

Urmila Ingale

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

WRIT PETITION NO.7725 OF 2021

Shri Parasram Thakur

....Petitioner

vs.

Union of India and ors.

....Respondents

Mr. Vicky A. Nagrani, for the petitioner.

Mr. T.J. Pandian a/w Mr. T.C. Subramanian, for the respondents.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: DECEMBER 1, 2021

P.C. :

1. After recording the facts giving rise to this writ petition in our earlier order dated November 17, 2021, we had called for a report from the Registrar, Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) as to how and under what authority the Member (Administrative) could have presided over a Single Bench and dealt with the original application of the petitioner, which pertains to disciplinary proceedings initiated against him, on the face of the provisions contained in Rule 154 of the Central Administrative Tribunal Rules of Practice, 1993 (hereafter "the 1993 Rules", for short) read with Appendix VII, entry 9 thereof.

2. The Joint Registrar of the Tribunal has submitted a report dated November 23, 2021. In such report, after quoting paragraph 5 of our order dated November 17, 2021, the Joint Registrar says as follows:

"In this regard, I am to state that as per Order No. 1/32/87-JA dated 20.01.1992 passed by Hon'ble Mr. Justice V. S. Malimath the then Chairman, Central Administrative Tribunal, in situations when a Division Bench is not available for dealing with urgent cases for 'Admission' and 'Grant of Interim Orders', and the urgency is such that, the matter cannot be deferred until a Division Bench becomes available, the Single Member is authorized to take up such urgent cases for 'Admission' and 'Grant of Interim Orders' subject to the condition that if the Single Member is not inclined to admit the matter, he/she shall refer the matter, for being placed before the appropriate Division Bench as soon as the same becomes available. It is further submitted that on 13.10.2021, Division Bench was not available. A copy of the aforesaid Order and the Cause List dated 13.10.2021 is enclosed herewith for ready reference."

3. The order of the Chairman of the Central Administrative Tribunal on which the Joint Registrar has placed reliance to suggest that the Member (Administrative) could have presided over a Single Bench on October 13, 2021, is dated January 20, 1992. Such order was made by the Chairman invoking Section 5(6) of the Administrative Tribunals Act, 1985 (hereafter "the Act", for short). However, not only the Joint Registrar but also the Member (Administrative), who presided over the Single Bench on

October 13, 2021 and passed the order impugned in this writ petition, seem to be utterly ignorant of the 1993 Rules which have been brought into force with effect from September 6, 1993. On or from such date, the order of the Chairman dated January 20, 1992 was required to be read in such manner so that it does not derogate from the statutory rules. Assignment of cases to be heard by a Division Bench or by a Single Bench having been ordained by Rule 154 of the 1993 Rules read with Appendix VII thereof, it is the statutory rules that would guide consideration of matters, either by a Division Bench or by a Single Bench. The order dated January 20, 1992 would have limited application to cases covered thereby, and cannot be read in a manner that it is inconsistent with the statutory rules.

4. Even otherwise, the aforesaid excerpt from the report of the Joint Registrar clearly reveals that a Single Bench can deal with urgent cases for "admission" and "grant of interim orders", provided the urgency is such that the matter cannot be deferred until a Division Bench becomes available. It is also clear that if a Single Bench is not inclined to admit the matter, he has to refer the matter for being placed before the appropriate Division Bench as soon as the same becomes available. Even, having regard to the terms of the order dated January 20, 1992 of the Chairman, the Single Bench presided over by the Member (Administrative) in this case could have only considered

matters relating to “admission” and “grant of interim orders”; however, such order of the Chairman did not authorize him to vacate an interim order which had been passed earlier by a Division Bench of the Tribunal. Here, jurisdiction conferred on a Single Bench to ‘grant interim order’ in an urgent case could not have been construed as conferring jurisdiction to vacate an interim order previously granted by a Division Bench.

5. Leaving aside all considerations, it has not been explained as to how after the advent of the 1993 Rules, a matter pertaining to a disciplinary case could be placed on the board of a Single Bench presided over by the Member (Administrative). No order either under Section 5(6) of the Act or under Rule 154 (c) and/or (d) passed by the Chairman of the Central Administrative Tribunal to that effect has been brought to our notice whereby the Member (Administrative) presiding over a Single Bench was conferred jurisdiction to hear a matter, which is otherwise required to be heard by a Division Bench in terms of the 1993 Rules. The Tribunal, evidently, has breached the law.

6. For the reasons aforesaid, we have no doubt in our mind that the order impugned has been passed by the Member (Administrative) upon wrongful assumption of jurisdiction. The said order, accordingly, stands set aside.

7. We are informed at this stage by Mr. Pandian, learned advocate for the respondents that a subsequent order dated November 16, 2021 has been passed by a Division Bench of

the Tribunal comprising of the Members (Administrative) and (Judicial). Although the order dated November 16, 2021 is not under challenge in this writ petition, we are of the considered opinion that interest of justice would be sufficiently served if such order is also set aside and *status-quo ante* as on October 13, 2021 is restored, meaning thereby that the Tribunal shall proceed to consider the original application from the stage it had reached on that date. We do so in exercise of our power of superintendence under Article 227 of the Constitution of India. Also, we direct that henceforth the original application of the petitioner shall be heard by a Division Bench of the Tribunal which should not comprise of the incumbent Member (Administrative) who passed the impugned order dated October 13, 2021. It shall consider and decide all points raised in such application on merits, uninfluenced by any observation in any earlier order that nothing further survives for decision in view of subsequent developments.

8. The Tribunal is encouraged to dispose of the original application, as early as possible. All contentions on merits are left open.

9. The writ petition is disposed of. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)