

CASE NO.:

Appeal (civil) 4106 of 2002
Appeal (civil) 4107 of 2002
Appeal (civil) 4404 of 2002
Review Petition (civil) 398 of 2002

PETITIONER:

V.K. Majotra
Shambhu Dayal
Union of India & Ors.
Gopal Singh

RESPONDENT:

Union of India & Ors.
Union of India & Ors.,
Shambhu Dayal & Ors.,
Union of India & Ors.

DATE OF JUDGMENT: 09/09/2003

BENCH:

R.C. Lahoti & Ashok Bhan.

JUDGMENT:

J U D G M E N T

BHAN, J.

This judgment shall dispose of Civil Appeal No. 4107 of 2002, Civil Appeal No. 4404 of 2002 impugning the final order dated 9th April, 2002 passed by the High Court of Allahabad, Civil Appeal No. 4106 is directed against the interim order dated 25th February, 2002 passed in the writ petition while it was pending in the High Court and Writ Petition (C) No. 398 of 2002 filed under Article 32 of the Constitution of India by Shri Gopal Singh, Administrative Member, Central Administrative Tribunal, Jodhpur Bench, at Jodhpur, challenging the empaneling of Shri V.K.Majotra, respondent No. 5 on the ground that he was not qualified to be chosen as Vice-Chairman of Central Administrative Tribunal. The point raised in all the cases being common, the same are taken up together for disposal.

The facts are:

Shambhu Dayal, appellant in Civil Appeal No. 4107 of 2002 filed Writ Petition No. 8248 of 2002 in the High Court of Allahabad challenging the panel prepared for the post of Vice-Chairman in various branches of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') in India and seeking for preparation of a fresh panel. Empanelment of V.K. Majotra, respondent No.5, was challenged on the ground that he was not qualified to be chosen for the post of Vice-Chairman to the Tribunal. He also impugned the constitutional validity of Explanation to Section 6 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') being ultra vires of the Constitution of India and inoperative.

By an interim order dated 25th February, 2002 the High Court being prima facie of the opinion that only a sitting or retired High Court Judge or an advocate who is qualified for appointment as a High Court Judge could be appointed as Vice-Chairman of the Tribunal issued a direction that in the panel already prepared for appointment of Vice-Chairman of various Branches of the Tribunal and in future panels also only the person referred to Section 6 (2) (a) of the Act could be appointed as the Vice-Chairman of the Tribunal.

Aggrieved against the interim order of 25th February, 2002 Mr. V.K.

Majotra filed Civil Appeal No. 4106 of 2002 in which leave was granted and operation of the interim order dated 25th February, 2002 passed by the High Court was stayed.

The writ petition was taken up for final disposal by the High Court on 9th April, 2002. Instead of disposing of the writ petition on the pleas raised in the writ petition or the points raised by the counsel for the parties during the course of the arguments, the High Court going completely off the tangent went on to hold that the Vice-Chairman of the Tribunal should be from a legal background and can only be a sitting or retired High Court Judge or an advocate who is qualified for appointment as a High Court Judge. It was held that in the instant panel prepared by the Government and in all future panels only the person referred to in Section 6 (2)(a) of the Act can be appointed as the Vice-Chairman of the various benches of the Tribunal. It was also observed that there are number of Tribunals in the country like CEGAT, Board of Revenue, Income Tax Appellate Tribunal etc., which should have persons from a legal background as the presiding Judge to maintain the confidence of the public. That the senior member of every Tribunal must be a person with a legal background as presiding officer of the Tribunal which would ensure compliance of the mandate of Article 50 of the Constitution of India. A direction was issued to the authorities including the Government to take speedy steps to ensure compliance of the judgment and appoint as presiding Judge of every Tribunal a person with a legal background so that the Tribunal may be independent and inspire confidence of the public. If it is a single member bench, then the person must be from a legal background. Registrar General of the High Court was directed to send copies of the judgment to the Secretary, Law Department, Union of India, the secretary Personnel and Appointment Department, Union of India, the Cabinet Secretary of Union of India and to the Chief Secretary of the U.P. Government as also to the Chairman of the CAT and other appropriate authorities for due compliance.

Appeals have been filed by the Union of India, writ petitioner Shambhu Dayal as well as V.K. Majotra, whose appointment was challenged in the writ petition taking strong exception to the manner in which the petition has been disposed of and the decision arrived at by the High Court. It is contended that point on which the writ petition was disposed of was neither raised in the pleadings nor argued before the High Court by any of the parties to the writ petition; that point raised in the writ petition has neither been adverted to or adjudicated upon by the High Court and that the High Court was wrong in adopting such an approach. As to whether a person not having judicial experience could be appointed as Vice-Chairman of the Tribunal was not questioned in the writ petition. Similarly, vires of Section 6(2) (b) (bb) and (c) were not challenged. High Court without striking down the provisions of Section 6 (2) (b) (bb) and (c) has obliterated them from the statute book by holding that henceforth the appointment to the post of Vice-Chairman be made only from amongst the persons mentioned in Section 6 (2) (a) of the Act. It is further contended that the High Court did not stop at giving direction that the Vice-Chairman of CAT should be from amongst the persons having judicial training but went a step ahead to hold that CEGAT, Board of Revenue, Income Tax Appellate Tribunal etc., which were not even remotely connected to the dispute in the writ petition should also be manned by persons having judicial training and no administrative member should be appointed as the presiding officer of such a Tribunal. No notice had been issued to the concerned or the affected parties. Such a direction is totally unsustainable in law being in violation of principles of natural justice if not anything more. Lastly, it was contended that the impugned judgment of the High Court runs contrary to the view taken by this Court and therefore bad in law.

Counsel for the parties have been heard at length.

We have perused the pleadings of the writ petition and the counter affidavits filed by the respondents before the High Court. Counsel for the parties are right in submitting that the point on which the writ petition has

been disposed of was not raised by the parties in their pleadings. The parties were not at issue on the point decided by the High Court. Counsel for the parties are also right in contending that the point raised in the writ petition was neither adverted to nor adjudicated upon by the High Court. It is also correct that vires of Section 6(2) (b) (bb) and (c) of the Act were not challenged in the writ petition. The effect of the direction issued by the High Court that henceforth the appointment to the post of Vice-Chairman be made only from amongst the sitting or retired High Court Judge or an advocate qualified to be appointed as a Judge of the High Court would be that Sections 6 (2) (b) (bb) and (c) of the Act providing for recruitment to the post of Vice-Chairman from amongst the administrative services have been put at naught/obliterated from the statute book without striking them down as no appointment from amongst the categories mentioned in clauses (b) (bb) and (c) could now be made. So long as Section 6 (2)(b)(bb) and (c) remains on the statute book such a direction could not be issued by the High Court. With respect to the learned Judges of the High Court we would say that the learned Judges have over stepped their jurisdiction in giving a direction beyond the pleadings or the points raised by the parties during the course of the arguments. The writ courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case keeping in view the facts and circumstances of the case any additional points are to be raised then the concerned and affected parties should be put to the notice on the additional points to satisfy the principles of natural justice. Parties cannot be taken by surprise. We leave the discussion here.

We are also in agreement with the submissions made by the counsel for the appellants that the High Court exceeded its jurisdiction in issuing further directions to the Secretary, Law Department, Union of India, the secretary Personnel and Appointment Department, Union of India, the Cabinet Secretary of Union of India and to the Chief Secretary of the U.P. Government as also to the Chairman of the CAT and other appropriate authorities that henceforth the appointment to the post of presiding officer of various other Tribunals such as CEGAT, Board of Revenue, Income Tax Appellate Tribunal etc., should be from amongst the judicial members alone. Such a finding could not be recorded without appropriate pleadings and notifying the concerned and affected parties.

The relevant provisions of Section 6 read as under:

"6. Qualifications for appointment of Chairman, Vice-Chairman or other Members.- (1) A person shall not be qualified for appointment as the Chairman unless he

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least two years, held the office of Vice-Chairman.

(2) A person shall not be qualified for appointment as the Vice-Chairman unless he

(a) is, or has been, or is qualified to be a Judge of a High Court; or

(b) has, for at least two years, held the post of a 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 Secretary to the Government of India; or

(bb) has, for at least five 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

(c) has, for a period of not less than three years, held office as a Judicial Member or an Administrative Member.

xxx

xxx

(6) The Chairman, Vice-Chairman and every other Member of Joint Administrative Tribunal shall, subject to the terms of the agreement between the participating State Governments published under sub-Section (3) of Section 4, and subject to the provisions of sub-section (7), be appointed by the President after consultation with the Governors of the concerned States.

Explanation.- In computing, for the purposes of this Section, the period during which a person has held any post under the Central or a State Government, there shall be included the period during which he has held any other post under the Central or a State Government (including an office under this Act) carrying the same scale of pay as that of the first mentioned post or a higher-scale of pay.

(7) No appointment of a person possessing the qualifications specified in this Section as the Chairman, a Vice-Chairman or a Member shall be made except after consultation with the Chief Justice of India."

Reading of the above provisions make it clear that Chairman can be appointed under Section 6 (1) (a) from amongst the sitting or retired Judges of the High Court or if he has held the office of Vice-Chairman for two years. The eligibility for the appointment of Vice-Chairman is provided in clauses (b) (bb) and (c) of Section 6 (2). Clause (a) provides that appointment can be made of a person who is or has been or is qualified to be a Judge of a High Court; Clause (b) provides that a person has for at least two years, held the post of a 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 Secretary to the Government of India; Clause (bb) provides that a person has, for at least five 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; and Clause (c) provides that a person has, for a period of not less than three years, held office as a Judicial Member or an Administrative Member.

Administrative Tribunals Act was enacted in the year 1985 by the Parliament under Article 323-A of the Constitution. Constitutional validity of this Act was challenged and upheld by the Constitution Bench of this Court in S.P. Sampath Vs. Union of India & Ors., 1987 (1) SCC 124. Vires of the provisions of the Act other than Section 6(1) (c) were upheld. Section 6(1) (c) provided that Secretary to the Government of India could be appointed as Chairman of the Tribunal. It was directed that Section 6(1) (c) be omitted from the statute. This observation of the Court was accepted and Section 6(1)(c) of the Act was later on deleted from the statute. As to sub-section (a), (b), (bb) and (c) of Section 6(2) for the appointment of Chairman/Vice-Chairman and other members from amongst the administrative services it was observed (vide para 21) in the lead judgment of the Ranganath Misra, J.:

"We do not want to say anything about Vice-Chairman and members dealt with in sub-sections (2), (3) or (3-A) because so far as their selection is concerned, we are of the view that such selection when it is not a sitting Judge or retired Judge of a High Court should be done by a high-powered committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India as its Chairman. This will ensure selection of proper and competent people to man these high offices of trust and help to build up reputation and acceptability. Once the qualifications indicated for appointment of Chairman are adopted and the manner of selection of Vice-Chairman and members is followed, are inclined to think that the manning of the Tribunal would be proper and conducive to appropriate functioning. We do not propose to strike down the prescriptions containing different requirements but would commend to, the Central Government to take prompt steps to bring the provisions in accord with what we have indicated. We must state that unless the same be done, the Constitution of the Tribunal as a substitute of the High Court would be open to challenge. We hasten to add that our judgment shall operate prospectively and would not affect appointments already made to the offices of Vice-Chairman and member - both administrative and judicial."

Observations to the same effect were made by Bhagwati, CJ in his separate but concurring judgment. It was held that there should be no preponderance of administrative members in the Tribunal and the Tribunal should consist of one judicial member and one administrative member on any bench. That the presence of the administrative member would provide input of practical experience in the functioning of the services. The Bench directed that the selection of Vice-Chairman and the other members from the administrative services should be made by a high powered committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India which would ensure selection of proper and competent people to man these high offices of trust and help to build up reputation and acceptability of the Tribunal.

The question as to whether the members of the administrative services could be appointed as members of the Central Administrative Tribunal or Vice-Chairman was answered in the affirmative. Vires of Section 6(2)(a)(b)(bb) and (c) were upheld.

This question was again considered in *L. Chandra Kumar Vs. Union of India*, 1997 SCC 261, by a Seven-Judge Constitution Bench. In this case as well an argument was raised that the appointment of Administrative Members to Administrative Tribunals be stopped. The Court observed that it was difficult to accept such a contention since setting up of these Tribunals is founded on the premise that specialist bodies comprising of both trained administrators and those with judicial experience would by virtue of their specialised knowledge be better equipped to dispense speedy and efficient justice. The Court held:

"We are also required to address the issue of the competence of those who man the Tribunals and the question of who is to exercise administrative supervision over them. It has been urged that only those who have had judicial experience should be appointed to such Tribunals. In the case of Administrative Tribunals, it has been pointed out that the Administrative Members who

have been appointed have little or no experience in adjudicating such disputes; the Malimath Committee has noted that at times IPS Officers have been appointed to these Tribunals. It is stated that in the short tenures that these Administrative Members are on the Tribunal, they are unable to attain enough experience in adjudication and in cases where they do acquire the ability, it is invariably on the eve of the expiry of their tenures. For these reasons, it has been urged that the appointment of Administrative Members to Administrative Tribunals be stopped. We find it difficult to accept such a contention. It must be remembered that the setting up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of Judicial members and those with grassroots experience would best serve this purpose. To hold that the Tribunal should consist only of Judicial Members would attack the primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that Administrative Members are chosen from amongst those who have some background to deal with such cases."

From the above observations, it is clear that this Court held that it was not desirable to stop the appointment of members of administrative services as administrative members to the Tribunal. Rather the judicious mix of Judicial Members and those with grassroot experience would serve the purpose better for which the Tribunals were created. Contention that Tribunal should consist only of Judicial members was rejected and it was held that such a direction would attack the primary basis of the theory pursuant to which the Tribunals were constituted. It was observed that a Selection Committee which was headed by a sitting Judge of the Supreme Court would ensure that Administrative Members would be chosen from amongst those who had the requisite background to deal with the cases coming up before the Tribunal.

In view of the observations of this Court in S.P. Sampath and L. Chandra Kumar cases (supra) the High Court was not right in observing that henceforth the appointment of Vice-Chairman should be made from amongst the persons mentioned in of Section 6 (2) (a) of the Act alone. The findings recorded by the High Court run contrary to the law laid down by this Court.

For the reasons stated above, the Civil appeals are accepted, the interim order dated 25th February, 2002 which merged with the final order dated 9th April, 2002 passed by the High Court are set aside. The stay granted by the High Court is vacated. The authorities would be at liberty to make appointment as per selection made which would of course be subject to the final result of the writ petition by the High Court.

Since the High Court did not decide the inter se dispute between writ petitioner Shri Shambhu Dayal and Shri V.K. Majotra, respondent No. 5 in the writ petition, we remit the case back to the High Court for decision in accordance with law. We would request the High Court to dispose of the matter at an early date and if possible within four months from the date of receipt/production of a certified copy of this judgment.

Since we are not deciding the dispute on merits and remitting the case

back to the High Court for appropriate decision we refrain to go into merits of the dispute in writ petition No. 398 of 2002 and dismiss the same with liberty to the petitioner to approach the High Court, if so advised.

Shri D.C. Verma, Respondent No. 4 in the Writ Petition, is a Judicial Member of the Tribunal. Counsel for the parties are agreed that no relief has been claimed in the writ petition against him and he be deleted from the array of the parties. Accordingly the name of Shri D.C. Verma be deleted from the array of the parties in the writ petition. He is not required to appear before the High Court henceafter. Appeals are allowed. No costs.

JUDIS