



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 7261/2018

Prem Chand Deshantri

-----Petitioner

Versus

1. Union Of India Through The Secretary, Ministry Of Labour,
Shram Shakti Bhavan, New Delhi.

2. The Central Provident Fund Commissioner, Employees
Provident Fund Organisation, Bhavishya Nidhi Bhavan 14,
Bhikaji Kama Place New Delhi-110 066

3. The Additional Central Provident Fund Commissioner,
Employees Provident Fund Organisation, Bhavishya Nidhi
Bhavan, 14, Bhikaji Kama Place, New Delhi-110 066

4. The Regional Provident Fund Commissioner Rajasthan,
Employees Provident Fund Organisation, Zonal Office,
Nidhi Bhawan, Vidhyut Marg, Jyoti Nagar, Jaipur-302005

5. The Additional Central Provident Fund Commissioner,
Employees Provident Fund Organisation, Zonal Office,
Nidhi Bhawan, Vidhyut Marg, Jyoti Nagar, Jaipur-302005

-----Respondents

For Petitioner(s) : Mr. Shreyansh Mardia.

For Respondent(s) : Mr. Yashpal Khileree.

HON'BLE MS. JUSTICE REKHA BORANA

Order

27/04/2022

The matter comes upon an application preferred on behalf of the respondents with the preliminary objection regarding the maintainability of the present writ petition.

It has been averred in the application that Sections 14 and 15 of the Central Administrative Tribunal Act, 1985 (the Act of



1985') provide for a specific bar in the matters pertaining to the recruitment to any All India Service or to any Civil Service of the Union. It has been submitted that the jurisdiction to decide to such matters lies with the Central Administrative Tribunal ('CAT') and in terms of Section 15(4), there is a specific bar for exercise of such jurisdiction by any other Authority or Tribunal.

Section 15(4) of the Act of 1985 reads as under:-

"15. Jurisdiction, powers and authority of State Administrative Tribunals:-

 (4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable."

Learned counsel for the petitioner relied upon the Hon'ble Apex Court judgments passed in **Union of India & Ors. v. Deep Chand Pandey and Anr.** reported in **1992 (4) SCC 432** (decided on 27.08.1992); **Union of India (UOI) & Ors. v. Parma Nand** reported in **1989 (2) SCC 177** (decided on 14.03.1989); judgment passed by High Court of Himachal Pradesh in **Vinod Kumar v. H.R.T.C. & Ors.** reported in **ILR 1995 1 HP 121** (decided on 30.12.1994) and order of a Co-ordinate Bench of this Court in **S.B. Civil Writ Petition No.5192/2020; Prahalad Kumawat v. All India Institute of Medical Sciences & Anr.** (decided on 09.09.2020).

Per contra, learned counsel for the respondents relied upon the judgment passed by the High Court of Delhi in **Har Kaur**



Chadha & Ors. v. NCT of Delhi & Ors.; Writ Petition (Civil) No.11498/2016 (decided on 05.09.2019). Learned counsel for the respondents submits that at present the Central Administrative Tribunal is functioning and therefore, the petitioner be relegated to the said Authority.

In the present matter, the notices had been issued to the respondent Authorities on 29.05.2018.

The order dated 29.05.2018 reads as under:-

"It is submitted by the petitioner that this Court on previous occasions on account of non-availability of the Bench of Central Administrative Tribunal has granted indulgence and relies on certain orders and judgments of Hon'ble Supreme Court and other High Courts, wherein observations in this regard have been made.

In view of the submissions made, issue notice. Issue notice of the stay application also, returnable in five weeks.

Notices when issued be given 'dasti' to the petitioner/learned counsel for the petitioner.

In the meanwhile and until further orders, the respondents are directed to keep one post of Section Supervisor (Examination Quota) vacant while filling the said posts vide the Departmental Examination scheduled to be held in June, 2018."

A perusal of the above order makes it clear that the present writ petition was entertained by this Court on the ground that the Bench of the Central Administrative Tribunal was not available/not functioning at that relevant time.

The application as preferred by the respondents also does not controvert the said fact that the Tribunal was not functioning or not available at the time when the present writ petition was filed. There is no dispute on the position of law that an alternative remedy does lie before the CAT in the service matters pertaining



to All India Services or Civil Services governed by the Union. But in the present matter, it is clear on record that the writ petition had been entertained only because of the fact that the competent Authority i.e. the CAT was not functioning/available at the relevant time. Therefore, any litigant cannot be left remediless. It cannot be assumed that a litigant would keep waiting for the adjudication of his disputes, if the competent Forum or the Authority is not functioning. It cannot also be the intention of the legislation to make a litigant suffer because of the inaction or lacuna on the part of the system. The fact of the CAT not functioning at the relevant time being not disputed, the dismissal of the writ petition at this stage i.e. after four years of filing of the same and being entertained by this Court, would not be in the interest of justice now only on the ground of alternative remedy. It is not because of any fault on the part of the petitioner that the writ petition had been filed before this Court and the same being entertained once, now after a period of four years and after the service of the notices on the respondents, it would not be appropriate to relegate the parties to the Tribunal.

So far as the judgments relied on by the learned counsel for the respondents are concerned, at the cost of the repetition, it would be appropriate to note that there is no dispute or second opinion about the fact and the law that the jurisdiction to entertain the service matters pertaining to All India Services lie with the Central Administrative Tribunal. But as observed above, because of the peculiar facts and circumstances of the present case, this Court is not inclined to accept the application of the respondents for dismissal of the writ petition on the ground of alternative



remedy. As held in **Har Kaur Chadha's** case (supra), to relegate the petitioner to an alternative remedy at this stage would needlessly cause delay and prejudice the petitioner.

In view of the above observations, the application as filed by the respondents is dismissed.

List the writ petition for filing of reply on 11.07.2022.



(REKHA BORANA),J



सत्यमेव जयते