
(2020) 02 J&K CK 0049

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 4452 Of 2019, Cm 9417 Of 2019

Romesh Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 2, 2(a), 14
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 J&K CK 0049

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Surinder Kour, Manpreet Kour, Vishal Sharma

Final Decision : Dismissed

Judgement

1 Notice dated 19.11.2019 issued by the Assistant Director, Ministry of Home Affairs, Government of India, by the order of the President, whereby

his Excellency has been pleased to retire the petitioner from service on the forenoon of the day following the date of expiry of three months computed

from the date of service of impugned notice.

2 The petitioner, as is claimed by him, came to be recruited as Personal Assistant in the Intelligence Bureau, Ministry of Home Affairs, Government

of India on 25.01.1990. With the passage of time, he earned his promotion as Private Secretary in 1998 and then Assistant Director/Staff Officer on

09.06.2015. The petitioner claims that his services throughout his career have remained exemplary and, therefore, there was no occasion for the

President of India to exercise the powers conferred by Clause (j)(i) of Rule 56 of the Fundamental Rules and forcibly retire the petitioner prematurely.

The petitioner is, thus, aggrieved of the impugned notice and has challenged the

same on several grounds indicated in Paragraph 17 of the writ petition.

3 Mr. Vishal Sharma, learned ASGI, appearing for the respondents, at the outset, takes a preliminary objection with regard to the maintainability of this

petition. It is claimed that the dispute raised in this petition is a service matter concerning a person holding a civil post under the Union of India and,

therefore, the Central Administrative Tribunal alone has jurisdiction to entertain this petition as a Court of first instance. Reliance in this regard is

placed on a Constitution Bench Judgment of Honâ?ble Supreme Court rendered in the case of L . Chandra Kumar vs Union of India and others, 1997

(3) SCC 261.

4 Having heard learned counsel for the parties and perused the record, I am of the view that the petitioner, who is serving as a Assistant Director in

the Intelligence Bureau, Ministry of Home Affairs, Government of India is ex-facie holding a civil post under the Union of India and, therefore, any

service dispute inter se the petitioner and his employer is cognizable by the Central Administrative Tribunal.

5 The plea of learned senior counsel appearing for the petitioner is that the application of the Administrative Tribunals Act, 1985 (for short â??the

Actâ?) is excluded qua the Intelligence Bureau of Ministry of Home Affairs on the ground that it is nothing, but an Armed Force of the Union.

Reliance in this regard is placed on Section 2 of the Act. It is further argued that, by Section 14 of the Act, it is the service matters concerning only a

civilian appointed to any defence service or a post connected with defence which fall within the jurisdiction, power and authority of the Central

Administrative Tribunal.

6 Section 2 of the Act, which is strongly relied upon by the learned senior counsel, for expediency, is reproduced hereunder:

â??2. Act not to apply to certain persons- The provisions of this Act shall not apply to- (a) any member of the naval, military or air forces or of any

other armed forces of the Unionâ??

7 From a bare reading of Section 2 of the Act, it clearly transpires that the Administrative Tribunals Act is not applicable to any member of the naval,

military or air forces or any other armed forces of the Union. Admittedly, the petitioner is not a member of naval, military or air forces. Intelligence

Bureau is an intelligence agency created by an executive order by the Union of

India and is, thus, a part and parcel of Ministry of Home Affairs. The term "Armed Forces of the Union" has to be understood in the context it has been used in Section 2(a) of the Act. Reading the expression "any other Armed Forces of the Union" in ejusdem generis with the terms "naval, military or air forces", it becomes abundantly clear that the Intelligence Bureau, whose job is to collect internal intelligence in the country, cannot be termed to be an Armed Force of the Union. Even by literal meaning, Armed Force of the Union would mean a Force which is armed for maintenance of security of the country, internal or external.

8 An organization which is enjoined to collect intelligence alone and is not a regular force created to defend the security and integrity of the country or to maintain internal law and order and security, cannot be construed to be an Armed Force of the Union. ITBP, CRPF, BSF, CISF, SSB, Assam Rifles and such like agencies alone can fall within the ambit of the expression "any other Armed Forces of the Union". The petitioner is a person holding a civil post under the Union and the impugned order has been issued by the President of India in the exercise of powers conferred by clause (j)(i) of Rule 56 of Fundamental Rules serving a notice of three months on the petitioner on the expiry of which he would compulsorily retire from the service.

9 Viewed from any angle, the dispute raised by the petitioner is a service dispute between a person holding a civil post under the Union of India on one hand and the Intelligence Bureau and the Union of India on the other hand and is one which is amenable to the jurisdiction, power and authority of the Central Administrative Tribunal.

10 In view of the law laid down by the Hon'ble Supreme Court, though the jurisdiction of this Court under Article 226 of the Constitution is not ousted, but as provided by the Supreme Court, the parties in such a situation must approach the Central Administrative Tribunal as a Court of first instance. In view of the above, I feel constrained not to entertain this petition and the same is, accordingly, dismissed. However, dismissal of this petition shall not come in the way of the petitioner to approach Central Administrative Tribunal by way of appropriate proceedings.