

Amulya Chandra Kalita

Vs

Union of India and Others

Civil Appeal No. 1212 of 1990 (Arising out of SLP (C) No. 14741 of 1989)

(A.M. Ahmadi, Smt. M.S. Fathima Beevi JJ)

16.01.1990

ORDER

1. Special leave granted. Heard counsel on both sides.

2. The only question to which we are addressing ourselves is whether the Administrative Member of the Central Administrative Tribunal could alone decide the case in the face of this Court's decision in S.P. Sampath Kumar v. Union of India ((1987) 1 SCC 124 : (1987) 2 ATC 82). In that case this court pointed out in paragraph 5 of the judgment as under : (SCC p. 131)

"It is necessary to bear in mind that service matters are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involves questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have some modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained judges in the High Court's and the Supreme Court. That is the reason why at the time of the preliminary hearing of these writ petitions we insisted that every bench of the Administrative Tribunal should consist of one judicial member and one administrative member and there should be no preponderance of administrative members on any bench. Of course, the presence of the administrative member would provide input of practical experience in the functioning of the services and add to the efficiency of the Administrative Tribunal but the legal input would undeniably be more important and sacrificing the legal input or not giving it sufficient weightage would definitely impair the efficacy and effectiveness of the Administrative Tribunal as compared to the High Court."

3. Part XIV-A containing Articles 323-A and 323-B was introduced in the Constitution by the 42nd Amendment Act, 1976. Article 323-A enables Parliament to make law providing for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect of recruitment and conditions of service of persons or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the government. It permits the exclusion of the jurisdiction of all courts except the jurisdiction of this Court under Article 136 of the Constitution. The Parliament then enacted the Administrative Tribunals Act, 1985, providing for the adjudication of such disputes and

complaints through the Tribunals established under Section 4 of the said Act. Section 5(1) sets out the constitution of the Tribunal and adds that 'the jurisdiction, powers and authority of the Tribunal may be exercised by benches thereof'. Sub-section (2) of that section next provides that 'a bench shall consist of one Judicial Member and Administrative Member'. No provision to the contrary is shown to us. It is, therefore, statutorily recognised that every bench of the Tribunal must consist of a Judicial Member and an administrative Member. It is, therefore, obvious that the Administrative Member alone could not have heard and decided the matter.

4. In view of the above state of the law we have no hesitation in coming to the conclusion that the matter ought not to have been disposed of by the Administrative Member alone. We, therefore, set aside the impugned order and remand the matter to the Tribunal for disposal in accordance with law by a bench properly constituted as required by Section 5(2) of the statute. The civil appeal is accordingly disposed of.

5. In the facts and circumstance of this case there will be no order as to costs.

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