
(2008) 09 AHC CK 0091
In the Allahabad High Court

Varun Kumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20, 21, 5
Constitution of India, 1950 — Article 226, 227, 28, 32, 323A

Citation : (2008) 09 AHC CK 0091

Hon'ble Judges : Arun Tandon, J; Amitava Lala, J

Bench : Division Bench

Judgement

Amitava Lala, J.—The writ petition has been made challenging order dated 24th July, 2008 passed by the Central Administrative Tribunal, Allahabad (hereinafter referred to as the tribunal), not on merits but only with regard to delay, holding that in the absence of application for condonation of delay, nothing can be adhered to on merits. So far as this part is concerned, we have gone through the provisions of Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985 (for short the Act). Section 21 directly deals with limitation. Sub-section (1) (a) gives time to make application before the tribunal within one year from the date on which final order has been made. Sub-section (1)(b) gives time to make such application within one year after the expiry of six months from the date of filing of appeal or representation made under Clause (b) of Sub-section (2) of Section 20. We quote hereunder all the relevant Sections 19, 20 and 21 of the Act for all practical purposes.

19. Applications to Tribunals. -(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation. - For the purposes of this sub-section, "order" means an order made-

(a) by the Government or a local or other authority within the territory of India

or under the control of the Government of India or by any corporation or society owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation or society referred to in Clause (a).

(2) Every application under Sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.

(3) On receipt of an application under Sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under Sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

20. Applications not to be admitted unless other remedies exhausted. -(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of Sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service,, rules as to redressal of grievances,-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of Sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the> applicant had elected to submit such

memorial.

21. Limitation. - (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in Clause (a) of Sub-section (2) of Section 20 has been made in connection with that grievance unless the application is made, within one year from the, -date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of Sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in Sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of Sub-section (1) or within a period of six months from the said date, whichever -period expires later.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of Sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

2. We have also checked up the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as the Rule) and find that the format under Rule 4, prescribed that the applicant will declare that the application is within the period of limitation as per Section 21 of the Act. Therefore, the application is to be made coupled with a separate application for condonation of delay for the purpose of hearing by the tribunal. We also find that as per Rule 8(4) of the Rules, the applicant who seeks condonation of delay, shall file a separate application supported by an affidavit, therefore, the Rule is very clear to that extent.

3. Mr. Vinay Khare, learned Counsel appearing for the petitioner contended before us that since the selection was not made in the year 2005 but actually it has been noticed during that period within which one year's period is prescribed for appeal, there is no need of making any separate application for condonation

of delay, which has been strongly opposed by Dr. Ashok Nigam, learned Addl. Solicitor General, by saying when the law as mentioned above gives scope to make it, the same is to be followed. In such way the explanation can be given.

4. During the course of hearing, one other question arose before us i.e. whether word "limitation" is the appropriate word in respect of hearing of such matters by the tribunal. Against this background, we find that the tribunal was formed as per Article 323A of the Constitution inserted by the Constitution (Forty-second Amendment) Act, 1976 w.e.f. 3rd January, 1977. It gives power to the tribunal to hear such matters as a Court of first instance. If we go through the ratio laid down by the judgement of seven-Judge Bench of apex Court, reported in L. Chandra Kumar Vs. Union of India and others, we shall find the following:

99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323-A and Clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and Supreme Court under Articles 226/227 and 32 of the Constitution are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" Clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B 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 Tribunal concerned 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 open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

5. Therefore, the tribunal is not an usual statutory tribunal but the Jurisdiction of Writ Court is curtailed and given to the tribunal. Thus, undoubtedly the tribunal hears such matters as a court of first instance i.e. like learned single Judge exercising writ jurisdiction of the High Court and its decisions are of course, subject to scrutiny by a Division Bench of the High Court, therefore, in respect of exercise of such jurisdiction for adjudicating questions of natural justice, the appropriate word, according us, should be "laches" in the place and instead of "delay".

6. The word "limitation", therefore, is uncalled for. Copy of such observation and/or order will be communicated to learned Addl. Solicitor General of India to

inform the government in this regard. However, presently we have to go by the existing law.

7. In the instant case, we find that virtually by making this writ petition, the petitioner wants to enter into merits of the matter, bypassing the order of tribunal passed on account of delay. We cannot enter into the merits in such circuitous manner because merits cannot be adhered to by this Court directly as a court of first instance, overlapping the jurisdiction of the tribunal.

8. Therefore, the writ petition is disposed of without any order as to cost and with a liberty to the petitioner to make an application for condonation of delay before the tribunal positively within a fortnight from this date and if such an application is made, the tribunal will hear out such application afresh, excluding the period consumed for the purpose of making the writ petition upon obtaining the certified copy from the tribunal till the period when certified copy of the order made ready for delivery by the registry of this Court.