

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

***WRIT PETITION NO.3118 OF 2022***

Puja Diliprao Khedkar

...Petitioner

Versus

Union of India and Ors.

...Respondents

Mr. Abhay Anil Anturkar, a/w Mr. Vaibhav Kulkarni, Mr. Harshvardhan Suryavanshi, Bhavya Pande and Mr. Dhruv Tonk, for the Petitioner.

Mr. Rui Rodrigues a/w Mr. R. R. Shetty and Mr. A. A. Garge, for the Respondent Nos.1 to 3.

Mr. Vinod Joshi, for the Respondent No.4.

***CORAM : REVATI MOHITE DERE &  
MADHAV J. JAMDAR, JJ.***

***DATE : 18<sup>th</sup> APRIL 2022***

**P.C. :**

1. Heard learned Counsel for the parties.

2. By this petition, the petitioner has sought the following substantive reliefs:-

“6. ....

(A) That this Hon’ble Court be pleased to issue a writ mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of

India quashing and setting aside the Letter No. 13018/7/2020-ASI-I dated 03.03.2021 issued by the Government of India, Ministry of Personnel and Training, to the Secretary, Union Public Service Commission forwarding the consolidated tentative vacancy position of Cadre Controlling Authority (CCAs) to the extent that it provides for no vacancies for persons with benchmark disabilities in category (d) of Section 34 of the Rights of Persons with Disabilities Act, 2016, as being *ultra vires* the said Act as well as Articles 14 and 21 of the Constitution of India;

- (B) That this Hon'ble Court be pleased to issue a writ mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents herein to make the sufficient reservations for persons suffering from benchmark disability provided for in category (d) in terms of the Rights of Persons with Disabilities Act, 2016, and suitably amend the paragraph from Notification dated 04.04.2021 issued by the Union Public Service Commission;
- (C) That this Hon'ble Court be pleased to issue a writ mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents to include persons belonging to category (d) in addition to those belonging to categories (a), (b) and (c), to get the benefit of the reservations made for persons suffering from multiple disabilities under category (e);
- (D) That this Hon'ble Court be pleased to issue a writ mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents to extend the facility of unlimited attempts to persons with benchmark disabilities;
- (E) That this Hon'ble Court be pleased to issue a writ mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of

India directing the Respondents to carry forward all the backlog of unfilled vacancies since the passing of the Act pertaining to the category of the Petitioner;

- (F) That this Hon'ble Court be pleased to issue a writ mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents to reserve 4% of 712 vacancies for persons with benchmark disabilities in terms of Section 34 of the Rights of Persons with Disabilities Act, 2016;
- (G) That alternatively, this Hon'ble Court may direct the Respondents to consider the Petitioner's disability under category (d) and thereafter consider her candidature under category (e) as she suffers from multiple disabilities under categories (a) and (d), and give her the benefits of the same in accordance with law."

Other interim reliefs have also been sought, however, the same are not reproduced, having regard to the order, we propose to pass.

3. At the outset, learned counsel for the respondent Nos.1 to 3 raises a preliminary objection with respect to the maintainability of the aforesaid petition. In support of his submission, learned counsel has tendered a compilation of Judgments. The said compilation of judgments is taken on record. Learned Counsel for the respondent Nos.1 to 3 amongst the said judgments tendered, relied in particular, on the judgment of the

Apex Court in the case of ***L. Chandra Kumar v/s Union of India and Others***<sup>1</sup> and the Division Bench judgment of this Court (Coram: Dipankar Datta, CJ & M. S. Karnik, J.) in the case of ***Gaurav Ganesh Das Daga and Others v/s Maharashtra Public Service Commission and Another***<sup>2</sup>. He submits that having regard to the said judgments the aforesaid writ petition was not maintainable and that it was open for the petitioner to raise the challenge raised in the present petition, before the Central Administrative Tribunal ('CAT').

4. Perused the papers, in particular, the judgment of the Apex Court in the case of ***L. Chandra Kumar (supra)***. The Apex Court in the case of ***L. Chandra Kumar (supra)*** has in paras 91 to 94 and 99 observed as under:-

*“91. \*\*\* 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*

---

1 (1997) 3 SCC 261

2 Writ Petition No.2270 of 2021 decided on 4<sup>th</sup> March 2022.

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.

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. 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.

94. The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e. will apply to decisions rendered hereafter. To maintain the sanctity of judicial proceedings, we have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered.

\*\*\*

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.”*

**(emphasis supplied)**

5. It is further pertinent to note that Section 14 of the Administrative Tribunals Act, sets out the jurisdiction, powers and authority of the CAT. The relevant part of the provision with which we are concerned, reads thus:-

**“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 [\*\*\*] 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 [or society] owned or controlled by the Government;

.... .... ”

6. It is thus evident, that the Administrative Tribunal has the powers to decide issues pertaining to ‘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.

7. In these circumstances, having regard to what is stated hereinabove, the aforesaid writ petition cannot be entertained on the ground of availability of an alternate efficacious remedy. Liberty is granted to the

petitioner to approach the Central Administrative Tribunal, in accordance with law.

8. Needless to state, that we have not gone into the merits of the petition and as such all contentions of all parties are kept open to be raised before the Tribunal.

9. If an original application, in particular an interim application is filed before the Tribunal, the Tribunal is requested to decide the same expeditiously.

10. Petition is accordingly disposed of on the aforesaid terms.

11. All concerned to act on the authenticated copy of this order.

**MADHAV J. JAMDAR, J.**

**REVATI MOHITE DERE, J.**