.K. Joshi, the other Vice Chairman (Administrative).

13. We may also record at this stage that learned Counsel for the petitioner had challenged the aforesaid reasoning given by the Chairman. His submission was that Section 5 will have no application to the present case as that provision deals with composition of the Tribunal and is totally distinct from Section 25 of the Act. Learned Counsel for the respondent No. 4, on the other hand, adopted the reasoning given by the Chairman in the said order dated 22.5.2008. Additionally, he also submitted that the petitioner was estopped from taking such a plea inasmuch as after the matter was relegated to the Vice Chairman to decide the transfer applications, the petitioners had appeared and argued these applications before the Vice Chairman without any protest or demurer. Not only this, even in these writ petitions no such ground was taken and this contention was taken orally for the first time during arguments. He, therefore, contended that the petitioners were precluded from raising such a plea. He further submitted that doctrine of necessity as applied by the learned Tribunal in the facts of this case was well-founded as otherwise the provisions of Section 25 would be rendered otiose where the Chairman decides to recuse himself from dealing with those applications. He also referred to Section 19 of the General Clauses Act in support of his submission that such a delegation was permissible.

14. No doubt, the petitioners had not raised specific plea questioning the jurisdiction of the Vice-Chairman to deal with transfer applications. It is purely legal and jurisdictional issue. It, however, goes to the root of the matter and may have wider ramifications in view of general delegation given by the Chairman in his orders dated 22.5.2008 empowering the Vice-Chairman (J) and in his absence Vice-Chairman (A) to deal with such matters. We are, therefore, of the opinion that this issue needs determination and should not be wished away by accepting the technical objection of the counsel for the respondent No. 4.

15. Concededly, the power of the Chairman in transferring cases emanates only from Section 25 of the Act. It is worded as under:

25. Power of Chairman to transfer cases from one Bench to another.- On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

16. It cannot be disputed that under this provision it is only the Chairman who is given the power to transfer any case pending before one Bench for disposal by another Bench. He is, thus, the *persona designata*. It also cannot be disputed that there is no specific provision under the Act under which the Chairman is authorized to delegate this power to another Member. Section 5 of the Act, sustenance whereof is drawn, deals with "Composition of Tribunals and Benches thereof". Sub-section (6) of Section 5 is in the following terms:

Notwithstanding anything contained in the foregoing provisions of this Section, it shall be competent for the Chairman or any other Member authorized by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify.

17. Since under this provision Chairman is authorized to constitute Benches and he can authorize any Member also, by general or special order, to function as a Bench the learned Chairman has opined that this provision gives him power to authorize a Member to hear and dispose of application moved u/s 25 of the Act as well. For this it is observed that Section 5(6) does not exclude, not even by implication, cases covered u/s 25 of the Act. This reasoning of the Chairman does not appear to be correct in law. As already noted above, Section 5 deals with composition and Benches of the "Tribunal". These Benches are to be that of the "Tribunal". "Tribunal" is defined u/s 3(t) to mean the Central Administrative Tribunal or the State Administrative Tribunal or a Joint Administrative Tribunal. Section 5 specifically states that Benches so constituted shall exercise jurisdiction, power and authority of the "Tribunal". Sub-section (6) of Section 5 states that jurisdiction, power and authority of the Tribunal is "in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify." Thus, these Benches which are to be constituted u/s 5 are supposed to exercise jurisdiction, powers and authority of the Tribunal. The jurisdiction, power and authority of the Tribunal is specified u/s 14 of the Act. It relates to the matters enumerated in Clauses (a) to (c) of Sub-section (1) of Section 14. To put it simply, "service matters" of various types of officials of civil service or statutory bodies etc. can be dealt with by the Tribunal. For this purpose there is a separate provision for making application to the Tribunal contained in Section 19 of the Act. Under that provision 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. In the explanation to that Section expression "order" is also defined to



mean "the order passed by the Government or a legal authority....." It is, thus, clear that the Benches which are to be constituted u/s 5 are those of the Tribunal and those Benches are to exercise the power and authority conferred upon the Tribunal u/s 14. As mentioned above, the Tribunal is defined in Section 3(t) of the Act.

18. In contrast, specific power of "transfer" of the case is given to the Chairman only u/s 25 of the Act. That is the power of the Chairman and not of the Tribunal. The Chairman is distinctly defined u/s 3(g) of the Act and therefore, he is distinct from the Tribunal. No doubt, when he discharges judicial function u/s 14 of the Act in deciding applications filed u/s 19 of the Act, he acts as the Tribunal. However, he is also invested with certain powers, under the Act, as a Chairman and not as the Tribunal. Constitution of Benches of the Tribunal u/s 5 of the Act is one such power. Deciding transfer application u/s 25 of the Act is other power to be exercised as a Chairman. Whereas the Chairman is authorized to constitute the Benches of the Tribunal and delegate the power to another Member as well to constitute such Benches, there is no such power of delegation in Section 25 of the Act. Here he is persona designate, distinct from the Tribunal. One has to bear in mind clear distinction between the "Tribunal" on the one hand and "Chairman" on the other hand.

19. We are not treading this path for the first time. Such situations have cropped up earlier as well and the Apex Court has taken the view that wherever a persona designate is mentioned in a statutory provision to exercise certain powers, then such a function is to be discharged by the said persona designate only, unless there is a specific power of delegation to the subordinate authority. In the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, this principle was explained in the following terms:

17. It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a license for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that Under Rule 250 has been vested with the absolute discretion at any time to cancel or suspend any license which has been granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it.

20. A lucid enunciation of this principle can be found in the Constitution Bench judgment of this Supreme Court in the case of S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, Following discussion contained therein would amply explain the principle:

14. Normally, when a power is conferred on the highest judicial authority who normally performs judicial functions and is the head of the judiciary of the State or of the country, it is difficult to assume that the power is conferred on the Chief Justice as persona designata. u/s 11(6), the Chief Justice is given a power to designate another to perform the functions under that provision. That power has

generally been designated to a Judge of the High Court or of the Supreme Court respectively. *Persona designata*, according to Black's Law Dictionary, means "A person considered as an individual rather than as a member of a class". When the power is conferred on the Chief Justices of the High Courts, the power is conferred on a class and not considering that person as an individual. In *The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad*, while considering the status in which the power was to be exercised by the District Magistrate under the United Provinces (Temporary) Control of Rent and Eviction Act, 1947, this Court held: "a *persona designata* is "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character." (See Osborn's Concise Law Dictionary, 4th Edition., p.253). In the words of Schwabe, C.J., in *Parthasardhi Naidu v. Koteswara Rao*, [I.L.R. 47 Mad 369 F.B.] *personae designatae* are, "persons selected to act in their private capacity and not in their capacity as Judges." The same consideration applies also to a well-known officer like the District Magistrate named by virtue of his office, and whose powers the Additional District Magistrate can also exercise and who can create other officers equal to himself for the purpose of the Eviction Act."

In *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, this Court after quoting the above passage from *The Central Talkies Ltd., Kanpur v. Dwarka Prasad*, Page 1806 applied the test to come to the conclusion that when Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 constituted the District Judge as an appellate authority under that Act, it was a case where the authority was being conferred on District Judges who constituted a class and, therefore, the appellate authority could not be considered to be *persona designata*. What can be gathered from P. Ramanatha Aiyar's *Advanced Law Lexicon*, 3rd Edition, 2005, is that "*persona designata*" is a person selected to act in his private capacity and not in his capacity as a judge. He is a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character. It is also seen that one of the tests to be applied is to see whether the person concerned could exercise the power only so long as he holds office or could exercise the power even subsequently. Obviously, on ceasing to be a Chief Justice, the person referred to in Section 11(6) of the Act could not exercise the power. Thus, it is clear that the power is conferred on the Chief Justice u/s 11(6) of the Act not as *persona designata*.

15. Normally a *persona designata* cannot delegate his power to another. Here, the Chief Justice of the High Court or the Chief Justice of India is given the power to designate another to exercise the power conferred on him u/s 11(6) of the Act. If the power is a judicial power, it is obvious that the power could be conferred only on a judicial authority and in this case, logically on another Judge of the High Court or on a Judge of the Supreme Court. It is logical to consider the conferment of the power on the Chief Justice of the High Court and on the Chief Justice of India as presiding Judges of the High Court and the Supreme Court and the exercise of the power so conferred, is exercise of judicial power/

authority as presiding Judges of the respective courts. Replacing of the word "court" in the Model Law with the expression "Chief Justice" in the Act, appears to be more for excluding the exercise of power by the District Court and by the court as an entity leading to obvious consequences in the matter of the procedure to be followed and the rights of appeal governing the matter. The departure from Article 11 of the Model Law and the use of the expression "Chief Justice" cannot be taken to exclude the theory of its being an adjudication u/s 11 of the Act by a judicial authority.

21. The Court also drew distinction between the "Chief Justice" of the "High Court/Supreme Court" and the High Court/Supreme Court itself in the following words:

18. It is true that the power u/s 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief Justice of India or the Chief Justice of the High Court. One possible reason for specifying the authority as the Chief Justice, could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be governed by the normal procedure of that Court, including the right of appeal and the Parliament obviously wanted to avoid that situation, since one of the objects was to restrict the interference by Courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by Section 11 of the Act. We have already seen that it is not possible to envisage that the power is conferred on the Chief Justice as *persona designata*. Therefore, the fact that the power is conferred on the Chief Justice, and not on the court presided over by him is not sufficient to hold that the power thus conferred is merely an administrative power and is not a judicial power.

22. It is a different matter that u/s 11 of the Arbitration and Conciliation Act specific power is given to the Chief Justice to designate another authority to exercise such a power. Thus, delegation is permissible in the scheme of the said Act. Otherwise, as opined by the Supreme Court in that very judgment, in the absence of such power a *persona designate* cannot delegate his power to another.

To the same effect is the judgment of the Supreme Court in *I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd.*,

23. We may point out at this stage that u/s 12 of the Act the Chairman is vested with financial and administrative powers as well. However, that very Section specifically authorizes the Chairman to delegate those financial and administrative powers to Vice-Chairman or any other officer of the Tribunal subject to certain conditions. No corresponding provision is made u/s 25.

24. We may also refer to provisions of Section 7 of the Act at this juncture. This Section authorizes the Vice-Chairman to act as the Chairman or to discharge his functions in certain circumstances. It reads as under:

7. VICE-CHAIRMAN TO ACT AS CHAIRMAN OR TO DISCHARGE HIS FUNCTIONS IN CERTAIN CIRCUMSTANCES. - (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice- Chairmen or, as the case may be, such one of the Vice-Chairmen as the appropriate Government may, by notification, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the appropriate Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

25. Though circumstance stipulated in Section 25 may not be covered by the aforesaid provision as this provision contemplates giving powers to Vice-Chairman in the absence of Chairman, even if one has to proceed on the basis that it encompasses the situation covered by Section 25, then also it is necessary for the appropriate Government to issue a notification authorizing Vice-Chairman to discharge such functions.

26. We may also refer to the provisions of Section 34 of the Act, which empowers Central Government to remove the difficulties that may arise in giving effect to the provisions of this Act. However, for this purpose, it is necessary for the Central Government to do so by means of an order which has to be published in the official gazette.

27. Indubitably, the situation with which we are faced with, namely, where the Chairman is not in a position to hear a particular transfer application u/s 25 of the Act and wants to recuse himself, there is no provision made to delegate the powers. In such circumstances, whether delegation is permissible by applying the doctrine of necessity is the question as, the Chairman in his orders dated 22.5.2008 has resorted to this doctrine. In his opinion when a Chairman does not like to hear a particular case or transfer application, there has to be a way out "that being so, the doctrine of necessity would require transfer of cases including transfer applications."

28. The doctrine of necessity has been introduced as an exception to the principle of bias. It is the normal rule that a man cannot be a judge in his own cause. Therefore, if a person has some interest in a particular cause, he cannot decide the same and should recuse himself. However, in those cases where there is no other authority except the persona designate who is to take decision, doctrine of necessity authorizes him to decide even if he has some interest in the matter. This doctrine has come in for discussion in various cases and the doctrine is explained in the following manner:

i) In State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , the

Supreme Court observed as under:

If in the existing case, the entire Council of Ministers becomes interested in the use of the statutory power one way or the other, the doctrine of necessity will fill up the gap by enabling the Governor by dispensing with the advice of His Council of Ministers and take a decision of his own on the merits of the case. Such discretion of the Governor must be implied as inherent in his constitutional powers....The doctrine of necessity will supply the necessary power to the Governor to act without the advice of the Council of Ministers in such a case where the entire Council of Ministers is biased. In fact, it will be contrary to the Constitution and the principles of democratic Government which it enshrines if the Governor was obliged not to act and to decline to perform his statutory duties because his Ministers had become involved personally.

ii) In *Jagjit Singh Vs. State of Haryana and Others*, the Supreme Court observed that:

The Speaker, in law, was the only authority to decide whether the petitioners incurred or not, disqualification under the Tenth Schedule to the Constitution in his capacity as Speaker. He had obviously opportunity to see the petitioners and hear them and that is what has been stated by the Speaker in his order. We are of the view that the Speaker has not committed any illegality by stating that he had on various occasions seen and heard these MLAs. It is not a case where the Speaker could transfer the case to some other tribunal. The doctrine of necessity under these circumstances would also be applicable.

iii) In *State of U.P. Vs. Sheo Shanker Lal Srivastava and Others*, the Supreme Court observed that:

11. It is true that the principle of natural justice is based on two pillars: (i) nobody shall be condemned without hearing; and (ii) nobody shall be a judge in his own cause. It is, however, well known that the principles of natural justice can be excluded by a statute. It can also be waived. In a case where doctrine of necessity is applicable compliance of the principles of natural justice would be excluded. Referring to the doctrine of necessity, Sir William Wade in his *Administrative Law* stated: But there are many cases where no substitution is possible, since no one else is empowered to act. Natural justice then has to be give way to necessity, for otherwise there is no means of deciding and the machinery of justice or administration will break down. In administrative cases the same exigency may arise. Where statute empowers particular minister or official to act, he will usually be the one and only person who can do so. There is then no way of escaping the responsibility, even if he is personally interested. Transfer of responsibility is, indeed, a recognized type of *ultra vires*. In one case it was unsuccessfully argued that only minister competent to confirm a compulsory purchase order for land for an airport had disqualified himself by showing bias and that the local authority could only apply for a local Act of Parliament.

29. It is clear from the above that in such circumstances the particular authority is permitted to take the decision itself, applying the doctrine of necessity. This principle does not permit delegation. Delegation is permissible only if there is specific power in the authority to delegate the function which that authority is supposed to discharge. In the present case if this doctrine is to be applied, the Chairman should have passed the orders himself. We have to bear in mind the distinction between the doctrine of necessity on the one hand wherein the persona designate is competent to decide the issue himself though otherwise he would have recused and delegation of the power by the persona designate on the other hand, which can be resorted to only when there is specific power. Well known maxim "delegatus non potest delegare", namely, a delegate cannot sub delegate his power governs the principle.

30. We have already seen that the statute confers power only in the Chairman to decide transfer application and there is no provision for delegation of this power to anybody else. Therefore, by resorting to the doctrine of necessity the Chairman could not delegate this function to the Vice-Chairman. Impugned order dated 22.5.2008 passed by the Chairman is, therefore, bad in law. As a sequitor order dated 29.5.2008 whereby transfer applications are decided by the Vice-Chairman are without jurisdiction and non est. We, therefore, set aside both these orders.

31. What is the remedy in such a circumstance when power is only with the Chairman without any authority to delegate and the Chairman for some reason does not want to hear the application for transfer?

32. If the doctrine of necessity is applicable, then the Chairman could still pass the orders on such a transfer application instead of recusing himself. Otherwise there is a vacuum which can be filled by issuing necessary orders by the Central Government under the provisions of Section 34 of the Act. Third alternative is to amend the provisions of Section 25 of the Act authorizing the Chairman to delegate power to deal with transfer applications.

33. None of the aforesaid has happened. In the interregnum what is the solution? Since the matter has now landed up in this Court, we are of the opinion that situation can be remedied by passing appropriate orders by this Court which the Court is competent to pass under the provisions of Article 227 of the Constitution. In somewhat different context but faced with same type of situation, the Supreme Court had indicated that such a power lies with the High Court under Article 227 of the Constitution, in the case of *United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others*, . Following observations from the said judgment would bring home the message:

32. There is yet another aspect of the matter. Even assuming that the suit was not pending "immediately" before the establishment of the Tribunal before the Single Judge but came before him on remand after 27.4.94, the crucial date, and even assuming that the Registrar of the High Court could not have transferred

the suit to the Tribunal on 27.4.94 as the appeal was pending before the Division Bench, it would, in view of the prohibition in Section 18, be necessary for the High Court to transfer the Bank's suit under Article 227 of the Constitution of India to the Tribunal.

34. In the light of the aforesaid position in law, we propose to deal with the applications for transfer made by the petitioners as well as the respondent No. 4. Some of the material aspects which need consideration in this behalf have already been noted above. The petitioners as well as the respondent No. 4 are the residents of Chandigarh. The case in favour of the respondent No. 4 was initiated by the State of Punjab recommending to the UPSC for convening of the Review Selection Committee from the select list of 1995-96 vide letter dated 8.10.2007 granting him due date of seniority after including the service rendered by him in the Indian Army. The petitioners have challenged this order by filing OA in the Chandigarh Bench of the CAT. No doubt, UPSC has not agreed with the view of the State of Punjab and rejected the claim of the respondent No. 4 vide its communication dated 28.11.2007, which is the subject-matter of challenge in the OA filed by the respondent No. 4 before the Principal Bench, New Delhi. Fact remains that the origin of dispute is the recommendation of the State of Punjab contained in its letter dated 8.10.2007. Even the claim of the respondent No. 4 is founded on the said decision of the State of Punjab. Therefore, that decision is the fountain head from which other proceedings have sprung up. Normally, to battle out the rights the natural jurisdiction would rest with the Chandigarh Bench of the CAT. It is also not to be forgotten that the respondent No. 4 in his first round of litigation had approached the Chandigarh Bench. He has now filed OA before the Principal Bench only because he is aggrieved by the decision of the UPSC and UPSC is in Delhi. There is no other reason. Apart from UPSC and Union of India, all other parties are in Chandigarh. Substantial cause of action has accrued within the jurisdiction of Chandigarh Bench. Therefore, that would be the more appropriate Bench, once we keep in mind the following dicta of the Supreme Court in the case of *Kusum Ingots v. Union of India* AIR 2004 SC 2321:

We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenience....

35. No doubt, UPSC had stated before the Vice-Chairman, during arguments in the transfer applications, that it was opposed to the transfer of matter to the Chandigarh Bench. However, before us spontaneous and categorical statement of Mr. Kaushik, learned Counsel for the UPSC, was that it being a public authority, it will have no objection if the matter is dealt with by Chandigarh Bench. Counsel for the State of Punjab made a specific statement at the Bar that matter could be heard in either of the Benches. Even though counsel for the Union of India had

shown helplessness in stating either way before the Tribunal for want of instructions, before us Mr. Sinha, learned Counsel for the Union of India, was forthright in stating that the Union of India has no objection if the matter is heard by the Chandigarh Bench.

36. It also cannot be disputed that if the matter is required to be taken further, after the decision of the CAT, it would be convenient for the parties to opt for hearing at Chandigarh. Therefore, as far as convenience of all the parties is concerned, hearing at Chandigarh Bench is the clear option. These weighty reasons which go in favour of transfer of OA No. 253/2008 filed in the Principal Bench, Delhi to Chandigarh Bench and not the vice versa cannot be allowed to be glossed over and preference given to the only ground that in Delhi the OA was part-heard or it was instituted prior in time. It would be necessary to comment that even this reason has lost much of its significance. We say so keeping in view the following development: Admittedly, some applications for intervention have been filed in this OA. If they are allowed, the newly impleaded respondents shall be given time to file the reply and contest the OA. Till that time hearing cannot take place. Furthermore, even if the matter was partly heard on 11.4.2008, almost a year has passed without any constructive proceedings. Therefore, such a consideration cannot outweigh otherwise impeccable case in favour of transfer of OA No. 253/2008 to the Chandigarh Bench.

37. It is the "expediency for ends of justice", which would be the primary consideration. In the facts of this case more convenient Bench, out of the two, would definitely be the Chandigarh Bench and over all considerations also point out that expediency for ends of justice would demand transfer of OA filed in Delhi to Chandigarh Bench. In this behalf, following observations in the case of Gupte Cardiac Care center and Hospital Vs. Olympic Pharma Care Pvt. Ltd., would be apt:

5. The suit at Nashik has been instituted first in point of time. By reference to Section 10 CPC, the trial of the suit at Delhi, being the latter suit, shall be liable to be stayed. For the exercise of its discretionary jurisdiction u/s 25 of the Code of Civil Procedure, 1908 the only consideration which is relevant is "expediency of ends of justice." The court will have regard to and respect for the rule enacted in Section 10 of the Code. Of course, the considerations such as which is the place where most of the evidence is available, convenience of the parties and witnesses, which one of the two places is more convenient to access and attend and so on are also the factors to be kept in view and may in an appropriate case persuade this Court to direct a transfer of case in departure from the rule underlying Section 10 of the Code. All would depend on the facts and circumstances of a given case. So far as the present cases are concerned, we deem it proper to transfer the suit at Delhi to the court at Nashik for the purpose of hearing and decision thereat. In doing so we are following the ordinary rule as we do not find any factor or consideration relevant for making a departure therefrom.



38. We, therefore, are of the opinion that applications for transfer filed by the petitioners should be allowed and OA No. 253/2008 filed in Delhi be transferred to Chandigarh Bench of CAT and transfer application filed by respondent No. 4, therefore, has to be dismissed. The WP(C) Nos. 4459/2008 and 4464/2008 are accordingly allowed in the aforesaid terms.

39. In so far as WP(C) No. 5894/2008 is concerned, learned Counsel for the respondents, including the respondent No. 4 had conceded that the stay order passed by Chandigarh Bench may be allowed to operate. Even otherwise we are of the opinion that there was no valid ground for vacating the said stay by the Principal Bench vide its orders dated 24.7.2008. Moreover, this order is passed in the OAs filed in Chandigarh Bench after transfer to Principal Bench and when order of transfer passed by the Vice-Chairman (J) itself has been upset as without jurisdiction and we are holding that the Chandigarh Bench of the CAT shall continue to hear these OAs, that is yet additional reason for restoring the stay orders given by the Chandigarh bench. Order dated 24.7.2008 vacating the stay order is accordingly set aside. WP(C) No. 5894/2008 stands allowed accordingly.

40. In the peculiar facts of these matters, there shall be no orders as to costs.