

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4304 OF 2021

Smriti Verma,
(daughter of Shri Rajendra Kumar Dwivedi), Date of Birth:01-03-1965,
Age-56 years 05 months, working as :
Executive Director, Planning & Finance,
(Group "A" post), in the office of Chairman
and Managing Director (MRVC), Mumbai
Railway Vikas Corporation, Mumbai and
Residing at:- D-55, Badhwar Park, Colaba,
Mumbai-400 005, State of Maharashtra,
Cell: 9004983205,
email smritidwivedi@gmail.com

... Petitioner

Vs.

1. Union of India
Through Secretary, Railway Board,
Railway Bhavan, Raisina Road,
Rafi Ahmed Kidwai Marg, Delhi-110 011.

2. Chairperson,
Government of India,
Department of Personnel & Training,
PESB (Public Enterprises Selection Board),
Block No. 14, CGO Complex, Lodhi Road,
New Delhi 110 003.

3. Director,
Government of India,
Department of Personnel & Training,
PESB (Public Enterprises Selection Board),
Block No. 14, CGO Complex, Lodhi Road,
New Delhi 110 003.

4. Department of Personal & Training,
Through Secretary, North Block,
Central Secretariat, New Delhi,
Delhi 110 001.

5. Mumbai Rail Vikas Corporation
Through Chief Managing Director,
2nd Floor, Churchgate Station Building,
Mumbai-400 020.

... Respondents.

Mr. Rahul G. Walia, Advocate for Petitioner.
Mrs. R. M. Shinde, AGP for State.
Mr. J. J. Pandian i/b Mr. Suresh Kumar, Advocate for Respondent
No.1.
Mrs. Chitru Phadke, Advocate for Respondent No.5.

**CORAM : PRASANNA B. VARALE &
ABHAY AHUJA, JJ.**

DATE : 14TH OCTOBER 2021

JUDGMENT: (PER ABHAY AHUJA, J) :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.
2. By order dated 14th October 2021, we have dismissed the above writ petition for the reasons to be recorded separately. Accordingly, we are setting forth the reasons for dismissing the above petition as under.
3. By this petition, petitioner is aggrieved by her non-inclusion in the list of candidates in the selection process to the post of

Chairman and Managing Director, Mumbai, Railway Vikas Corporation Limited (the “MRVC”) and seeks declaration that she is eligible for being considered to the said post and direction to allow her to participate in the selection process initially scheduled on 19th August 2021 with directions of this Court for consideration for appointment to the said post.

4. Petitioner is working as Executive Director, Planning and Finance(Group “A” post) with MRVC. It is submitted that petitioner is a lady officer, who after passing all India selection process conducted by the Union Public Commission Service (UPSC), came to join the Group “A” service of the Indian Railway Accounts Service in the year 1989. That in the year 2021 she has been appointed as Executive Director, Planning and Finance with the MRVC after a detailed selection process and has been absorbed on a permanent post with the said corporation. It is submitted that the post of the Executive Director is only subordinate the Managing Director of MRVC.

5. It is submitted that the MRVC is a Central Public Sector Enterprise, which is fully controlled by the Central Government and

performs public duties being involved in various suburban railway infrastructure projects.

6. Petitioner submits that pursuant to the advertisement no. 5/2021 issued by the Government of India, Department of Personnel and Training (DOPT), Public Enterprise Selection Board (PESB) dated 13th January 2021 for filling up the post of Chairman and Managing Director (CMD) of MRVC, petitioner applied for the said post vide application dated 22nd February 2021. It is submitted that petitioner complied with all the eligibility criteria for the said post and after making the said application, she was eagerly waiting for being notified about the status of her application and her candidature. However, as she had not received any response, she made various e-mail representations in respect thereof to the respondents, but she has not received any response nor even a phone call from them.

7. It is submitted that she was rudely shocked when she came across an office memorandum dated 13th August 2021 uploaded on the website of PESB stating that the interview process of short listed candidates was scheduled on 19th August 2021 at 2.00 p.m.

Petitioner submits that there is no list of short listed candidates which has been notified or published by the respondents nor any information as to who is participating in the selection process for the post of Chairman and Managing Director of MRVC. It is submitted that petitioner is an internal candidate/ an officer of the Indian Railways, who on permanent absorption basis came to be appointed with the MRVC after serving the Indian Railways in the accounts department for 32 years and since February 2021 she has been working on the post of Executive Director of MRVC. The respondent no.5 disputes that petitioner is an internal candidate.

8. It is submitted by petitioner that the selection process is not being conducted in a transparent manner as even the list of eligible candidates participating in the selection process has not been notified nor petitioner has been informed as to why she has not been shortlisted or that the interviews were scheduled for 19th August 2021. Aggrieved thereby, petitioner is before this Court seeking the reliefs set out in the petition, alleging arbitrariness and discrimination in short listing of candidates.

9. When the matter was listed before this Court on 18th August 2021, this court (Coram: Ujwal Bhuyan and Madhav J. Jamdar, JJ) had in paragraph 4 recorded the statement made on behalf of MRVC that the interview for the post of Chairman and Managing Director scheduled on 19th August 2021 would be deferred. Thereafter, the matter was listed on 20th September 2021 for permission to file reply which was granted by this Court,

10. Today when the matter is called out, we note that the reply dated 27th August 2021 by MRVC as well as rejoinder to the same dated 31st August 2021 are on record. On behalf of MRVC, the reply is filed raising preliminary objection to the jurisdiction of this Court to entertain this petition as well as on merits.

11. The controversy that arises for our consideration is the maintainability of the present petition before this Court and we are, therefore, hearing the parties on this preliminary objection.

12. Learned counsel for petitioner submits that the Central Administrative Tribunal (“CAT”) has no jurisdiction or authority to decide the issues raised in the present petition. He submits that the

present petition raises issues with regard to the petitioner's non-consideration /non-inclusion of petitioner's candidature for appointment to the post of CMD, MRVC by PESB, which is an independent body like UPSC or Staff Selection Commission to recommend the eligible and selected candidates to Public Sector Undertakings like MRVC for appointment. He submits that the PESB is not notified under the Administrative Tribunals Act, 1985 for the CAT to exercise its jurisdiction on the acts and orders passed/issued by the PESB. That in the present petition, the only challenge is to the impugned act of the PESB not to consider the petitioner's candidature for the post of CMD, MRVC, inspite of being eligible under the Rules though the same is disputed by respondent no.5. He submits that it is not only erroneous and incorrect to raise the objection that CAT has jurisdiction to entertain and decide the issues raised in the present petition, but even shocking that a plea of alternate remedy has been raised even when there is an infringement of fundamental right of petitioner. He submits that the entire selection process is fraught with lack of transparency and arbitrariness on the part of the respondents as neither the list of eligible candidates has been notified nor the reasons as to why petitioner was found to be was ineligible has been disclosed. That

the act of the respondents to keep the entire process secret is nothing but a complete abuse and misuse of the powers, authority and nothing else.

13. Petitioner has referred to the following decisions in her rejoinder in support of her contentions:-

- (i) M. P. State Agro Industries Development Corporation and Anr. Vs. Jahan Khan, (2008) 1 SCC (L &S) 9.*
- (ii) Dr. Devki Nandan Vs. Union of India in Writ Petition No. 113 of 2004*
- (iii) R. Sai Babu and Ors Vs. Bharat Sanchar Nigam Ltd. In Writ Petition No. 1657 of 2004.*

14. On the other hand, Mrs. Phadke, learned counsel appearing for respondent no.5-MRVC, vehemently opposes the submissions made on behalf of petitioner. She refers to and relies upon the affidavit in reply dated 1st September 2021. She submits that the MRVC is a Central Public Sector Undertaking (CPSU) under the Ministry of Railways, Government of India with 51:49 shareholding by Ministry of Railways and State Government of Maharashtra. The MRVC executes Rail infra projects in Mumbai suburban and extended suburban sections under Mumbai Urban Transport Project (MUTP) and is presently executing MUTP-III and 3A projects for the infrastructure development for the Mumbai

Suburban Railway System. She submits that the board level appointments in the Corporation are dealt by the PESB, Department of Personnel and Training (DOPT) of the M/o Personnel, Public Grievances and Pensions of Government of India.

15. Referring to the reply, learned counsel submits that the PESB regularly organizes all India level selection for the post of CMD and Directors with the selection criteria made available on its website and every level of the selection process is well defined and made available in the public domain including the selection committee composition etc. She submits that the Government of India constituted the PESB by a Resolution dated 30th August 1974. In the present case, the selection process for the filling up of the post of CMD, MRVC was initiated as per guidelines on account of anticipated vacancy due to arise upon superannuation of the existing incumbent pursuant to which the said advertisement for the post was circulated on PESB's website on 31st January 2021 in response to which petitioner filed her online application.

16. It is submitted that petitioner, is an absorbed employee of MRVC and by filing the present writ petition before this Court is

wilfully bypassing the CAT, knowing well that service matters ought to be initially filed before the CAT. She submits that the list of organisations within the jurisdiction of CAT also includes MRVC, which is listed at serial no. 167 under the list of corporations/societies/other Authorities within the purview of CAT under Section 14(2) of the Administrative Tribunals Act, 1985 under department-wise classification of cases under Appendix-VI. She draws the attention of this court to the exhibit R-2 to the reply, which contains the said entry on page 155. Learned counsel also draws the attention of this Court to item no. 28 of exhibit R-2 on page 145, which refers the Ministry of Personnel, Public Grievances and Pensions, under which the Department of Personnel and Training functions. She submits that the PESB functions under the DOPT of the Ministry of Personnel etc. Therefore, looked at from any angle, the CAT of concerned jurisdiction would have jurisdiction to entertain petitioner's grievance and not this Court.

17. Learned counsel relies upon the decision of the Apex Court in the case of *L. Chandra Kumar Vs. Union of India, (1997) 2 SCC 261*, which she submits has also been referred to in the judgment of the Delhi High Court in **WP(C) 3334/2019** in the case of *Prabhat Rajan*

DEO Vs. Union Public Service Commission and Others. She submits that therefore this Court ought not to entertain the writ petition and be pleased to dismiss this petition for want of jurisdiction to entertain this petition.

18. We have heard Mr. Rahul Walia, Learned Counsel, on behalf of Petitioner, Mrs. R. M. Shinde, learned AGP for Respondent- State, Mr. J. J. Panchian, learned Advocate for Respondent No.1-Union of India and Mrs. Phadke, learned advocate for respondent no.5 and with their able assistance, we have perused the papers and proceedings in the matter.

19. The above basic facts not being in dispute, we have at this stage been called upon to decide whether this Court has jurisdiction to entertain this petition.

20. The MRVC, as submitted is a Central Public Sector Undertaking under the Ministry of Railways with the Government of India having majority stake. It is also not in dispute that the board level appointments in MRVC are dealt with by the Public Enterprises Selection Board or PESB for short, which is under the

Department of Personnel and Training of the Government of India or DOPT for short. We also note that the DOPT is a department under the Ministry of Personnel, Public Grievances and Pensions. This is evident from the Gazette of India exhibited at pages 161 to 163 of the 5th respondent's reply. There is no dispute that reliefs claimed by petitioner are against the PESB being respondents no. 3 and 4 in the petition and against MRVC being respondent no.5 to petition. We note from exhibit R-2 to the MRVC's reply at pages 144 to 160 being Appendix -VI (under Rule 154(b)) which contains Department-wise classification of cases, under Clause (B) with respect to Other services regulated by Central Government Service Rules, that at item 28 is the entry in respect of M/O Personnel, Public Grievances and Pensions; also under the Clause (D) which refers to List of corporations/societies/other authorities within the purview of CAT under Section 14 (2) of the Administrative Tribunals Act, 1985, entry number 167 refers to Mumbai Rail Vikas Corporation Limited, M/O Railways. What emerges is that PESB functions under the DOPT which is a department under the M/o Personnel, Public Grievances and Pensions. It is, therefore, not necessary for PESB to be separately notified in the aforesaid Appendix.

21. The Administrative Tribunals Act, 1985 is an Act to provide for adjudication or trial by Administrative Tribunals of all 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. Tribunals, constituted under the Administrative Tribunals Act, are courts of limited jurisdiction. Section 14 of the Administrative Tribunals Act, which confers jurisdiction on Administrative Tribunals.

22. It would also not be out of place to set forth Section 14 of the Administrative Tribunals Act, 1985 with respect to the jurisdiction, powers and authority of the CAT as under :-

“(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) 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 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;

(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 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 the 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 or societies owned or controlled by Government, not being a local or other authority or Corporation 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 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 or society, all the jurisdiction, powers and authority exercisable immediately before that date by all Courts (except the Supreme Court) 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 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 [or society] and pertaining to the service of such person in connection with such affairs”

23. Therefore, there is no doubt that CAT of appropriate jurisdiction would have jurisdiction to entertain a service dispute involving PESB and / or MRVC.

24. Admittedly, petitioner is absorbed on permanent basis on the post of Executive Director, Planning and Finance in MRVC and had applied for the post of CMD, MRVC to PESB, which is conducting the selection process. As stated above in all service matters in respect of such petitioner, under Section 14 of the Administrative Tribunals Act, 1985, the CAT shall exercise jurisdiction, power and authority in relation to all service matters. Section 3 (q) of the Act defines service matters as all matters relating to conditions of service and

includes matters with respect to tenor, confirmation, seniority, promotion, etc.

25. In our view, the grievance of petitioner of not being included in the list of eligible candidates short listed for selection to the post of Chairman and Managing Director of MRVC being in the nature of service dispute, in the light of the provisions of Administrative Tribunals Act, 1985, the Court of first instance for service matters is the Central Administrative Tribunal. The decision of the Constitution Bench of the Hon'ble Supreme Court in the case of *L. Chandrakumar (supra)* aptly highlights this point.

26. The Constitution Bench of the Supreme Court in *L. Chandrakumar (supra)* has observed that it will not be open for litigants to directly approach the High Court even in cases where there is challenge to the vires of statutory legislation by overlooking the jurisdiction of concerned tribunal. The Apex Court has laid down in the said case that the Tribunals created pursuant to Article 323-A or under Article 323-B of the Constitution of India are competent to hear matters entrusted to them and will continue to act as only courts of first instance in respect of the areas of law for

which they have been constituted. Paragraphs 93 and 99 of the decision in the case of *L.Chandrakumar* is usefully quoted as under:-

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislation and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

99. In view of the reasoning adopted by us, we hold that clause 2(d) of [Article 323-A](#) and clause 3(d) of [Article 323-](#)

B, 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 323-A and 323-B 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 a 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 323-A and Article 323-B 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 Tribunal concerned 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 Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

27. The decision of the Delhi High Court relied upon by the respondent no. 5 in the case of *Prabhatranjan Deo(supra)* also draws strength from this view.

28. It is, therefore, clear from the aforesaid discussion that this Court cannot entertain the present petition and the remedy of petitioner lies only before the CAT of appropriate jurisdiction. With respect to the decisions relied upon by petitioner, while we respectfully agree with the principles laid down therein but it must be said that those decisions have been rendered in completely different contexts and are therefore, distinguishable and not applicable to the facts of this case.

29. In this view of the matter, the present petition is not maintainable and is accordingly dismissed. Ad-interim order stands vacated.

30. It will however be open to petitioner to approach the Central Administrative Tribunal having jurisdiction for determination of her grievances.

31. This Court has not expressed any opinion on the merits of the case. The arguments were only limited to the issue of jurisdiction of this Court to entertain the petition.

32. All contentions on merits are kept open.
33. Petition accordingly stands disposed. No costs.
34. Parties to act upon an authenticated copy of this order.

(ABHAY AHUJA, J.)

(PRASANNA B. VARALE, J.)

NIKITA
YOGESH
GADGIL

Digitally signed
by NIKITA
YOGESH
GADGIL
Date:
2021.10.27
18:20:46
+0530