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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 14.02.2023**

% **LPA 113/2023 & C.M. APPL.7254-7256/2023**

DR AMBIKA TYAGI

..... Appellant

Through: **Mr. Anuj Bhandari & Mr. Vivek Tyagi, Advocates**

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ANR.

..... Respondents

Through: **Mr. V.S.R. Krishna & Mr. V. Shashank Kumar, Advocates for R-1**
Mr. Jatin Singh, Advocate for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The present appeal is arising out of Order dated 17.01.2023, passed by the learned Single Judge in W.P.(C.) No. 555/2023.
2. The facts of the case reveal that the Appellant before this Court was born in the United States of America and is, thus an American citizen.
3. The Citizenship Act, 1955, was amended in August 2005 and Section 7A was introduced by the amending Act. The Overseas Citizenship of India (OCI) Scheme came into force on account of a notification issued by the

Government of India dated 11.04.2005. By virtue of notification dated 11.04.2005, the OCI's were given parity with non-resident Indians in respect of facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

4. The Government of India issued another notification dated 05.01.2009 and various benefits were extended to OCI Card Holders and OCI Card Holders were permitted to pursue their profession as medical doctors. The facts of the case reveal that the Appellant is an OCI Card Holder and was selected for the post of Senior Resident/ Demonstrator.

5. The result of the examination was published on 15.06.2022 and finally the Appellant was appointed by an order dated 14.12.2022. The Appellant submitted an application to extend her joining period and by an order dated 05.01.2023, no extension was given to her and she was informed that she was not eligible as she was a foreign national/ OCI Card Holder in the light of the Indian Gazette Notification dated 04.03.2021.

6. The memorandum issued by the All India Institute of Medical Sciences dated 05.01.2023 reads as under:

*“ALL INDIA INSTITUTE OF MEDICAL SCIENCE
ACADEMIC SECTION (II)
No. F.10-341/2022(July)-ACAD.-I Dated: 05.01.2023*

MEMORANDUM

*Subject: Extension of Date of Joining of Senior Resident/
Demonstrator in respect of Dr. Ambika Tyagi, Selected
Candidate of Senior Resident/ Demonstrator in the waiting list*

for the session July, 2022 in the Department of Medical Oncology

With reference to his/ her letter dated 29.12.2022, on the subject cited above, Dr. Ambika Tyagi, Selected Candidate of Senior Resident/ Demonstrator in the waiting list for the session July, 2022 in the Department of Medical Oncology is informed that the request for extension for date of joining to the post of Senior Resident/ Demonstrator has been examined by the competent authority, however, the same has not been acceded to as she is not eligible being Foreign National/ OCI Cardholder vide Indian Gazette notified under File No. 26011/CC/05/2018-OCI dated 04.03.2021.

Sd/-

(REGISTRAR)

Dr. Ambika Tyagi

B-176, INDRA VIHAR KOTA-324005, Rajasthan”

7. The Appellant being aggrieved by the aforesaid communication dated 05.01.2023, preferred a writ petition before this Court and the learned Single Judge disposed of the writ petition with the liberty to take recourse to the appropriate remedies available in law before the appropriate forum, if so advised.

8. The learned Single Judge has declined to interfere in the matter as the Appellant was claiming appointment in the services of All India Institute of Medical Sciences and it is an undisputed fact that the matters relating to appointment and other service disputes are to be heard at the first instance by the Central Administrative Tribunal keeping in view The Administrative

Tribunals Act, 1988 and the notifications issued thereunder.

9. Paragraphs 3 and 4 of the Order passed by the learned Single Judge read as under:

“3. From the narrative of facts, it is evident that the matter relates to appointment to the post of Senior Resident/Demonstrators pursuant to an advertisement issued by AIIMS. A Constitution Bench of the Supreme Court in L. Chandra Kumar v. Union of India and Others, (1997) 3 SCC 261 has clearly ruled that the Central Administrative Tribunals shall be the only Courts of first instance in respect of areas of law for which they have been constituted albeit with an observation that the jurisdiction of the High Court under Articles 226/227 of the Constitution is a part of the inviolable basic structure of the Constitution and cannot be ousted. Relevant paras of the judgment are as follows:

“90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals.

Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law

matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In R.K. Jain case [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that

no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforesaid contentions, 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 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. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be

subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. 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.”

4. A Single Bench of this Court in *Praveen Sharma v. U.P.S.C.* in W.P. (C) No. 498/2006 decided on 20.06.2007, has held that the expression ‘matters concerning recruitment’ is of a wide amplitude and will include examination by the Central Administrative Tribunal of the conditions of eligibility in a recruitment/appointment process. Relevant paras of the judgment are as under:

“17. It is apparent that the Supreme Court, while keeping the powers conferred on the High Courts under Article 226/227 intact inasmuch as it was part of the inviolable basic structure of the Constitution, observed that the Tribunals may perform a supplemental role in discharging the powers conferred by the aforesaid Articles. The Supreme Court also observed that the decisions of such Tribunals would, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned

falls. The Tribunals would, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted and that it would not 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. In this context it becomes necessary to examine the provisions of Section 14 of the Administrative Tribunals Act, 1985 which indicates the areas of law for which the Tribunal has been constituted. The relevant portion of Section 14 of the Administrative Tribunals Act, 1985 reads as under:-

“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 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;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) or Clause (b), being a person-whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation :- For the removal of doubts, it is hereby declared that references to "Union" in this sub-

section shall be construed as including references also to a Union territory.]

(2) xxxxxxxx

(3) xxxxxxxx”

The expression that is relevant in the present case is “recruitment, and matters concerning recruitment”. In S. Tripathi v. Union of India & Another: 1988 (2) SLR 688 a Division Bench of the Allahabad High Court (Lucknow Bench) held that the examination conducted by the UPSC for the purposes of the All India Services including the Indian Administrative Service, was part of the recruitment process. The Court held as under:-

“7. It is not disputed that holding of competitive examination is a condition precedent for appointment to an All India Service for which the petitioner had applied and appeared and was ultimately declared not to have succeeded. It is also not disputed that appointment to All India Services, at least, to the Indian Administrative Service as indicated in the petition, is made on the basis of the result of the competitive examination held by the Union Public Service Commission. The examination, therefore, is a part of the process of recruitment.

8. In view of the provisions contained in Section 14, since the dispute raised in the present petition directly concerns the recruitment to All India Service, we are of the opinion that the petition can be entertained only by the Administrative Tribunal.”

This finding of the Allahabad High Court has been approved by successive learned Single Judges of this Court in Pranay Kumar Soni (supra) and Neeraj Kansal (supra). It is, therefore,

clear that the UPSC examination is part of the recruitment process.

18. The question that arises in the present case is whether the issues involved herein can be regarded as relating to the examination conducted by the UPSC. This question emerges in the context that there is no challenge to the examination conducted in 2006. Insofar as the 2005 examinations are concerned, that is over. And, the petitioner does not stake any claim in respect thereof because he could not complete that examination as a result of circumstances beyond his control. By way of this petition, the petitioner is seeking a direction from this Court declaring his appearance in the 2005 examination to be disregarded as an attempt. The issue here is not so much with regard to the conduct of the examinations but with regard to the petitioner's eligibility to sit in the examination. Had it been a matter where the examination itself was in question, it would clearly fall within the ratio of the decisions in Pranay Kumar Soni (supra) and Neeraj Kansal (supra), which in turn followed S. Tripathi (supra). Here the issue is with regard to eligibility. In my view, the expression used in Section 14 of the Administrative Tribunals Act, 1985 is not just "recruitment" but "recruitment, and matters concerning recruitment". Had the expression only been "recruitment", there could have been some debate as to whether a condition of eligibility was a part of recruitment. But the expression used in Section 14 is of much wider amplitude inasmuch as it also refers to "matters concerning recruitment". An eligibility condition would definitely, in my view, fall within the scope of this expression. The question in the present writ petition is whether the petitioner was eligible or not to sit for the 2006 examinations. That is certainly a matter concerning recruitment. Accordingly, the Central Administrative Tribunal would, in view of the Supreme Court decision in L. Chandra Kumar (supra), have to function like the court of the first instance with regard to the question of eligibility raised in the present case because this is the precise area of law for which the Tribunal has been constituted, as indicated by Section 14 (1) (a) of the Administrative Tribunals Act, 1985. It would, therefore, not be

open to the petitioner to directly approach this Court and, therefore, it would be appropriate if the petitioner is directed to first approach the Central Administrative Tribunal which, indeed, has jurisdiction to adjudicate upon the issue of eligibility raised by the petitioner herein.”

10. The learned Single Judge keeping in view the judgment delivered in the case of ***L. Chandra Kumar v. Union of India and Others***, (1997) 3 SCC 261 has rightly arrived at a conclusion that the Appellant has to approach the Central Administrative Tribunal at the first instance.

11. The learned Single Judge has placed reliance upon a judgment delivered by this Court in the case of ***Praveen Sharma v. U.P.S.C***, W.P.(C.) No. 498/2006, decided on 20.06.2007 wherein it has been held that in the matters concerning recruitment a person is required to approach the Central Administrative Tribunal at the first instance.

12. In the considered opinion of this Court, the learned Single Judge, as the Appellant was claiming appointment in the services of All India Institute of Medical Sciences, has rightly arrived at a conclusion that the matter has to be heard by the Central Administrative Tribunal at the first instance.

13. Learned counsel for the Appellant has placed reliance upon a judgment delivered in the case of ***M/S Godrej Sara Lee Ltd. v. The Excise and Taxation Officer- Cum-Assessing Authority & Ors.***, Civil Appeal No. 5393/2010, decided on 01.02.2023 as well as a judgment delivered in the case of ***Union of India and Another v. State of Haryana and Another***, 2000 10SCC 482 and has vehemently argued before this Court that an alternative remedy is not a bar and is not an adequate remedy and when it is not an adequate remedy, the petition could not have been disposed of on the

ground of alternative remedy. Learned counsel has further submitted that only because alternative remedy is available, it does not mean that this Court cannot exercise its writ jurisdiction under Article 226 of the Constitution of India.

14. This Court has carefully gone through the aforesaid judgments and the fact remains that the Appellant certainly has an equally efficacious alternative remedy and the prayers made in the writ petition can certainly be granted by the Central Administrative Tribunal in case an Original Application is preferred before the Central Administrative Tribunal keeping in view Section 14 of The Administrative Tribunals Act, 1988.

15. This Court does not find any reason to interfere in the matter at this stage and the Appellant is certainly at liberty to take recourse to the appropriate remedies available under the law i.e. to approach the Central Administrative Tribunal if so advised. No case for interference is made out in the matter. The admission is declined.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J.

FEBRUARY 14, 2023

N.Khanna