

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.7723/2014**
% **15th January, 2015**

SH. PAWAN KUMARPetitioner
Through: Mr. Chander Shekhar, Advocate.

VERSUS

UNION OF INDIA AND ORS. Respondents
Through: Mr. Sanjay Jain, ASG with Mr.
Kirtiman Singh, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The petitioner by this writ petition filed under Article 226 of the Constitution of India seeks a writ of *quo warranto* questioning the appointment of the private respondent nos.3 to 6 with the respondent no.2/National Technical Research Organization. Respondent no.2 is a department of Union of India and therefore the employer of the private respondent nos.3 to 6 is Union of India.

2. All service issues with respect to recruitment etc of government servants with the government have to be decided by the Central

Administrative Tribunal (CAT) by virtue of Section 14 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') inasmuch as Section 14(1)(a) of the Act provides that all issues with respect to the recruitment to a post under Union of India has to be decided by the CAT. The issue of *quo warranto* or whether the recruitment of respondent nos.3 to 6 is or is not valid, therefore, will necessarily have to be decided by the CAT.

3. The Constitution Bench of the Supreme Court in the judgment in the case of ***L. Chandra Kumar vs. Union of India & Ors. AIR 1997 SC 1125*** in its para 99 has observed as under:-

“99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the

Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. 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 valid and constitutional and is to be interpreted in the manner we have indicated.” (underling added)

4. A reading of the aforesaid para shows that all disputes which are subject matter of jurisdiction for being decided by the CAT have to be decided by the CAT including challenge to *vires* of a statutory provision. This Court, as per the aforesaid para, cannot exercise original jurisdiction but only as a Court which would hear challenges to judgments which are pronounced by the CAT exercising original jurisdiction.

5. I asked the counsel for the petitioner that in view of the above whether I should decide this petition or this petition can be transferred to the CAT, but counsel for the petitioner insists that case be heard and decided on merits.

6. In view of the above, it is clear that this Court has no jurisdiction whatsoever to decide the disputes in the present case which are squarely covered for being decided by the CAT in terms of Section 14 of the Act.

7. Reliance placed by the petitioner upon the judgment in the case of *Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Ors. (2014) 1 SCC 161* is misconceived and this judgment does not apply to the facts of the present case because no doubt High Court has power to issue a writ of *quo warranto* but with respect to issues which are in the nature of seeking writs of *quo warranto* falling within Section 14 of the Act, it is the CAT which will have to decide the issue and not this Court. The judgment relied upon by the petitioner does not deal with the disputes of recruitment, service etc etc of an employee of the Central Government with the Central Government and therefore the said judgment has no application to the facts of the present case.

8. Further, I may note that I have recently in the judgment in the case of *Bridge and Roof Company (India) Ltd. Executives' Association Vs. M.K. Singh and Ors.* in W.P.(C) No.1574/2014 decided on 6.1.2015 held that a writ of *quo warranto* would not lie unless there is violation of

statutory provisions and I do not find that any statutory rules/provisions are alleged to be violated in this case, however, I need not observe anything further because I have no jurisdiction to decide the matter.

9. Dismissed.

JANUARY 15, 2015
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VALMIKI J. MEHTA, J