

(1992) 03 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 409/81, Writ Petition No. 370 Of 1982

Tej Nath and others

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 09-03-1992

Acts Referred:

Jammu and Kashmir Government Servants (Prevention of Corruption) Act, 1975 —
Section 6

Citation : (1993) 2 SCT 690

Hon'ble Judges : V.K.Gupta, J

Bench : Single Bench

Advocate : J.A. Qazmi, J.S. Kotwal, Advocates appearing for the Parties

Judgement

V.K. Gupta, J.—By this common judgment both the aforesaid two petitions shall be disposed of.

2. The only point on which these petitions are being disposed of is about the inherent lack of jurisdiction of the Single Member Tribunal Anti

Corruption (Nongazetted) cases for Jammu Province, based on whose recommendations the petitioners were issued show cause notices and

ultimately the impugned orders awarding punishments to them, were passed. In case of the petitioner Tej Nath in Writ Petition No. 409/81, the

Single Member Tribunal AntiCorruption (Nongazetted) cases Jammu Province hereinafter to be referred to as the Tribunal) submitted his

findings/recommendations on 29.12.1979 vide his judgment of the same date and a show cause notice dated 11.8.1980 was consequently issued

by the Deputy Secretary to Government Home Department (Vig) calling upon the petitioner to show cause as to why he should not be demoted to

the lower post of constable police, and be deemed to have entered lower grade

for the first time where your pay will start from the minimum of the grade. The petitioner was also proposed to be inflicted a fine of Rs. 150/ for being recovered from his pay and paid to the complainant. The petitioner submitted his explanation and order No. 32 GR of 1981 dated 6.4.1991 was passed whereby the aforesaid two punishments were awarded to the petitioner by the Government.

3. In the case of the petitioner Abdullah in Writ Petition No. 370/82, the Tribunal gave his findings/recommendations on 26.4.1980 vide his judgment on the same date and consequent upon these findings a show cause notice was issued to the petitioner and after considering the explanation tendered by the petitioner the punishment in following terms was awarded to him :

- i) that he should not be promoted to the next rank for a period of three years and his present pay be reduced by three increments postponing his future increments for three years;
- ii) the fine equivalent to one month's pay be imposed upon him;
- iii) Rs. 150/ be recovered from him and paid to the complainant.

4. Mr. J.S. Kotwal, learned counsel appearing for the petitioners, has submitted that because the impugned orders were based upon the findings and recommendations returned by the Tribunal, these were not legally sustainable on the ground that the Tribunal lacked inherent jurisdiction in holding enquiry into the matter and because of this inherent lack of jurisdiction, the proceedings were vitiated and therefore the petitioners could not be awarded the impugned punishments.

5. Mr. J.A. Qazmi, learned Addl. Advocate General, appearing for the respondents, was not able to refute or controvert the aforesaid submission of Mr. Kotwal.

6. In order to appreciate the submissions in its true and proper perspective and to arrive at a rightful conclusion it was deemed desirable, rather essential that the original record of the case be perused. This record included the file of the Tribunal as well. It was because of this reason that on 5.3.1991, i.e., more than a year above, while this case was heard in part Mr. Qazmi was directed to produce the original record within two months. That order is reproduced hereunder for ready reference :

Heard in part, Mr. Qazmi is directed to produce original record of this case, including the record of the Tribunal, within two months. If the record

is not produced necessary inference shall be drawn against the respondents. List after two months.

On 7.5.1991 despite expiry of two months the record was not produced and Mr. Qazmi sought one month's more time to produce the record. His

prayer was allowed. When the case came up on 3.3.1992, again the record was not produced and it was adjourned for today. Today also the

record has not been produced.

7. Tribunal has been defined in Section 2(b) of the J&K Government Services (Prevention of Corruption Act) 1975 (hereinafter to be referred to

as the Act), to mean the AntiCorruption Tribunal constituted under Section 6 of the Act. Under Section 6(1) of the Act the Governor has been

given the powers to constitute a Tribunal for enquiring into and report upon the cases covered under clauses (a) and (b) of Section 3 of the Act.

This Tribunal is not relevant for our purposes because the petitioners in both the cases are not covered by clause (a) and (b) of the Act as they are

admittedly government servants of nongazetted rank. In respect of government servants of non gazetted rank, subsection (2) of Section 6 of the

Act is relevant, which is reproduced hereunder for ready reference :

6(2). In respect of government servants of nongazetted rank referred to in clause (c) as Section 3, the District and Sessions Judge in whose

jurisdiction any such Government servant has committed corruption shall constitute a single member Tribunal for inquiry into the cases of such

Government servants under this Act.

8. A bare reading of Section 6(2) of the Act, therefore, leaves no one in any doubt that the only forum contemplated under and provided for by

this provision of law to enquire into and report upon the cases of government servants of nongazetted rank are the District and Sessions Judges of

the Districts in whose jurisdiction such a government servant has committed corruption. Admittedly, the petitioners in both the cases are of

nongazetted rank. The Tribunals were enquiring the reporting about their alleged acts of commission of corruption under Section 4 of the Act and

the submission of Mr. Kotwal that because of the unambiguity in Section 6(2) of the Act, the Tribunal could not enquire into these cases, has to be

accepted. It has not been pointed out to me by the respondents, despite persistent efforts as to how did the Tribunal come to have jurisdiction into the matter when the only forum prescribed under law was the District and Sessions Judge of the concerned district. In fact, I tried in vain, of course, to enquire into the legal sanction behind the constitution and functioning of the Tribunal but since none was put forth before me, I have no option, because of my reading of Section 6(2) of the Act, to hold that the Tribunal functioned without there being any jurisdiction in it and that it was the forum unknown to the 1975 Act. The respondents by their wilful and deliberate omission to place the record before me or even to cite any rule, regulation or government order on the subject, have left no choice with me but to hold that the Tribunal, which enquired into and reported upon the cases of both the petitioners, had no jurisdiction in the matter and was not a forum contemplated under the Act. It appears that the respondents, for the reasons best known to them, chose not to contest these petitions, otherwise to my mind there was no insurmountable difficulty in their procuring the record for one year or even to cite the relevant rule or regulations, under which, if at all, the Tribunal had been constituted or was functioning.

9. Because of the aforesaid conclusion arrived at with regard to the inherent lack of jurisdiction, in the Tribunal. It is held that the impugned orders passed against the petitioners in both the petitions were unconstitutional and illegal and accordingly by a writ of certiorari these are quashed and set aside with all the necessary consequences. The petitioners in both the petitions are awarded costs of Rs. 1000/ each.

10. Connected CMPs shall also stand disposed of.

11. Order accordingly.