

Ashok Kumar Khandelwal Vs. Collector and ors.

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Court : Madhya Pradesh

Decided On : Apr-06-1998

Reported in : 1998(2)MPLJ509

Judge : Shacheendra Dwivedi and ;Fakhruddin, JJ.

Acts : [Administrative Tribunals Act, 1985](#) - Sections 28; [Constitution of India](#) - Article 226

Appeal No. : L.P.A. No. 71 of 1998

Appellant : Ashok Kumar Khandelwal

Respondent : Collector and ors.

Advocate for Def. : S.K. Sharma, Adv.

Advocate for Pet/Ap. : A. Mishra, Adv.

Judgement :

Shacheendra Dwivedi, J.

1. This appeal has been filed under Clause 10 of Letters Patent (Nagpur) challenging the order passed by the learned Single Judge of this Court in W. P. No. 7/98 on 27.02.1998.

2. The appellant and respondent No. 4 hold the post of dresser in health centres. Respondent No. 4 had preferred a writ petition before the learned Single Judge wherein he had challenged the order of Collector, Morena, by which the transfer of petitioner from Agra (Vijaypur) to Banmor was set aside. Before any stated transfer, respondent No. 4 was working as dresser at Primary Health Centre Agra (Vijaypur), whereas appellant was posted as dresser in Primary Health Centre, Banmore. On 15.7.1997, respondent No. 4 was transferred to Banmore and the appellant was transferred to Agra (Vijaypur) under the order of Chief Medical and Health officer, Morena, at the instance of District Panchayat Administrative Committee. Appellant treating the order to be of District Panchayat Administrative Committee, preferred an appeal before the Collector, Morena by relying upon the circular of the Department of General Administration, Madhya Pradesh Government dated 23.4.1997, issued in the name of Governor wherein under Clause 9, it was provided that when the transfer orders are made by the Panchayat Institution, the aggrieved person may prefer a representation to the Collector. The Collector, on the consideration of the facts and circumstances, had set aside the order of transfer.

3. The order of Collector was challenged by respondent No. 4 before the learned Single Bench by way of writ petition. The learned Single Bench had considered the aspect whether the Collector had any jurisdiction to set aside the order of transfer of a Government servant and came to the conclusion that since the order of transfer related to Government employee holding the civil post, the learned Collector had no jurisdiction and the order of transfer could be challenged only before the Madhya Pradesh State Administrative Tribunal. The learned Single Bench had itself thus entertained the writ petition and had set aside the order of Collector.

4. Now the question posed before us in this appeal is whether the learned Single Judge in view of the provisions of Administrative Tribunals Act, had the jurisdiction to entertain the writ petition when the Tribunal was working effectively at Gwalior.

5. Adverting to the question posed, it may be seen that the learned Single Bench itself found that inter se transfer of appellant and of respondent No. 4 fell under the

jurisdiction of the Tribunal and it had therefore, observed that the order of transfer passed by the Chief Medical and Health Officer, Morena, could be challenged only before the Tribunal and Collector, Morena had no jurisdiction on the subject matter. In this view, the learned Single Bench itself could not have exercised the jurisdiction on the subject matter and could not have entertained the writ petition. The learned Writ Court was required at the threshold to dismiss the writ petition with liberty to the writ petitioner to approach the Tribunal for redressal of the grievance.

6. It is contended by Shri S.K. Sharma, the learned counsel for respondent No. 4, that the High Court has wide powers under Article 226 of the [Constitution of India](#) and when an authority had acted illegally, it had jurisdiction to entertain the petition under Article 226 of the [Constitution of India](#) and interfere with the order, in order to do justice.

7. The contention may appear to be attractive but has no substance. In view of the special enactment of Administrative Tribunals Act, the original jurisdiction has been vested with the Tribunal in relation to the service matters either of the State or of the Centre and the powers of the High Courts have thus been restricted to that extent.

8. The [Administrative Tribunals Act, 1985](#) is an special enactment made by the Parliament under Article 323 of the [Constitution of India](#). It provides exclusive machinery for the adjudication or trial of disputes in respect of recruitment, as also the conditions of service of persons appointed to public services and posts. On the constitution of the Tribunals under the Act, the jurisdiction of the Courts of first instance has been ousted. The decisions of Tribunals, whether created pursuant to Article 323A or 323B of the Constitution would still be subject to the High Courts writ jurisdiction under Articles 226/227 of the Constitution.

9. It has been held by the Apex Court in the case of L. Chandra Kumar v. Union of India, 1997(1) MPLJ (SC) 621 = AIR 1997 SC 1125 that in discharging the duty, the Tribunals cannot act as substitute for the High Courts and the Supreme Court, which have under our constitutional set up, been specifically entrusted with such an obligation. The Tribunals function in this regard is only supplementary and such

decisions of the Tribunals, are subject to scrutiny before a Division Bench of the respective High Courts.

10. It was further added by Supreme Court that the Tribunals will however continue to act as the only Courts of first instance in respect of areas of law for which they have been constituted. By this, it is meant that it will not be open for litigants to directly approach the High Courts. To quote the observations made in para 99 of L. Chandra Kumar (supra):-

'99. 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 concerned Tribunal. Section 5(6) of the Act is varied and constitutional and is to be interpreted in the manner we have indicated.'

11. In view of the above, the writ petition filed by respondent No. 4 could not be entertained directly by the learned Single Judge.

12. Consequent to the above discussion, we set aside the order passed by the learned Single Bench and leave the parties to approach the Tribunal, if so advised, for redressal of their grievance. However, in the facts and circumstances, there shall be no order as to costs.