

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

+ **W.P.(C) 3805/2014**

Decided on : 12.11.2014

**IN THE MATTER OF**

SANJAY PANDEY & ORS

..... Petitioners

Through : Mr. Sanjeev Rajpal, Advocate

versus

CENTRAL BOARD OF DIRECT TAXES

..... Respondent

Through : Mr. R.V. Sinha and  
Mr. A.S. Sinha, Advocates

**CORAM**

**HON'BLE MS.JUSTICE HIMA KOHLI**

**HIMA KOHLI, J. (ORAL)**

1. The present petition has been filed by the petitioners praying *inter alia* for quashing the order dated 12.11.2013, passed by the respondent/CBDT, declining to promote them w.e.f. 23.9.2010, the date when the DPC was held.

2. On 24.9.2014, it was recorded that the petitioners, who were working on the post of Additional Commissioners of Income Tax, Department of Revenue, Ministry of Finance, have a grievance that the respondent/CBDT has violated the order dated 6.7.2012 passed by the Division Bench in a batch of writ petitions filed by them, including WP(C)No.8017/2010 filed against the order dated 2.11.2010 passed

by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi. On the aforesaid date, learned counsel for the petitioners was requested to address arguments on the maintainability of the present petition as the petitioners have approached the High Court directly, when as per the guidelines in the case of L. Chandra Kumar vs. Union of India & Ors. reported as **(1997) 3 SCC 261**, in the first instance, their remedy lies before the Tribunal, since respondent/CBDT, being a part of the Central Government, comes under its jurisdiction. Learned counsel had sought an adjournment to enable him to examine the aforesaid aspect and address arguments.

3. Today, Mr. Rajpal, learned counsel for the petitioners states that once notice to show cause was issued in the present petition on 30.5.2014, this Court is precluded from raising the question of maintainability of the petition or going into the issue of lack of jurisdiction for the reason that any such decision would amount to reviewing the order dated 30.5.2014, which is impermissible in law. To substantiate his argument, learned counsel relies on a decision of the Supreme Court in the case of State Bank of India & Ors. vs. Labour Enforcement Officer (Central) and Anr., reported as **(1997) 10 SCC 258**.

4. It may be observed that the Administrative Tribunals Act, 1985 is a self-contained Code. Central Administrative Tribunals that have been constituted in terms of Article 323(A) & Article 323(b) of the Constitution of India, have the requisite jurisdiction to determine all service disputes, including the *vires* of statutes or statutory rules. In view of the fact that judicial review is one of the basic features of the Constitution of India, in the well known case of L. Chandra Kumar (supra), the Supreme Court had clarified that the High Courts and the Supreme Court shall have the powers of judicial review over the decision of the Tribunal but it had gone on to lay down a road map to be followed by litigants governed under the aforesaid Statute, for seeking legal recourse. In this context, following observations of the Supreme Court are relevant:-

"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 setup, 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 concerned High Court 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.” (emphasis added)

5. Thus, it was clarified that a cause of action that had arisen subsequent to the decision in the case of L. Chandra Kumar (supra), shall have to be agitated before the Tribunal in the first instance and the jurisdiction of the Division Bench of the concerned High Court under Article 226 of the Constitution of India can be invoked only after approaching the Tribunal and obtaining a decision from it. As was discussed in the aforesaid case, the jurisdiction of the High Court under Article 226 of the Constitution of India has not been completely

ousted. The only fetter imposed on the said discretion is that as the first step, the litigants shall approach the Tribunal that will continue to act like courts of first instance in respect of areas of law for which they have been constituted and only after a decision is taken by the Tribunal, can they approach the Division Bench of the High Court within whose jurisdiction the Tribunal falls. Further, if aggrieved by the decision of the Division Bench of the concerned High Court, the aggrieved party can move the Supreme Court under Article 196 of the Constitution of India.

6. In the present case, indisputably, in the first round of litigation, the petitioners had approached the Tribunal for relief as a court of first instance. After the Tribunal had passed an order, the aggrieved parties including the petitioners herein had approached the Division Bench of this Court by filing writ petitions which were disposed of vide common judgment and order dated 6.7.2012. Now, for the counsel for the petitioners to urge that the petitioners are well entitled to approach a Single Judge of this Court directly for relief, which would lie in the first instance before the Tribunal, is found to be quite untenable and is turned down.

7. Coming next to the submission made by learned counsel for the petitioners that once a notice to show cause was issued in the present petition on 30.5.2014, any decision to non-suit the petitioners on the ground of lack of jurisdiction amounts to a review, it may be noted that the competence of a Court to try and entertain a case goes to the very root of its jurisdiction. The jurisdiction of the Court is of various types, including inherent, territorial and pecuniary. While objections in respect of the pecuniary, personal and territorial jurisdiction ought to be ordinarily raised at the earliest opportunity and the Court is well empowered to decline to entertain such an objection at a later stage or if it is raised very belatedly, when it comes to lack of inherent jurisdiction, nothing can confer the same on the Court, either by waiver or on account of oversight.

8. Resultantly, when inherent jurisdiction is lacking in a court, mere issuance of a notice to show cause in the writ petition, cannot be treated as a waiver. If it comes to the notice of the Court at any stage of the proceedings, whether *suo moto*, or otherwise, that there is a question that needs to be examined with regard to maintainability of a petition on the ground of lack of inherent jurisdiction, then there can be no question of waiver of such an objection only on account of the fact that notice to show cause has been issued in the petition. Even

otherwise, if notice came to be issued in the present petition, the respondent/CBDT is not barred from raising the same when filing their counter affidavit, which has yet to be filed.

9. Pertinently, the Registry had listed the present petition before the Court with an objection that it was maintainable before the Tribunal. It appears that the said objection was not brought to the notice of the predecessor Bench at the time of admission, may be because none was present on behalf of the respondent/CBDT on the said date to assist the Court. It appears that notice came to be issued in the writ petition without examining the aforesaid aspect. However, on the very next date of hearing, i.e., on 24.09.2014, Mr. Sinha had appeared for the respondent/CBDT and raised the objection of maintainability of the petition and learned counsel for the petitioners was called upon to satisfy the court on that aspect.

10. The submission made by learned counsel for the petitioners that such a detection is not fundamental in character or does not amount to anything more than an irregularity in exercise of jurisdiction or that show cause notice having been issued in the petition, the Court is barred from questioning the same subsequently, is found to be devoid of merits and is rejected.

11. Further, reliance placed by him on the decision of the Supreme Court in the case of State Bank of India and Ors (supra) will also not be of any assistance to the petitioners for the reason that in the aforesaid case, aggrieved by the prosecution launched against the appellant/Bank under Section 24 of the Contract Labour (Regulation and Abolition) Act, 1970, it had moved the High Court under Section 482 Cr.PC for quashing the said prosecution. The High Court had declined to grant any relief to the appellant/Bank and aggrieved by the said order, the appellant/Bank had approached the Supreme Court, where it was claimed that another Single Judge of the very same High Court had quashed a similar prosecution initiated against the Bank, by accepting their contention that in view of Section 1(4), the Act had no application to their establishment at the relevant point in time. Taking note of the aforesaid submission, the Supreme Court had observed that if the Single Judge was unable to share the views expressed by another Judge on an identical point, the matter ought to have been referred to the Division Bench in accordance with legal propriety and resultantly, the SLP filed by the Bank was allowed.

12. In the present case, no decision has been taken either on merits or on the issue of maintainability of the present petition on the ground of lack of jurisdiction. Simply because notice to show cause was issued

to the respondent/CBDT on the first date, will not preclude this Court from examining the aspect of inherent jurisdiction on a subsequent date. Nor would issuance of the notice prevent the respondent/CBDT from taking the plea of lack of inherent jurisdiction in this court at the first available opportunity or at the time of filing the counter affidavit or even thereafter. It is commonplace for the respondents to raise a number of preliminary objections, including legal objections as to the maintainability of the petition, both orally and when filing a reply and it is equally commonplace for the Courts to allow such objections, if found valid. A show-cause notice is nothing but a notice to the respondent to show cause as to why a petition should not be admitted for hearing. This Court is therefore of the opinion that no "view" was taken by the predecessor Bench on the issue of maintainability of the present petition, for the order dated 24.9.2014 to be treated as a "review" of an earlier order.

13. In the instant case, the petitioners are working on different posts with the respondent/CBDT and they have raised a grievance with regard to their promotions. In such a situation, they cannot be permitted to bypass the forum of the Tribunal and approach a Single Judge of the High Court directly for relief. It is for the petitioners to follow the route charted out by the Supreme Court in the case of L.

Chandra Kumar (supra). Only after they exhaust their remedy before the Tribunal, can the petitioners approach the High Court in appeal, and in that eventuality, their petition would have to be placed before the Division Bench for appropriate orders.

14. Accordingly, the notice dated 30.5.2014 is discharged and the writ petition is dismissed as not maintainable directly in the High Court. However, liberty is granted to the petitioners to approach the Tribunal for appropriate relief, in accordance with law.

**(HIMA KOHLI)**  
JUDGE

**NOVEMBER 12, 2014**  
sk/rkb