

(2020) 05 DEL CK 0041

In the Delhi High Court

Case No : Civil Writ Petition No. 3055 Of 2020, Civil Miscellaneous Application No. 10635, 10636 Of 2020

Lalit Kumar Gupta

APPELLANT

Vs

North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 06-05-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(2)

Citation : (2020) 05 DEL CK 0041

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Shashank S. Mangal, Akhil Mittal

Final Decision : Disposed Of

Judgement

C. Hari Shankar, J

This matter has been taken up for hearing by video conferencing.

CM.APPL.10636/2020 (exemption)

Exemption allowed, subject to all just exceptions. Application stands disposed of.

W.P.(C) 3055/2020 & CM APPL.10635/2020 (for interim relief)

1. The petitioner seeks issuance of a writ of certiorari, quashing the disciplinary proceedings, pending against him for over 7 years as on date, on, inter alia, the ground that he has been acquitted in the criminal proceedings initiated against him on the same charge. It is pointed out that, on the ground of pendency of the aforesaid disciplinary proceedings, the petitioner's request for being permitted to voluntarily retire from service, was also been rejected vide communication dated 12th December, 2019.

2. The North Delhi Municipal Corporation is notified under Section 14(2) of the Administrative Tribunals Act, 1985, and service matters relating to employees of

the said Corporation, therefore, are amenable to adjudication by the Central Administrative Tribunal.

3. As a consequence, this Court is entirely proscribed, in law, from entertaining the petitioner's cause as a court of first instance, in view of para 93 of the judgment of the Supreme Court in *L. Chandra Kumar v U.O.I.* (1997) 3 SCC 261, which reads thus:

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

(Emphasis supplied)

4. The petitioner has necessarily, therefore, to be relegated to his remedy under the Administrative Tribunals Act, 1985.

5. I am informed that, at present, owing to the COVID-19 pandemic, the Central Administrative Tribunal (CAT) is not functional. Many other judicial fora have, in view of the current situation, started hearing urgent matters by video conferencing, over the appropriate web platforms. In view of the complete proscription, on this Court, entertaining service matters, which are otherwise amenable to the jurisdiction of the Central Administrative Tribunal, as a court of first instance, it may become highly questionable whether, even in extremely urgent cases, the High Court could, in the teeth of the said proscription, entertain a service matter, otherwise amenable to the jurisdiction of the Central Administrative Tribunal, even if the case is of extreme urgency.

6. Needless to say, even in service matters, there may conceivably be cases of pressing urgency, which brook no delay.

7. In view of the fact that, by virtue of the law laid down in *L. Chandra Kumar*¹, such disputes cannot be urged before the High Court as a court of first instance, the Hon'ble Chairman of the Central Administrative Tribunal is respectfully requested to examine the feasibility of commencing hearing, of urgent matters, by video conferencing, so that this Court, as also other High Courts, are not swamped by a deluge of petitions which, otherwise, would lie within the jurisdiction of the Central Administrative Tribunal.

8. The writ petition is disposed of with these directions and in the above terms. The petitioner would be at liberty to approach the Central Administrative Tribunal, if so advised.

9. Pending applications also stands disposed of accordingly.

10. Copy of this order shall be uploaded on the website positively within 24 hours and copy whereof shall also be forwarded to the counsel for the parties via email.

11. Let a copy of this order be also forwarded to the Registrar, Central Administrative Tribunal, Principal Bench, for being placed before the Hon'ble Chairman, so that the feasibility and possibility of hearing urgent matters by video conferencing could be explored.