

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.2067 of 2018

P.Gokul Kaleeswaran Petitioner

vs.

1. Union Public Service Commission,
Rep. by Under Secretary (CSM),
Dholpur House,
Shahjahan Road, New Delhi - 110 069.

2. The Union of India,
Rep. by its Deputy Secretary to Government,
Ministry of Social Justice and Empowerment,
Department of Disability Affairs,
Shastri Bhawan,
New Delhi.

3. Office of the Chief Commissioner for Persons
With Disabilities,
Rep. by the Chief Commissioner,
Ministry of Social Justice & Empowerment,
Sarojini House, 6 Bhagwan Dass Road,
New Delhi.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the 1st respondent to allow persons suffering from Writers Cramps to avail the assistance of a scribe while participating in the Civil Services (Mains) Examination.

For Petitioner : Mr.T.Mohan

for Mr.P.Muthukumaarasaamy

For Respondents: Mr.M. Devendran (for R1)

Standing Counsel for UPSC

Mr.M.Arvindkumar (for R2 & R3)

Senior Panel Counsel.

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner, an undergraduate Civil Engineer from Anna University (PSG College of Technology, Coimbatore) and a Civil Service aspirant, suffering from Writer's Cramps (Task Specific Focal Dystonia), expressing difficulties in writing a three hour main examination, in the Civil Services Examinations to be conducted by Union Public Service Commission and further contending inter alia that Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), 1995 and the Right of Persons with Disabilities Act, 2016, enables a differently-abled, to seek for assistance of a scribe, has filed the present writ petition for a mandamus, directing Union Public Service Commission, New Delhi, 1st respondent, to allow persons suffering from Writer's Cramps, to avail the assistance of a scribe, while participating in the Civil Services (Mains) Examination.

2. Record of proceedings shows that on 03.08.2018, a Hon'ble Division Bench of Court has passed the following orders.

"The petitioner herein is suffering from writer's cramps as seen from the certificate issued by the Consultant Neurologist dated 17.10.2016 disabling him from prolonged writing. The petitioner also cleared the Civil Services Preliminary Examination successfully. The petitioner made a request for writing main examination through the scribe. The request made was rejected by the impugned order dated 30.11.2016 on the ground that only two categories of disabilities suffered are permitted viz., candidates suffering from loco motor disability and the cerebral palsy and blind/low vision. Challenging the same, the present writ petition has been filed.

2. Learned counsel appearing for the petitioner would submit that in view of the stand taken by the first respondent, the petitioner's application is bound to be rejected, if the petitioner makes out an application form for which Monday is the last date. If the petitioner fills up the application without a request for scribe, then the petitioner may be able to write examination. On the contrary, if the scribe is sought for, then, certainly the application will be rejected by quoting the rules which non-suited the petitioner from getting the said relief. Learned counsel further submits that the rules cannot be strictly interpreted as they are meant to help

those candidates, who are suffering from disability more than 40% which is attributable to the ability to write. Therefore, the disabilities quoted therein are merely illustrative in nature.

3. Considering the submissions made, we are inclined to pass an interim direction directing the first respondent to permit the petitioner to fill up the application form in the prescribed format manually seeking for permission to write the examination with the assistance of a scribe. We are passing this order also by taking note of the official memorandum of the Government of India dated 26.02.2013 in this regard. Pending further orders, the request of the petitioner shall not be rejected.

4. Post the matter for further hearing after two weeks. It is made clear that on the next date of hearing, the first respondent shall indicate their clear stand notwithstanding the stand taken already in the counter affidavit."

3. Opposing the prayer sought for, Under Secretary, Union Public Service Commission, New Delhi, has filed a counter affidavit.

(a) Union Public Service Commission being a Constitutional body, under Articles 315 to 323 Part XIV (Services under the Union and the States) Chapter-II of the Constitution, discharge their functions, duties and constitutional obligations assigned to them under Article 320 of the Constitution. Thus, the Commission is fully aware and conscious of the responsibilities entrusted to them under the Constitution of India and they conduct various competitive examination, including the Civil Services Examination, strictly in accordance, with the rules of examination notified by the Government of India, in a fair, just and impartial manner.

(b) Civil Services examination is held by the Commission for recruitment to the Indian Administrative Service, Indian Police Service, Indian Foreign Service and various other Group-A and Group-B Central Services / Post. The rules for this examination which, inter-alia, contain the conditions of eligibility, scheme and syllabi, provisions relating to reservation of vacancies etc. are framed and notified by the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) and are published by them in the Gazette of India Extra-ordinary. The rules for the Civil Services Examination, 2018 were also accordingly notified by the said Department of the

Government of India in the Gazette of India Extraordinary dated 07.02.2018. This commission also published the Examination Notice of the Civil Services Examination, 2018 on 07.08.2018, on its website, which may be termed as a mere replica of the Rules of Examination notified by the Government.

(c) As per rules of Civil Services Examination, 2018 following provisions exist which relates to special facilities to the candidates belonging to Persons with Benchmark Disability for writing the Examination:-

Section II, below "General Instructions
(Preliminary as well as Main Examination):

(i) "Candidates must write the papers in their own hand. In no circumstances will they be allowed the help of a scribe to write the answers for them. However, blind candidates and candidates with Locomotor Disability and Cerebral Palsy where dominant (writing extremity) is affected to the extent of slowing the performance of function (minimum of 40% impairment) will be allowed to write the examination with the help of a scribe in both the Civil Services (Preliminary) as well as in the Civil Services (Main) Examination."

(d) According to the extant Rules of Civil Services Examination, a candidate belonging to Persons with Benchmark Disability category with Locomotor Disability and Cerebral Palsy where dominant (writing extremity) is affected to the extent of slowing the performance of function (minimum of 40% impairment) and the blind candidates will be allowed to write the examination with the help of a scribe. Thus, in the Rules of Civil Services Examination, 2018, there is no provision for providing a scribe and extra time to a candidate, who does not belong to any of the categories of Persons with Benchmark Disability except mentioned above.

(e) While framing the Rules of Civil Services Examination, 2018, the Government had included categories i.e. (a) blindness and low vision; (b) deaf and hard of hearing; (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack and victims and muscular dystrophy; (d) autism, intellectual disability, specific learning disability and mental illness; and (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness as the persons with Benchmark Disability as per Section 34(I) of the Rights of Persons with Disabilities (RPwD) Act, 2016 extending the benefits as mentioned in the RPwD Act, 2016.

(f) Union Public Service Commission, New Delhi, has further contended that O.M.dated 26.02.2013 issued by the Department of Disability Affairs, Ministry of Social Justice & Empowerment contains broad guidelines for conducting written examinations for the persons with disabilities. It is submitted that based on some issues envisaged by the Commission and some other Examination conducting bodies, the Government had set up an expert committee to finalize the implementation aspects of those guidelines. Based on the recommendations of the expert Committee, some further steps are to be taken by the Government. However, the Commission, in compliance to the above-mentioned guidelines contained in the O.M. dated 26.02.2013 has started providing scribes (Even own scribes if asked for by the candidates), extra time, various assistive devices asked for by the physically disabled candidates, question papers with large font size etc. However, the facilities of scribes and extra-time are provided only to two categories of Persons with Benchmark Disability viz., Locomotor Disability and Cerebral Palsy [where dominant (writing extremity) is affected to the extent of slowing the performance of function (minimum of 40% impairment)] and Blind as per the extant Rules of Civil Services Examination notified by the Government.

(g) It is further submitted that in the online Application portal for the Civil Services Examination, 2018 available in the Commission's website for the period from 07.02.2018 to 06.03.2018, there are provisions for the candidates belonging to the Persons with Benchmark Disability to indicate whether they require scribe (Own Scribe or Commission's Scribe), extra time, assistive devices and large font question papers. However, a candidate who does not belong to the two categories of disabilities viz. Locomotor Disability and Cerebral Palsy and Blind / Low Vision, were not eligible to ask for a Scribe and / or extra time, as per the extant Rules of Civil Services Examination.

(h) Union Public Service Commission, New Delhi, has further submitted that in response to the representation dated 30.11.2016 of the petitioner, the concerned Under Secretary of the Civil Services (Main) Examination, had given an e-mail reply on the same day conveying the relevant provision of the Rules of Civil Services Examination, 2016.

(i) The Rights of Persons with Disability Act, 2016 has come into effect since 19th April 2017. The Ministry of Social Justice and Empowerment has framed and notified the Rules of Rights of Persons with Disability, 2017 on 15th June 2017. Rule 17 and Rule 18 of Chapter VII of

these Rules has provided the process to apply for the Certificate of Disability. The Form for the Certificate of Disability has also been provided along with the application for applying for Certificate of Disability.

(j) It is further case of the respondent that the petitioner does not belong to Persons with Benchmark Disability as he has failed to produce the Certificate of Disability as per the Rules dated 15th June 2017. These Certificates are also included in the Rules of Civil Services Examination, 2018. The question of considering his request for a scribe does not arise as he must belong to the Persons with Benchmark Disability Category. The guidelines dated 26.02.2013 are applicable to the Persons with Benchmark Disability Category.

(k) In view of the facts stated above, contentions of the petitioner are devoid of any merit since the Commission is mandated to conduct its examination as per the Rules notified by the Government and in the instant case, in the Rules of Civil Services Examination, 2018 there is no provision of allowing a Scribe to a person who is not covered under the categories of benchmark disabilities prescribed therein. Since the petitioner is unable to produce a valid Certificate of Disability as per provisions of the Rules of RPwD, 2016 his case for availing the facility of scribe cannot be considered.

(l) Union Public Service Commission, New Delhi, has stated that in view of the submissions made in the foregoing paragraphs, the grounds preferred by the petitioner in the instant writ petition is totally unfounded and devoid of any merit, if it is seen in the context of the Rules of Civil Services Examination, 2018 notified by the Government (DoP & T), the Rights of Persons with Disability Act, 2016 and the Rules of Rights of Person with Disability, 2017 on 15th June 2017. The Commission has been following the prescribed norms of the Government which have been enunciated in the rules of Civil Services Examination, 2018.

4. Added further Mr.M.Devendran, learned counsel for the 1st respondent made oral submissions that for the very same relief, petitioner has filed OA No.414 of 2017, before the Central Administrative Tribunal, Chennai and that the same is posted before the Registrar, Central Administrative Tribunal on 26.09.2018. He further submitted that matter pertains to "service" as defined in Section 3(q) of the Administrative Tribunals Act, 1985 and therefore, instant writ petition is not maintainable.

5. Per contra, Mr.T.Mohan, learned counsel for the petitioner submitted that OA No.414 of 2017, was filed

seeking for assistance of a scribe, for the Civil Services Examination of 2017, and that the said OA has become infructuous.

6. Mr.T.Mohan, learned counsel further submitted that the petitioner has cleared the preliminary examination for Civil Services conducted by Union Public Service Commission, New Delhi and that the main examination is scheduled in November 2018. He also submitted that in the event of this Court, non suiting the petitioner on the grounds of maintainability of the instant writ petition, sufficient protection be given, not to reject the application as directed by the Hon'ble Division Bench, for a considerable period.

7. Heard the learned counsel for the parties and perused materials on record.

8. Though rival contentions have been made as to the entitlement of a scribe, to assist the petitioner, stated to be suffering from Writer's Cramps (Task Specific Focal Dystonia), in the Civil Services Examinations to be conducted in November 2018, we are not inclined to delve into the said aspect, for the following reasons:-

"Administrative Tribunals Act, 1985, is an Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union 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 or society owned or controlled by the Government in pursuance of article 323A of the Constitution and for matters connected therewith or incidental thereto."

9. "Service", as defined in Section 3(q) of the Administrative Tribunals Act, 1985, reads thus,

"service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union 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, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation,

seniority, promotion, reversion,
premature retirement and
superannuation;
(iii) leave of any kind;
(iv) disciplinary matters; or
(v) any other matter whatsoever;

10. Section 14 of the Administrative Tribunals Act, 1985, which deals with Jurisdiction, powers and authority of the Central Administrative tribunal, is extracted hereunder.

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts except the Supreme Court 3 in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union 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 4[or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation 4[or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation.—For the removal of doubts, it is

hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations 4[or societies] owned or controlled by Government, not being a local or other authority or corporation 1[or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations 1[or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation 1[or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court 2***) in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation 1[or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation 1[or society] and pertaining to the service of such person in connection with such affairs.

11. Section 15 of the Administrative Tribunals Act, 1985, which deals with Jurisdiction, powers and authority of State Administrative tribunal, is extracted hereunder.

15. Jurisdiction, powers and authority of State Administrative Tribunals.—(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority

exercisable immediately before that day by all courts (except the Supreme Court 3**) in relation to—

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation 4[or society] owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation 4[or society] or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities and corporations 4[or societies] controlled or owned by the State Government:

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations 4[or societies].

(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation 4[or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court 3**) in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation 4[or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any service or post in connection with the affairs of such local or other authority or corporation 1[or society] and pertaining to the service of such person in connection with such affairs.

(4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable. "

12. Section 14 (1-a) speaks about recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services. Admittedly, petitioner is an aspirant to become a Civil Servant and thus, the matter concerns recruitment.

13. Central Administrative Tribunal, Madras, has been constituted under Article 323-A of the Constitution of India. For matters pertaining to recruitment, an original application has to be filed, under Section 19 of the Act, which reads thus.

19. Applications to tribunals.—(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.—For the purposes of this sub-section, "order" means an order made— (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation 4[or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation 4[or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) 1[in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government].

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules. "

14. Section 28-A of the Administrative Tribunals Act, 1985, reads thus:

"28. Exclusion of jurisdiction of courts except the Supreme Court under article 136 of the Constitution.—On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except—

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

15. In Subramanian vs. Union of India, reported in AIR 1986 Kerala 158, the court held as follows:-

"The legislative intention seems to be that all service matters relating to Central Government Servants should be exclusively dealt with by the Central Administrative Tribunal, when once such a Tribunal is established and that no Court including the High Court, shall have thereafter original jurisdiction to deal with such matters. Even pending cases relating to such matter cannot be proceeded with, in view of the statutory transfer ordained by Section 29 Section 14(1) speaks of the date from which the jurisdiction of the Tribunal becomes exercisable under this Act. Therefore, with effect from 1st November, 1985 (which is the appointed day for the Central Administrative Tribunal), the power of the Tribunal became exercisable and that from that point of time, the High Court's jurisdiction stood ousted. The Supreme Court's reluctance to stay transfer of pending Article 226 petition in S.P. Sampath Kumar's Case A.I.R. 1986 S.C.1, in the same manner as Article 32 petitions itself shows what the true position is.

The conclusion, therefore, is that the writ petitions cannot now be entertained by the High Court."

16. In S.M.Pattanaik Vs. Secretary to Government, reported in 1987 11 LLJ 113, the Karnataka High Court, discussed the provisions of the Administrative Tribunals Act, 1985 as hereunder.

"(d) Section 15 of the Act is similarly worded and specifies powers and authority of State Administrative Tribunals in relation to service matters and recruitment to State Civil Services and posts. Section 17 of the Act confers power on the Tribunal to punish for contempt of itself in the same manner as the High Court has under the provisions to the Contempt of Courts Act. Section 18 of the Act provides for distribution of business amongst the Benches. Clause (1) of Section 18 provides that the power to distribute the work could be made by a Notification by the appropriate Government. Clause (2) of Section 18 provides that if any question arises as to whether any matter falls within the purview of the business allocated to a Bench of a Tribunal, the decision of the Chairman thereon, shall be final. Section 19 provides for making the applications before the Tribunals. Section 20 provides that ordinarily the Tribunal shall not admit an application unless the applicant has exhausted the remedy available under the

Service Rules. Section 21 prescribes the period of limitation as one year for making an application from the date on which the final order was made. Section 22 prescribes the procedure and powers of the Tribunals. According to the said provision, the Tribunal is not bound by the procedure laid down by the C.P.C., but it is required to act in conformity with the rules of natural justice. Sub-section (3) of Section 22 confers on the Tribunal the power available to a Civil Court under the C.P.C. in respect of matters specified in clauses (a) to (i) thereof. Section 23 provides that every applicant before the Tribunal has a right to take the assistance of a legal practitioner. Under Section 24, normally, the Tribunal cannot pass any interim order unless copies of the application are served on the opposite parties and opportunity is given to such parties of being heard, but under certain circumstances the Tribunal can dispense with the above requirement and grant an interim order for a period not exceeding 14 days. Section 25 of the Act confers power on the Chairman to transfer cases from one Bench to another. Section 26 provides that the decision of the Bench shall be taken by majority. Section 27 provides for the execution of the orders of the Tribunal. Section 28 of the Act provides for exclusion of jurisdiction of all Courts except the Supreme Court under Article 136 of the Constitution and Section 29 provides for transfer of all pending cases before any Court which falls within the jurisdiction of the Tribunal under Section 28 of the Act.

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6. It is common ground that the answer to the question, which arises for consideration in this case, depends upon the true meaning of the words 'disputes and complaints' used in Article 323A of the Constitution, for the reason that it is pursuant to the said Article the Parliament has enacted the Act, providing for the establishment of Administrative Tribunals for the purpose of adjudication of disputes and complaints relating to recruitment and conditions of service of Civil Servants as clearly indicated in the Preamble. Therefore, the jurisdiction, power and authority conferred on the Tribunal must necessarily fall within the scope and ambit of Article 323A of the Constitution. In other words, the ambit of the expressions 'Service matters' defined in

Section 2(r) of the Act and of the jurisdiction, power and authority conferred on the Tribunal under Section 14 or 15 of the Act and of exclusion of jurisdiction of other Courts provided for under Sections 28 and 29 of the Act must also be ascertained only having due regard to the meaning of the words 'disputes and complaints' used in Article 323A of the Constitution. It is also pertinent to note that the provision for exclusion of jurisdiction under clause (d) is expressly stated to be only with respect to the disputes and complaints referred to in clause (1)."

17. In S.P.Sampath Kumar vs. Union of India reported in 1987 SC 386 : 1987 (1) SCC 124, while upholding the constitutional validity of the Administrative Tribunal Act, 1985, the Hon'ble Apex Court held that as the Tribunal constituted under the Act is the substitute of the High Court and is entitled to the powers thereof and it is paramount importance that the substitute institution must be a worthy successor of the High Court in all respect.

18. In Government of Tamil Nadu rep. by its Secretary, Education Department, Madras - 600 009 and 2 others vs. P.Hepzi Vimalabai reported in 1994 Writ L.R. 690, a Hon'ble Full Bench of this court considered, as to whether the expression "matters concerning recruitment" would include pre-recruitment matters as well. After a threadbare analysis of the constitutional and statutory provisions, at paragraph 30, the Hon'ble Full Bench held as follows:

"30. In our view, the use of the expression 'matters concerning recruitment' is wide enough to cover and include all matters concerning recruitment. There is no warrant to make a distinction between 'pre-recruitment matters' and 'recruitment matters'. We are of the opinion that the view expressed by the Division Bench in Ruban's case, 1990 W.L.R. 1 : (1990)2 L.L.J. 92, that only 'in service' candidates can raise disputes in respect of matters pertaining to recruitment and not a person not in service is not acceptable. On the contrary, 'recruitment' is a process which would cover within its ambit all the necessary steps commencing from the stage of notifying the vacancies and ending with the appointment of selected candidates. The fact that the definition of the expression 'service matters' in Section 3(q) of the Act does not make any reference to recruitment is wholly

irrelevant'. 'Recruitment' is separately referred to in the preamble as well as in the relevant provisions of the Act. In addition thereto, the expression 'conditions of service of persons appointed' is also found. Section 3(q) of the Act is applicable to persons appointed to service. That is why that section does not make any reference to recruitment.

At paragraph 39, the Hon'ble Full Bench further added that "we are also of the view that there can be no distinction such as 'recruitment' and 'pre-recruitment' matters. The judgment in 1990 Writ. L.R. Page 1 is hereby overruled"

19. In L. Chandra Kumar vs. Union of India, reported in AIR 1997 SC 1125, Hon'ble Supreme Court held thus,

"91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In R.K. Jain case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforesaid contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution."

20. In *Dr. Duryodhan Sahu and Ors. Vs. Jitendra Kumar Mishra and Ors.*, reported in (1998) 7 SCC 273, the Hon'ble Supreme Court considered whether Tribunal has jurisdiction to entertain Public Interest Writ Petitions. Discussion by the Hon'ble Apex Court, on the aspect of constitution of the Tribunal, would be relevant, and that the same is reproduced hereunder.

"18. The constitution of Administrative Tribunal was necessitated because of large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the Courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of 'service matters' found in Section 3 (q) shows that in relation to a person the expression means all service matters relating to the conditions of his service. The significance of the word 'his' cannot be ignored. Section 3 (b) defines the word 'application' as an application made under Section 19. The latter Section refers to 'person aggrieved'. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the work 'order' has been defined in the explanation to sub-s. (1) of Section 19 so that all

matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. It in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated."

21. In *Rajeev Kumar and Another Vs. Hemraj Singh Chauhan* reported in 2010 (4) SCC 554, at para 16, the Hon'ble Supreme Court held thus:-

"16. The grievances of the appellants in this appeal are that they were not made parties in proceedings before the Tribunal. But in the impleadment application filed before the High Court it was not averred by them that they were not aware of the pendency of the proceeding before the Tribunal. Rather from the averments made in the impleadment petition it appears that they were aware of the pendency of the proceedings before the Tribunal. It was therefore, open for them to approach the Tribunal with their grievances. Not having done so, they cannot, in view of the clear law laid down by the Constitution Bench of this Court in *Chandra Kumar* (supra), approach the High Court and treat it as the Court of first instance in respect of their grievances by 'overlooking the jurisdiction of the Tribunal'. The C.A.T. also has the jurisdiction of Review under Rule 17 of CAT (Procedure) Rules, 1987. So, it cannot be said that the appellants were without any remedy."

22. Thus, after the constitution of the Central Administrative Tribunals, on matters concerning recruitment to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, writ cannot be entertained directly. Thus, holding that the instant writ petition, as not maintainable, we permit the petitioner to file an application under Section 19 of the Administrative Tribunals Act, 1985 for redressal of his grievance.

23. Interim protection granted by a Hon'ble Division Bench, vide order, dated 03.08.2018, to be in force, for a period of three weeks from today, so as to enable the

petitioner to file an application before the tribunal.

24. OA No.414 of 2017, is stated to have been filed seeking permission to avail the assistance of a scribe in the Civil Service Examination, scheduled in 2017. Pendency of the said OA would not disentitle the petitioner from seeking appropriate relief, if any application is filed for the latter period. We only observe that the grievance of the petitioner, be addressed with reference to the statutory provisions, pragmatically, keeping in mind the objects of the Act.

25. With the above directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

dm/ars

To

1. The Under Secretary (CSM),
Union Public Service Commission,
Dholpur House,
Shahjahan Road, New Delhi - 110 069.

2. The Deputy Secretary to Government,
Union of India,
Ministry of Social Justice and Empowerment,
Department of Disability Affairs,
Shastri Bhawan,
New Delhi.

3. The Chief Commissioner,
Office of the Chief Commissioner for Persons
With Disabilities,
Ministry of Social Justice & Empowerment,
Sarojini House, 6 Bhagwan Dass Road,
New Delhi.

+1 CC TO MR.ARVIND KUMAR Advocate SR.NO. 57053

+1 C.C. to P.MUTHUKUMARASAMY Advocate SR.NO. 57353

+1cc to Mr.M.Devendran, Advocate SR.No.57768 (26/09/2018)

WP.No.2067 of 2018

ASK (24/08/2018)