

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY 2021

BEFORE

THE HON'BLE MR.JUSTICE M. NAGAPRASANNA

WRIT PETITION No.2448 OF 2021 (S-RES)

BETWEEN:

SANJAY MALLYA
SON OF SHRI YASHWANTH MALLYA
AGE ABOUT 24 YEARS
RESIDING AT NO 5
BHUMIKA KRISHNA, 1B
MEGHALAPURA VILLAGE
MAIDANAHALLI POST
YELAWALA, MYSURU - 571 130.

...PETITIONER

(BY SRI. SHIVASHANKAR S.K., ADVOCATE)

AND:

THE RAILWAY RECRUITMENT BOARD
SOUTH WESTERN RAILWAYS
MINISTRY OF RAILWAYS
GOVERNMENT OF INDIA
No. 18, MILLERS ROAD,
BENGALURU - 560 046.

....RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH

ANNEXURE-E DATED 08.01.2020 ISSUED BY THE RESPONDENT AND DIRECT THE RESPONDENT TO EMPANEL THE PETITIONER TO OPTED POSTS OF THE PETITIONER IN THE CATEGORY OF JUNIOR ENGINEER (CIVIL) IN CEN 3/2018 DATED 14.01.2019 AS PER ANNEXURE-B.

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Learned counsel for the petitioner calls in question a notification issued by the respondent - Railway Recruitment Board calling for applications from eligible candidates to various posts.

2. The jurisdiction to consider the grievance of the petitioner is with the Central Administrative Tribunal in terms of the Administrative Tribunals Act, 1985, for it being the Court of first instance, as held by the Apex Court in the case of RAJEEV KUMAR & ANR. VS. HEMRAJ SINGH CHAUHAN & ORS.¹, wherein it is held as under:

"9. The Constitution Bench in L. Chandra Kumar held that the power of the High Court under

¹ (2010) 4 SCC 554

Articles 226 and 227 of the Constitution and of this Court under Article 32 of the Constitution is a part of the basic structure of our Constitution (See paragraphs 78 & 79, pages 301 and 302 of the report). The Constitution Bench also held that various Tribunals created under Articles 323-A and 323-B of the Constitution, will function as Court of first instance and are subject to the power of judicial review of the High Court under Articles 226 and 227 of the Constitution. The Constitution Bench also held that these Tribunals are empowered even to deal with constitutional questions and can also examine the vires of statutory legislation, except the vires of the legislation which creates the particular Tribunal.

10. In paragraph 93, at page 309 of the report, the Constitution Bench specifically held: (L. Chandra Kumar case)

"93. ...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...." (Emphasis added)

The Constitution Bench explained the said statement of law by reiterating in the next sentence:

"93. ...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."

11. On a proper reading of the above quoted two sentences, it is clear:

(a) The Tribunals will function as the only Court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which Tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court "overlooking the jurisdiction of the Tribunal".

12. The aforesaid propositions have been repeated again by the Constitution Bench (in L.

Chandra Kumar case) in the penultimate paragraph 99 at page 311 of the report in the following words:

"99. ...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."

13. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which C.A.T. has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a Court of first instance in respect of their service disputes, for adjudication of which C.A.T. has been constituted."

3. In view of the above, the writ petition is not entertainable. Reserving liberty to the petitioner to approach the CAT, the writ petition is dismissed.

**SD/-
JUDGE**

RD