

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE NARAYAN SINGH DHANIK

WRIT PETITION (S/B) NO. 407 OF 2020

23RD OCTOBER, 2021

BETWEEN:

Sanjiv ChaturvediPetitioner.

And

Union of India & othersRespondents.

Counsel for the Petitioner : Mr. Sanjiv Chaturvedi, petitioner,
party-in-person.

Counsel for the respondents : Mr. Rakesh Thapliyal, learned
Assistant Solicitor General with
Mr. V.K. Kaparuwan, learned
Standing Counsel for the Union of
India.

Mr. K.N. Joshi, learned Deputy
Advocate General for the State.

Mr. N.S. Pundir, learned counsel
for respondent no.4.

Ms. Aklema Pravin, learned *proxy*
counsel for Mr. Hanu Bhaskar,
learned counsel for respondent
nos.6 and 7.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

The petitioner-in-person, Mr. Sanjiv Chaturvedi, has challenged the legal validity of the order dated 04.12.2020, passed by the Central Administrative Tribunal (for short "C.A.T."), Principal Bench, New Delhi, whereby the learned Tribunal has transferred O.A. No.331/109/2020 filed

by the petitioner from the Allahabad Bench (Nainital Circuit Bench), to the Principal Bench, New Delhi.

2. Although, this case has a long and highly chequered history, but the chequered history is absolutely immaterial for deciding this petition. Therefore, only the relevant facts are being narrated.

3. Briefly, the facts of the case are, that the petitioner had filed Original Application, namely O.A. No.331/00109/2020, before the Nainital Circuit Bench of C.A.T. with the following prayers:-

"a. To call for records and issue appropriate direction/order for quashing present system of 360 degree appraisal being used in empanelment of officers at the level of Joint Secretary and above in Central Government, being arbitrary, unreasonable, in violation of principles of natural justice, being in supersession of statutory rules and finding of Parliamentary Committee Report.

b. To restrain the respondents from filling up the posts of Joint Secretary/equivalent to Joint Secretary rank and also posts above in rank of Joint Secretary in Central Government, through contract system, in future.

c. To set aside all those provisions of present Central Staffing Scheme, governing constitution of and evaluation by Expert Panel for the purpose of empanelment at Joint Secretary level in Central Government, issued vide O.M. 36/77/94-EO (SM-1)" date 05.01.1996 and modified subsequently, being arbitrary, unreasonable, violative of principles of natural

justice and in violation of basic federal structure enshrined into the Constitution.

d. To direct the respondents to remove huge artificial time lag created between empanelment of officers of different services and between same levels in Central Government and State Government, in case of All India Service Officers.

e. To direct the respondents to consider the case of Applicant for empanelment to the level of Joint Secretary in view of fulfillment of all the eligibility criteria regarding completion of requisite number of years of service and elevation into Level-14 of Pay Matrix; or alternatively, issue directions to respondents not to reject abovementioned case of Applicant, on any ulterior/subjective/oblique consideration, and decide the same objectively, on merit, facts and in accordance with law only.

f. To order and appropriate investigation so as to fix responsibility into various irregularities into recruitment process of Joint Secretary rank officers through contract system, taken place in the year 2019, in view of irregularities brought out in para 3.5 of factual matrix”.

4. Despite repeated opportunities being given to the Union of India to file its counter-affidavit, till 04.12.2020, no counter-affidavits was filed by the Union of India. Instead, the Union of India filed a transfer application before the Principal Bench, New Delhi for seeking transfer of O.A. filed by the petitioner from Nainital Circuit Bench to the Principal Bench, New Delhi. By the impugned order dated 04.12.2020,

the said O.A. has been transferred as aforementioned. Hence, the present petition before this Court.

5. The only issues before this Court are whether the learned Tribunal is justified in transferring the O.A. pending before the Nainital Circuit Bench, or not? (ii) Whether valid reasons have been given in the impugned order for transferring the O.A., or not?

6. Mr. Sanjiv Chaturvedi, party-in-person, has raised the following contentions:-

Firstly, in the O.A., he had challenged the recruitment selection process for the post of Joint Secretary. He was also aggrieved by the fact that, although eligible candidates were available for the post of Joint Secretary, within the All India Services, in 2019, a policy decision was taken by the Central Government that henceforth the post of Joint Secretary would be filled by hiring persons on contractual basis for a period of three to five years. This policy decision, according to Mr. Sanjiv Chaturvedi, *prima facie*, would adversely affect the rights of the persons who are in the All India Services.

Secondly, he had filed a representation to the Secretary, Department of Personnel & Training, Government of India, the respondent No.2, wherein he has brought to the notice of the Secretary that he was working on a post

equivalent to the post of Joint Secretary. Therefore, his candidacy for the post of Joint Secretary should be considered. However, the said representation is still pending.

Thirdly, a very peculiar contention was raised by the Union of India for seeking transfer of the O.A. from the Nainital Circuit Bench to the Principal Bench, New Delhi: since the petitioner has challenged a policy decision, and since the policy decision has "nationwide repercussions", therefore, the O.A. deserves to be transferred to the Principal Bench, New Delhi. According to Mr. Sanjiv Chaturvedi, if the Parliament were of the opinion that issues of "national importance" need to be decided only by the Principal Bench, a provision would have existed in the Administrative Tribunals Act, debarring other Benches of C.A.T. from hearing issues of "national importance", or having "nationwide repercussions". However, there is no such bar contained in the Administrative Tribunals Act preventing other Benches of C.A.T., which are considered to be equivalent to the Principal Bench, from hearing or from examining a policy decision of the Central Government. Despite this fact, the learned Tribunal, in the impugned order, has accepted the contention raised by the Union of India, and has transferred the O.A., ostensibly, on the ground that "*the decision on the policy would impact the very functioning of the Central Government*".

Fourthly, since all the Benches, including the Principal Bench have equal jurisdiction, the impugned order creates an impression that somehow the other Benches of C.A.T. are subordinate to the Principal Bench, and the Principal Bench is paramount Bench in the country. For, the impression is being created that issue of "national importance" can be decided only by the Principal Bench, and by none others. According to Mr. Sanjiv Chaturvedi, such an interpretation of the Act is highly misplaced. If such an impression were to be created, it would dilute the importance of other Benches of C.A.T., and for all practical purposes would make all other Benches of C.A.T. subordinate to the Principal Bench.

7. On the other hand, Mr. Rakesh Thapliyal, the learned Assistant Solicitor General appearing for the Union of India, submits that the transfer application was filed on the ground that there is a distinct possibility that the same policy decision may be challenged before different Benches of C.A.T. throughout the country. Thus, it was imperative for the Principal Bench to hear the same.

Secondly, since no cause of action had arisen in Uttarakhand, the Nainital Circuit Bench does not have the territorial jurisdiction to hear the petition. According to the learned Assistant Solicitor General, the policy was framed in New Delhi, the names are invited for selection in New Delhi,

the selection process begins and ends in New Delhi, therefore, only the Principal Bench at New Delhi has the territorial jurisdiction to hear the O.A.

Thirdly, according to the Union of India, since the relevant files are lying in New Delhi, and since relevant witnesses would be available in New Delhi, it would be in the interest of justice to transfer the case to the Principal Bench, rather than keeping the case pending before the Nainital Circuit Bench.

Lastly, since the decision with regard to a policy decision of the Central Government would have nationwide repercussions, therefore, only the Principal Bench is a suitable Bench for deciding the validity of the policy decision.

8. In rejoinder, Mr. Sanjiv Chaturvedi, the petitioner, party-in-person, submits that that first contention raised by Mr. Rakesh Thapliyal, the learned Assistant Solicitor General, is a hypothetical. For, it was never pleaded before the Principal Bench that other Benches throughout the country, or parts of the country are seized of the same issue. Since the said plea was never raised, the said plea cannot be raised hypothetically before this Court.

Secondly, part of cause of action does arise in Uttarakhand. For, names of the eligible candidates for the post of Joint Secretary are called from the States. Thus, the

names are recommended by the States; the service record of the eligible candidates is with the State. The service record is forwarded by the State. Moreover, as pointed out above, the decision to appoint Joint Secretaries on contractual basis adversely affects the petitioner's right of consideration for the post of Joint Secretary. Hence, the impact of the policy decision deprives the petitioner's right in the State of Uttarakhand. Therefore, a part of cause of action arises in the State. Hence, the Nainital Circuit Bench does have the jurisdiction to hear the O.A.

Thirdly, while considering the issue of transfer of a case, the comparative hardship of both the parties should be considered. However, the petitioner's hardships have been ignored. Even if the records are in Delhi, the respondents have sufficient means to send them to Nainital. Moreover, the question of production of witnesses does not exist, for, C.A.T. is not a trial court where witnesses need to be produced. Furthermore, since the petitioner is appearing in person before C.A.T., he would have to travel and stay at Delhi. He would have to invest time, energy and money to fight his case. According to Mr. Chaturvedi to force him to travel to Delhi on each date makes access to justice an expensive proposition. Yet, the learned Tribunal has ignored the hardship caused to the petitioner.

9. Mr. Sanjiv Chaturvedi, party-in-person, and Mr. Rakesh Thapliyal, the learned Assistant Solicitor General, are *ad idem* that after passing of the impugned order, the O.A. was, indeed, transferred to the Principal Bench. However, ever since it has been transferred, no effective hearing has occurred. Therefore, the status remains the same, as was the status at Nainital Circuit Bench.

10. Heard Mr. Sanjiv Chaturvedi, the party-in-person, and the learned counsel for the respondents.

11. The first contention raised by Mr. Rakesh Thapliyal, the learned Assistant Solicitor General, is clearly untenable. For, a bare perusal of the impugned order clearly reveals that the respondents have nowhere raised the contention that since similar issues have been raised in number of Benches of C.A.T., the petitioner's O.A., which is pending before the Nainital Circuit Bench, deserves to be transferred to the Principal Bench. Even today, no evidence has been produced to show that similar issues challenging the selection process, and the Policy of 2019, are under challenge before other Benches besides the Nainital Circuit Bench. Therefore, the said contention is apparently an afterthought to justify the impugned order.

12. In order to appreciate the reasoning given by the learned Tribunal, it is apposite to consider the relevant

provisions of the Administrative Tribunals Act, 1985 (for short the "Act, 1985").

13. Section 3(e) of the Act, 1985 defines the word "Bench" as meaning "a Bench of a Tribunal".

14. Section 3(t) of the Act, 1985 defines the word "Tribunal" as meaning "the Central Administrative Tribunal or a State Administrative Tribunal or a Joint Administrative Tribunal".

15. Section 4 of the Act, 1985 bestows the power on the Central Government to establish an Administrative Tribunal, to be known as the Central Administrative by or under this Act.

16. Section 5 of the Act, 1985 defines the composition of Tribunals and Benches thereof. The relevant portion of Section 5 is as under:-

"5(1) *Each Tribunal shall consist of [a Chairman and such number of Judicial and Administrative Members] as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof".*

17. Section 5(7) creates Benches of the Central Administrative Tribunals and directs that 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. Therefore, the said section creates Benches in different parts of the country.

18. Section 14 of the Act, 1985 defines the jurisdiction, powers and authority of Tribunals 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 3 ***) 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 civil post under the Union; or*

(iii) *a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,*

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation 4 [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 2 ***) 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 1 [or society] and pertaining to the service of such person in connection with such affairs”.

19. A conjoint reading of the provisions clearly reveal that while Section 14 defines the jurisdiction, powers and authority of the C.A.T., Section 5 bestows identical jurisdiction, power, and authority of the Tribunal upon the different Benches situated and located under Section 5(7) of the Act, 1985 in different parts of the country. Hence, the

Benches exercise the same jurisdiction, power and authority as the Principal Bench at New Delhi.

20. In the case of ***L. Chandra Kumar vs Union Of India, (1997) 3 SCC 261***, the Hon'ble Supreme Court has clearly opined that the Administrative Tribunals would have the power to hear a challenge to any Act except the Principal Act, i.e. the Administrative Tribunal Act. Therefore, a challenge to a policy decision can equally be invoked before any Bench of CAT. There is no requirement of law that a policy decision must, necessarily, be challenged before the Principal Bench. In fact, there is no provision under the Act which bestows the sole power to hear the challenges to a policy decision only on the Principal Bench, and not on any other Bench of the C.A.T.

21. A bare perusal of the impugned order clearly reveals that a single contention had been raised before the learned Tribunal, namely that the decision would have the nationwide repercussions. Considering the issue raised in the O.A., it is relevant to quote Paragraph 3 of the impugned order in order to understand the contentions raised by the Union of India.

22. Paragraph 3 of the impugned order is as under:-

"3. Shri Hanu Bhaskar, learned counsel for the petitioner, submits that the O.A. deserves to be heard by the Principal Bench having regard to the importance and the nationwide repercussions of the issue sought to

be raised in the O.A. To be precise, he contends that the challenge is to the very process of empanelment to the post of Joint Secretary and being a policy matter, it needs to be decided the Principal Bench”.

23. Thus, it is apparent that the contention with regard to the lack of jurisdiction of the Nainital Circuit Bench was not raised before the learned Tribunal. The only point, that was raised, was with regard to the importance of the issue. Moreover, in the concluding part of the impugned order, the learned Tribunal has observed as under:-

“5. A perusal of the prayer in the O.A. discloses that the very procedure for empanelment for the post of Joint Secretary is sought to be assailed. The matters of this nature have their own impact on the very functioning of the Central Government. It is felt that the O.A. deserves to be heard by Principal Bench. Since the hearings are taking place through video conferencing, no prejudice are taking place through video conferencing, no prejudice would be caused to the respondent in the P.T., i.e. applicant in the O.A. also”.

(Emphasis added).

24. Thus, the O.A. has been transferred, ostensibly, on the ground that the matter of this nature would have their own impact on the very functioning of the Central Government.

25. However, in case the Parliament in its wisdom were of the opinion that issues have nationwide repercussion, or having great impact on the functioning of the Central Government, should be consigned to the Principal Bench, then a necessary provision would have been enacted by the Parliament. However, since the Parliament has treated all the

Benches of the C.A.T. as alike, even cases of nationwide repercussion, or having great impact on the functioning of the Central Government can, indeed, be decided by other Benches of C.A.T. Such issues need not be relegated to the Principal Bench.

26. Moreover, the impugned order tends to create an impression that somehow the Principal Bench is the superior Bench to other Benches of the C.A.T., which are functioning throughout the country. Since all the Benches including the Principal Bench, are equal, such a mis-impression be cannot be made in the mind of the litigant. For, the Principal Bench cannot be allowed to robe itself with a superior authority which was never given to it by the Act. After all, the Principal Bench cannot be permitted to be usurper of the power.

27. The issue with regard to transferring the case from one bench to another, or from one court to another is not a new. For, the power to transfer cases is well bestowed under the Code of Civil Procedure, and the Code of Criminal Procedure, and even under the Constitution of India. However, before a case is transferred from one bench to another, or from one court to another, certain criteria for transferring the case have to be kept in mind.

28. In the case of ***Parminder Kaur (Smt.) vs. State of Uttar Pradesh & another, [(2007) 15 SCC 307]***, the

Hon'ble Supreme Court has opined that "*the comparative inconvenience of the litigant parties should be borne-in-mind while transferring the case from one State to another*".

29. Recently, in the case of ***Umesh Kumar Sharma vs. State of Uttarakhand & others, (2020 SCC OnLine SC 845)***, the Hon'ble Supreme Court has opined that while considering the plea for transfer, the convenience of parties would be a relevant consideration.

30. Therefore, in the present case, while considering the prayers of the Union of India to transfer the case from Nainital Circuit Bench to the Principal Bench, New Delhi, the learned Tribunal should have considered the convenience of both the parties.

31. Although, the Union of India has pleaded that since all the relevant files and papers are at New Delhi, the case should be transferred to New Delhi. However, such a plea is rather fallacious: (i) The Union of India has sufficient means of shifting the files, if necessary, from New Delhi to Nainital Circuit Bench; (ii) the files can be transferred even electronically from New Delhi to Nainital Circuit Bench; (iii) although, the respondent-Union of India has pleaded that even witnesses would have to be produced, the said plea is highly misplaced. For, C.A.T. is not a trial court where

witnesses need to be produced. In fact, the evidence, if necessary, is submitted through affidavits.

32. A bare perusal of the impugned order clearly reveals that the learned Tribunal has failed to consider the hardship caused to the petitioner if the O.A. were to be transferred from Nainital Circuit Bench to New Delhi. Since the petitioner is presently posted as Chief Conservator of Forest (Working Plan), Haldwani, District Nainital, Uttarakhand, on every date of hearing, it is the petitioner who would be required to travel from Haldwani to New Delhi. His travelling would not only entail financial expenditure, but also require time and energy. It will also necessitate that the petitioner should take leave from his work, thereby, preventing him from discharging his official duties. Travelling from Haldwani to New Delhi would also adversely affect his physical health, and psychological makeup. For, he will continue to be under a mental tension while having to travel from Haldwani to New Delhi. Thus, the balance of convenience is in favour of the petitioner if the case should be heard by the Nainital Circuit Bench, and should be decided by it.

33. Lastly, there is no indication in the impugned order that the issue with regard to the cause of action and territorial jurisdiction was raised before the learned Tribunal. For, Paragraph No.3 of the impugned order, quoted

hereinabove, does not indicate that such a contention was ever raised before the learned Tribunal. Even if such a contention were raised, the plea is clearly unsustainable. As pointed out by the petitioner in the present case, the names of eligible candidates are sent by the State for being considered for the post of Joint Secretary. The records of the eligible candidates continue to be in the custody and in the possession of the State Government. Therefore, part of selection process includes the action and omission of the State Government.

34. Furthermore, the policy to hire the Joint Secretaries on contractual basis, for three to five years, adversely affects the petitioner's right of consideration for the said post. Such a policy decision, *prima facie*, does affect the petitioner's right of consideration in the State of Uttarakhand. Therefore, a part of the cause of action does arise in the State of Uttarakhand.

35. Moreover, the petitioner claims that he has filed a representation before the respondent No.2, which is still pending. However, in case the representation were to be rejected, the rejection order would be received by the petitioner in the State of Uttarakhand. Therefore, the cause of action not only presently, but also in the future, would arise in the State of Uttarakhand. Hence, it could not be argued that only the Principal Bench shall have the territorial

jurisdiction and the subject matter jurisdiction to hear the O.A.

36. Therefore, this Court is of the opinion that the reasoning contained in the impugned order dated 04.12.2020, is legally unsustainable.

37. For the reasons stated above, this writ petition is, hereby, allowed. The impugned order dated 04.12.2020 is, hereby, set-aside. No costs.

(RAGHVENDRA SINGH CHAUHAN, C.J.)

(N.S. DHANIK, J.)

Dated: 23rd October, 2021

NISHANT