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Court : Andhra Pradesh

Decided On : Dec-16-1998

Reported in : 1999(1)ALD234; 1999(1)ALT346

Judge : Motilal B. Naik and ;J. Chelameswar, JJ.

Acts : Administrative Tribunals Act, 1985 - Sections 2, 4, 9 and 14(1); Income Tax Act, 1961 - Sections 252 and 252(1); Constitution of India - Articles 50, 219, 226, 227, 233, 235, 236 and 309; Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 - Rules 4, 8 and 13 - Sections 3

Appeal No. : WP No. 29167 of 1998

Appellant : Abdul Razack

Respondent : Union of India and Others

Advocate for Def. : Mr. Vaidyanathan, Addl. Solicitor-General of India, ;Mr. B. Adinarayana Rao, SC for Central Govt., ;Mr. G. Raghuram, ;Mr. N. Rama Mohan Rao and ;Mr. N.V.S.J. Rama Rao, Advs.

Advocate for Pet/Ap. : Mr. J. Sudheer, Adv.

Judgement :
ORDER

Motilal B. Naik, J

1. Petitioner, who is a Member of Income-tax Appellate Tribunal (for short 'I.T.A.T.'), has approached this Court under Article 226 of the Constitution of India seeking to declare the impugned transfer order bearing No.F.46-Ad(AT)/98, dated 22-9-1998, issued by the11th respondent as illegally passed and ultra vires the Income-tax Act, 1961 and the Recruitment Rules, 1963 being without jurisdiction, authority of law and a vindictive, mala fide transfer and a further direction or order particularly in the nature of Writ of Certiorari and to pass such other order as may be deemed fit and proper in the set of circumstances.

2. According to the petitioner, he was appointed as a Judicial Member of Income-tax Appellate Tribunal pursuant to an application filed by him on 24-3-1990, which was submitted from Hyderabad and was given posting orders on 10-9-1991 by the first respondent under Section 252(1) of the Income-tax Act, 1961, which was received by him at Hyderabad on 12-9-1991. Petitioner, who was functioning as a Member of the I.T.A.T., was transferred from place to place during these years. According to him, he was transferred from Patna to Chennai as per the order, dated 9-10-1996, issued by the third respondent and assumed duties as such in the fore-noon of 22-10-1996.

3. While he was at Chennai, he being a senior Member was constantly being pressurised since April 1998 by the second, third and fourth respondents to grant unconditional and absolute stay in the appeals, involving approximately rupees two hundred crores, of- (1) Sri M. Ramachandran, former Industries Secretary, Government of Tamil Nadu, (2) Sri S. Dhyaneshwaran, former Chairman of Tamil Nadu Mines and Minerals Development Corporation Limited, (3) Sri T. K. Dinakaran, (4) Sri T. V. Sudhakaran, (5) Sri V. Bhaskaran, who are bothers and nephew of Smt. N. Sasikala, a very close associate of Ms. J. Jayalalitha, former Chief Minister of Tamil Nadu State, presently General Secretary of AIADMK party, to which the second respondent belongs and which is a coalition partner with the ruling Bharatiya Janata Party. Petitioner claimed that he resisted the pressures brought on him by the second, third and fourth respondentsand declined to oblige them as demanded by them, with the result the third and fourth respondents were

angry with the petitioner and were harassing and humiliating him in leave and tour matters and also in allocation of Bench work. According to the petitioner, he and the tenth respondent had been constantly put on 'D' Bench since April, 1998, which is constituted to deal petty and small matters.

4. Petitioner alleged that the appeal bearing I.T.(SS) A. No.238/MDS/1997, of V. Bhaskaran who is a member of Jayalalitha group, was heard by the pelitioner and the tenth respondent. The appeal was dismissed by order, dated 7-8-1998, giving appropriate reasons. According to the petitioner, the dismissal of the appeal filed by V. Bhaskaran angered the second, third and fourth respondents, who, in their fury, constantly humiliated and harassed the petitioner and the tenth respondent and allotted small and petty cases.

5. Petitioner complained that thesecond, third and fourth respondents came to Chennai in the second week of August, 1998 for inauguration of new premises of the Tribunal at Rajaji Bhavan, Besant Nagar, which was inaugurated by the second respondent on 19-8-1998 at about 10.30 a.m. According to the petitioner, he was summoned by the third and fourth respondents in the afternoon of 19-8-1998 (after the inauguration function) to the Tamil Nadu Guest House where the second respondent was present. Petitioner states that the second respondent informed him that the eighth respondent (B. Sankar), who hails from Tamil Nadu, will be shifted by the third respondent from Ahmedabad to Chennai Bench and the fourth respondent will constitute a Bench consisting of the petitioner and the eighth respondent and that the remaining appeals of Jayalalitha group would be posted for hearing from time to time before that Bench and that the Bench consisting of the petitioner and B. Sankar should allow allthe appeals relating to Jayalalitha group. According to the petitioner the third and fourth respondents assured him that if he does this favour to Jayalalitha group, the second respondent and his party's supremo will be too pleased and the petitioner would be suitably rewarded. Petitioner submits that he resisted the pressure and refused to oblige. According to him, his refusal to oblige angered the second respondent and the second respondent in turn seems to have directed the third respondent to obtain the resignation of the petitioner forthwith from the post for refusing to obey his orders being Minister of Law, Government of India. Petitioner claimed that the third

respondent ordered him to write and sign the resignation and hand over the same to the fourth respondent for onward transmission to the Central Government for acceptance. Petitioner claimed that he resisted this attempt of the second, third and fourth respondents.

6. Notwithstanding these developments, petitioner claims, as he has been given to understand by one of the colleagues at Mumbai, that the third respondent was summoned by the second respondent around 4p.m. on 3-9-1998 to the guest house of Shipping Corporation of India, Mumbai and that the third respondent in obedience thereto, accompanied by the fifth respondent went there and met and the second respondent. Petitioner claims that he was further given to understand that on the said date a decision was taken by the second and third respondents to punish and teach the petitioner a lesson for not faithfully obeying their orders and as such, according to the scheme, the second respondent seems to have directed the third respondent on 3-9-1998 at Mumbai to effect the transfer of the petitioner immediately to Guwahati Bench and bring in the seventh respondent from the Jabalpur Bench and the eighth respondent from Ahmedabad Bench to Chennai Bench. The sole aim in effecting the transfer of seventh and eighth respondents to Chennai is that both hail from Tamil NaduState and further, they have close proximity with Ms. Jayalalitha and her group. According to the petitioner, by effecting the transfers the second and third respondents could achieve the purpose of getting the work done in favour of Jayalalitha group members, whose appeals are pending before the Chennai Bench. Petitioner complains that as a consequence of the plan hatched on 3-9-1998, he was transferred from Chennai Bench to Guwahati Bench by order No.F.46-Ad(AT)/ 98, dated 22-9-1998, which was received by him, while on leave at Hyderabad on 13-9-1998. This is the order which is assailed before this Court on various grounds.

7. In all, there are 11 respondents in the writ petition-first respondent being the Union of India represented by its Secretary, Ministry of Law and Justice, New Delhi; second respondent being Dr. M. Thambidurai, Minister for Law and justice, Government of India; third respondent being Sri T. V. Rajagopal Rao, President, Income-tax Appellant Tribunal, Mumbai; fourth respondent being Sri Ram Swarup, Vice-President, Income Tax Appellate Tribunal, Hyderabad; fifth and sixth

respondents being Registrar and Assistant Registrar of Income-tax Appellate Tribunal at Mumbai and Hyderabad respectively; seventh respondent being P. Mohan Rajan, Judicial Member, Chennai Bench, eighth respondent being Sri Bharatwaja Sankar, Accountant Member, Chennai Bench of I.T.A.T., ninth respondent being Sri T.K. Sharma, Judicial Member, Jabalpur Bench; tenth respondent being Sri P.K. Bansal, former Accountant Member, New Delhi and the eleventh respondent being the President, Income Tax Appellate Tribunal, Mumbai, who is also shown as third respondent by name.

8. When the matter came up before this Court on 27-10-1998, the Registry was directed to post the matter on 2-11-1998 for admission. On 2-11-1998 the matter was adjourned to 5-11-1998. When the matter came up on 5-11-1998, Sri B. AdinarayanaRao, learned senior Standing Counsel for the Central Government, took notice on behalf of respondents 1 and 11 and resisted the matter.

9. On a preliminary hearing and on a prima facie satisfaction, the Bench felt that the transfer of the petitioner from Chennai Bench to Guwahati Bench is not in accordance with the set principles and directed the 11th respondent not to give effect to the transfer made to the petitioner posting him to Guwahati Bench. We further desired that the petitioner, who was on leave, from 7-10-1998, shall continue to be on leave pending further orders that would be passed in the writ petition and we directed notice before admission to all the respondents. We also permitted the petitioner to take out notice to respondents 2 to 10 by Registered post with acknowledgment due and permitted the petitioner to file proof of service and the matter was directed to be listed on 16-11-1998.

10. When the matter came up on 16-11-1998, Sri B. Adinarayana Rao, learned senior Standing Counsel for the Central Government, who had taken notice at the threshold on behalf of the first and eleventh respondents, stated before us that the second respondent who was abroad has reached New Delhi only on 15- 11-1998 and sought three weeks time to enable him to file counter. Likewise, on behalf of the eleventh respondent, a similar request was made by Sri B. Adinarayana Rao, stating that the eleventh respondent is currently associated with the process of selecting members for Income-tax Tribunals and required some more time. At that

stage, the petitioner in the absence of his Counsel, appeared in person and represented that excepting the tenth respondent, notices were served on all the respondents and a memo to that effect has also been filed. He further stated that if the request for time, made on behalf of respondents 2 and 11 is acceded, he would be placed in a precarious condition as he isneither permitted to serve in Chennai Bench nor he is able to proceed to any other place. He further stated that he remained on leave hoping that the matter would be decided by the Court within a day or two and if further time is granted to the respondents for filing counter, his position may be safeguarded till the disposal of the writ petition.

11. We examined the pros and cons of the matter and felt that the request made on behalf of the respondents seeking time for filing counters is legitimate and we granted time to the respondents for filing counters and participating in the proceedings through their Counsel. We also permitted the petitioner to continue to be on leave pending further orders that would be passed in the writ petition and also made an order that while disposing of the writ petition, the Court would take care of the situation and pass appropriate orders. The matter was directed to be listed before us for admission and disposal on 7-12-1998 and all the respondents were directed to file their counters by that time. The petitioner was permitted to take steps to serve notice on the tenth respondent.

12. Thus, the matter came up before us on 7-12-1998. At that stage, on behalf of the first respondent, Sri Vaidyanathan, learned Additional Solicitor-General made his appearance; on behalf of the second respondent Sri G. Raghuram, learned senior Counsel made his appearance; on behalf of the third and 11th respondents, Sri B. Adinarayana Rao, learned senior Standing Counsel for the Central Government made his appearance; and on behalf of the fourth respondent N. Rama Mohan Rao, learned Counsel, made his appearance; and on behalf of seventh and eighth respondents Sri N. V.S.J. Rama Rao, learned advocate, made his appearance. As far as respondents 5, 6, 9 and 10 are concerned, though notices were served, none appeared on their behalf.

13. Counters have been filed separately on behalf of the first and second respondents.On behalf of the third and eleventh respondents one counter is filed.

Separate counters have also been filed on behalf of respondents 4, 7 and 8.

14. When the writ petition is taken up for consideration, two preliminary objections are raised on behalf of the contesting respondents on the admissibility of the writ petition: viz.,

(i) that the petitioner is not entitled to invoke the jurisdiction of the High Court, instead he should approach the Central Administrative Tribunal; and

(ii) that this Court has no territorial jurisdiction to entertain the writ petition under Article 226 of the Constitution of India.

15. Sri G. Raghuram, learned senior Counsel, appearing for the second respondent led the arguments on the preliminary objections, which was duly supported by the learned Additional Solicitor-General representing the first respondent and adopted by the Counsel representing the other contesting respondents.

16. The first and foremost submission made in this behalf is about the petitioner invoking the jurisdiction of this Court under Article 226 of the Constitution of India. According to Sri G. Raghu Ram, learned senior Counsel, the petitioner, a Member of the Income-Tax Appellate Tribunal, is appointed in that post in terms of Section 252 of the Income-tax Act. learned Counsel pointed out that Income-tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 have been framed and were duly notified in the Gazette of India, Part II, Section 3(i), dated 27-7-1963 (hereinafter referred to as 'Recruitment Rules'). According to the learned senior Counsel, Rule 4 provides for 'method of recruitment' and Rule 8, which gives a classification, states that - 'A member shall be a member of the General Central Service, Class I, Gazetted, unless he is amember of any other Central Civil Service'. Thus, drawing our attention to these Rules, learned senior Counsel stated that the petitioner, who has been classified as a 'member of the General Central Service, Class I, Gazetted', is a holder of a civil post and as such he has to approach the Central Administrative Tribunal rather than invoking the jurisdiction of the High Court under Article 226 of the Constitution of India. While justifying his submission on this count, learned senior Counsel tried to distinguish

between the Judges of the High Court or for that matter members of sub-ordinate judiciary, who are brought under Chapter-VI of the Constitution of India and are saved from approaching any Service Tribunals. While making his submissions in that direction, the learned senior Counsel pointed out that the object of Articles 233 to 236 in Chapter VI, is to secure the independence of Judiciary from the Executive and to that extent to effect separation of powers. According to the learned Counsel, this safeguard provided to the High Courts and Courts subordinate to High Courts, is in tune with Article 50 of the Constitution of India, which mandates that 'the State shall take steps to separate the judiciary from the executive in the public services of the State'. According to the learned Counsel, as enshrined in Article 50 and Articles 233 to 236 of the Constitution of India, the Judges of the High Court and Courts subordinate to High Court cannot be equated with the Members of the Income-tax Appellate Tribunal; they are to be treated as a class apart. In his endeavour to convince this Court that the Members of the Income-tax Appellate Tribunal, aggrieved by any infringement of their conditions of service, cannot invoke the jurisdiction of the High Court, learned senior Counsel has taken us through the provisions of the Administrative Tribunals Act, 1985. Learned Counsel has drawn our attention to the provisions under Section 2 of the Administrative Tribunals Act, wherein it is specifically indicated about the persons to whom the Act would not apply. Sub-section (c) of Section 2 provides that 'any officer or servant of the Supreme Court or of any High Court or Courts Subordinate thereto' would not fall within the ambit of the Administrative Tribunals Act. Section 14 in Chapter III of the Administrative Tribunals Act specially deals with 'jurisdiction' powers and authority of the Central Administrative Tribunal'. Learned senior Counsel has taken us through the provisions of Section 14 of the Administrative Tribunals Act, particularly sub-section (1)(b)(ii) thereto. Learned Counsel has further submitted that Section 14(1)(b)(ii) of the Administrative Tribunals Act has to be read along with Rule 8 of the Recruitment Rules, 1962. According to the learned Counsel, the Recruitment Rules, 1962 are made by the Central Government in exercise of the powers conferred under Article 309 of the Constitution of India. Learned Counsel states that Section 9 of the Administrative Tribunals Act gives immunity, in the matter of resignation and removal, to the Chairman, Vice-Chairman and other Members, whereas the petitioner cannot

claim even the immunity provided to the Members of the Administrative Tribunals under Section 9 of the Administrative Tribunals Act. According to the learned Counsel, there is no constitutional status provided for the Income-tax Appellate Tribunal and as such the Members of the Income-tax Appellate Tribunal fall within the ambit of Section 14(1)(b)(ii) of the Administrative Tribunals Act, as they are deemed to be in the civil service of the State. Learned senior Counsel stated that the appointment of the Members of the Income-tax Appellate Tribunal is not made in consultation with the High Court as provided under Article 233 of the Constitution of India. The petitioner, therefore, cannot claim equality of status either on par with the Judges of the High Court or members of subordinate judiciary to seek exemption from approaching the Administrative Tribunal in relation to the grievances arising out of service conditions. Leaned senior Counsel has thus stated that the petitioner is a member of civil service inthe State and has to approach the Administrative Tribunal against the order of transfer passed by the eleventh respondent and cannot invoke the jurisdiction of the High Court under Article 226 of the Constitution of India. Learned Counsel has also supported his contention by taking us through the decision of the Supreme Court in Chief Justice, A.P. v. L V.A. Dikshitula, : [1979]1SCR26 .

17. The arguments of the learned senior Counsel on behalf of the second respondent, are mostly adopted by all the other learned Counsel representing the contesting respondents. The learned Additional Solicitor-General of India, who has made appearance on behalf of the first respondent has also drawn our attention to the various provisions of the Administrative Tribunals Act and the Recruitment Rules made by the Government of India under Article 309 of the Constitution of India, applicable to the members of the Income-Tax Appellate Tribunal.

18. In the counter filed on behalf of the first respondent, it has been specifically mentioned that the petitioner is a holder of a civil post and therefore, he falls within the ambit of Section 14(1)(b)(ii) of the Administrative Tribunals Act.

19. Apart from the above preliminary objection, yet another preliminary objection on the territorial jurisdiction of the High Court has been raised by the contesting respondents. Though the learned Counsel for the petitioner as well as the

contesting respondents have submitted elaborate arguments on the second preliminary objection and also on merits, we for one reason, proceed to decide the first preliminary issue, viz., as to which forum the petitioner should approach-either the High Court or the Central Administrative Tribunal.

20. Learned Counsel for the petitioner, however, made sustained efforts before us toconvince that the petitioner is not a holder of civil post and he is a holder of a post in the cadre of subordinate judiciary. Learned Counsel contended that the High Court, under Article 227 of the Constitution of India, is conferred with the power of superintendence over all Courts and Tribunals within its jurisdiction. If that be so, according to the learned Counsel, the Income-tax Appellate Tribunals though constituted under Section 252 of the Income Tax Act are subordinate to the High Courts and fall within the ambit of Article 235 of the Constitution of India. The Rules governing the service conditions of the Members of Income-Tax Appellate Tribunal framed under Article 309 of the Constitution of India cannot be themselves decide the status of the members of the Income-tax Appellate Tribunal to say that they are holders of civil post. The learned Counsel has stated before us that the Income Tax Appellate Tribunals are no substitutes to the High Court, but they are supplement to the High Court and exercise judicial powers. Therefore, they are to be brought under the umbrella of Articles 233 to 236 of the Constitution of India. The learned Counsel for the petitioner has stated further that what is to be seen, in deciding whether a person is a holder of a civil post, is whether there exists 'maser and servant' relationship and the nature of functions one discharges and whether such post falls under the category of 'civil post'. Learned Counsel has supported his contention by taking us through the decision of the Allahabad High Court in Mohammed Ahmad Kidwai v. Chairman, Improvement Trust, Lucknow, AIR 1958 All. 358. Learned Counsel has also drawn our attention to the decision of the Supreme Court in Chief Justice A.P. v. L.V.A. Dikshitulu (supra). Learned Counsel has tried to distinguish that the members of the Administrative Tribunal are held to be not the holders of civil post by the Madhya Pradesh High Court arid has referred to a decision of the Madhya Pradesh High Court in Daulat Singh v. Union of India, 1993 (7) SLR 456, paras 7 and 8. Lastly, the learned Counsel has taken usthrough the decision of the Supreme Court in Income-Tax Appellant Tribunal v. V.K. Agarwal, 1998 (6) Scale 155. Learned Counsel contends that

under Article 227 when all the Courts subordinate to the High Court including Tribunals fall within the judicial superintendence of the High Court and when the members of the subordinate judiciary including the staff are given immunity under Chapter VI of the Constitution of India, the Members of the Income-tax Appellate Tribunal, who also discharge judicial functions, cannot be denied such immunity.

21. Learned Counsel for the petitioner, apart from meeting the first preliminary objection raised by the Counsel on behalf of the respondents, has also met the second preliminary objection with regard to territorial jurisdiction of the High Court for entertaining the writ petition.

22. We have heard the learned Counsel appearing on behalf of all the parties to the litigation at length.

23. In the wake of the submissions and in the light of the specific objection on the issue of proper forum in which the dispute raised by the petitioner could be adjudicated, we now proceed to deal with the submissions on the first preliminary objection raised on behalf of the contesting respondents.

24. It is true that the petitioner isdischarging judicial functions. It is also true that the Members of the Tribunal are to discharge their duties without fear or favour. It is equally true that under Article 227 of the Constitution of India, the High Court shall have the power of superintendence over all the Courts subordinate to it, including Tribunals throughout the territories in relation to which it exercises jurisdiction. It is now well settled that the power of superintendence conferred upon the High Court under Article 227 of the Constitution of India is notconfined to administrative superintendence only but includes the power of judicial review even where no appeal or revision lies to the High Court under any ordinary law. The power involves a duty on the High Court to keep the inferior Courts and Tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner.

25. In the case in Chief Justice, A.P. v. L V.A. Dikshitulu, supra, the Supreme Court was considering the power of control exercisable by the High Court over the subordinate judiciary and the nature and extent thereof. The Supreme Court, while

examining the extent of control exercised under Article 235 of the Constitution of India, held:

'In Article 235, the word 'control' is accompanied by the word 'vest' which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court being exclusive, and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority.'

26. The distinction is, under Article 235 the control over the District Courts and Courts subordinate thereto including the posling and promotion of, and the grant of leave to persons belonging to the judicial service of the State and holding any post inferior to the post of District Judge, is vested in the High Court. It is in this context, the Supreme Court in the above case held that the High Court exercises administrative control not only in service matters relating to the District Judges and the Subordinate Judges, but also on the staff working in the subordinate Courts. It is relevant to note that in the matters relating to service conditions of staff of subordinate Courts, the High Court is the appellate authority on administrative side to examine the grievances raised before it. Thus, it is clear that the High Court not only exercises the power of judicial review on the orderspassed by the subordinate Courts, but also has administrative control over the subordinate judiciary within its territory.

27. Learned Counsel for the petitioner submitted that while the High Court exercises power of superintendence over the Courts subordinate to it within its territory which includes tribunals and the Bench of Income Tax Appellate Tribunal is subordinate to the High Court being under the territorial jurisdiction of the High Court and as such, like the officers/staff of the subordinate judiciary, the members of the Income-tax Appellate Tribunal are entitled to approach the High Court under Article 226 of the Constitution of India in respect of their service conditions. As indicated in the earlier paragraphs, learned Counsel for the petitioner has laid emphasis on this aspect, basing on a decision of the High Court of Madhya Pradcsli in Daulat Singh v. Union of India (supra) and contended that the members of the Administrative Tribunal do not hold a civil post and cannot be equated on

par with a holder of a post of Civil Service. Learned Counsel also referred to a decision of the Jabalpur Bench of the Madhya Pradesh High Court in Syed Shaukat Ali v. Union of India, 1994 (7) SLR 533, in support of his contention. Learned Counsel further submitted that the Administrative Tribunal and the Income-Tax Appellate Tribunal have been created under Section 4 of the Administrative Tribunals Act, 1985 and Section 252 of the Income-tax Act, 1961 respectively and as such the members of the Income Tax Appellate Tribunal cannot be treated as either holding a post of civil service or appointed to any civil service of the Union. He further contended that both the Tribunals discharge judicial functions and are subordinate to the High Court within the meaning of Article 235 of the Constitution of India. Learned Counsel has heavily relied upon a decision of the Supreme Court In Income Tax Appellate Tribunal v. V.K. Agarwal (supra) wherein, according to him, the Supreme Court has held that the IncomeTax Appellate Tribunal is a Court and is entitled to the immunity under Chapter VI of the Constitution of India.

28. In Sarwan Singh Lamba v. Union of India, : AIR 1995 SC1729 , the Supreme Court, while dealing with a batch of appeals, which include the appeal against the decision of the Madhya Pradesh High Court in Daulat Singh v. Union of India (supra), considered various relevant issues and set aside the decision of the Madhya Pradesh High Court and dismissed the writ petitions which were allowed by the Madhya Pradesh High Court. We may say that the Supreme Court in Sarwan Singh Lamba's case (supra), probably did not go into the question whether the members of the Administrative Tribunal are holders of civil post as held by the Madhya Pradesh High Court, but on merits of that case, held that the Madhya Pradesh High Court fell in error in setting aside the orders of appointment made to the Madhya Pradesh Administrative Tribunal, on unfounded grounds and set aside the orders of the Madhya Pradesh High Court.

29. In the other supporting decision referred to by the learned Counsel for the petitioner reported in Income Tax Appellate Tribunal v. V.K. Agarwal (supra), wherein the action of the Law Secretary, Government of India about his interference in judicial matters was examined by the Supreme Court and the Supreme Court did say that under Article 219 of the Constitution, power is vested

in the Supreme Court to punish not only for contempt of itself but also for contempt of subordinate Courts and Tribunals. Learned Counsel tried to take a clue from the observations of the Supreme Court in that case by contending that since the Income Tax Appellate Tribunal is held to be subordinate Court falling within the ambit of Article 235 of the Constitution of India, the members of the Administrative Tribunal are also entitled to the immunity available to the District Judges as well as the subordinate judiciary under Article 236 of the Constitution of India.

30. We are not inclined to agree with the submissions of the learned Counsel for the petitioner in this behalf. The service conditions of the members of the Income Tax Appellate Tribunal are regulated under Section 252 of the Income Tax Act and the Rules framed under Article 309 of the Constitution of India. In Rule 8 of the Recruitment Rules, the members of the Income Tax Appellate Tribunal are classified as members of the General Central Service, Class I (Gazetted). Unlike in the case of the District Judges and members of the Subordinate Judiciary, the High Court has no administrative control over the service matters of the members of the Income Tax Appellate Tribunal. Under Article 233 of the Constitution, the appointment and postings of District Judges are made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. This is clear from the words used in this Article that for the purpose of appointment the High Court is consulted, without there being any consultation, no appointments are made. Insofar as the service conditions of the members of the Income Tax Appellate Tribunal are concerned, as indicated above, the High Court is not at all consulted nor the High Court has any administrative control on the service conditions of the members of the Income Tax Appellate Tribunal unlike the administrative control exercised by the High Court on the District Courts and Subordinate Courts and staff working under them. Insofar as the power of judicial review is concerned, the law is well settled that the High Court exercises the power of judicial superintendence on the judicial functions of subordinate Courts which include all the Tribunals within its territory. The Income-tax Appellate Tribunal performs judicial functions and therefore, is a Court subordinate to the High Court within its territorial jurisdiction. The distinction is whether the High Court exercises administrative control over the Income Tax Appellate Tribunal, or only exercises the power of judicialsuperintendence on the judicial orders of the

Income Tax Appellate Tribunal. The answer is emphatic 'No' on the question of power of administrative control, but categorical 'yes' on the question of power of judicial review on the judicial actions of the Tribunals.

31. Precisely, this is the distinction between these two which are to be borne in mind to bring the matter relating to service conditions of the members of the Income Tax Appellate Tribunal, within the ambit of Article 236 of the Constitution of India. The position of High Court exercising the powers under Article 226 and 227 of the Constitution of India over the subordinate Courts within its territory including the Tribunals has been well accepted by the Supreme Court in a decision reported in L. Chandra Kumar v. Union of India, : [1997]228ITR725(SC) . Merely because the members of the Income Tax Appellate Tribunal discharge judicial functions, it cannot be said that they are entitled to immunity as is available to District Judges or other members of subordinate judiciary. There may be instances where master and servant relationship may not be evident and yet such members cannot claim immunity as provided to Special Categories of Services. To certain Class of persons, the Central Administrative act has no application. The members of the Income Tax Appellate Tribunal, as per Rule 8 of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 are classified as members of the General Central Service - Class I Gazetted. This category, as classified under Recruitment Rules does fall within the purview of Section 14(i)(b)(ii) of the Central Administrative Act and, therefore, the Administrative Tribunal, having territorial jurisdiction, is entitled to examine the matters relating to the service conditions of persons of this category. Even otherwise, Rule 13 of the Recruitment Rules, 1963 makes it clear that in respect of matters for which no provision is made in the rules, shall be the same as may for the time being, be applicable to other employees of the Government ofIndia of a corresponding status. In the counter filed by the respondents, it is stated that the post held by the petitioner is equivalent to the rank of the Additional Secretary to the Government of India. In the absence of specific immunity as available to the District Judges and other members of the subordinate judiciary and personnel of defence and other specific categories, the members of the Income Tax Appellate Tribunal cannot claim immunity from the purview of the Administrative Tribunals Act, 1985. Even the decisions cited by the learned Counsel for the petitioners

supporting his contentions that the petitioner is entitled to immunity on par with other category of persons protected under Chapter VI of the Constitution of India, we do not think, the ratio laid down in those decisions could lend any assistance to his stand.

32. The petitioner questions the transfer order dated 22-9-1998, issued by the eleventh respondent transferring him from Chennai Bench to Guwahati Bench. The question whether the President, Income Tax Appellate Tribunal has the power to transfer the members of the I.T.A.T. from one Bench to another is stated to be pending adjudication before the Supreme Court. In this writ petition, the petitioner sought a direction declaring the impugned transfer order issued by the 11th respondent as illegal, ultra vires of the income Tax Act, 1961 and the Recruitment Rules, 1963, being without jurisdiction and a further direction in the nature of writ of certiorari calling for the records and to pass such other order or orders. We do not think, we can issue such a declaration when the power of the President of the Income Tax Appellate Tribunal - 11th respondent to transfer a member from one Bench to another, is pending consideration before the Supreme Court, which fact is not disputed before us. The impugned order is an order transferring the petitioner from Chennai Bench to Guwahati Bench. For the reasons elaborately discussed above, we do not think, the petitioner is entitled to agitateon the question of transfer, which relates to service conditions, before this Court under Article 226 of the Constitution of India without exhausting the other remedies available to him i.e., to approach the Court of first instance. Rule 8 of the Recruitment Rules framed under Article 309 of the Constitution of India makes it clear that the members of the Income Tax Appellate Tribunal, who are appointed under Section 252 of the Income Tax Act, are classified as members of the General Central Service Class-I, Gazetted. We, therefore, hold that in view of this classification, the members of the Income-Tax Appellate Tribunal have to approach the Central Administrative Tribunal, which has territorial jurisdiction, for reddressal of their grievances relating fo service conditions. During the course of hearing of the writ petition, incidentally, we are also informed that the tenth respondent, who was dismissed from service, had approached the Central Administrative Tribunal at Delhi and obtained an order of status quo.

33. In the light of the above discussion, we answer the first preliminary objection against the petitioner.

34. Since we are convinced that the Writ Petition cannot be maintained before the High Court as the High Court is not a Court of first instance in respect of service matters, as held by the Supreme Court in L. Chandra Kumar 's case (supra), we do not propose to deal with the other aspects on the elaborate arguments advanced before us relating to the territorial jurisdiction of this Court as well as the alleged acts of malice attributed to other respondents by the petitioner. We, therefore, dismiss the writ petition on this score alone.

35. By an order dated 5-11-1998, we directed the petitioner to continue to remain on leave pending passing of further orders and again on 16-11-1998 we further clarified that appropriate orders would be passed about the interregnum period. The question,therefore, is as to what should happen to the petitioner who has been stranded pursuant to his approaching this Court under Article 226 of the Constitution of India, during the pendency of this writ petition. In view of the orders passed by us as indicated above, we hold that the petitioner shall be treated as on leave from 7-10-1998 to 4-11-1998. However, from 5-11-1998 i.e., the day when this Court ordered notice before admission to all the respondents, to this day i.e., 16-12-1998, the petitioner shall be treated as 'on duty' and is entitled for all the benefits pursuant thereto. Since we are dismissing the writ petition by this order, we declare that the petitioner is entitled to avail the joining time and other benefits from tomorrow onwards as admissible to him under the Rules. No costs.

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