

**(2007) 12 DEL CK 0171**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 4557 of 2007**

Union of India (UOI) and Another

APPELLANT

Vs

Shanker Raju

RESPONDENT

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**Date of Decision : 13-12-2007**

**Acts Referred:**

Administrative Tribunals (Amendment) Act, 2006 — Section 10  
Administrative Tribunals Act, 1985 — Section 14, 19, 3, 30, 6  
Company Law Board (Qualification, Experience and other Conditions of Service of Members) Rules, 1993 — Rule 13, 4  
Constitution of India, 1950 — Article 226, 272, 309, 311, 323A  
Contempt of Courts Act, 1971 — Section 17, 22  
Penal Code, 1860 (IPC) — Section 193, 195, 196, 219, 228

**Citation :** (2008) 150 DLT 545 : (2008) 100 DRJ 742 : (2007) 11 ILR Delhi 206

**Hon'ble Judges :** Vipin Sanghi, J;A.K. Sikri, J

**Bench :** Division Bench

**Advocate :** A. Sharan, Addl. Solicitor General and Amit Anand Tiwari, for the Appellant; V.P. Singh and Anju Bhattacharya, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

A.K. Sikri, J.—Delhi is a place where cost of living as well as cost of construction has been steadily increasing at least in the last 30 years. Last few years have seen an upward trend at feverish pace. For persons with average income, to which category Government employees also belong, it is already becoming difficult to have their own accommodation in Delhi. That day is not far away when it would be impossible for a salaried class employee (excluding those with higher income like top executives in corporate sector) to afford his own house as the residential accommodations are becoming costlier and prices skyrocketing. It has corresponding effect of similar nature on the rentals as well. Therefore, arranging a rental accommodation also is becoming difficult to this middle class. It is one important reason that rent-free accommodation provided by the employer is viewed as the most lucrative perk. As a sequitur, this also becomes reason for perennial litigation between the employer and the employees,

particularly where the employer is the Government. The disputes are not confined to getting the Government accommodation allotted, but go far beyond and touch upon the entitlement to the type of accommodation as well. Problem is compounded also because of the fact that there is a growing demand for such accommodations as the persons entitled to the Government accommodations, and for a particular type of accommodation, are larger in number than the staff quarters that are available. This scenario of demand being far more than the supply compounds the problem and gives rise to various legal issues. Present is one such case.

2. The respondent herein is the Member of Central Administrative Tribunal (for short, "CAT"), Principal Bench, New Delhi. He was initially appointed as Member (Judl.) in the CAT on 10.12.2000. Said term was for a period of 5 years. After the expiry of this period, the respondent had been reappointed for a further period of 5 years. Within a short span of his initial appointment, the respondent was allotted Government quarter in the General Pool, i.e. C-II/82, Bapa Nagar, New Delhi, which is a Type C-II category allotment. He continues to occupy this house. It is not in dispute that a Member of the CAT is entitled to better accommodation, i.e. Type C-I house. Therefore, his entitlement to Type C-I quarter is not in question. However, according to the petitioner/UOI, since there is a shortage of Government accommodation, such officials are normally allotted the accommodation of a type below their entitlement and their names are placed in the Waiting List to enable them to get the allotment of the residential accommodation as per their entitlement upon their turn maturing as per the Waiting List. This happened in the case of the respondent as well. The respondent did not even question the aforesaid move on the part of the petitioners herein in initially allotting him Type C-II accommodation and putting his name in the Waiting List. The dispute has now arisen as according to the respondent on the basis of his date of appointment i.e. December 2000, his turn has matured for allotment of Type C-I quarter as well. The petitioners join issue. Differences have arisen because in the Waiting List prepared and maintained by the petitioner No. 2/Directorate of Estates, date of priority mentioned against the name of the respondent is given as 6.12.2006. Thus, the dispute is as to whether the date of priority should be 10.12.2000, as claimed by the respondent or 6.12.2006 as per the petitioners.

3. We may, however, point out at this stage that claiming the aforesaid benefit, the respondent had filed OA No. 631/2007 u/s 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act") and vide judgment dated 24.5.2007 the said OA of the respondent is allowed. In this OA, interim order dated 30.4.2007 was passed restraining the petitioners from allotting quarter No. C-I/77, Bapa Nagar Colony, New Delhi which had fallen vacant. While allowing the application of the respondent herein, the Tribunal has also directed the petitioners to allot said staff quarter No. C-I/77 to the respondent herein within a period of two weeks of the judgment. This judgment is assailed in the present petition.

4. As pointed out above, the respondent was initially appointed as Member of the Tribunal on 10.12.2000 and, Therefore, normally this should be the date of seniority for the purpose of allotment. However, the case of the petitioner is that the Waiting List is prepared on the basis of Office Memorandum dated 24.7.2004 which restricts allotment of Type C-I accommodations to those officials who are drawing the fixed emoluments of Rs. 26,000/- and as the respondent started getting this pay with effect from 6.12.2006, his name is included in the Waiting List showing the date of priority as 6.12.2006. In this manner, he is placed at S.No. 25 in the said List as of August 2007 and, Therefore, according to the petitioners his turn for allotment has not matured as there are 24 persons above him waiting to get C-I Type houses.

5. The respondent on the other hand, contends that as per Rule 12 of the Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1985 which are framed under Article 309 of the Constitution of India and, Therefore, are having statutory flavour, a Member of the Tribunal is entitled to the use of an official residence of the type admissible to an officer of the rank of Secretary to the Government of India stationed at Delhi. The case of the respondent Therefore, on the basis of this Rule, is that for the purpose of accommodation, the respondent is entitled to same type of accommodation to which a Secretary to the Government is entitled and it has nothing to do with the emoluments drawn by the Member of the Tribunal and, Therefore, his date of priority is to be the date on which he was appointed and not when he started getting the emoluments of Rs. 26,000/-, which is the salary of a Secretary to the Government. The Tribunal has accepted this plea of the respondent and has held that the Office Memorandum dated 24.7.2004 is ultra virus of Rule 12.

6. Though not raised before the Tribunal or even in the writ petition, at the time of arguments, a fundamental question relating to the jurisdiction of the CAT to adjudicate the purported dispute of the respondent was raised. The contention is that the Member of the CAT is not amenable to the jurisdiction of the Tribunal constituted under the Act, inasmuch as, neither such a Member is a "Civil Servant" nor the dispute raised by him would come within the ambit and scope of "Service Matters" as defined u/s 3(q) of the Act. As this issue is in the realm of pure question of law and touches the very jurisdiction of the Tribunal, we allowed the petitioners to argue the same and passed orders to this effect on 7.9.2007. The petitioners were directed to file additional affidavit raising this ground in a proper manner with liberty to the respondent to file reply thereto. Such an additional affidavit was filed on 20.9.2007 to which no reply is filed by the respondent as counsel for the respondent took the position that being a pure question of law, he was prepared to argue the same without any formal reply. Counsel for the parties were, accordingly, heard at length on this aspect of the matter.

7. We advert to this legal issue before proceeding to discuss the case on merits.

Since this is a jurisdictional plea, we shall have to answer the same in the first instance.

8. Mr. A. Sharan, learned Additional Solicitor General, argued the case on behalf of the petitioners. The respondent was initially represented by Mr. A.K. Behera, Advocate. However, for certain reasons, application was filed by Mr. Behera seeking discharge from the case, which was allowed vide order dated 14.11.2007. At the same time, having regard to the nature of dispute and intricate question of law, we requested Mr. V.P. Singh, Senior Advocate, to who appear as amicus curiae on behalf of the respondent who was present in the Court on that date. He agreed graciously and at the time of arguments made submissions on behalf of the respondent ably assisted by Ms. Anju Bhattacharya. We place on record our appreciation for the valuable assistance rendered by him.

9. Whether CAT had no jurisdiction to entertain the OA filed by the respondent?

This argument is predicated on the nature of function being discharged by the respondent. Mr. Sharan, learned ASG, made a fervent plea to the effect that the Tribunal is a statutory authority discharging judicial function, which is a sovereign function of the State and, Therefore, a Member of such a judicial forum by no means can be termed as a Central Government servant. The appointment of a Member of the Tribunal is regulated by Section 6(5) of the Act, which is to the following effect:

6. Qualifications for appointment as Chairman, Vice-Chairman or other Members.  
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(5) Subject to the provisions of Sub-section (7), the Chairman, Vice-Chairman and every other Member of an Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the concerned State.

He also refers to Section 9(2) of the Act, which deals with "removal of a member", which reads as follows:

9. Resignation and removal. -

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(2) The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

10. He argues that any dispute touching his service conditions, Therefore, would not come within the sweep of "Service Matters" as defined u/s 3(q) of the Act,

which reads as under:

### 3. Definitions. -

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(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;

11. The learned ASG also banked upon Section 14 and Section 30 of the Act to buttress his submission that since the respondent is not a holder of civil post, and the Tribunal has jurisdiction to entertain the service matters only of those who are holders of civil posts, the Tribunal had no jurisdiction in this particular case. We may reproduce here Sections 14 and 30 of the Act as well which are to the following effect:

### 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 matters 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 defense or in the defense 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 defense services or a post connected with

defense,

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.

Explanation. - For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to -

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person [other than a person referred to in Clause (a) or Clause (b) of Sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

30. Proceedings before a Tribunal to be judicial proceedings. -

All proceedings before a Tribunal shall be deemed to be judicial proceedings

within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860)."

The submission was that appointment of the respondent was not an appointment concerning the affairs of the Union; it was not an All Indian Service nor Civil Service and, Therefore, the case of the respondent was not covered by Section 14 of the Act either.

12. Mr. V.P. Singh, learned senior counsel and amices, countered the aforesaid arguments of the learned ASG. His submission was that CAT is a creature of a Statute under Article 323-A of the Constitution of India and is expected to have same jurisdiction as that of the High Court as per the decision of the Supreme Court in Union of India (UOI) and Others Vs. Kali Dass Batish and Another, . However, the Constitution Bench of the Apex Court in L. Chandra Kumar Vs. Union of India and others, , while pitted with the virus of the Act, ruled the role of the Tribunal as supplementary to the High Court and what has been barred from entertainment by the Tribunal is only the question of virus of the parent statute, as being creature of an Act, the Tribunal cannot declare the Act to be unconstitutional. Accordingly, by necessary implication the jurisdiction as to the service grievance of the Member of the Tribunal as one of the service conditions of a Court having jurisdiction is to be inferred and the ouster of jurisdiction cannot be implied but has to be expressed as ruled in Bhatia International Vs. Bulk Trading S.A. and Another, In Durgadas Purkyastha v. Union of India and Ors. 2002 SCC (L&S) 854, Judicial Members in the CAT have been observed to be public servants.

13. Mr. Singh has also placed heavy reliance on the judgment of the Supreme Court in the case of V.S. Mallimath Vs. Union of India and Another, , to contend that insofar as Members, Vice-Chairman of CAT are concerned, it is observed that they perform and discharge duties in connection with the affairs of Union of India. Placing reliance upon another judgment of the Supreme Court in R.N.A. Britto Vs. Chief Executive Officer and others, , he argued that it is ruled by the Supreme Court that to ascertain whether one is holder of a civil post, if the service conditions are promulgated by the Government, then one is a government servant holding a civil post. His further submission was that the Administrative Tribunal (Amendment) Act, 2006 promulgated on 29.12.2006 in proviso to Section 10 envisages that in case of a serving government servant appointed as a Member, he shall be deemed to have retired from service but a subsequent service as Member on his option has to be treated as a post-retirement re-employment counting for pension and other retirement benefits. Moreover, in order to ascertain whether a particular post is a civil post or not, the Constitution Bench of the Supreme Court in State of Assam and Others Vs. Shri Kanak Chandra Dutta, , ruled that if there has been administrative control of the State and regulation of the conditions of service of persons appointed to the post, it establishes a relationship of master and servant between the State and a person and the person would be a holder of a civil post. Likewise, another

Constitution bench of the Apex Court in *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, ruled as follows:

27. We have to first consider the question whether the members of the Gujarat Panchayats Service are Government servants. Earlier we have already said enough to indicate our view that they are Government servants. We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not. Amongst the cases cited before us were *Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others*, ; *State of Uttar Pradesh and Another Vs. Audh Narain Singh and Another*, ; *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, D.R. *Gurushantappa Vs. Abdul Khuddus Anwar and Others*, ; *Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, ; and *Jalgaon Zilla Parishad v. Duman Gobind C.A. Nos. 24 and 25 of 1968* decided on December 20, 1968. We have considered all of them and do not consider it necessary to refer to each of these cases.

14. Taking sustenance from various provisions of the Act, the learned senior counsel ventured to make the submission that there has been a control of the Government not only in the service conditions of a Member of the Tribunal but also in the procedural aspect of the matter and, thus, there was a relationship of master and servant between the Government and the Member (Judl.) of CAT and, Therefore, such a Member was holder of a civil post. He, thus, submitted that a matter touching the conditions of service of a Member would be a "Service Matter" within the meaning of Section 3(q) of the Act as it was in connection with the affairs of the Union and u/s 14 of the said Act, the CAT would have jurisdiction to deal with such a matter.

15. In order to determine the status of the respondent herein, we may have to look into the provision of Article 323A of the Constitution of India under which Central Administrative Tribunals are created. One will have to also take into consideration the provision of the Administrative Tribunal Act as well as the Rules framed there under which provide for the appointment of such members of the Central Administrative Tribunal and prescribe their service conditions etc. including relating to the payment of salaries and allowances. Chapter relating to

Tribunals is dealt with in Part XIV-A of the Act, which contains two provision, namely, Article 323A and 323B. Article 323A deals with the creations of Administrative Tribunals with which we are concerned in the present case. Article 323B deals with Tribunals for other matters.

16. Under Article 323A the Parliament is authorised, by law, to provide for adjudication or trials by Administrative Tribunals of disputes and complaints with respect to the recruitment and conditions of service of persons appointed to public services and posts 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 owned or controlled by the Government. The Administrative Tribunal Act, 1985 is a legislation in terms of Article 323-A. By setting up a Tribunal under this Act, for the resolution of service disputes, the jurisdiction of the High Court in regard to such matters is intended to be taken away and is intended to be vested in the Tribunal.

17. Section 14 of the Administrative Tribunals Act is the provision which entrusts the jurisdiction, duties and authority upon the CAT. Thus, the CAT can exercise jurisdiction in respect of the service matters as contemplated therein and in respect of those persons specified therein. Ignoring that part of the provision with which we are not concerned and focusing on the issue in the facts of the case, the requirements which are to be fulfilled to enable a member to cover his case within the jurisdiction of CAT would be: (a) he should be a member of All India Service or All India Civil Service of the Union or All India Civil post under the Union; and (b) the subject matter should relate to his recruitment and matters concerning recruitment or "service matters" as defined in Section 3(q) of the Act.

18. It cannot be disputed that the allotment of staff quarter would be a "service matter" covered by the definition contained in Section 3(q). Therefore, the entire consideration is limited to one aspect, namely, whether a member of the CAT, like the respondent herein, is the holder of a civil post under the Union. We say so because of the reason that he is not a member of All India service or to a post connected with defense. The expression "civil post" eminently appears in Article 311 of the Constitution of India and has become subject matter of interpretation in various judgments. The expression "civil post" came up for interpretation before various Courts but while trying to define "civil post", Courts considered it desirable to leave it free to be decided by the concerned Court on the facts of each case. In fact in the context of this case the word "civil post" assumes significance. Therefore, the relevant and crucial factor to see is the nature of the control which the Government exercises. However, such control by itself may not be decisive. In fact no doctrinaire attitude can be adopted. In each case it is a question of fact. Any attempt to evolve rigid uniform formula would fail. A certain amount of flexibility in interpreting and applying the word "civil post" in the facts of each case is necessary. The one or the other test will not determine the question and status of the post. In fact status of the post has to be decided on

its own merits.

19. Keeping in view of these parameters, we have to embark on the enquiry as to whether Member of the CAT would be the holder of a civil post or not. Section 6 of the Administrative Tribunal Act deals with qualifications for appointment at Chairman, Vice-Chairman or other Member. In so far as the Members are concerned, Act stipulates that there will be two types of Members, namely, judicial members and administrative members. Their qualifications are prescribed in Sub-section (3) and (3-A) of Section 6, which are to the following effect:

#### 6. QUALIFICATIONS FOR APPOINTMENT OF CHAIRMAN, VICE-CHAIRMAN OR OTHER MEMBERS.-

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(3) A person shall not be qualified for appointment as a Judicial Member unless he - (a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least three years.

(3-A) A person shall not be qualified for appointment as an Administrative Member unless he -

(a) has, for at least two years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; or

(b) has, for at least three years, held the post of a Joint Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India. and shall, in either case, have adequate administrative experience.

20. As per Sub-section (5), such a Member is to be "appointed by the President after consultation with the Governor of the concerned State". As per Sub-section (7), no such appointment can be made "except after consultation with the Chief Justice of India." Section 8 of the Administrative Tribunals Act deals with terms of office. Section 9 is about the resignation and removal of such persons and Section 10 stipulates salaries and allowances as well as terms and conditions of service. These provisions are reproduced below:

8. TERM OF OFFICE. - The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years:

Provided that no Chairman, Vice-Chairman or other member, shall hold office as such after he has attained, -

(a) in the case of the Chairman, or Vice-Chairman, the age of sixty-five years,

and

(b) in the case of any other Member, the age of sixty-five years

9. RESIGNATION AND REMOVAL. - (1) The Chairman, Vice-Chairman or other Members may, by notice in writing under his hand addressed to the President, resign his office :

Provided that the Chairman, Vice-Chairman or other Member shall unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the Chairman, Vice-Chairman or other Member referred to in Sub-section (2).

10. SALARIES AND ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF CHAIRMAN, VICE-CHAIRMAN AND OTHER MEMBERS. - The salaries and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairman, Vice-Chairman and other Members shall be such as may be prescribed by the Central Government :

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Member shall be varied to his disadvantage after his appointment.

21. On the basis of the aforesaid provisions, the learned Counsel for the respondent had argued that since the respondent was appointed by the Government, his appointment was to "civil service of the union" and he would be holder of a civil post.

22. On the other hand, as already appointed above, the learned ASG had argued that such a Member discharges function which is a sovereign function and, Therefore, cannot be treated as appointed to any civil service of the union or the holder of a civil post under the union. Before we address this issue, we may take note of certain precedents.

23. In the case of A.K. Doshi (Dr.) v. Central Administrative Tribunal and Ors. 2000 II AD (DEL) 107, this Court was called upon to decide as to whether Member of Company Law Board would be the holder of civil post or not. The

Court took into consideration Company Law Board (Qualification, Experience and other Conditions of Service of Members) Rules, 1993, it was found that as per Rule 4 thereof, the selection of Member was to be made in consultation with the Chief Justice of India. If a Member wanted to resign, resignation letter was to be addressed to the Central Government. Power of removal was also conferred upon the Central Government. The conditions of service were also to be provided by the Central Government. In view thereof, the Court opined that Member of the Company Law Board would be holder of civil post.

24. Interestingly, while coming to this conclusion, the Court contrasted the case of a Member of CLB with the Member of CAT as is clear from para 9 of the judgment, which reads as under:

9. From the conjoint reading of the Rules i.e. 4, 6, 7 and 10 one can conclude that the appointment of a Member of CLB is by the Central Government. Rule 13 in fact envisages that condition of service of a Member in respect of matters for which no provisions are made in these rules relating to his service conditions shall be governed by the rules which are applicable to other employees of the Government of India of a corresponding status. The status of the Member of the CLB as such has been put and treated at par with corresponding status employees of the Central Government. It, Therefore, cannot be said that the post of Member of CLB is not a "civil post". The petitioner cannot take aid of the rules as framed under the Administrative Tribunals Act, 1985 to contend that Member of CLB like Member of CAT is not holder of civil post. As per the Rules framed under the CAT Act, the tenure of the Member is secured by providing his removal only by the President of India. Salaries of the Chairman, Vice-Chairman and the Member of the Administrative Tribunals is regulated by their rules which cannot be varied to their disadvantage.

25. This judgment was taken in appeal to the Supreme Court. The decision of the Supreme Court is reported as Dr. A.K. Doshi Vs. Union of India, . The Supreme Court, though decided the issue on merits, in respect of the opinion of the High Court that Member of the CLB is the holder of a civil post, expressed its reservation which can be found in the following discussion contained in the said judgment:

16. Both the Central Administrative Tribunal and the High Court have relied upon various Rules, notably Rules 6, 7, 10 and 13 of the said Rules and concluded that these Rules indicated control by the Government. It was held that as the Government had control, thus the post was a civil post. It must be mentioned that we have reservation in accepting this view. However, for all these years the post has lain vacant. Even if we were to hold in favor of the Appellant no useful purpose would be served. The 2nd Respondent would have to be given time to challenge in a proper forum. On facts set out hereinabove the end result would be the same. The selection of the appellant would be set aside. The post would then lie vacant for the period it takes to dispose of that matter. The only sufferer would be the litigating public. As in this case the facts are very gross, we see no

reason to interfere. We leave this question open to be decided in an appropriate manner.

26. Thus, as per the Apex Court, whether even a Member of the CLB is holder of a civil post or not is at large.

27. We may refer here the judgment of the Supreme Court in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, . The parameters for holding a particular post to be a civil post were delineated in the said judgment by the Supreme Court in the following manner:

The question is whether a Mauzadar is a person holding a civil post under the State within Article 311 of the Constitution. There is no formal definition of post and civil post. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defense; it is a post on the civil as distinguished from the defense side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Article 311. In Article 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defense outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasis the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

28. The power which the State/Government generally exercises over a person holding civil post, as described above, are missing in the present case. On the contrary, the CAT is sought to be insulated from influences, including that of the Government, so that it can discharge its adjudicatory functions independently and impartially.

29. Very recently, a Division Bench of this Court was called upon to decide as to whether Presiding Officer of the National Highways Tribunal would be subject to the jurisdiction of the CAT under the Administrative Tribunal Act, 1986. The CAT had taken the view that Presiding Officer of the said Tribunal was holder of a civil post within the meaning of Section 14(1) of the Administrative Tribunal Act. Writ petition was filed against that judgment before this Court titled as *Union of India v. Shiv Charan Sharma WP(C) No. 15754/2006*. A Division Bench of this Court in

its judgment dated 26.4.2007 disagreed with the opinion of the CAT and concluded that the Presiding Officer of the said Tribunal was not the holder of a civil post. This conclusion was predicated on the functions which the National Highways Tribunal discharges. The Division Bench was of the opinion that the functions of the National Highways Tribunal are quasi-judicial in nature and Therefore, the post of Presiding Officer of that Tribunal cannot be equated with a civil post. After analysing the provision of the National Highways Authority Act with regard to the qualification, appointment, service conditions and removal etc. of the Presiding Officer, the Court recorded its conclusion in para 20 of that judgment in the following manner:

20. From the above observations it is concluded:

(a) National Highways Tribunal is a creation of Statute i.e. The Control of National Highways (Land and Traffic) Act, 2002.

(b) Presiding Officer of the Tribunal should either be qualified to be a Judge of the High Court or has been a Member of the Indian Legal Service.

(c) Presiding Officer of the Tribunal is selected by a Selection Committee chaired by a Judge of the Supreme Court of India and two members, one Secretary to the Government of India in the Ministry of Road Transport and Highways and second from the Secretary to the Government of India in the Ministry of Law and Justice (Department of Legal Affairs).

(d) The Selection Committee has the authority to devise its own procedure for selecting candidate for appointment.

(e) On the recommendations of the Selection Committee, the Central Government makes a list of persons selected for appointment as a Presiding Officer. Only person so selected has to be appointed as a Presiding Officer of the Tribunal.

(f) The Presiding Officer of the Tribunal has the jurisdiction, powers and authority to entertain appeals from the orders passed or actions taken by the Highway Administration to the exclusion of any other authority except the Hon"ble Supreme Court and High Court exercising jurisdiction under Article 226 and 272 of the Constitution. The Tribunal has the powers as are vested in civil court under the CPC (without any biding force) for the purposes of discharging its functions while trying a suit as specified in the Act in accordance with the principles of natural justice and other provisions of the Control of National Highways Act and Rules.

(g) The Tribunal is independent in its functions and has the powers to regulate its own procedure including the places at which it shall have its sitting.

(h) The Proceedings before the Tribunal are deemed to be judicial proceedings within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code and the Tribunal is deemed to be a civil court for all the

purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(i) The orders of the Tribunal are to be executed by a civil court on its directions as if the said civil court has passed the decree.

(j) The Presiding Officer of a Tribunal can be removed only after an inquiry made by a Judge of a High Court on the ground of proved misbehavior or incapacity.

30. If one has regard to the aforesaid judgment of a co-ordinate Bench of this Court, the conclusion would be inescapable that the Member of the CAT would not be the holder of a civil post. Apart from the provision of the Administrative Tribunal Act noted above, we may point out that u/s 27 of the Act, the CAT can execute its own orders. In order to enforce its orders Section 17 of the Act empowers the CAT to punish for contempt. It confers same jurisdiction, power and authority in respect of contempt of itself as a High Court has and may exercise. For this purpose, provisions of the Contempt of Courts Act, 1971 can be pressed into service, subject to the modifications provided in Section 17 of the Act. Section 22 of the Act, which deals with procedure and power of the CAT and makes certain provisions of CPC applicable to the proceedings before the CAT, gives specific power to the CAT to review its decisions as well as setting aside order of dismissal of any representation for default or any order passed by it ex parte. Section 30 provides that proceedings before the CAT would be judicial proceedings within the meaning of Sections 193, 219 and 228 of the IPC. Section 32 provides protection of action taken in good faith by the Chairman, Vice-Chairman or other Members of the CAT. All these powers signify the attributes of judicial functions.

31. In coming to the aforesaid conclusion, we may also draw support from the historical events which led to the creation of the Administrative Tribunal Act and also the events subsequent thereto when the virus of this Act were challenged. As mentioned above, the Administrative Tribunal Act was enacted by the Parliament, drawing powers from Article 323-A of the Constitution. With the objective to confer jurisdiction upon the Tribunal to decide all service matters relating to the Government employees of the Union and the State Governments. Immediately after this Act, petition was filed challenging its virus and the issue was decided in the case of S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, . The Supreme Court upheld the validity of the legislation, but at the same time made certain observations with respect to the appointments of Chairman, Vice-Chairman and Members of the Tribunal. Because of these observations, the Act was amended in the year 1987 in which certain infirmities pointed out in the aforesaid judgment were sought to be cured. Sub-section (7) of Section 6 was amended in the Act to the effect that the appointment to the post of Chairman, Vice-Chairman and Members shall not be made except after consultation with the Chief Justice of India. Following observations from this judgment of Bhagwati, J., are worth a quote:

Obviously, Therefore, if the Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is taken away and vested in the Administrative Tribunal, the same independence from possibility of executive pressure or influence must also be ensured to the Chairman, Vice-Chairman and Members of the Administrative Tribunal, Or else the Administrative Tribunal would cease to be equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be rendered invalid. I am, Therefore, of the view that the appointment of Chairman, Vice-Chairman and Administrative Members should be made by the concerned Government only after consultation with the Chief Justice of India and such consultation must be meaningful and effective....

32. The manner in which such appointments are to be made came for detailed in the case of Sarwan Singh Lamba and others Vs. Union of India and others, . In this case judgment in the case of S.P. Sampath Kumar v. Union of India (supra) was discussed in detail and following observations from that judgment would be of help in the present context:

6. The majority judgment in S.P. Sampath Kumar case<sup>1</sup> delivered by Misra, J. also expressed the same view in these words: (SCC p. 139, para 17)

What, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court-not only in form and de jure but in content and de facto. As was pointed out in Minerva Mills<sup>3</sup>, the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations.

7. The next step was to consider how to ensure that the Tribunal was a "real substitute" of the High Court. It was observed that the things to be examined were whether the judges of the Tribunal were equally efficient/trained and equally independent as those of the High Court. Said Misra, J.: (SCC pp. 139-40, para 18)

"Disciplined, independent and trained judges well versed in law and working with all openness in an unattached and objective manner have ensured dispensation of justice over the years. Aggrieved people approach the court-the social mechanism to act as the arbiter-not under legal obligation but under the belief and faith that justice shall be done to them and the State's authorities would implement the decision of the Court. It is, Therefore, of paramount importance that the substitute institution-the Tribunal-must be a worthy successor of the High Court in all respects. That is exactly what this Court intended to convey when it spoke of an alternative mechanism in Minerva Mill case<sup>3</sup>."

33. All this discussion would lead to the inescapable conclusion that the Members of the CAT are not the holders of civil post.

34. In so far as reliance by the learned Counsel for the respondent on the judgment of the Supreme Court in V.S. Mallimath v. Union of India (supra) is

concerned, in that case no such question arose for consideration as to whether Members or Vice-Chairman of the CAT are concerned, they would be discharging the duties in connection with the affairs of the Union or would be the holder of the civil post. Likewise, the judgment in *R.N.A. Britto v. Chief Executive Officer* (supra) would not come to the aid of the respondent. The service conditions of the Members are governed by the statute and it is specifically provided that the Government cannot alter those conditions to their prejudice. The judgment in *L. Chandra Kumar v. Union of India* (supra) when read contextually, it would rather answer the issue against the respondent. It is very categorically provided in that judgment that the powers, which were exercisable by the High Court under Articles 226 and 227 of the Constitution in respect of "service matters" are now exercisable by the Tribunals. Apart from that, the Apex Court was concerned with the power of judicial review of the High Court under Article 226 and held that such power of the High Court cannot be taken away being a basic feature of the Constitution and this aspect does not arise for consideration in the present case. For the same reasons other judgments cited by the respondent would not be of much help to him.

35. If one has to apply the dicta of a Division Bench of this Court in *Union of India v. Shiv Charan Sharma* (supra), the principles laid down therein would be applicable to the Members of the Tribunal with greater force, as discussed in detail above. We, Therefore, are of the opinion that the Members of the Tribunal are not holders of a "civil post". In view of our aforesaid discussion, the Original Application filed by the respondent before the CAT was not maintainable. Consequently, we set aside the impugned judgment of the CAT as being incompetent. However, it would not preclude the respondent herein to approach appropriate forum for redressal of his grievances.