

(2007) 04 DEL CK 0151

In the Delhi High Court

Case No : Writ Petition (C) 15754 of 2006

Union of India (UOI)

APPELLANT

Vs

Shiv Charan Sharma

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(2), 15, 16, 18

Central Administrative Tribunal Act, 1986 — Section 14(1)

Control of National Highways (Land and Traffic) Act, 2002 — Section 12, 12(2), 16(4), 5, 6

Criminal Procedure Code, 1973 (CrPC) — Section 195

Citation : (2007) 2 ILR Delhi 572

Hon'ble Judges : Mukul Mudgal, J; Aruna Suresh, J

Bench : Division Bench

Advocate : H. K. Gangwani, for the Appellant; P.P. Khurana and Tamali Wad, for the Respondent

Final Decision : Allowed

Judgement

Aruna Suresh, J.—The impugned order of the Central Administrative Tribunal (hereinafter referred to as "CAT"), Principal Bench, New Delhi dated 24.8.2006 passed in OA No. 757/2006 has been assailed by the petitioner-UOI on the grounds that National Highways Tribunal has not been notified u/s 14(2) of the Administrative Tribunal Act, 1985 and, Therefore, the Central Administrative Tribunal could not exercise its jurisdiction with respect to the National Highways Tribunal as the Presiding Officer of the National Highways Tribunal is not a civil post within the meaning of Section 14(1) of the Administrative Tribunal Act, 1986 (hereinafter referred to as the "Act")

2. On 25.2.2003 the petitioner had invited applications for appointment to the post of Presiding Officer of the National Highways Tribunal. The respondent herein was interviewed on 18.9.2003 in response to his application to the Selection Committee for consideration/ appointment to the post of Presiding Officer of the National Highways Tribunal. The respondent could not be selected.

On 9.2.2005 petitioner invited fresh applications for appointment as Presiding Officer in National Highways Tribunal against the existing vacancies which resulted into filing of OA No. 757/2006 by the respondent. In the said OA, petitioner-Union of India took a preliminary objection challenging the jurisdiction of the Tribunal to hear the OA as the National Highways Tribunal has not been notified u/s 14(2) of the Administrative Tribunal Act, 1985. The Tribunal rejected the legal objections raised by the petitioner by way of impugned order holding that the post of Presiding Officer of National Highways Tribunal was a civil post within the meaning of Section 14(1) of the Administrative Tribunal Act, 1986. This resulted into the filing of the present writ petition.

3. Mr. H. K. Gangwani, learned Counsel for the petitioner has submitted that the post of Presiding Officer of the National Highways Tribunal cannot be considered as a civil post as Section 14(1) of the Administrative Tribunal Act confers jurisdiction, power and authority on the Central Administrative Tribunal and the Presiding Officer of the National Highways Tribunal, in no manner, can be considered as a person holding a civil post. He has referred to the judgment of Hon"ble the Supreme Court in the case of State of Assam and Others Vs. Shri Kanak Chandra Dutta, . Reliance is also placed on the judgment of Supreme Court in the case of Dr. A.K. Doshi Vs. Union of India, .

4. Section 14(1) of the Act reads as under:

14. Jurisdiction, power 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 All-India Service or a person referred to in Clause (c)}appointed to any defense service 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.

On a plain reading of Section 14 (1) of the Act, it is clear that it is only a person holding a civil post who has the right to approach the Central Administrative Tribunal.

5. The only controversy raised in the present writ petition is whether the post of the Presiding Officer of the National Highways Tribunal falls within the definition of Section 14(1) of the Act and is a civil post for conferring jurisdiction on the Central Administrative Tribunal to hear the OA or, for want of Notification u/s 14(1) the post of Presiding Officer of the National Highways Tribunal cannot be treated as a civil post ousting the jurisdiction of the Central Administrative Tribunal to hear the OA.

6. The Control of National Highways (Land & Traffic) Act, 2002 (hereinafter referred to as "N.H. Act") came into force with effect from 15.1.2003. u/s 5 of this Act, Central Government has the power to constitute a Tribunal by a Notification in the Official Gazette to be known as a "National Highways Tribunal" to exercise the jurisdiction, power and authority conferred on such Tribunal by or under this Act. Section 6 of this Act guides the composition of the Tribunal. Section 6(1) of the Act reads as under:

6(1) A Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer) to be appointed, by notification in the Official Gazette, by the Central Government.

6 (2) ...

7. Section 7 of the N.H. Act prescribes the qualification required for appointment as a Presiding Officer which are as under:

7. A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless he-

(a) 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 not less than Grade II of that service.

Thus it is clear that the person who can be considered for appointment as a Presiding Officer of the National Highways Tribunal has to be a person who holds the qualification to be a Judge of a High Court or has been in Indian Legal Service and has held a post not less than Grade II of that service. In other words an incumbent is required to possess a qualification required for appointment of a Judge and not of a civil post.

8. Section 12 of the N.H. Act regulates the removal of a presiding officer of the Tribunal. So far as it is relevant for the purposes of this case it is reproduced as below:

12. (1) The Presiding Officer of a Tribunal may, by notice in writing under his hand addressed to the "Central Government, resign his office:

Provided....

(2) The Presiding Officer of a Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of a high Court, in which the Presiding Officer has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) ...

9. By virtue of Section 12(2) of the said Act the Presiding Officer of the Tribunal cannot be removed from his office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a judge of a High Court. It is obvious that in case of a Presiding Officer of the National Highways Tribunal, inquiry has to be conducted only by a Judge of a High Court and none else.

10. Sections 14,15,16, 18 and 19 speaks of the jurisdiction, power and authority of the Tribunal. Perusal of these provisions makes it clear that the Presiding Officer of the Tribunal is to exercise quasi judicial powers derived from the statute and from the Code of Civil Procedure, 1908, while trying a suit. The Tribunal has exclusive powers to regulate its own procedure including the places at which it shall have its sittings, pass interim orders in exercise of its powers to the exclusion of any other authority except the powers of the Supreme Court and High Court exercising jurisdiction under Articles 226 and 227 of the Constitution. The Order of the Tribunal is executable as a decree of a civil court and the Order of the Tribunal, if referred to a civil court having local jurisdiction for execution has to be executed by the Civil Court as if the decree was made by that court.

11. Section 16 Sub section (4) of the N.H. Act is a deeming clause. By virtue of this Section any proceedings before the Tribunal shall be deemed to be a 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. Section 16 (4) of the N.H. Act reads as under:

16 (4) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

12. From the analysis of the entire scheme of the Act it is obvious that National Highways Tribunal are vested with quasi judicial powers. Quasi Judicial powers of a post cannot ipso facto be equated as powers and functions of a civil post.

13. In the case of *State of Assam v. Kanak Chandra* (Supra) it was held as follows:

The question is whether a Mauzadar is a person holding a civil post under the State within Art. 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 Art. 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 Art. 311. In Art. 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 Arts, 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.

General principles have been laid down by the Supreme Court of India in the said judgment for consideration whether a post is a civil post or not. The post in question before us is not a post connected with defense.

14. The learned Counsel for the respondent has controverted the submission of Mr. Gangwani and has urged that Presiding Officer of a National Highways Tribunal is a civil post and he is appointed under the Government of India. The right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action or conditions of service, the nature of the duties etc. to be performed by the Presiding Officer of the Tribunal are all under the Government of India. The salary of the Presiding Officer is also paid by the Government. All these factors indicate that there is a relationship of master and servant between the presiding officer of the Tribunal and the Government of India. Therefore, the Presiding Officer is a civil post and the Central Administrative Tribunal has the jurisdiction u/s 14 of the Central Administrative Act to entertain an OA filed by a person who is aggrieved by the Act of the Government in not considering his name for appointment as a

Presiding Officer of the National Highways Tribunal. In support of his contentions, he has referred to State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, . In this case the Supreme Court while considering the question whether the members of Gujrat Panchayat Service are Government servants, laid down various factors which may indicate the relationship of master and servant though none of them may be conclusive as no single factor may be considered absolutely essential. In paragraph 27 of the judgment the following findings were recorded :

We have to first consider the question whether the members of the Gujarat Panchayat 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 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.

These are the guidelines to be kept in mind by us while appreciating the facts of this case.

15. The Ministry of Road Transport and Highways vide its notification dated 12.11.2003 has notified the rules to be called National Highways Tribunal (Procedure for appointment as Presiding Officer of the Tribunal) Rules, 2003. Rule 3 regulates the method of appointment of a Presiding Officer which reads as under:

Method of appointment of Presiding Officer:

(1) For the purpose of appointment to the post of a Presiding Officer, there shall be a Selection Committee consisting of:

(i) a Judge of the Supreme Court of India as nominated by the Chief Justice of India Chairman, (ii) the Secretary to the Government of India in the Ministry of Road Transport and Highways Member; (iii) the Secretary to the Government of India in the Ministry of Law and Justice (Department of Legal Affairs) Member.

16. The Selection Committee is comprised of a Judge of Supreme Court of India as nominated by the Chief Justice of India as a Chairman, Secretary to the

Government of India in the Ministry of Road Transport and Highways and a Secretary of Government of India in the Ministry of Law and Justice as Members. The Selection Committee has been given the power to devise its own procedure for selecting a candidate for appointment as Presiding Officer. The Selection Committee recommends persons for appointment as Presiding Officer from amongst the persons on the list of candidates prepared by the Ministry of Road Transport and Highways after inviting applications. The Central government is required to make a list of persons on the basis of the recommendations of the Selection Committee for appointment as a Presiding Officer. This list is to be valid for a period of two years and appointment of a Presiding Officer has to be made from the list so prepared. In other words the Central Government on recommendations of the Committee chaired by a Judge of the Supreme Court is to appoint a Presiding Officer from the selection list prepared by the Selection Committee. Hence even the selection process of the candidate for appointment as presiding officer of the Tribunal is not made by the Government of India or by the UPSC which is generally responsible for selection of candidates for appointment to various civil posts but by the Selection Committee chaired by a Judge of the Supreme Court of India.

17. In the case of *L. Chandra Kumar v. Union of India and Ors.* (Supra) the Supreme Court of India while considering several distinct questions of law involving various issues, grouped them in three broad issues which are as follows:

(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by Sub-clause (d) of Clause (2) of Article 323-A or by Sub-clause (d) of Clause (3) of Article 323-B of the Constitution; to totally exclude the jurisdiction of "all courts", except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in Clause (1) of Article 323-A or with regard to all or any of the matters specified in Clause (2) of Article 323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?

(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?

18. None of these issues are under consideration before us in the present writ petition. The learned Counsel for the respondent has referred to para 93 of the said judgment which reads as under:

Before moving on to other aspects, we may summarise our conclusion on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear

matters where the virus of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for 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 Tribunal 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 virus 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 virus of their parent statutes following the settled principle that a tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned 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 Courts. We may add that 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 High Courts even in cases where they question the virus of statutory legislation (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

19. The Supreme Court while upholding to the jurisdictional powers and competence of the Tribunal to hear matters where virus of statutory provisions are questioned, observed that the Tribunal cannot work as a substitute for High Court or Supreme Court which have been set up under the Constitution. virus of the provision of N.H. Act are not under challenge either before the Tribunal or before us in this writ petition. Only the jurisdiction of the Central Administrative Tribunal to entertain an OA filed by a disqualified candidate for appointment to the post of Presiding Officer of National Highways Tribunal has been challenged. Therefore *L. Chandra Kumar v. Union of India and Ors.* (Supra) is of no help to the present respondent.

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 & 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 binding 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.

21. Consequently we are unable to agree with the Tribunal when it held vide its Order dated 24.8.2006 passed in OA No. 757/2006 that it had the jurisdiction to entertain the OA. The functions of the National Highways Tribunal are quasi judicial in nature and, Therefore, the post of Presiding Officer of National Highways Tribunal cannot be equated with a civil post. In the absence of notification issued by the Government of India, Section 14(1) of the Central Administrative Tribunal Act cannot be made applicable on the quasi judicial posts or other posts not of a civil nature and other statute bodies which cannot be termed as a civil post.

22. The writ petition is accordingly allowed. The Order of the Central Administrative Tribunal, Principal Bench, New Delhi dated 24.8.2006 passed in OA No. 757/2006 is hereby quashed and set aside. However, this judgment does preclude the challenge raised by the respondent before the CAT being raised before the appropriate forum in accordance with law.

23. The writ petition and all pending applications stand disposed of accordingly.