
(2002) 12 GAU CK 0030
In the Gauhati High Court
Case No : Writ Petition (C) No. 66 of 1999

Prabhash Dev Nath

APPELLANT

Vs

Union Bank of India and Others

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 19, 28, 3, 5(6)
Constitution of India, 1950 — Article 226, 227, 32, 323, 323A

Citation : (2004) GLT 482 Supp

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : M.A. Seikh and A. Begum, for the Appellant; B.K. Sharma and D.K. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

N.S. Singh, J.—Heard Mr. M.A. Seikh, learned Counsel for the Petitioner and Mr. B.K. Sharma, learned Sr. counsel assisted by Mr. D.K. Sarma learned Counsel for the Respondents. In this writ petition the Petitioner namely Prabhash Dev Nath sought for a direction to the Respondents to declare the result of the selection test for recruitment of Sports man against Sports quota in group "D" category which was held on 26th September, 1995 and 27th September, 1995 by contending inter alia, that the writ Petitioner along with others participated in the test in terms of the related notification which was issued by the Respondent Authority on 20.4.95 and the said test was held on the above mentioned dates but the Authority concerned did not declare the result of such Selection test as on today without assigning any reason. The Petitioner herein also sought for a direction to the Respondents to keep one post in Group "D" category (Badminton) vacant pending final disposal of this writ petition.

2. At the hearing Mr. B.K. Sharma, learned Counsel for the Railway, Respondents raised a preliminary issue pertaining to the maintainability of this writ petition. Supporting his submission Mr. B.K. Sharma, learned Sr. Counsel has drawn my

attention to the relevant provisions of Section 3(q)(v), Section 14 read with Section 19 of the Administrative Tribunals Act 1985 for short the Act of 1985 and contended that if the Petitioner is really aggrieved in the related process of recruitment of Sports Man against the Sports Quota under N.F. Railway in terms of the related notification dated 20.4.1995 as in Annexure "C" and another Notification dated 14th March 1997 as in Annexure "E" to the writ petition, the writ Petitioner ought to have approached the proper forum that is, the Central Administrative Tribunal concerned as the matter falls within the jurisdiction of the Central Administrative Tribunal not with this Court. Further, strengthening the submission, Mr. B.K. Sharma, learned Sr. counsel relied upon the Full Bench decision of the Apex Court rendered in L. Chandra Kumar Appellant v. Union of India reported in 1997 (1) GLT (S.C.) 1 and argued to in such a case jurisdiction vests upon the Central Administrative Tribunal concerned and the Tribunal is the First Court which has power and jurisdiction to try and deal with the present matter within the purview of Article 226/227 of the Constitution of India and the decision of this Tribunal will, however be subject to scrutiny before the Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. Now this Court is to see and examine whether the preliminary issue raised by Mr. B.K. Sharma, learned Sr. Counsel can be entertained/accepted or not.

3. In terms of the Notification dated 20th April/95 as in Annexure "C" to the writ petition, applications are invited in the standard form from the intending candidates for recruitment of Sports-man against sports quota in Group "D" category under the Respondent, Railway and the Petitioner was also one of the candidates who applied to it and participated in the test along with others and the result of the selection test was not announced as on today instead, the Railway Respondent Authority issued subsequent notification dated 14th March/97 for recruitment of Sports person against Sports Quota in the same Group "D" category as seen in the document marked Annexure "E" to the petition. It is not disputed that there were recruitment processes of the sports-man against Sports Quota in terms of the related notification as discussed above, and such posts are Civil posts under the Union of India and as such in my considered view, it is the Central Administrative Tribunal concerned to decide the matter pertaining such recruitment, as the post advertised falls within the purview of Civil post under the Union of India in terms of the related provisions of Section 3 read with Section 14 of the Act of 1985. For better appreciation in the matter Section 3(q) and Section 14 of the Act of 1985 are quoted below:

Section 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,

Section 14 "Jurisdiction, powers and authority of the Central Administrative Tribunal-

(1) 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 matter 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 or in the 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 a member 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 or controlled by the Government.

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) of Clause (b) being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment.

In *L. Chandra Kumar Appellant v. Union of India Respondent* (supra) the Apex Court held that Tribunal may perform a Supplementary role in deciding the powers conferred by Article 226/227 of the Constitution of India. However, the decision of this Tribunal will however be subject to the scrutiny before the Division Bench of the High Court within whose jurisdiction the concerned Tribunals falls and those Tribunals will nevertheless continue to act like Courts of

First Instance in respect of the areas of law for which they have been constituted and it will not therefore, be opened for litigants to directly approach the High Court even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged). This relevant observation of the Apex Court finds its place in paragraph 99 of the related judgment and the same is quoted below:

99. In view of the reasoning adopted by us we hold that Clause 2(d) or Article 323(A) and Clause 3(d) or Article 323B to the extent they exclude the jurisdiction of the High Court and the Supreme Court under Article 226/227 and 32 of the Constitution are unconstitutional. Section 28 of the Act and the exclusion of Jurisdiction clauses in all other legislation enacted under the aegis of Article 323 and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our constitution. While the jurisdiction cannot be ousted, other courts and tribunals may perform a supplemental role in discharging the powers conferred by Article 226/227 and 32 of the Constitution. The Tribunal created under Article 323A and Article 323B of the constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these tribunals will however be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunals falls. The Tribunals will nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not therefore, be opened for litigants to directly approach the High Court even in cases where they questioned the vires of statutory legislations (except where the legislation which creates particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and Constitutional and is to be interpreted in the manner we have indicated.

4. In the instant case, the present Petitioner sought for a relief for declaration of the result/test in terms of the related advertisement pertaining to the recruitment of sports person against sports quota in Group "D" category, a civil post under the Union of India. According to me, the case of the Petitioner is governed by the Provisions of law laid down u/s 14 of the Act of 1985 and as such the Petitioner ought to have approached the Central Administrative Tribunal concerned as the Central Administrative Tribunal concerned is to act like the Courts of first instance and, it will not be opened for him (Petitioner) to directly approach this Court with the present writ petition. I made this observation, keeping in view of the related provisions of law laid down under Sections 3, 14 and 19 of the Act of 1985 and decision of the Apex Court rendered in *L. Chandra Kumar v. Union of India* Respondent (supra). Accordingly, I do hereby accept the preliminary issue raised by the Respondents pertaining to the maintainability of this writ petition. However, it is made clear that liberty is granted to the writ Petitioner to approach the Central Administrative Tribunal concerned for this purpose, if so advised. This writ petition is dismissed with the above observation.

No order as to costs.