

Dr. Mahabal Ram

Vs

Indian Council of Agricultural Research and Others

Civil Appeal No. 2381 of 1991

(CJI Ranganath Misra, Kuldip Singh, M. H. Kania JJ)

03.05.1991

ORDER

1. Special leave granted.

2. This matter has two aspects involved in it - firstly, the question as to whether a single member of the Central Administrative Tribunal set up under the Administrative Tribunals Act, 1985, has jurisdiction to dispose of matters coming before the Tribunal under the Act - a question which has been referred by a two-Judge Bench to a larger Bench and the second, a controversy between the parties which centres round the order of transfer of the appellant. We do not propose to finally dispose of the second aspect and would leave it to the Tribunal to deal with it in the matter which we shall presently indicate.

3. Turning to the first aspect, it would be necessary to refer to the relevant provisions of the Act. Section 5 deals with composition of the Tribunal and benches thereof. Section 5(1), (2) and (6) provide :

"5. (1) Each Tribunal shall consist of a Chairman and such number of Vice-Chairman (and Judicial and Administrative Members) as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.

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(6) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as (a Bench) consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify :

Provided that if at any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of (two Members) the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to,

such Bench as the Chairman may deem fit."

4. A two-Judge Bench of this Court in *Amulya Chandra Kalita v. Union of India* ((1991) 1 SCC 181 : 1991 SCC (L&S) 145 : 1990 (1) JT 558) dealt with the dispute where a claim had been disposed by a Single Administrative Member. This Court in that case referred to sub-section (2) of Section 5 and the observations made by the Constitution Bench of this Court in the case of *S. P. Sampath Kumar v. Union of India* ((1987) 1 SCC 124 : (1987) 2 ATC 82 : AIR 1987 SC 386 : (1987) 1 SCR 435) and indicated that the scheme of statute was that cases should be heard by a Bench of two Members. From what has been said in the judgment, it appears that sub-section (6) of Section 5 was not brought to the notice of the Court.

5. Undoubtedly in *Sampath Kumar* case ((1987) 1 SCC 124 : (1987) 2 ATC 82 : AIR 1987 SC 386 : (1987) 1 SCR 435) this Court has clearly indicated that the jurisdiction of the High Court had been transferred to the Tribunal and, therefore, the nature of the business transacted by the Tribunal was judicial out and out. Referring to this aspect, Chief Justice Bhagwati has said : (SCC p. 131, para 5)

"It is necessary to bear in mind that service matters which 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 involve 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 Courts and the Supreme Court."

6. Sub-sections (2) and (6) appearing as limbs of the same section have to be harmoniously construed. There is no doubt that what has been said in *Sampath Kumar* case ((1987) 1 SCC 124 : (1987) 2 ATC 82 : AIR 1987 SC 386 : (1987) 1 SCR 435) would require safeguarding the interest of litigants in the matter of disposal of their disputes in a judicious way. Where complex questions of law would be involved the dispute would require serious consideration and thorough examination. There would, however, be many cases before the Tribunal where very often no constitutional issues or even legal points would be involved. Mr. Ramamurthi, Senior Counsel, suggested to us in course of the hearing that keeping the principles indicated in the Constitutional Bench judgment in view, the Single Member contemplated under sub-section (6) should be meant to cover a judicial member only. That view may perhaps not be appropriate to adopt. On the other hand, we are prepared to safeguard the interests of claimants who go before the Tribunal by holding that while allocating work to the Single Member - whether judicial or administrative - in terms of sub-section (6), the Chairman should keep in view the nature of the litigation and where questions of law and for interpretation of constitutional provisions are involved they should not be assigned to a Single Member. In fact, the proviso itself indicates Parliament's concern to safeguard the interest of claimants by casting an obligation on the Chairman and Members who hear the cases to refer to a regular bench of two members such cases which in their opinion require to be heard by a bench of two Members. We would like to add that it would be open to either party appearing before a Single Member to suggest to the Member hearing the matter that it should go to a bench of two Members. The Member should ordinarily allow the matter to go to a bench of two Members when so requested. This would sufficiently protect the interests of the claimants and even of the administrative system whose litigations may be before the Single Member for disposal. To make a

distinction between Judicial Member and Administrative Member functioning under sub-section (6) of Section 5 of the Act may not be appropriate and, therefore, we have not been able to accept the approach suggested by Mr. Ramamurthi. The observation made in the two-Judge Bench case that no provision was cited to them that a Single Member could hear cases laid before the Tribunal led to the conclusion that the judicial business of the Administrative Tribunal was intended to be carried by a bench of two Members. The vires of sub-section (6) has not been under challenge and, therefore, both the provisions in Section 5 have to be construed keeping the legislative intention in view. We are of the view that what we have indicated above brings out the true legislative intention and the prescription in sub-section (2) and the exemption in sub-section (6) are rationalised.

7. Now in the instant case we have been told that subsequent to the decision of the Tribunal, there has been a letter from the Director of the Central Soil Salinity Research Institute, Karnal, that there is no scope for the appellant to be fitted into that Institute to which the appellant has been transferred by the impugned order. It has been further pointed out by the counsel for the appellant that he had undertaken certain research which was halfway through prior to the transfer and the seeds upon which he had carried his research would not have germinating capacity beyond the end of May this year. Therefore, he suggested that we should dispose of the matter on merit. Counsel for the respondent is not available before us on account of the fact that we had indicated to the bar in the afternoon today that the Board before us would be discharged on account of what we thought was a long matter into which we had been drawn in. That, however, has collapsed and respondent's counsel cannot be found fault with for not being present in the court. We are also not prepared to make any order behind her back. In these circumstances, we suggest that the Central Administrative Tribunal shall take up the question relating to transfer of the appellant from the Indian Council of Agricultural Research to Central Soil Salinity Research Institute, Karnal, within two weeks from today so as to have the matter disposed of before May 25, 1991. The Chairman of the Tribunal, we suggest, shall take personal care to comply with this part of the direction. The appellant has agreed to appear before the Tribunal on May 10, 1991 and had undertaken to inform Ms K. Jaiswal that the matter has been posted on that day for the purpose. The appeal is disposed of accordingly. There will be no order as to costs.

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