



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 679 OF 2024

MAHESH M. DESAI

... Petitioner.

V e r s u s

UNION OF INDIA, THR. THE SECRETARY,
(MINISTRY OF FINANCE) AND 2 ORS.

... Respondents.

*Mr N. Sardessai, Senior Advocate with Mr Shivan Fadte, Advocate
the Petitioner.*

*Ms Asha Desai, Senior Standing Counsel with Ms Suprit Dessai,
Advocate for the Respondents.*

**CORAM: M. S. KARNIK &
 NIVEDITA P. MEHTA, JJ.**

DATE: 28th JANUARY 2025.

ORAL ORDER(PER M. S. KARNIK,J.)

1. Heard Mr N. Sardessai, learned Senior Advocate for the petitioner and Ms A. Desai, learned Senior Standing Counsel for the respondents.

2. The challenge in this petition is to the memorandum dated 27.12.2023 issued by the respondent no.1 initiating inquiry against the petitioner under Rule14 of the Central Civil Services (Classification, Control and Appeal) Rules,1965 read with Rule 8 of the CCS (Pension) Rules 2021.

3. The petitioner at the relevant time was working as Assistant Commissioner, Goa Customs Commissionerate. He retired on 3.3.2020.

4. It is the contention of the learned Senior Advocate that initiation of the inquiry is in complete contravention of the CCS (Pension) Rules, 2021. It is submitted that inquiry is initiated for a cause of action which arose four years prior to the initiation of the inquiry. The petitioner was already retired as on the date when the inquiry is initiated, the respondents are debarred from initiating or conducting any inquiry against the petitioner.

5. Ms Desai, learned Senior Standing Counsel for the respondents raised preliminary objection that the petitioner has to approach the Administrative Tribunal for redressal of his grievance in the light of the provisions of the Administrative Tribunal Act 1985 and the decision of Supreme Court in the case of *L. Chandra Kumar Vs Union of India, 1995(1) SCC 400*.

6. Mr Sardesai, urged that the present writ petition is maintainable and should be entertained as what is under challenge is a memorandum dated 27.12.2023 initiating inquiry against the petitioner who is now a retired employee. It is further submitted that as an objection is raised that the initiation of the inquiry is without jurisdiction and on a plain reading of the provisions of Rule 8 of the CCS (Pension) Rules 2021, the inquiry is initiated four years after the cause of action arose is illegal. Further it is submitted that memorandum dated 27.12.2023 cannot be construed as an order within the meaning of sub section 1 to Section 19 of the Administrative Tribunal Act 1985 which would enable the petitioner to make an application before the Tribunal for redressal of his grievance.

7. We are afraid that the contention of the Mr Sardesai, learned Senior Advocate that the memorandum cannot be said to be an 'order' within the meaning of Section 19 lacks merit. Section 14 under Chapter III of the Administrative Tribunal Act, 1985 provides for jurisdiction, powers and authority of the Central Administrative Tribunal. Sub Section 1 of Section 14 which is relevant for a decision in the context of the present petition reads thus:-

(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;

(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) of 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.]

8. It is therefore clear from the reading of Section 14(1)(b) of the Act that in respect of all service matters concerning a member of any All India Service and pertaining to the service of such member, in connection with the affairs of the Union or of any State in connection with the affairs of the Union, it is the Central Administrative Tribunal which exercise all jurisdiction, powers and authority exercisable immediately before specified date by all Courts except the Supreme Court. Further Chapter IV deals with the procedure to be followed for making applications to the Tribunal under Section 19. Section 19 reads thus:-

"19. Applications to Tribunals. - (1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.-For the purposes of this sub-section, "order" means an order made---

(a)by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation [or society] owned or controlled by

the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] [Inserted by Act 19 of 1986, Section 14 (w.r.e.f. 22.1.1986).] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) [in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.]

(3) [On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.]

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

9. Based on the reading of Section 19, it is not possible for us to accept the submission of the learned Senior Advocate that the impugned memorandum is not an 'order' within the meaning of sub section (1) of Section 19. Section 14(1) read with Section 19(1) of the Administrative Tribunal, 1985 leaves no manner of doubt that if the petitioner is aggrieved by such memorandum, for the redressal of his

grievance, the petitioner can always make an application to the Tribunal under Section 19(1) of the Administrative Tribunal Act.

10. Petitioner was a member of All India Service on the date of retirement. Therefore, if any inquiry is initiated in respect of any matter or in respect of cause of action, as a member of All India Service, it is open for the petitioner to maintain an application under Section 19(1) before the Administrative Tribunal.

11. We have not expressed any opinion on the merits of the contentions advanced by the learned counsel for the petitioner to the impugned memorandum. All contentions are kept open to be raised before the Administrative Tribunal. Keeping liberty of the petitioner open to approach the Administrative Tribunal, petition stands disposed of. No costs.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.