IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Date of Decision: 28th July, 2021***

\+ W.P.(C) 4946/2021, CM No. 15198/2021

DR. ARUN KUMAR MISHRA ..... Petitioner
Through: Mr. Tushar Ranjan Mohanty, Adv.

versus

UNION OF INDIA ..... Respondent
Through: Mr. Rakesh Kumar, CGSC

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

1. When the matter was listed on April 22, 2021, this Court had raised an issue of maintainability of the petition before this Court. This is for the reason that the petitioner who was Chief Director (Corporation) in the Ministry of Agriculture Corporation and farmers welfare, was issued a charge sheet dated August 28, 2020 under Rule 8 of the Central Civil Services (Pension) Rules, 1972 for alleged misconduct committed by him while working as Official Liquidator of Super Bazar, the Cooperative Store Limited. In other words, the charge sheet has been issued to the petitioner as a retired employee of the Central Government and hence, the subject matter of the writ petition shall lie before the Central Administrative Tribunal.

2. This objection has been contested by Mr. Tushar Ranjan Mohanty, learned counsel for the petitioner by stating that the subject matter of the charge sheet is the alleged misconduct while

working as an Official Liquidator and as such, he would not be amenable to the jurisdiction of the Central Administrative Tribunal. In support of his submission, Mr. Mohanty has relied upon documents related to the case of one T.C. Sivakumar, who was charge sheeted, though by the Ministry of Social Justice and Empowerment, Department of Disability Affairs, but while working as Director of National Institute of Mentally Handicapped.

3. He stated in the case of T.C. Sivakumar the Government of India is the appointing and disciplinary authority but for all purposes, T.C. Sivakumar being Director of the National Institute of Mentally Handicapped, had filed a writ petition before this Court, titled as ***T.C. Sivakumar v. UOI and Ors. W.P.(C) 6318/2020*** which was entertained. In support of his submission, he has drawn my attention to various documents with regard to the proceedings initiated by the Ministry of Social Justice and Empowerment, Department of Disability Affairs against T.C. Sivakumar. That apart, Mr. Mohanty has also relied upon the judgment in the case of ***Rajendra Singh v. UOI and Ors. W.P.(C) 5304/2008 dated December 22, 2015*** passed by this Court. The petitioner therein was working in the National Federation of Fishermen's Cooperatives Ltd., which according to Mr. Mohanty is not notified under the Administrative Tribunal Act and as such is not amenable to the jurisdiction of Central Administrative Tribunal and the petition filed by him was rightly entertained by this Court. Further, in support of his submission that this Court has the jurisdiction to entertain the present

petition, he has also stated that the petitioner was being paid remuneration in the sum of Rs.50,000/- per month by the Super Bazar only after his superannuation from government service and not by the respondents and therefore, if at all it is Super Bazar which could have raised an issue against the petitioner. He also stated that the appointing authority of the Official Liquidator is the Central Registrar of the Cooperative Societies under the Multi State Co-operative Societies Act, 2002, therefore the Department of Consumer Affairs under the Ministry of Consumer Affairs, Food and Public Distribution is not even concerned with the issue at all.

4. That apart, the petitioner is a pensioner from the Ministry of Agriculture & Farmers' Welfare and the Department of Consumer Affairs under the Ministry of Consumer Affairs, Food and Public Distribution does not have jurisdiction on the issue.

5. According to Mr. Mohanty, the issue whether the Department of Consumer Affairs could have issued the charge sheet is a jurisdictional issue and can only be examined by this Court.

6. Having heard Mr. Mohanty and Mr.Rakesh Kumar and also perused the record, it is a conceded position that the petitioner while working in the Ministry of Agriculture, Cooperation and Farmers Welfare was appointed as the Official Liquidator of Super Bazar, the Cooperative Store Limited, under the administrative control of Department of Consumer Affairs under the Ministry of Consumer Affairs, Food and Public Distribution. Even after attaining the age of superannuation on

January 31, 2017, he continued to hold the charge of the post of Official Liquidator of Super Bazar till March 31, 2018, which was extended upto May 15, 2018. The Articles of Charge framed against the petitioner though, are with regard to his working as an Official Liquidator of Super Bazar, but the fact of the matter is, the impugned charge sheet has been issued under Rule 8 of the Central Civil Services (Pension) Rules, 1972, being a pensioner of the Central Government and any outcome of the charge sheet shall have a bearing on the pension. So, any challenge need to be made before the Central Administrative Tribunal.

7. The plea of Mr. Mohanty is that the Department of Consumer Affairs under the Ministry of Consumer Affairs, Food and Public Distribution has assumed the jurisdiction, though it was not his employer. A connected plea is that the Authority, which has no jurisdiction shall not be amenable to the jurisdiction of the Central Administrative Tribunal. I am not in agreement with this plea of Mr. Mohanty for three reasons; firstly the Department of Consumer Affairs under the Ministry of Consumer Affairs, Food and Public Distribution being a Department of the Govt. of India is amenable to the jurisdiction of the Central Administrative Tribunal. Secondly, the plea of competency of the Department of Consumer Affairs under the Ministry of Consumer Affairs, Food and Public Distribution for issuing the impugned charge sheet dated August 28, 2020 can also be taken / advanced by the petitioner before the Central Administrative Tribunal. Thirdly, the plea of Mr.Mohanty is with regard to the competency / jurisdiction of the Department of Consumer Affairs to issue the

charge sheet, which plea is different from the competency / jurisdiction of the Tribunal to entertain the petition.

8. The plea of Mr. Mohanty, is also without merit in view of the conclusion of the Supreme Court in ***L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261,*** wherein in para 99, the Supreme Court clearly held that the Tribunals shall continue to act as the court of first instance in respect of the areas of law for which they have been constituted, i.e., any dispute relating to the service matters. The relevant Para is reproduced hereunder:

> ***"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."

9. I am of the view that the issue being a service matter, the same need to be agitated by the petitioner before the Central Administrative Tribunal. The reliance placed by Mr. Mohanty in the case of ***T.C. Sivakumar (supra)*** and ***Rajendra Singh (supra)*** have no applicability to the issue as arises for consideration, inasmuch as, in those cases, the petitioners were not the employees of the Central Government, but of autonomous bodies, which were not notified under the provisions of the Administrative Tribunal Act, 1985, to be brought under its jurisdiction, though in the case of ***T.C. Sivakumar (supra),*** the appointing authority was the Central Government. In so far as the Judgments in the case of ***Rajat Textiles v. Income Tax Officer (1973) 1 SCC 633, Carona Limited v. M/s. Parvathy Swaminathan & Sons (2007) 8 SCC 559*** and ***Commissioner of Municipal Corporation Shimla v. Premlata (2007) 11 SCC 40 (supra)*** are concerned, they are not applicable to the facts of this case, in view of the Judgment of the Supreme Court in ***L. Chandra Kumar (supra)***, which was with reference to the Tribunals constituted under Articles 323A and 323B of the Constitution of India and also in view of para 99 as reproduced above.

10. It goes without saying, if the petitioner is aggrieved by any of the order, to be passed by the Tribunal, he shall be at

liberty to approach the Division Bench of this Court. Surely, this Court shall not have the jurisdiction to entertain the petition. The petition needs to be dismissed by granting liberty to the petitioner to approach the Central Administrative Tribunal, in accordance with law. Ordered accordingly. No costs.

<u>CM No. 15198/2021</u>

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 28, 2021/*ak*