Mr. Rajesh Goyal vs Defence Research And Development ... on 25 February, 2021

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 2542/2021, CM APPL. 7493/2021
MR. RAJESH GOYAL ..... Petitioner
Through: Mr.Rajat Kumar and M Nabh, Advs.

versus

DEFENCE RESEARCH AND DEVELOPMENT ORGANISATION & ORS. ..... Respon
Through: Counsel (appearance not given)

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

% 25.02.2021 This matter is being heard through video-conferencing.

1. This writ petition has been filed by the petitioner with the following prayers:

> "a. Issue a writ of mandamus, or any other appropriate writ, against the Respondents to issue fresh instructions/order for treating „Special Pay in lieu of separate high pay scale of Rs. 4,000/- w.e.f. 0l.01.2006 as part of the basic pay;
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> b. Issue a writ of certiorari, or any other appropriate writ, against the Respondent to set aside the Corrigendum PPO No. 409201300729 (0102) issued by the Respondents on Page Nos. 156 and 207;
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> c. Issue a writ of mandamus, or any other appropriate writ, against the Respondents to issue a fresh corrigendum PPO to the Petitioner in terms Office Memorandum No. F.No.38/37/20 J6P& PW(A) dated 06.07.2017, read with the judgment rendered in CA No. 12040 of 2019, titled O.P. Nijhawan vs Union of India and Ors., and CA No. 12041 of2019, titled Rajesh Goyal vs Union of India;
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> d. Issue a writ of mandamus, or any other appropriate writ, against the Respondents to issue directions e. Pass such other or further orders as this Hon ble Court may deem just, necessary and proper and in the interest of justice in the facts and circumstances of the case."

2. On a specific query to the learned counsel for the petitioner on the maintainability of the petition before this Court, the counsel by conceding to the fact that the petitioner had retired as a Scientist-G from the Defence Research and Development Organization under the Government of India, would submit that the petitioner has approached this Court seeking implementation of earlier orders passed by the Courts and in view of the judgment of a co-ordinate bench of this Court in Akul Bhargawa vs. UPSC being W.P. (C) 3509/2020 decided on October 09, 2020, this petition is maintainable.

3. That apart he also relied upon a notification of the Central Administrative Tribunal to contend that because of COVID-19 and lack of infrastructure the Central Administrative Tribunal is holding the proceedings only through virtual hearing, and it is efficacious, to prosecute the proceedings in this Court.

4. The aforesaid submissions made by the learned counsel for the petitioner are not appealing in view of the judgment of the Constitution Bench of the Supreme Court in the case of L. Chandra Kumar vs. UOI (1997) 3 SCC 261 wherein in para 90 to 94 the Court has held as under:

> "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.
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> 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 aforestated 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.
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> 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"

5. There is no dispute that the petitioner had earlier approached the Central Administrative Tribunal as is clear from page no.49 of the paper- book, by filing O.A. 170/00291/2015 for certain reliefs, which was decided on August 21, 2017. There is no reason, why the petitioner should not approach the Tribunal now. The reliance placed by the counsel on the judgment of the co-ordinate bench in the case of Akul Bhargawa (supra) is misplaced for two reasons; firstly, the said judgment is under challenge before the Division Bench; and secondly in a subsequent judgment by another co-ordinate bench of this Court in the case of Akshay Kumar and Ors. vs. Union of India & Ors. W.P. (C) 8316/2020 decided on November 24, 2020, the Court by relying on the judgment of the Supreme Court in the case of L. Chandra Kumar (supra) has held that the judgment in Akul Bhargawa (supra) cannot inure to the advantage of the petitioners in that case. I am in agreement with the view taken by the co-ordinate bench of this Court in the case of Akshay Kumar (supra). The law is very clear in view of the judgment of the Supreme Court in the case of L. Chandra Kumar (supra) and the remedy for the petitioner is to approach the Central Administrative Tribunal.

6. The petition along with pending application(s) is dismissed as not being maintainable with the liberty to the petitioner to approach the Central Administrative Tribunal in accordance with law.

V. KAMESWAR RAO, J FEBRUARY 25, 2021/bh