

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12678 OF 2019**

Shri Azizul Haque	}	Petitioner
Versus		
Union of India and Ors.	}	Respondents

Mr. Angsuman Ojha with Ms. Akshita Kohli for the petitioner.
Mr. T. J. Pandian with Mr. Dheer Sampat for the respondents.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: SEPTEMBER 21, 2022

P.C.:

- 1.** The petitioner is an ex-serviceman. He had applied for employment on a Group 'C' post under the Indian Railways. Despite making such application, the petitioner has not been informed the fate of his candidature. Aggrieved thereby, this writ petition has been instituted before this Court.
- 2.** A preliminary objection to the maintainability of the writ petition is raised by Mr. Pandian, learned advocate for the respondents. According to him, the remedy of the petitioner lies in approaching the Central Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) for relief.
- 3.** The objection of Mr. Pandian is countered by Mr. Ojha, learned advocate for the petitioner by placing reliance on the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 (hereafter "the Rules of 1979", for short) as well as the decisions of the Supreme Court in Appeal (Civil) No. 2403 of 2002 (**Sansar Chand Atri vs. State of Punjab and Anr.**) decided on 2nd April 2002 and Appeal (Civil) Nos.

4312-4317 of 1998 (**State Bank of India and Ors. vs. K. P. Subbaiah and Ors.**) decided on 16th July 2003 as also the decision of the Kerala High Court in Writ Petition (C) No. 33397 of 2011 (Y) (**Sini Ben and Anr. vs. Union of India and Ors.**) decided on 16th October 2015.

4. We have perused the decisions and considered the relevant Rules of 1979.

5. The Rules of 1979 mandate that a quota has to be earmarked for appointment of ex-servicemen in the Central Civil Services as well as in the para-military forces. The para-military forces, *inter alia*, include the Railway Protection Force.

6. The decision in **Sini Ben** (supra) arose out of an application made by an ex-serviceman for the post of Inspector (Prosecution) in the Railway Protection Force. Obviously, the writ petition was maintainable before the High Court of Kerala because service disputes in relation to members of the Railway Protection Force are not covered by the Administrative Tribunals Act, 1985 (hereafter "the 1985 Act", for short) and are required to be heard by the High Courts. The decision in **Sini Ben** (supra), therefore, does not advance the case of the petitioner that this Court, at least at this stage, has jurisdiction to entertain the writ petition.

7. In **Sansar Chand Atri** (supra), the question that the Supreme Court had been called upon to decide was whether the petitioner was an ex-serviceman for the purpose of appointment under the Punjab Recruitment of Ex-servicemen Rules. Since there is no dispute that the petitioner in this case is an ex-serviceman, any law laid down in such decision does not assist the petitioner.

8. In **State Bank of India** (supra), the question was in relation to employment by the State Bank of India. Obviously, once again, service matters in relation to State Bank of India cannot be considered by the Central Administrative Tribunal and therefore, this decision too does not come to the rescue of the petitioner.

9. Section 3(q) of the 1985 Act defines service matters as follows: -

“(q) ‘service matters’ in relation to a person, means all matters relating to the conditions of his service 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, as the case may be, of any corporation or society owned or controlled by the Government, as respects-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever.

10. Section 14 of the 1985 Act confers jurisdiction, powers and authority on the Central Administrative Tribunal. Clause (a) of sub-section (1) clearly ordains that matters concerning recruitment to any All-India Service or to any civil service of the Union or a civil post under the Union may be urged before the Tribunal for its consideration. The jurisdiction of the Tribunal has to be invoked by filing an application under section 19 of the 1985 Act. The provisions of the 1985 Act read with Article 323-A of the Constitution are such that the

High Courts' original jurisdiction to hear service disputes has been excluded in the sense that remedy before the High Court is not available as the first remedy, but it is only when the judicial review jurisdiction is invoked, challenging a decision of the Tribunal under Articles 226/227 of the Constitution in terms of the decision of the Constitution Bench in **L. Chandra Kumar vs. Union of India**, (1997) 3 SCC 261, that such review jurisdiction can be exercised.

11. Since the petitioner is claiming recruitment in the civil services of the State, more particularly under the Ministry of Railways, the objection raised by Mr. Pandian with regard to maintainability of the writ petition is well taken. The petitioner does have a remedy before the Central Administrative Tribunal, which he ought to approach first. We, therefore, see no reason to entertain the writ petition at this stage.

12. At this stage, Mr. Ojha submits that the petitioner also has a remedy under the Armed Forces Tribunal Act, 2007 since he is ex-serviceman and he may be granted liberty to pursue his remedy under the said Act.

13. We do not express any opinion as to whether the petitioner has any remedy before the Armed Forces Tribunal. If at all the petitioner approaches such Tribunal or the Central Administrative Tribunal, the concerned Tribunal shall be free to decide the claim of the petitioner in accordance with law.

14. With the aforesaid observations, this writ petition stands dismissed. No costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)