
(2006) 02 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25037 of 2004

Nishant Kaushik

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 7 AWC 6744 : (2006) 3 UPLBEC 2316

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : S.K. Misra, for the Appellant; K.C. Sinha and S.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri S.K. Mishra, Advocate on behalf of the petitioner, and Sri K.C. Sinha, Assistant Solicitor General of India, on behalf of the respondents.

2. Petitioner made an application for compassionate appointment being offered on the ground that his father Sri V.D. Sharma has expired during harness on 21st November, 2000. According to the petitioner his father was a permanent employee in the Ordinance Factory at Muradnagar. The application of the petitioner was rejected vide order dated 5th March, 2001. Feeling aggrieved by the aforesaid order, the petitioner preferred a departmental appeal. The appeal so filed was not decided within reasonable time and therefore, the petitioner approached this Court by means of Civil Misc. Writ Petition No. 9174 of 2002. The writ petition was decided under order dated 16th July, 2002 with a direction upon the concerned authority to decide the appeal filed by the petitioner.

3. The appellate authority by means of the order dated 10th October, 2002 rejected the appeal so filed. Against the order of the appellate authority petitioner filed Civil Misc. Writ Petition No. 48036 of 2002. The writ petition was finally allowed by this Court vide judgment and order dated 25th February, 2002

and the orders dated 5th March, 2001 and dated 10th October, 2002 were quashed. The matter was remanded to the authority concerned for deciding the claim of the petitioner for compassionate appointment afresh in light of the observations made by the Court.

4. learned Counsel for the petitioner states that by means of the impugned order dated 29th July, 2004 application of the petitioner has been again rejected by the authority, on clear misreading of the directions issued by this Court vide judgment and order dated 25th February, 2002. Hence the present writ petition.

5. On behalf of the respondents two preliminary objections have been raised;

(i) Petitioner has the remedy of an appeal as was filed earlier by the petitioner against the order dated 21st November, 2000.

(ii) In view of the judgment of Hon''ble Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, proper remedy available to the petitioner is to approach the Central Administrative Tribunal under the Central Administrative Act at the first instance.

6. learned Counsel for the petitioner with reference to the aforesaid preliminary objects, submits that the Hon''ble Supreme Court of India in its recent judgment in the case of T.K. Rangarajan v. Government of Tamil Nadu and Ors. reported in AIR 2003 S.C. has held that extraordinary jurisdiction vested under Article 226 of the Constitution of India in the High Court, can be exercised, even where statutory legislation provides for an efficacious alternative remedy before the Tribunal constituted under the Act

7. Reference has also been made to the judgment of this Court in the case of Brijesh Kumar Tripathi v. State of U.P. and Ors. reported in 2006 (1) ESC 441 wherein this Court has held that availability of statutory alternative remedy is not an absolute bar in entering of a writ petition.

8. In order to appreciate the aforesaid issue, it would be worthwhile to reproduce Paragraph-93 of the judgment of Hon''ble Supreme Court in the case of L. Chandra Kumar (Supra) in so far as it deals with the jurisdiction of the High Court under Article 226 of the Constitution of India vis-a-vis the jurisdiction conferred upon the Central Administrative Tribunal constituted under the Central Administrative Tribunal Act, 1985. Paragraph-93 is being quoted herein below:

"93. Before moving on to other aspects, we may summarise our conclusions of 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 present statutes following the settled principle that a Tribunal which is creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court 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 Court. 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 the High Courts even in cases where they question the vires of statutory legislation (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

9. Thus the Hon''ble Supreme Court has categorically laid down that the Tribunals will continue to act as the Courts of first instance in respect of the areas of law, for which they have been constituted.

10. In view of the declaration of law as aforesaid by the Hon''ble Supreme Court there is no other alternative but to hold that remedy being available, the Administrative Tribunals in the facts of the present case cannot be substituted by the petitioner, by means of writ petition before this Court.

11. So far as the judgment of Hon''ble Supreme Court in the case of T.K. Rangarajan (Supra) is concerned, suffice is to point out that the Hon''ble Supreme Court has specifically held as follows:

High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel. When the State Government has dismissed two Lac employees for going on strike, the situation is very very exceptional. There was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the Statute.

12. In view of the aforesaid observations of the Hon''ble Supreme Court, the dictum as recorded in Paragraph-93 of the judgment of the Hon''ble Supreme Court in the case of L. Chandra Kumar (Supra) is not diluted in any manner.

13. learned Counsel for the petitioner has not able to point out any extraordinary situation having no parallel, on which this Court could bye-pass the normal remedy, which is available to the petitioner before the Central Administrative Tribunal. Accordingly the judgment of Hon''ble Supreme Court in the case of T.K. Rangarajan (Supra) cannot assist the petitioner in any manner. Similary the judgment of this Court in the case of Brijesh Kumar Tripathi (Supra) deals with the availability of statutory alternative remedy it dos not in any way lay down which could help the petitioner to plead anything contrary to the law laid down by the Hon''ble Supreme Court in the case of L. Chandra Kumar (Supra) referred

to above.

14. In view of the aforesaid, the writ petition is accordingly dismissed with liberty to the petitioner to approach the Central Administrative Tribunal at the first instance for redressal of the grievance raised in the present writ petition.