A.F.R.

Neutral Citation No. - 2024:AHC-LKO:68607-DB

Court No. - 2

Case :- WRIT - A No. - 3089 of 2024

Petitioner :- Arun Kumar Gupta
Respondent :- Union Of India Thru.Secy.Ministry Of Chemical And Fertilizer Deptt. Chemical Petro Chemical And Ors
Counsel for Petitioner :- Utsav Mishra,Gaurav Mehrotra
Counsel for Respondent :- A.S.G.I.,Anurag Srivastava,Raj Kumar Singh

Hon'ble Rajan Roy,J.
Hon'ble Om Prakash Shukla,J.

1) This is a writ petition filed by the petitioner challenging the judgment and order dated 17.01.2024 passed by the Central Administrative Tribunal, Lucknow in a Transfer Application bearing No. 01 of 2017 (Arun Kumar Gupta Vs. Union of India & Ors.).

2) The judgment and order dated 26.04.2024 reads as under:-

> *"1. Heard Shri Gaurav Mehrotra along with Shri Utsav Mishra, learned counsel for the petitioner and Shri Anurag Srivastava along with Raj Kumar Singh, learned counsel for the opposite parties no. 2 to 4.*
>
> *2. Let Shri Anurag Srivastava, learned counsel for the opposite parties no. 2 to 4 satisfy the Court*

firstly as to there being any evidence to establish even on the basis of preponderance of probabilities that the petitioner herein conducted 17 tests misusing his official position illegally.

3. Secondly, that he did not conduct any test in respect of other samples and issued a certificate in favour of M/s Satyadeep Polypipes, Jalpaigudi and that for the aforesaid illegal acts he accepted money from the proprietor of the Firm.

4. Thirdly, whether the proceedings were initiated on the basis of the oral complaint of Shri S. Goenka, Proprietor of the said Firm or some other material. If so, what was it.

5. Fourthly, whether there is any evidence or any witness who may have seen the petitioner preparing the certificate in question and signing it.

6. Fifthly, whether the hand writing expert, who has opined that the signature on the certificate in question is that of the petitioner, was produced during inquiry proceedings. If not, what is the consequence of it upon the validity of such proceedings.

7. Sixthly, whether there is any evidence that PVC Pipes were brought to the premises of CIPET on a four wheeler as considering their size it would not have been possible to carry them on a two wheeler but the number of the vehicle which has come in evidence was ultimately found to be that of a two wheeler, therefore, what is the evidence about 17 tests being carried out on three samples of resist PVC Pipes after bringing those pipes found in the premises.

8. Seventhly, whether Shri S. Goenka, who is alleged to have been made the oral complaint, appeared before the Inquiry Officer and was examined.

9. If any fax message was received from him or his Firm supporting the charges against the petitioner

what exercise was conducted by the Inquiry Officer to verify the veracity of the said Fax Message that it had been sent by Shri S. Goenka or his Firm and what was the evidence in this regard.

10. Learned counsel for the parties shall also address the Court upon the scope of power and jurisdiction of the Central Administrative Tribunal while considering and deciding an Original Application under the Administrative Tribunals Act, 1985; whether its power are akin to the powers of judicial review available to the High Court under Article 226 of the Constitution of India or they are akin to a Court or a Tribunal of first instance, such as, the Civil Court and whether the Tribunal has misdirected itself by proceeding to decide the OA, as if, it was exercising the powers of judicial review for which it was guided by a decision of Hon'ble the Supreme Court rendered in the case of Union of India Vs. Subrata Nath; Civil Appeal Nos. 7939-7940 of 2022 arising out of Special Leave to Appeal (Civil) NO. 3524 of 2022.

11. List/ put up no 29.04.2024 as fresh."

3) Although, we had put certain queries to the opposite parties Counsel vide our order dated 26.04.2024, which are contained in Paragraph 2 to 9, but in Paragraph 10 of our order, we had also proposed to consider the scope of power and jurisdiction of the Central Administrative Tribunal while considering and deciding an original application, under the Administrative Tribunals Act, 1985 (hereinafter referred to as, the Act, 1985); whether its powers are akeen to the powers of judicial review, available to the High Court under Article 226 in the Constitution of India, or they are akeen to a Court or a Tribunal of first instance, such as, the Civil

Court; and whether the Tribunal has misdirected itself, by proceeding to decide the O.A., as if, it was exercising the powers of judicial review, for which it was guided by a decision of Hon'ble the Supreme Court, rendered in the case of ***Union of India vs. Subrat Nath in Civil Appeal No. 7939-7940 of 2022 arising out of Special Leave to Appeal (Civil) No. 3524 of 2022.***

4) After hearing the matter, we are of the opinion that the queries raised by us in Paragraph 2 to 9, can be considered by the Tribunal itself, as it may involve an inquiry into questions of fact and the evidence which was adduced in the disciplinary proceedings against the petitioner. As regards, the scope and power of jurisdiction of the Tribunal in this regard, the Act, 1985 was promulgated with a reference to Article 323-A of the Constitution of India. The very purpose of constitution of Tribunals under the said Act and Article 323-A of the Constitution is to ensure a forum for speedy and effective adjudication of disputes pertaining to terms and conditions of service of officers and employees, whether they be of the Central Government or the State Government, as the case may be.

5) No doubt, the Tribunals constituted under the Act, 1985 have certain powers analogous to the High Court, such as to decide the vires of an enactment, except the Act, 1985 under which they have been constituted, but at the same time, they are also supposed to

act as Courts or Tribunals of first instance so as to thrash out findings of fact also. It is a misconception, that Tribunals while exercising the powers under the Act, 1985 in fact exercise powers of judicial review, *stricto sensu,* as the High Court does under Article 226 of the Constitution of India. It is not so. This would be evident from the provisions of the Act, 1985 itself. We may in this regard refer to Section 4 of the Act, 1985, which provides for establishment of an Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal, by or under the Act, 1985. The Tribunal consists of judicial and administrative members, both. The jurisdiction, powers and authority of the Tribunals have been dealt with in Chapter III of the Act, 1985. Section 14 deals with Central Administrative Tribunal, whereas Section 15 deals with State Administrative Tribunals, constituted under the Act, 1985. Section 22 deals with powers and procedure of Tribunals and it reads as under:-

> *"22. Procedure and Powers of Tribunals – (1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 [5 of 1908], but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.*
>
> *(2) A Tribunal shall decide every application made to it as expeditiously as possible and*

ordinarily every application shall be decided on a perusal of documents and written representations and after hearing oral arguments, if any, allowed by the Tribunal in the circumstances of the case.

(3) A Tribunal shall have, for the purposes of holding any inquiry, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 [5 of 1908], while trying a suit, in respect of the following matters, namely, --

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 [1 of 1872], requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government."

6) Although, the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, 1908, but it is to be guided by the principles of natural justice and the provisions of the Act, 1985.

Sub-section 3 of the Section 22 clearly provides that the Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of matters already quoted hereinabove.

7) The very vesting of such powers of summoning and enforcing attendance of any person and examining him on oath; requiring discovery and production of documents; receiving evidence on affidavits; requisitioning any public record or document, or copy of such record or document from any office subject to the provisions mentioned therein; issuing commissions for examination of witnesses or documents, as are exercised by a Civil Court while trying a suit, which is a court of first instance, it is evident, that the Tribunal while adjudicating a service dispute is empowered to enter into questions of fact, and decide factual issues based on evidence, as is done by the Civil Court, even though not bound by the provisions of Code of Civil Procedure, 1908. In fact, the Tribunal is a substitute for the Civil Court. Prior to constitution of the Central Administrative Tribunal under the Act, 1985, the remedy was before the Civil Court, and therefore, an alternative forum has been provided under Article 323-A of the Constitution of India. It can take evidence, evaluate it and record findings of fact. The powers of the High Court under Article 226 of the Constitution of India on the other hand, do not permit such

an exercise. The proceedings of the High Court under Article 226 are summary proceedings, whereas the proceedings of the Tribunal, even though they are required to be completed expeditiously, are not the same as the High Court in this sense. The Tribunal has been vested with powers to examine questions of fact, to take evidence and decide factual issues based thereon. This aspect has also been considered by a Seven Judges Bench decision of the Supreme Court of India in ***L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261,*** wherein it has been observed in Paragraph 93 – **"We may add that the Tribunal 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."** However, for the benefit of the Tribunal, the entire Paragraph 93 is quoted hereinbelow:-

> *"93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the 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 Tribunals 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 vires 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 vires 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 the 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 vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."*

8) When we peruse the impugned judgment in the light of what we have discussed hereinabove with regard to the scope of the proceedings before the Tribunal and the powers & jurisdiction vested in it under the Act, 1985, we find that the Tribunal has declined to enter into the factual issues on a misconception, as if it was exercising powers of judicial review as are exercised by the High Courts under Article 226 of the Constitution of India, by way of summary proceedings, wholly oblivious of the legal position as aforesaid. The similarity of the jurisdiction of the Tribunal vis-à-vis the High Court has been clearly discussed and explained by the Supreme Court in Paragraph 93 of its judgment in L. Chandra Kumar (Supra). This does not take away the initial role of the

Tribunal to act as a Court / Tribunal of first instance. There are various issues which should have been seen by the Tribunal, especially, the points which we have noticed in our order dated 26.04.2024, quoted hereinabove, but have not been discussed.

9) On being confronted, learned Counsel for the opposite parties could not dispute the factual and legal position, so far as, the scope of the proceedings of the Tribunal constituted under the Act, 1985, and the jurisdiction of the Tribunal under the said Act.

10) We are therefore, of the opinion, for the reasons aforesaid, the impugned judgment is liable to be set aside and accordingly, the same is set aside. The Transfer Application No. 33200001/2017 shall now stand restored before the Central Administrative Tribunal at Lucknow and the same shall be heard and decided afresh, keeping in mind the observations made hereinabove, especially the points raised in our order dated 26.04.2024. In doing so, it shall be open for it to exercise the powers and jurisdiction vested in it under Section 22 of the Act, 1985, rather it would be obliged to do so, if the situation so requires.

11) Considering the fact, that initially a writ petition was filed before the High Court in the year 2000 which was transferred to the Tribunal in 2017 and thereafter, it came to be dismissed on 17.01.2024, we request the Tribunal to grant priority to the

hearing of this petition, and we expect that the Tribunal shall hear and decide the same within a period of five months, as prayed by the petitioner's Counsel, from the date a copy of this order is served before it. We permit the parties herein to bring on record, the pleadings filed in this petition, before the Tribunal within a period of four weeks from today, for its convenience, which shall also be taken into consideration accordingly. This shall be done on affidavit.

12) The writ petition is accordingly **disposed of** in the aforesaid terms.

Order Date :- 24.9.2024
Lokesh Kumar

[Om Prakash Shukla, J.] **[Rajan Roy, J.]**