

IN THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

PIL NO. _____/2020

IA NO. _____/2020

Aditya Sharma and Anr.

V/S Union of India ors

IN THE MATTER OF:-

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FILED BY:-

DATED:- 04-05-2020

PLACE:- JAMMU

**Gagan Basotra
(ADVOCATE)**

E-MAIL ID- gaganbasotra@gmail.com

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIRAT JAMMU**

PIL No. /2020

I.A. No. /2020

Aditya Sharma & Anr V/s Union of India & Ors

IN THE MATTER OF: MEMO OF URGENCY

MAY IT PLEASE YOUR LORDSHIPS;

The petitioner most respectfully submits as under: -

1. That the above titled public interest litigation has been filed before this Hon'ble Court which his sure to succeed on merits.
2. That the matter pertains to the Impugned Notification issued by the Respondents whereby by the Service Matters jurisdiction has been conferred upon the Chandigarh Bench of CAT. It is submitted that there is every likelihood that all the pending service matters will be transferred as such the above titled Public Interest Litigation would become infructuous.
3. That the matter is of emergent in nature and is required to be considered urgently in view of the submissions made in the petition for grant of urgent relief in IA.

It is, therefore, prayed that the writ petition and the IA may be listed urgently for consideration of the Hon'ble Court and for appropriate orders.

Petitioners

Aditya Sharma

Place:- Jammu.

Dated: 04/05/2020

Through Counsel

**(GAGAN BASOTRA)
ADVOCATE**

BEFORE THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

PIL. No. _____/2020

I.A. NO. _____/2020

IN THE MATTER OF: MEMO OF PARTIES

1. Adv.Aditya Sharma, Age-31 Years

2. Rameshwar Padha Age 27 Years

..Petitioners

VERSUS

1. Union of India
Through Secretary,
Ministry of Personnel , Public Grievances and Pensions
(Department of Personnel and Training)
North Block,Central Secretariat,Delhi-110001
2. Union Of India
Ministry of Law and Justice,
Through its Secretary,
4TH Floor,A-Wing,Shastri Bhawan,Delhi-110001
3. Law Department,
Through its Secretary
Union Territory of Jammu and Kashmir
Civil Secretariat, Jammu.
4. The Bar Council of India,
Through its Secretary,
21,Rouse Ave Institutional Area RD,
Mata Sundari Railway Colony,Mandi House,
New Delhi-110001
5. Jammu and Kashmir High Court Bar Association
Through its General Secretary,
Janipur,Jammu.

..... Respondents

:

Place:- Jammu

Dated: 04/05/2020 .

Through Counsel

(GAGAN BASOTRA)
ADVOCATE

**IN THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

PIL NO. _____/2020

IA NO. _____/2020

Aditya Sharma & Anr. Versus Union Of India & Ors.

IN THE MATTER OF :-LIST OF EVENTS

S.No.	Date	Events
1	Feb,2019	Written Reply of the Minister for Respondent No.1 before Lok Sabha In Feb,2019 that there are 50,053 Cases pending before the 17 Benches Of the CAT as on 31.12.2018.
2	01.11.2019	J&k Reorganization Act,2019 Came into force.
3	06.03.2020	Data available on the website shows That the sanctioned strength of members Of the CAT as on 06.03.202020 is 65 Wherein 37 are sitting and 28 vacancies Are yet to be filed up. In respect of Chandigarh Bench as on date the sanctioned strength is 4 out of which one is Sitting and 3 vacancies are yet to be filed up.
4	28.04.2020	Respondent No.4 writes letter to the Honble Supreme Court that 90 % of The Lawyers donot have knowledge of e-filing of cases, Video Conferencing and are not tech savy.
5	29.04.2020	Respondent No.1 has issued the impugned Notification whereby the CAT Chandigarh Has been conferred jurisdiction to Adjudicate Service matters of the employees of UT of J&K which is impugned in the present Petition.

Filed through counsel

GAGAN BASOTRA
(ADVOCATE)

**BEFORE THE HON'BLE HIGH COURT OF JAMMU AND
KASHMIRAT JAMMU**

PIL No. /2020
I.A. /2020

Aditya Sharma & Anr V/s Union of India & Ors

IN THE MATTER OF: Brief Facts

May it please your lordships

The petitioners most respectfully submits as under:-

That the precise grievance of the Petitioners is the issuance of the Notification Dated 29.04.2020 bearing G.S.R. 267(E) whereby the Respondent No.1 has issued a Notification Under Sub-Section (1) of Section 18 of the Administrative Tribunal Act of 1985 showing therein the jurisdiction of the Bench to the respective States and Union Territories. The Notification further states that the Chandigarh Bench of the Central Administrative Tribunal (herein after to be referred as CAT) would exercise Jurisdiction inter alia over Union Territory of Jammu and Kashmir. It is submitted that the legal effect of the said notification is that all service disputes pertaining to the employees of the Union Territory of Jammu and Kashmir which are pending before the Hon'ble Court or yet to be filed from the date of Notification, stands transferred/to be filed in the Chandigarh Bench of the CAT.

That the impugned Notification fails the test of **proportionality and reasonableness**. It is submitted that the Respondents have failed to consider that there are already 50,053 cases pending before all the benches of the CAT as on 31.12.2018 and simultaneously there are around 40,000 pending service matters before the Hon'ble High Court of J&K which are likely to be transferred to the CAT. It is submitted that the Official Respondents have failed to appreciate that on aforesaid test the transfer of the cases to the CAT and correspondingly fresh institution of the service matters would only make a mockery of justice as the service dispute pertaining to the Union Territory of Jammu and Kashmir would unnecessarily get delayed in the absence of Constituting and establishing Permanent Benches in

the Union Territory of Jammu and Kashmir both at Jammu and Srinagar. It is relevant to mention here that the CAT has a sanctioned strength of 65 members for dealing more than 50 thousand cases and with the present transfer of cases the sanctioned strength would remain the same which is not in accordance with the test of Reasonability and proportionality as envisaged in the Article 14 of the Constitution of India.

Petitioners

Aditya Sharma

Rameshwar Padha

Place:- Jammu.

Through Counsel

Dated: 04/05/2020

GAGAN BASOTRA

ADVOCATE

BEFORE THE HON'BLE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

PIL. No. _____/2020

I.A. NO. _____/2020

1. Adv.Aditya Sharma, Age-31 Years

2. Rameshwar Padha Age 27 Years

..Petitioners

VERSUS

1. Union of India
Through Secretary,
Ministry of Personnel , Public Grievances and Pensions
(Department of Personnel and Training)
North Block, Central Secretariat, Delhi-110001
2. Union Of India
Ministry of Law and Justice,
Through its Secretary,
4TH Floor,A-Wing, Shastri Bhawan, Delhi-110001
3. Law Department,
Through its Secretary
Union Territory of Jammu and Kashmir
Civil Secretariat, Jammu.
4. The Bar Council of India,
Through its Secretary,
21,Rouse Ave Institutional Area RD,
Mata Sundari Railway Colony, Mandi House,
New Delhi-110001
5. Jammu and Kashmir High Court Bar Association
Through its General Secretary,
Janipur, Jammu.

IN THE MATTER OF:-

Writ Petition(Public Interest Litigation) under Article 226 of the constitution of India for issuance of an appropriate writ, direction or order in the facts and circumstances of the case.

- (i) Issue an appropriate writ, order or direction in the nature of mandamus commanding the respondents 1 to 3 to constitute and establish a permanent Bench/ Benches(Circuit Benches) of Central Administrative Tribunal in the Union Territory of Jammu and Kashmir at Jammu and Srinagar.
- (ii) Issue an appropriate writ, order or direction in the nature of Certiorari seeking quashment of Notification Dated 29.04.2020 bearing G.S.R. 267(E) to the extent of conferring jurisdiction on the Chandigarh Bench of CAT for the Union Territory of Jammu and Kashmir
- (iii) Any other appropriate order or direction which the Hon'ble Court deems fit and proper in the given facts and circumstances of the case may kindly be passed in favour of petitioners.

MAY IT PLEASE YOUR LORDSHIPS,

The petitioners are most respectfully submits as under:-

1. That the petitioner are the permanent residents of the Union Territory of J&K and being citizens of India, are entitled to their fundamental, legal and statutory rights enshrined under the Constitution of India.
2. That the petitioners are practicing Advocates in the High Court of J&K at Jammu and were enrolled in the year 2013 under _____ } under

respectively. The petitioners besides being Advocates are conscious citizens who are alive to their duties to the society in general and to the legal fraternity in particular. The petitioners are social activist and have filed number of Public Interest Litigations espousing the general cause of the disadvantageous public in order to safe guard their fundamental rights.

3. That the precise grievance of the Petitioners is the issuance of the Notification Dated 29.04.2020 bearing G.S.R. 267(E) whereby the Respondent No.1 has issued a Notification Under Sub-Section (1) of Section 18 of the Administrative Tribunal Act of 1985 showing therein the jurisdiction of the Bench to the respective States and Union Territories. The Notification further states that the Chandigarh Bench of the Central Administrative Tribunal (herein after to be referred as CAT) would exercise Jurisdiction inter alia over Union Territory of Jammu and Kashmir. It is submitted that the legal effect of the said notification is that all service disputes pertaining to the employees of the Union Territory of Jammu and Kashmir which are pending before the Hon'ble Court or yet to be filed from the date of Notification, stands transferred/to be filed in the Chandigarh Bench of the CAT. The copy of the Notification is enclosed herewith and marked as **ANNEXURE-I.**

4. That it is relevant to briefly mention here the provisions of the Administrative Tribunal Act, 1985 (herein after to be referred as an ACT) governing the Matter in controversy. It is submitted that Chapter II of the ACT provides for establishment of Tribunals and Benches thereof. Section 4 provides for the establishment of Administrative Tribunal and Section 5 deals with composition of the Tribunals and Benches thereof.
5. Section 5 Sub Section 7 of the ACT provides as under:-
“Subject to the other provisions of this Act, the Benches of the Central Administrative Tribunal shall ordinarily sit at New Delhi (which shall be known as the Principal Bench), Allahabad, Calcutta, Madras, New Bombay and at such other places as the Central Government may, by notification, specify”.

At present the Respondents from time to time have constituted 17 Benches including the Chandigarh Bench which exercises jurisdiction over the Union Territory of Jammu and Kashmir.

Section 5(6) authorizes the Chairman notwithstanding anything contained in the ACT to constitute a Bench of a Single Member who shall exercise the jurisdiction power and authority of the Tribunal in respect of such classes of the cases as the Chairman may specify in this behalf.

Section 13 of the ACT provides for the Appropriate Government to determine the nature and categories of

the officers and other employees required to assist the Tribunal in the discharge of its functions.

Furthermore Section 18 provides for Distribution of business amongst the Benches by way of a notification to be issued by the Appropriate Government from time to time amongst the Benches of the Tribunal so constituted.

It is relevant to mention here that the Section 29 of the Act provides for the transfer of the Pending cases which are pending before any Court or other Authority immediately before the date of establishment of the Tribunal or before the date with effect from which the jurisdiction is conferred on the Tribunal. Further sub section 4 of Section 29 mandatorily provides for the transfer and forwarding of the Record of the cases by the Court or any Authority to the Tribunal positively from the date when the Jurisdiction is conferred on the Tribunal.

6. That as per the various news reports there are approximately 40 thousand service matters pending before both the wings of the Hon'ble High Court of Jammu and Kashmir. The Petitioners have also reliably learnt and which was in the public domain that the registry of Jammu Wing has prepared a list of 16335 cases showing the title, Writ Petition Number as well as the names of the advocates in each Writ Petition. Similarly the registry of the Srinagar Wing of the Hon'ble Court has also undertaken an exercise and

prepared a list which reasonably could be of the same number or more as that of the Jammu wing. It is submitted that on a conservative estimate there are approximately more than 30000 Service Matters pending before the Hon'ble Court.

7. That as per the data available on the website www.cgatnew.gov.in of the Respondent, the sanctioned strength of the Members of the CAT including Chairman as on 06.03.2020 is 65 wherein 37 are in sitting and 28 vacancies are yet to be filled up. In respect of Chandigarh Bench the sanctioned strength as on date i.e. 06.03.2020 is 4 out of which one is sitting and three vacancies are yet to be filled up. It is submitted that under Section 5(2) of the ACT a Bench shall consist of One judicial and one administrative, though under Sub section 5(6) authorizes the Chairman of the CAT to constitute a Bench consisting of a Single Member.
8. That as per the Written reply of the Minister of State for Official Respondent No.1 before the Lok Sabha in February 2019 there are 50,053 Cases pending before the 17 Benches of the CAT as on 31st December,2018 and it has been further stated in the reply that there are 4,141 cases pending for more than five years, 10,263 for between two to five years, 9,006 between two to three years, 10,958 between 1-2 years and 15,685 for less than one year. This statement has been duly published in the Times Of India on 6th of February,2019. Copy of the news

item is enclosed and marked herewith as ANNEXURE-II.

9. That the afore said vacancy position of the CAT and the pendency of the cases in the CAT reflect the sorry state of affairs which defeats the very purpose for which the CAT was constituted in pursuance of 42nd Amendment of the Constitution of India whereby Article 323-A was incorporated in the Constitution of India for the speedy disposal of service matters. The Petitioner accordingly submit that the impugned notification does not sub serve the basic object and purpose of incorporating Article 323-A of the Constitution of India. In-fact there is every reason to believe that the transfer of cases to CAT Bench Chandigarh will result in endless delay with the present strength and composition of the benches of the CAT.
10. The Petitioners accordingly through the medium of the present Writ Petition are seeking to challenge the Impugned Notification and seek further indulgence of the Hon'ble Court to direct the Respondents for Constitution of a Regular/Permanent Bench of the Union Territory of Jammu and Kashmir in terms of Section 5(7) and 18 of the ACT amongst other on the following grounds:-
 - A) That the impugned Notification fails the test of **proportionality and reasonableness**. It is submitted that the Respondents have failed to consider that there are already 50,053 cases pending before all the

benches of the CAT as on 31.12.2018 and simultaneously there are around 40,000 pending service matters before the Hon'ble High Court of J&K which are likely to be transferred to the CAT. It is submitted that the Official Respondents have failed to appreciate that on the aforesaid test, the transfer of the cases to the CAT and correspondingly fresh institution of the service matters would only make a mockery of justice as the service disputes pertaining to the Union Territory of Jammu and Kashmir would unnecessarily get delayed in the absence of Constituting and establishing Permanent Benches in the Union Territory of Jammu and Kashmir both at Jammu and Srinagar. It is relevant to mention here that the CAT has a sanctioned strength of 65 members for dealing with more than 50 thousand cases and with the present transfer of cases the sanctioned strength would remain the same which is not in accordance with the test of Reasonability and proportionality as envisaged under the Article 14 of the Constitution of India.

B) That the impugned Notification is an ex-facie arbitrary and capricious exercise of power, which have no nexus with the object to be achieved for which the Tribunals were created by way of 42nd Amendment in the Constitution of India. The Petitioners submit that the official Respondent No.1 while exercising this power has deprived the service

litigants of the Union Territory of Jammu and Kashmir to access to meaningful and effective justice, in the context, that dispensation of justice is a basic and fundamental feature of the Constitution of India.

C) That the right to speedy justice is a necessary concomitant of Article 21 of the Constitution of India. The Hon'ble Supreme Court has further held that the provision of speedy justice is an obligation of the State for otherwise the operation of the legal system would not promote justice as assured in the Preamble. It is accordingly submitted that by way of impugned notification the justice delivery system would be negated in the context of Union Territory of Jammu and Kashmir which is geographically, culturally, linguistically and Politically distinct than the rest of the Country. The large parts of the Union Territory of Jammu and Kashmir are remote, inaccessible and even have no access to fast speed internet facilities due to the peculiar security threats as has been repeatedly admitted by the Respondents. The question of e-filing of cases and arguing cases by video conferencing by litigants and their advocates residing in those areas is a mere impossibility. Moreover the unemployed Youth would be severely handicapped Physically and financially to challenge selection matters before the CAT Chandigarh. The Petitioners submit that it would have been in the fitness of things and in furtherance of the

Constitutional obligation of the Official Respondents that a regular/permanent Bench(Circuit Benches) should have had been established before issuing the impugned notification.

D) That the Respondents are Constitutionally obliged to provide justice in view of Article 39-A of the Constitution of India which is reproduced as under:-

“The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities.”

It is accordingly submitted by way of impugned notification, access to Justice of Service litigants (employees of the Union Territory of Jammu and Kashmir) is severely jeopardized in view of the Facts narrated above in the Petition.

E) That admittedly the vacancy position of the Chandigarh Bench of CAT, reveals that the said Bench is not equipped along with its infrastructure to handle Approximately 40 Thousand Service matters of the Union Territory of Jammu and Kashmir in the background that the Chandigarh Bench has also to cater to the service disputes of other states including State of Punjab, Haryana, Himachal Pradesh and UT of Chandigarh and Ladakh. At present the

Chandigarh Bench is having a pendency of approximately 1100 cases and with the present influx of 40 thousand cases the same will not be listed for many years to come taking into account the working days and vacancy position of the Chandigarh Bench. The Petitioners have every reason to believe that the consecutive date of hearings of each Service Writ Petition would be more than year rendering many writ petitions infructuous, as such the service litigants have been rendered without any proper efficacious and effective alternate remedy which is infact a denial of justice. The Hon'ble Supreme Court in Case Titled Roger Mathew Versus South Indian Bank has elaborated on this and has made relevant observations and issued directions which the Petitioners would submit at the time of hearing.

F) That it is relevant to mention here that as admitted by the Respondent no.4 in its communication to Hon'ble Supreme Court wherein it has been clearly pleaded that 90 percent of the Advocates and Hon'ble Judges have no knowledge of computer and are severely disabled to file cases by way of e-mail and argue through videoconferencing. It is relevant to mention here that the Respondent No.2 has lately issued a Circular for e-filing of fresh cases which is not in accord with the stand already taken by the Respondent No.4. Moreover the cases to be transferred have not been digitalized by the Hon'ble

Court as such it is impossible for any advocate practicing in the Union Territory of Jammu and Kashmir to persue their cases by way of video conferencing or whatsapp calling. The Petitioner enclosed herewith the copy of the Copy of news item appearing in liveslaw (April,2020)as well as Circular and marked as **ANNEXURE-III**.

G) That the Union Territory of Jammu and Kashmir was created under the J&K Reorganization Act of 2019 published in the official Gazette on 08.09.2019, which came into force on 01.11.2019.The said J&K Reorganization Act 2019 was passed in pursuance of G.S.R. 551(E) Dated 05.08.2019,the Constitution (Application to Jammu And Kashmir) Order, C.O. 272.The Petitioner submit that the afore said Constitution (Application to Jammu And Kashmir) Order, C.O. 272 and the consequent J&k Reorganization Act 2019 is a subject matter of challenge before the Hon'ble Supreme Court in various petitions titled Mohd. Akbar Lone & Anr Versus Union Of India & Ors. and other connected matters . It is submitted that in case the afore said petitions are allowed by the Hon'ble Supreme Court which would result in the constitutional position of the UT OF Jammu and Kashmir prior to 05.08.2019 i.e. the State of Jammu and Kashmir would stand revived along with un amended articles 370 of the Constitution of India and enforcement of the

Constitution of the Erstwhile State of J&K. It is submitted that the consequent legal effect would be that the jurisdiction of the CAT would be ousted pertaining to the service disputes of the employees of the State of J&K who are at present the employees of the UT of J&K. This would necessarily mean that in case the present service petitions pending before the Hon'ble Court are transferred to CAT Bench Chandigarh in pursuance of the impugned notification then the same would be likely to be again re transferred back to the Hon'ble High Court. The Petitioners submit that this will all depend upon the outcome of the Petitions pending before the Hon'ble Supreme Court but the impugned notification simultaneously creates a lot of uncertainty and confusion pertaining to the service writ petitions to be transferred. The Petitioners accordingly seek indulgence of the Hon'ble Court to stay the impugned notification till the outcome of the aforesaid petitions pending before the Hon'ble Supreme Court.

11. That The Petitioners presently through the medium of present petition being stake holders are seeking enforcement of justice delivery system at the doorstep to the litigants in the Union Territory of Jammu and Kashmir. The petitioners have enclosed herewith the copy of the membership card which are collectively marked as **Annexure-IV**.

12. That the Petitioners are seeking indulgence of this Hon'ble Court to dispense with the PIL rules for filing representation as the present matter is of grave emergent and urgent in nature. It is submitted that after the passing of the impugned notification the Hon'ble Court is likely to transfer all the service writ petitions which are to be adjudicated by the CAT as such the Petitioners are disabled to file a detailed representation to the Respondents for the redressal of their grievances.
13. That the petitioners are left with no option but to invoke the extraordinary writ jurisdiction of the Hon'ble Court to get the bonafide public interest redressed at the August hands of the Hon'be Court. On the said account no other efficacious or effective remedy is available to the petitioners to get the aforesaid grievance redressed except by filing the present Writ petition.
14. That the petitioners have not preferred any SLP or other writ petition or legal proceedings in the Hon'ble Supreme Court of India or in any other Hon'ble High Court of India or in any Court, tribunal or authority till date on the supra cause of action Further to the best of knowledge of the petitioners no Writ petition on the cause analogues to the cause projected in the writ petition is pending in the Hon'ble Court.
15. That the petitioners have not been filed any other Public Interest Litigation in the Hon'ble Court and the instant

petition is being filed suo-moto by the petitioners for the benefit of public at large and not on asking of anyone else. The instant petition is not filed for any extraneous/personal consideration or without any oblique motive. No personal interest of the petitioners is involved in the subject matter of the petition and no money is being paid to the counsel by the petitioners for preferring the instant petition as the counsel has volunteered to prefer and contest the present petition free of cost. Copy of the Certificate is enclosed and marked as **ANNEXURE-V**.

16. That due to the grave emergent nature of the Petition, the Petitioners have given prior notice as well as copy of the Petition in Pdf File Form to opposite Counsel via Online Mode.
17. That the petitioner has no other efficacious / alternate remedy available than to approach this Hon'ble court by way of the present writ petition for redressal of their grievances.
18. That the petitioner has not filed any other writ petition or proceedings before any court including this Hon'ble Court on the same subject-matter.

An affidavit in support of the writ petition is annexed herewith.

IN THE PREMISES: -

It is, therefore, respectfully prayed that the Hon'ble Court may, in the facts and circumstances of the case, be pleased to;

1. Allow the Writ Petition.
2. Issue an appropriate writ, order or direction in the nature of mandamus commanding the respondents 1 to 3 to constitute and establish a permanent Bench/ Benches(Circuit Benches) of Central Administrative Tribunal in the Union Territory of Jammu and Kashmir at Jammu and Srinagar.
3. Issue an appropriate writ, order or direction in the nature of Certiorari seeking quashment of Notification Dated 29.04.2020 bearing G.S.R. 267(E) to the extent of conferring jurisdiction on the Chandigarh Bench of CAT for the Union Territory of Jammu and Kashmir.
4. Any other appropriate order or direction which the Hon'ble Court deems fit and proper in the given facts and circumstances of the case may kindly be passed in favour of petitioners.

Petitioners

ADITYA SHARMA

RAMESHWAR PADHA

Place:- Jammu.
Dated: 04/05/2020

THROUGH COUNSEL

**GAGAN BASOTRA
ADVOCATE**