

\$~35

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 31st January, 2020

+ W.P.(C) 1207/2020 & CM APPL. No. 4037/2020

SHIKSHA DAGAR

..... Petitioner

Through : Mr. M.K. Bhardwaj, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. D.S. Mahendroo, Senior
Panel Counsel for UOI with
Mr. Anshuman, Advocate
(Govt. Pleader)

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

CM APPL. No. 4037/2020 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 1207/2020

1. Notice to show cause as to why the petition be not admitted.
2. Mr. D.S. Mahendroo, learned Senior Panel Counsel for Union of India accepts notice.

3. The petitioner is aggrieved by two orders dated 17.01.2020 and 22.01.2020 passed by the Central Administrative Tribunal ('Tribunal', for short). In this case, the petitioner filed an OA before the Tribunal seeking the following reliefs :

"In view of the aforesaid facts and circumstances of the case, it is most humbly prayed that this Hon'ble Tribunal may be pleased:

(i) *To declare the action of respondents in selecting R-6 for appointment to the post of Tax Assistant as illegal and issue appropriate direction to appoint the applicant as Tax Assistant with all consequential benefits including arrears of pay.*

(ii) *To declare the action of the respondents in not finalizing the recruitment in Sports Category as per the eligibility criteria mention in the Circular/Advertisement (A-4) as illegal and direct the respondents to prepare the select list for appointment to various post i.e. Income Tax, Tax Assistant etc. as per the performance / participation of the candidates in National/ International and other Competition as mentioned in Annexure A-4.*

(iii) *To direct the respondents to consider the claim of the applicant for appointment to the post of Tax Assistant or Inspector Income Tax as per her performance / participation in the National/International Competitions.*

(iv) *To allow the OA with cost.*

(v) *To pass any further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

4. The case of the petitioner is that while the petitioner, who is an international level player, has been declined appointment to the post of Tax Assistant/Inspector Income Tax, candidates who are only university level players have been selected.

5. Mr. Bhardwaj submits that an objection was raised by the Registry for non-compliance of Section 20 of the Administrative Tribunals Act, 1985 ('Act', for short). Mr. Bhardwaj submits that this objection could not have been raised by the Registry. He relies on Section 20 (1) of the Administrative Tribunals Act, 1985, which says that the Tribunal shall not ordinarily admit an application unless the Tribunal is satisfied that the applicant has availed of all the remedies available under the relevant service rules for redressal of grievances. He submits however that this is not an absolute rule; and in an appropriate case an application can be filed before the Tribunal directly without exhausting a departmental remedy.

6. Reliance is placed upon a judgment passed by the Supreme Court in *D.B.Gohil vs. Union of India & Ors.* reported as (2010) 12 SCC 301.

"5. Section 20(1) of the Administrative Tribunals Act, 1985 ("the Act", for short) provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the appellant had availed of all the remedies available to him under the relevant

service rules as to redressal of grievances. The use of words "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" in Section 20(1) of the Act makes it evident that in exceptional circumstances for reasons to be recorded the Tribunal can entertain applications filed without exhausting the remedy by way of appeal.

6. The Tribunal referred to Section 20 of the Act and rightly held that the matter involved substantial and important point of law about the binding nature of CVC's advice. The Tribunal was better suited to consider that issue as the appellate authority would also feel bound by the directions of CVC. Therefore, it was one of the exceptional cases where the appellant could approach the Tribunal without exhausting a departmental remedy of appeal. The High Court ignored that aspect. We are of the view that the High Court ought not to have allowed the writ petition on this technical ground. The order of the High Court cannot be sustained."

7. We find that the matter was listed before the Tribunal on 17.01.2020, when the Tribunal passed the following order :

***"CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI***

ORDER SHEET

No. of adjournment : 1

***COURT NO. : 3
17.01.2020***

Dairy No. :-400/2020

SHIKSHA DAGAR

-V/S-

M/O FINANCE

ITEM NO:1

FOR APPLICANTS(S) Adv. : Mr. M.K. Bhardwaj

FOR RESPONDENTS(S) Adv. : None

<i>Notes of The Registry</i>	<i>Order of The Tribunal</i>
	<p><i>Registry is directed to list the matter after the removal of office objection.</i></p> <p><i>(ARADHANA JOHRI) (S N TERDAL)</i> <i>MEMBER (A) MEMBER (J)</i></p> <p><i>neetu</i></p>

8. On 22.01.2020, an M.A. No. 282/2020 was filed by the petitioner, which met with the same fate. The order on the M.A. reads as under :

**"CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

ORDER SHEET

No. of adjournment : 1

COURT NO. : 3

22.01.2020

M.A./100/282/2020

W.P.(C) 1207/2020

Page 5 of 7

SHIKSHA DAGAR

-V/S-

M/O FINANCE

ITEM NO:12

FOR APPLICANTS(S) Adv. : Mr. M.K. Bhardwaj

FOR RESPONDENTS(S) Adv.: Mr. Manjeet Singh Reen for R-1 to 6

<i>Notes of The Registry</i>	<i>Order of The Tribunal</i>
	<p><i>MA No.282/2020 seeking overruling of the office objection dismissed. Registry is directed to post the matter after removal of office objection.</i></p> <p><i>(MOHD. JAMSHED) (S N TERDAL)</i> <i>MEMBER (A) MEMBER (J)</i></p> <p><i>/anjali/</i></p>

9. A bare reading of Section 20 (1) of the Act shows that there is no absolute bar to the Tribunal entertaining an application straightaway, without the applicant having first exhausted administrative remedies for redressal of grievances. The use of the word "ordinarily" in the provision makes this amply clear. This is also supported by the decision of the Supreme Court in ***D.B. Gohil*** (supra) cited by the petitioner. Even otherwise, we are of the view

that Section 20 cannot be so applied as to deprive an applicant of his legal rights and remedies, especially in case there is urgency for approaching the Tribunal.

10. In this case, as Mr. Bhardwaj submits, once the posts are filled and the appointment letters are issued, the petitioner may loose-out on the relief sought; and at the very least it would lead to multiplicity of proceedings.

11. Accordingly, the orders dated 17.01.2020 and 22.01.2020 of the Tribunal are set aside. The matter be listed before the Tribunal for hearing on merits.

12. With these directions, the writ petition is disposed of

13. A copy of the order be given *dasti* under the signatures of the Court Master.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 31, 2020

j