
(1995) 05 DEL CK 0077

In the Delhi High Court

Case No : Civil Writ Appeal No. 3907 of 1994

Nighat Parveen

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-05-1995

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 19(1), 3
Central Hindi Directorate (Class III and Class IV) Posts Recruitment Rules, 1961 —
Rule 4
Constitution of India, 1950 — Article 14, 16(1), 16A, 226

Citation : (1995) 05 DEL CK 0077

Hon'ble Judges : S.D. Pandit, J;P.K. Bahri, J

Bench : Division Bench

Advocate : Asar Ahmed and Meena Bhatia, for the Appellant;

Judgement

S.D. Pandit, J.

(1) Rule D. B. We have heard learned counsel for the parties at length and have also perused the material on record. We, Therefore, proceed to dispose of this writ petition finally.

(2) Respondent No. 2 Union Public Service Commission wanted to recruit and nil in 46 posts of Principals in Government Senior Secondary Schools in Delhi. Out of these -16 posts, 20 posts were reserved for female candidates. Petitioner had applied for the said post in pursuance of the advertisement issued by the respondent No. 2. Thereafter, she had received a letter for interview before the Interview Board on 6-9-1994. It is her claim that in pursuance of the said letter issued by respondent Nos. 2 & 3, viz. Union Public Service Commission and the Chairman of Union Public Service Commission respectively, she went for the said interview and her name was shown 1148 HCD/96-2 A at Serial No. 17. It is her further claim that when her turn came she was not actually interviewed and the candidates next to her were interviewed. She waited till late evening but nobody gave her any information as to why she was not interviewed. It is also claimed

that she was possessing all the necessary qualifications for holding the said post of Principal and she had given all the details of her qualifications and experience in her application and only. on finding that she was suitable she was called for the said interview.

(3) As nobody was giving any reason as to why she was not interviewed on that date she went to collect the interview letter which was issued to her but the concerned official refused to return the letter to her. Then she gave a letter to the Secretary, of respondent No. 2 on the same date 6-9-94 mentioning therein that she was not allowed to appear for the said interview though she was present in the office and, Therefore, she was making a request to look into the matter immediately and to permit her to appear for the interview. But in spite of the said; she was not interviewed. Thus, she has been denied the right to get the said post and selection made by the respondent Nos. 2 & 3 is arbitrary and illegal. She, Therefore, prayed for issuing a direction to the respondents to consider her for the post of Principal to be appointed in the Government Senior Secondary School and to prevent the respondent Nos. 2 & 3 from implementing the results of the interview held on 6-9-1994.

(4) A show cause notice was issued to the respondents, in pursuance to the said show cause notice the respondents had appeared and filed their counter affidavit. In the said counter affidavit it has been contended that this Court has no jurisdiction to entertain the writ. petition and the grievances of the petitioner fall within the four corners of the Administrative Tribunals Act, 1985. Therefore, on this account alone the petitioner is not entitled to get any relief from this Court. It is further contended that the claim of the petitioner that she was called for the interview on 6-9-94 was a correct statement. She was allotted Roll No. 1004 but before the starting of the interviews short list criteria was adopted by the Commission and in the said short listing the petitioner could not come within the ambit of the persons to be interviewed and, Therefore, she was not interviewed. Not only the petitioner was not interviewed but there were other persons also who were not interviewed on account of short listing. All of them who had come from distant places and were not residents of Delhi were even paid TA/DA but as the petitioner was resident of Delhi she was not paid any TA/DA. Thus, it is contended that there was no mala fide denial of interview to the petitioner and in view of the existence of only few posts and there being large number of candidates who had applied for the said posts, the candidates were short listed and in the said short listing petitioner went out of consideration for the said post. Therefore, in these circumstances, the petition be dismissed.

(5) In view of this contention of the respondents it is necessary to consider as to whether the claim made by the petitioner is governed by the provisions of the Administrative Tribunals Act, 1985. Respondent Nos. 1 to 3 are admittedly representing the Central Government and the job in question is with the Central Government. None of the respondents are covered by the provisions of Section 2 of the Administrative Tribunals Act, 1985. Consequently, the job in question is

government by the provisions of Administrative Tribunals Act, 1985. Section 3(q) of the Administrative Tribunal, Act, 1985 gives the definition of "Service Matter" as under:- "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 allowance), 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. If the above definition of Service Matter is considered then it would be quite clear that the said definition is very wide. There is no scope to consider narrowly the term "Service Matter" or to limit its meaning strictly to the conditions of service. Thus, the term service matter includes not only the conditions of service but also other incidental and ancillary matters. The expression service matter has a very wide amplitude. Therefore, even the process of selection for the service would be governed by the word; service matter".

(6) Learned counsel for the petitioner drew our attention to Section 19 of the Administrative Tribunal Act and contended that a person aggrieved by any order pertaining to any matter within the jurisdiction of the Administrative Tribunal can make an application to the Tribunal for the redressal of his grievances. He, thus, contended that in order to approach the Administrative Tribunal it is necessary to have the existence of an order in which order to go before the Tribunal. The term order is not defined in the said Act, Explanation to Section. 19(1) also does not define the term order but only states that an order made by the government, local body, etc. all come within the purview of what is known as an order. Therefore, in these circumstances, the term has to be given a wide meaning to include not only the order made in writing and directed against the person concerned but also the actions and inactions of the concerned authorities. It could not be said that as there is no order a person cannot approach the Administrative Tribunal. On mere ground that no order as such has been passed against the petitioner by any authority and there is no specific prayer in the petition for quashing any particular order it cannot be said that the matter cannot be entertained by the Administrative Tribunal, in case *National Federation of Railway Porters & Bearers Vs. Union of India & Another* 55 (1995) Dlt 1991, learned Single Judge of this Court had considered this aspect and has observed in para 11 as under:- "The dispute raised now pertains to the absorption to the service under the Railway, resulting in creating a tenure in favor of the appointee; the dispute, also involves the remuneration paid or payable to the petitioners. This apart, Clause (v) of Section 3(q) brings in every kind of dispute relating to the conditions of service, within the concept of "service matters". The phrase "conditions of Service" would always include terms or conditions governing recruitment or employment. The scope of the said phrase is

not limited to the conditions governing the relationship of employer and employee after a person is employed. The word "conditions", in the phrase "covers the entire gamut of "services" in connection with the affairs of the Union or of any State, etc. The word "Services", here, is not the individual services of the person employed. but refers to the generality of the "services". The idea can be understood if the following two sentences are compared with each other :- (i) Government Servant is employed to render "service"; (ii) He is employed in the "services" of the State. The Government servant is in the services of the State, rendering service by virtue of the employment, with reference to the individual, his employment is denoted by the term "service". But with reference to the State, the term service reflects the State's establishment. through which, the State functions." We are in agreement with the said view.

(7) In case J.B. Chopra and Others Vs. Union of India (UOI) and Others, jurisdiction of the Administrative Tribunal to declare amended Rule- 4 of Central Hindi Directorate (Class Iii & IV) Posts Recruitment Rules, 1961, as violative of Articles 14 and 16 A of the Constitution of India, was challenged. It was contended before the Apex Court that the Administrative. Tribunal had no jurisdiction to consider and strike down the. Recruitment Rule as it was not pertaining to a service matter and that contention was negatived by the Supreme Court by making the following observations:

"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 offending Arts. 14 & 16(1) of the Constitution. That being so. the contention advanced by the petitioners that the Administrative Tribunal had no authority or jurisdiction to strike down the impugned notification dated March 15, 1980 purporting to amend R. 4 of the Central Hindi Directorate (Class Iii and Class IV) Posts Recruitment Rules, 1961 reserving 100 per cent vacancies to the post of Superintendent to be filled by the Head Clerk and thereby debarring Stenographers (Sr.) from being considered for promotion to that post, as being wholly mala fide, arbitrary and irrational and thus offending, Arts. 14 and 16(i) of the Constitution, must Therefore, fail."

(8) In the earlier decision of S. P. Sampat Kumar Vs. Union of India AIR 1987 Sc 3861 it has been held that the establishment of the Administrative Tribunal is setting up an alternative institution in place of High Court for providing judicial review and barring of the. jurisdiction of the High Court under Article 226 of the Constitution of India.

(9) Thus, we hold that in view of the provisions of the Administrative Tribunals Act, 1985. the subject matter of this petition pertains to "Service Matter" and, Therefore, we have no jurisdiction to entertain this petition. "

(10) As we have come to the conclusion that we have no jurisdiction to entertain

the petition we refrain from going into the merits of the matter as we, feel that any observations made by us in respect of the merits of the matter would cause prejudice to the parties if they happen to go before the Administrative Tribunal.

(11) Thus, we dismiss the writ petition for want of jurisdiction. In view of the circumstances of the case, we direct both the parties to bear their respective costs.