

WWW.LIVELAW.IN

**HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR**

*(Through Virtual Mode)*

LPA No.123/2020  
CM No.4168/2020

*Dated: 31<sup>st</sup> of December, 2020.*

Abdul Qayoom Chalkoo

..... Petitioner(s)

Through: -

*Mr R. A. Jan, Senior Advocate with  
Mr Taha Khaleel, Advocate.*

**V/s**

Union Territory of JK & Ors.

..... Respondent(s)

Through: -

*Mr D. R. Raina, Advocate General with  
Mr Sajjad Ashraf Mir, Government Advocate  
Mr Tahir Majid Shamsi, ASGI  
Mr Hanu Bhaskar, SCGSC.*

**CORAM:**

**Hon'ble Mr Justice Ali Mohammad Magrey, Judge  
Hon'ble Mr Justice Vinod Chatterji Koul, Judge**

**(JUDGMENT)**

**{Per Magrey; J (Oral)}:**

01. By this appeal, the appellant/ Writ petitioner has assailed the validity of judgment dated 8<sup>th</sup> of September, 2020, whereby the review petition preferred by the appellant against the judgment and order dated 17<sup>th</sup> of June, 2020 passed by the learned Single Judge in WP(C) No.862/2020; thereby transferring the said service petition filed by the appellant to the

WWW.LIVELAW.IN

02. The precise material facts leading to the filing of this appeal are that the appellant filed a Writ petition, being WP(C) No.862/2020; CM No.1875/2020, before the learned Single Judge. The learned Single Judge, in terms of order dated 17<sup>th</sup> of June, 2020, transferred the said Writ petition for adjudication to the Central Administrative Tribunal, Jammu Bench. Thereafter, the appellant assailed the order dated 17<sup>th</sup> of June, 2020 before this Court in an appeal, registered as LPA No.86/2020; 2821/2020, wherein this Court, by virtue of order dated 14<sup>th</sup> of August, 2020, permitted the appellant to withdraw the appeal and file a review petition before the learned Single Judge. Accordingly, the appellant filed the review petition before the learned Single Judge against the aforesaid order dated 17<sup>th</sup> of June, 2020, being RP No.20/2020, *inter alia*, stating therein as under:

*“i. That the Union Territory of Jammu and Kashmir has been constitutionally structured on the pattern of Union Territory of National Capital of Delhi with its own separate legislature and, as such, the services allocated to Union Territory of Jammu and Kashmir are under the legislative and executive domain as well as administrative control of the union Territory of Jammu and Kashmir and, thus, Central Administrative Tribunal, Jammu Bench, has no jurisdiction, power or authority under Section 14 of the Administrative Tribunals Act to entertain, hear and decide the matters in respect of services rendered in connection with the affairs of Union Territory of Jammu and Kashmir.*

*ii. That Section 28 of the Administrative Tribunals Act, 1985, where-under jurisdiction of the Writ Court in regard to the matters over which jurisdiction is vested in the Central Administrative Tribunal under Section 14, stands struck down as unconstitutional by the Supreme Court of India in L. Chandra Kumar's case reported in AIR 1997 SC 1125*

WWW.LIVELAW.INWWW.LIVELAW.INWWW.LIVELAW.IN

The learned Single, after hearing the counsel for the appellant, in terms of judgment dated 8<sup>th</sup> of September, 2020, dismissed the review petition of the appellant by observing that it has been unable to persuade itself to concur with the contentions raised by the petitioner/ appellant herein and that it did not find any ground to review the order passed on 17<sup>th</sup> of June, 2020, whereby the petition of the petitioner/ appellant herein stands transferred to the Central Administrative Tribunal, Jammu Bench. Faced with this position, the appellant has preferred the instant appeal before this Court assailing the order dated 8<sup>th</sup> of September, 2020 passed by the learned Single Judge in Review Petition No.20/2020.

03. In terms of order dated 10<sup>th</sup> of November, 2020, when this appeal came up for consideration before this Court, the Court arrayed the Union of India, Ministry of Personnel, Public Grievances and Pension, through its Secretary, New Delhi as well as the Central Administrative Tribunal, New Delhi, through its Chairman as party respondents in the appeal. Besides, on the same date, Mr Tahir Majid Shamsi, the learned Assistant Solicitor General of India, who had waived notice on behalf of the newly impleaded respondents, was directed to furnish the following information to the Court:

- i. *Number of cases received by the Jammu Bench of the Central Administrative Tribunal from this Court with effect from its establishment till filing of the reply:*

WWW.LIVELAW.IN

- iv. *The time that is taken by the Tribunal for processing and listing of fresh cases; whether the cases filed on a given day are listed on the same day or on the day following the day of its filing or some other future date; The Tribunal shall indicate the procedure adopted by it in listing and considering the fresh cases;*
- v. *Whether the order passed by the Tribunal, final or interim, are made available to the parties or are uploaded on its official website on the same day or the day following its pronouncement or on some other future date; the procedure, if any, adopted by the Tribunal in this regard;*
- vi. *How many Benches of the Central Administrative Tribunal, Jammu, are available and sit on a given day to take up the pending and the fresh cases;*
- vii. *What is the roadmap prepared by the Tribunal to list the pending matters which have been transferred from this Court to the Central Administrative Tribunal Bench;*
- viii. *How many pending/ fresh cases are listed on the average in a day and how many are actually taken up for orders.”*

Thereafter, the matter was again listed on 24<sup>th</sup> of December, 2020, on which date, it was observed that the requisitioned information stands filed on behalf of the Deputy Registrar, Central Administrative Tribunal, Jammu Bench, copy whereof furnished to the learned Senior Counsel representing the appellant on 17<sup>th</sup> of December, 2020, however, since the copy of the Counter Affidavit filed on behalf of the Central Administrative Tribunal, Principal Bench, New Delhi, on 23<sup>rd</sup> of December, 2020, was not provided to the learned Senior Counsel, this Court, while directing Mr Shamsi, learned Assistant Solicitor General of India to provide a copy of the

Counter Affidavit to the learned Senior Counsel and direct the respondent to 20<sup>th</sup>

WWW.LIVELAW.IN

04. Mr R. A. Jan, the learned Senior Counsel, representing the appellant/ Writ petitioner, while reiterating the submissions urged before the learned Single Judge and as reproduced in this judgment at Paragraph No.2 hereinabove, submits that the impugned judgment and order dated 8<sup>th</sup> of September, 2020, has been rendered by the learned Single Judge without appreciating the grounds urged in the review Petition. It is further submitted that the learned Single Judge has erred in law in not taking in regard the fact that all the services, excepting the All India Services, Police and Anti-Corruption Bureau, rendered by a person allocated to the Union Territory of Jammu and Kashmir are rendered in connection with the affairs of the Union Territory of Jammu and Kashmir, therefore, the service matter constituting the subject matter of WP (C) No.862/2020 filed by the appellant/ Writ petitioner, being the service rendered in connection with the affairs of the Union Territory of Jammu and Kashmir, is not the service or service matter in relation to which the Tribunal is vested with jurisdiction under Section 14 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act of 1985'). The learned Senior Counsel further pleads that the learned Single Judge also erred in law inasmuch as it has not appreciated the law rendered by the Constitutional Bench of the Hon'ble Supreme Court of India on the subject in the case of '*Government (NCT of Delhi) v. Union of India & Anr.*', reported as '*(2018) 8 Supreme Court Cases 501*'. Mr Jan has further

WWW.LIVELAW.IN

Tribunal at Srinagar, despite notification issued under Sub-Section 5 of Section 7 of the Act of 1985, way back on 20<sup>th</sup> of May, 2020, tantamounts to denial of access to justice in view of the judgment rendered by the Hon'ble Supreme Court of India in ***'Rojer Mathew V. South Indian Bank Ltd. & Ors.'***, reported as ***'(2020) 6 SCC 1'***. It is next contended by the learned Senior Counsel that the impugned judgment and order dated 8<sup>th</sup> of September, 2020, if allowed to stand, will have serious consequences of conferring the jurisdiction on the Tribunal *qua* the services and service matters not contemplated and comprehended under Section 14 of the Act of 1985.

05. Counter Affidavit stands filed on behalf of the Central Administrative Tribunal, New Delhi, through Mr Hanu Bhaskar, the learned Senior Central Government Standing Counsel, wherein it is stated that after the enactment of the Jammu and Kashmir Reorganization Act, 2019, the DoPT, on 29<sup>th</sup> of April, 2020, issued a Gazette Notification, whereby the jurisdiction of various Benches of the Central Administrative Tribunal was mentioned and, as per which the Chandigarh Bench of the Tribunal had the jurisdiction of the Union Territory of Jammu and Kashmir and Union Territory of Ladakh. Thereafter, as stated, a PIL, being WP(C) No.3/2020 titled ***'Aditya Sharma & Anr. V. Union of India & Ors.'***, came to be filed before this Court praying therein that a Bench of the Central Administrative

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

No.317(E) with further declaration that the said Bench will be made operational at Jammu w.e.f. 8<sup>th</sup> of June, 2020. It is further stated that since the sanction of a Bench at Jammu was likely to take some time, one Bench from the Principal Bench of the Central Administrative Tribunal was shifted to Jammu on permanent basis. Accordingly, the Bench at Jammu was inaugurated on 8<sup>th</sup> of June, 2020 and the proceedings of adjudicating the matters at Jammu commenced on 8<sup>th</sup> of June, 2020. The Counter Affidavit also details out that till the 14<sup>th</sup> day of December, 2020, the Central Administrative Tribunal, Jammu Bench received 4569 cases from Jammu wing of the High Court and 8542 cases from the Srinagar wing of the High Court, besides 48 cases from the Court of Sub Judge, Anantnag. Besides, it is submitted that 1235 OAs; 1639 MAs, 06 RAs and 30 CPs have been filed before the Central Administrative Tribunal, Jammu Bench till the 14<sup>th</sup> day of December, 2020. It is also informed that the Tribunal has till 14<sup>th</sup> of December, 2020 disposed of 550 cases. It is also forthcoming from the Counter Affidavit that the Central Administrative Tribunal, New Delhi, is conscious of the fact that since there is a permanent Bench of the Tribunal that has been established in Jammu, there is a need to establish a Circuit/ Permanent Bench in Srinagar as well and a proposal, in this behalf has already been submitted to the concerned authority(ies), which Bench would hear the matters pertaining to the jurisdiction of the Tribunal arising at Srinagar. It is

~~WWW.LIVELAW.IN~~WWW.LIVELAW.IN

once the said vacant positions are filled, a permanent Bench at Srinagar will be established immediately thereafter. It is further submitted that due to the shortage of Members, both Judicial as well as Administrative, at present, there is a difficulty in the functioning of the Central Administrative Tribunal as of now, however, since the hearings are going on through Virtual hearings (Video Conferencing) on account of the outbreak of COVID-19 Pandemic, the work at various Benches is being conducted smoothly.

06. Mr D. C. Raina, the learned Advocate General, submits that after the establishment of the Central Administrative Tribunal Bench at Jammu for the Union Territories of Jammu and Kashmir, and Ladakh, all the jurisdiction, powers and authority which were exercisable by this Court immediately before establishment of the Tribunal in relation to the matters enumerated thereunder, in terms of Sub-Section (1) of Section 14 of the Act of 1985 are exercisable by the Tribunal as the court of first instance. The learned Advocate General made specific reference to the words ‘recruitment, and matters concerning recruitment’ occurring in Clause (a) of Sub-section (1) of Section 14 and submitted that since the instant matter relates to recruitment to the civil post borne on the service of the Government of Jammu and Kashmir, all jurisdiction and powers and authority in relation thereto lies with the Tribunal. Besides, Mr Raina submits that insofar as the grievance projected by the



[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

matters of the employees of the Union Territory of Jammu and Kashmir and Union Territory of Ladakh. It is submitted that the Government of the Union Territory of Jammu and Kashmir has thus, already taken up the matter with the Central Government for the purpose of establishment of two separate Benches of the Tribunal, one each at Srinagar and Jammu for adjudication of the service matters of the employees of the Union Territory of Jammu and Kashmir and Union Territory of Ladakh. Mr Raina, in this behalf, has invited the attention of this Court to the communication No. RS/HLG/2020/373 dated 8<sup>th</sup> of May, 2020 addressed by His Excellency the Lt. Government of the Union Territory of Jammu and Kashmir to the Ministry of Home Affairs, Government of India; communication No. PS/CS/202 dated 22<sup>nd</sup> of May, 2020 addressed by the Chief Secretary to the Government of Union Territory of Jammu and Kashmir to the Secretary, DoPT, New Delhi; and Government Order No. 107-Est of 2020 dated 11<sup>th</sup> of November, 2020 issued by the Estates Department of the Government of Union Territory of Jammu and Kashmir. Both the aforesaid communications dated 8<sup>th</sup> of May, 2020 and 22<sup>nd</sup> of May, 2020 as well as Government order dated 11<sup>th</sup> of November, 2020 are taken on record.

07. We have heard the learned counsel for the parties, perused the pleadings on record and considered the matter.

WWW.LIVELAW.IN

petition filed by the petitioner/ appellant herein, in terms whereof the learned Single Judge has declined to review the order passed on 17<sup>th</sup> of June, 2020 whereby the petition of the petitioner/ appellant stands transferred to the Central Administrative Tribunal, Jammu Bench.

09. At the first blush, what requires to be stated is that after His Excellency the President made the Constitutional (Application to Jammu and Kashmir) Order, 2019 (C.O. 272) dated 5<sup>th</sup> of August, 2019 read with the Declaration made under Article 370(3) of the Constitution in terms of Notification G.S.R. 562(E) (C.O. 273) dated 6<sup>th</sup> of August, 2019; and after the Parliament enacted the Jammu and Kashmir Reorganization Act, 2019 (No.34 of 2019), the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi, in exercise of powers conferred by sub-section (1) of Section 18 of the Act of 1985, issued Notification G. S. R. 267(E) dated 29<sup>th</sup> of April, 2020 extending the jurisdiction of the Central Administrative Tribunal, Chandigarh Bench, *inter alia*, to the Union Territories of Jammu and Kashmir, and Ladakh. Subsequently, by another notification, issued in exercise of the powers conferred by sub-section (7) of Section 5 of the Act of 1985, the said Department issued Notification No. G.S.R. 317(E) dated 28<sup>th</sup> of May, 2020, specifying Jammu and Srinagar as the places at which the Benches of the

WWW.LIVELAW.IN

(Department of Personnel and Training), New Delhi, in exercise of the powers conferred by sub-section (1) of Section 18 of the said Act, the jurisdiction of the Jammu Bench of the Tribunal, was specified to be the Union Territory of Jammu and Kashmir and Union Territory of Ladakh. In short, the Act of 1985 stands extended to the two Union Territories (UTs) and a Bench thereof stands established at Jammu for the two Union Territories.

10. Admittedly, the subject matter of the Writ petition filed by the appellant before the learned Single Judge is the recruitment process concerning the civil post borne on the service of the Government of the Union Territory of Jammu and Kashmir. Section 14 of the Act of 1985 falls in Chapter III, captioned jurisdiction, powers and authority of Tribunals. It 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 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*

WWW.LIVELAW.IN

*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 4 [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) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government*

*Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.*

*(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts, except the Supreme Court, in relation to—*

*(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and*

*(b) all service matters concerning a person, other than a person referred to in clause (a) or clause (b) of sub-section (1), appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.”*

It is, thus, seen that Section 14, delineating the matters in relation with which the Tribunals have been prescribed to have the jurisdiction, speaks

WWW.LIVELAW.IN

Union Territory. The words used are ‘civil service’ or ‘civil post’. The subject matter of the Writ petition filed by the petitioner/ appellant herein relates to a duly sanctioned post borne on a Civil Service of the Union Territory of the Jammu and Kashmir and meets all the requirements of being a civil post. That being the position, the claim of the petitioner/ appellant herein, admittedly, relates to the recruitment and/or matters concerning recruitment to a civil service and/order a civil post under the Union. Consequently, in terms of the mandate of Section 14 of the Act of 1985, it is the Central Administrative Tribunal which has the jurisdiction as a Court of first instance to exercise all the jurisdiction, powers and authority *vis-à-vis* the petition filed by the petitioner/ appellant before the learned Single Judge, which were exercisable by this Court prior to the appointed day.

11. Apart from the above, in case titled **‘Kendriya Vidyalaya Sangathan & Anr. v. Subhash Sharma etc.’**, reported as **‘AIR SCW 2002 (2) 1105’**, a Constitutional Bench of the Hon’ble Supreme Court was called upon to deal with an issue similar to the one involved herein this appeal and the Constitutional Bench, at Paragraphs 12 and 13, clearly laid down as:

*“12. The Constitution Bench of this Court has clearly held that Tribunals set up under the Act shall continue to act as the only courts of first instance ‘in respect of areas of law for which they have been constituted’. It was further held that it will not be open for litigants to directly approach the High Court even in cases where they question the*

WWW.LIVELAW.IN

*petition to the Central Administrative Tribunal. Consequently, we set aside the impugned orders and direct the High Court to transfer both the writ petitions to the Central Administrative Tribunal, Chandigarh Bench which may, in its turn, make over the case to the circuit bench in the State of Jammu and Kashmir for disposal in accordance with law.”*

From the above position of law enunciated by Hon’ble the Supreme Court, it becomes axiomatic that the Tribunals set up under the Act of 1985 have been tasked to act as the only courts of first instance in respect of areas of law for which they have been constituted and the litigants have been restrained to directly approach the High Court even in cases where they question the vires of statutory legislation, except where the legislation which creates the particular Tribunal is challenged, by overlooking the jurisdiction of the concerned Tribunal. Consequently, in these circumstances, the learned Single Judge could not have entertained a petition raising a service dispute of the employee borne on the service of the Government of India or the Government of the Union Territory of Jammu and Kashmir and Union Territory of Ladakh.

12. Given the above clear and unambiguous position of law, we are unable to take a view other than the one taken by the learned Single Judge in the matter, initially, in the order dated 17<sup>th</sup> of June, 2020, passed in the Writ petition filed by the petitioner/ appellant herein and, thereafter, in the judgment dated 8<sup>th</sup> of September, 2020, passed in review petition filed by the

WWW.LIVELAW.IN

13. Before parting with the file, we feel that we must be failing in our duty in case we do not take note of the grievance projected by Mr Jan, the learned Senior Counsel, *qua* the non-availability of the Bench of the Central Administrative Tribunal at Srinagar which, as per the learned Senior Counsel, tantamounts to denial of justice to the litigants belonging to the Kashmir region in view of the judgment rendered by the Hon'ble Supreme Court in Rojer Mathew's case (*supra*). In this connection, it, needs, must be said that the Central Government has already issued notification under Sub-Section 7 of Section 5 of the Act of 1985 way back on 28<sup>th</sup> of May, 2020, specifying Jammu and Srinagar as the places at which the Benches of the Central Administrative Tribunal shall ordinarily sit for the Union Territory of Jammu and Kashmir and Union Territory of Ladakh and, in pursuance thereof, the Bench of the Central Administrative Tribunal started holding sittings at Jammu from 8<sup>th</sup> of June, 2020, hearing the cases not only pertaining to the litigants of Jammu, but also the ones belonging to Kashmir as well as Ladakh region for the time being. This arrangement of hearing of the cases pertaining to the litigants of Kashmir region, as would come to limelight from the stand taken by both the Central Administrative Tribunal as well as the Government of the Union Territory of Jammu and Kashmir, is temporary in nature and the proposal to establish a permanent Bench of the Central Administrative Tribunal at Srinagar is under active consideration of the authorities

WWW.LIVELAW.IN

in nature, with respect to which this Court cannot issue any specific direction(s) to the concerned authorities. Moreso, when the Hon'ble Apex Court in Rojer Mathew's case *supra*, has already observed that having Tribunals without Benches in at least the capitals of States and Union Territories amounts to denial of justice to citizens of those States and Union Territories which makes the entire justice delivery system very metropolis centric having many adverse effects. In this context, this Court can only hope and trust that all the difficulties/ encumbrances that may be there, on administrative side, in the process of establishment of the Bench of the Central Administrative Tribunal at Srinagar are removed as expeditiously as possible keeping in view the difficulties being faced by the litigants belonging to the Kashmir region in pursuing their cases before the Central Administrative Tribunal, Jammu Bench.

14. Copy of this judgment be furnished to all the learned appearing counsel for the parties under the seal and signatures of the Bench Secretary of this Court, today itself.

(Vinod Chatterji Koul)  
Judge

(Ali Mohammad Magrey)  
Judge

**SRINAGAR**

December 31<sup>st</sup>, 2020

"TAHIR"

i. Whether the Judgment is reportable?

Yes/ No.