*Before G.S. Singhvi & Nirmal Singh, JJ*

MES NO. 369751 RAJNISH KUMAR SHARMA—*Petitioner*

*versus*

UNION OF INDIA & OTHERS—*Respondents*

*C.W.P. No.* 16962/C of 2000

12th February, 2001

*Administrative Tribunals Act, 1985—S. 19—Constitution of India, 1950—Art. 226—Non-consideration of candidature for appointment—Challenge thereto—Summary dismissal of the application—S. 19(3) empowers the Tribunal to summarily reject applications—Principles of natural justice—Applicability of—While summarily dismissing an application, the Tribunal is under a statutory obligation to record cogent reasons—Writ allowed while setting aside the impugned order.*

*Held,* that sub section (3) of Section 19 does empower the Tribunals to summarily reject an application filed under sub-section (1) thereof, but having regard to the scheme of the 1985 Act and wide amplitude of the powers vested in them, the Tribunals are bound to exercise this power with great care and circumspection and cogent reasons will have to be recorded for dismissing an application at the admission stage. The use of the expression "after recording its reasons" in the second part of sub section (3) of Section 19 represents statutory embodiment of one of the facts of rules of natural justice i.e. speaking order. Thus, while deciding applications filed under the 1985 Act, the Tribunals are under a legal duty to record cogent reasons disclosing application of mind to the issues of fact and law and such applications cannot be decided summarily unless the Tribunal concerned comes to the firm conclusion that the claim made by the applicant is frivolous or vexatious.

(Paras 9 & 15)

D. R. Sharma, *Advocate for the Petitioner*

Gurpreet Singh, *Advocate for the Respondnets*

## JUDGMENT

*G.S. Singhvi, J*

(1) Whether the Central Administrative Tribunal (for short, 'the Tribunal') constituted under the Administrative Tribunals Act, 1985 (for short, 'the 1985 Act') can dismiss an application filed under sub-section (1) of Section 19 of the Act without assigning cogent reasons is the question which arises for determination in this petition filed for quashing of the order Annexure P. 2, dated 9th June, 2000 passed by the Chandigarh Bench of the Tribunal.

(2) For the purpose of deciding the afore-mentioned question, we may briefly notice the facts. The petitioner joined service in M.E.S. on 21st March, 1982 as Motor Pump Attendent. In February, 1996, he applied for appointment on the post of Superintendent, E&M, Grade-II (re-designated as Junior Engineer). He appeared in the written examination and *viva-voca,* but his name did not figure in select list. In February, 1997, he again applied for recruitment as Junior Engineer in pursuance of the circular issued by the Western Command, Chandi Mandir. His application was returned by Delhi Zone on the ground that he could apply only for one zone. He appeared in the written examination held for selection in Bhatinda Zone, but failed to clear the same. Thereafter, he submitted representation dated 17th May, 1997 complaining against non-considerastion of his candidature for appointment against the vacancies earmarked for Delhi zone and improper consideration of his candidature for appointment against the vacancies of Bhatinda Zone. Therefore, after serving legal notice upon the respondents, he filed an application under Section 19 of the 1985 Act for directing the respondents (non-applicants before the Tribunal) to appoint him as Junior Engineer in accordance with the instructions issued by the government,—*vide* circular dated 11th April, 1992. The Tribunal dismissed the petitioner's application by passing the following order :

> "The applicant had appeared in the test held on 10th September, 1997 and failed. He cannot thereafter seek benefit of a test held during the previous year.
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> In this view of the matter, this O.A. is dismissed in limine."

(3) The petitioner has assailed the summary dismissal of his application by contending that the reasonless order passed by the Tribunal is *ultra vires* to Section 19 (3) of the 1985 Act. He has averred that in terms of the instructions contained in the circular dated 11th

April, 1992, the concerned authority was bound to include his name in the panel and the Tribunal has completely over-looked this aspect of the matter and has arbitrarily refused to entertain the application.

(4) In the written statement filed on behalf of the respondents, an attempt has been made to justify the rejection of the petitioner's claim for appointment on the post of Junior Engineer on the ground that he had failed to clear the written test held on 10th September, 1997. The respondents have also defended the summary dismissal of the petitioner's application by contending that the Tribunal is not required to record detailed reasons for refusing to entertain an application filed under Section 19 (1). They have averred that in view of the decision of the Supreme Court in *L. Chandra Kumar* v. *Union of India (1),* the Tribunal cannot be treated as a Court and the order passed by it cannot be nullified on the ground that the same does not satisfy the requirment of a judgment or a decree as defined in Section 2(9) of the Code of Civil Procedure.

(5) Shri D.R. Sharma argued that the order passed by the Tribunal should be declared as vitiated by an error of law and quashed because it is totally bereft of reasons. Learned counsel submitted that even while dismissing an application at the admission stage, the Tribunal is bound to assign cogent reasons and, therefore, dismissal of the petitioner's application be a non-speaking order may be nullified and a direction may be given to it to decide the same on merits.

(6) Shri Gurpreet Singh candidly conceded that the impunged order does not satisfy the requirement of a speaking order but, at the same time, he submitted that the High Court may not entertain the petitioner's prayer because he cannot claim appointment on the post of Junior Engineer on the basis of selection made in 1996.

(7) We have given serious thought to the respective arguments. A perusal of the statement of objects and reasons contained in the Bill presented before the Parliament which led to the enactment of the 1985 Act shows that the government was gravely concerned with the pendency of large number of cases involving service disputes of the employees in different Courts and delay in their disposal. It was felt that prolonged pendency of such litigation had adverse impact on the working of the government departments as well as morale of the services and, therefore, it was decided to enact a new legislation for creation of a specialised forum, i.e., Administrative Tribunals having exclusive jurisdiction and power to deal with services disputes of the employees.

(1) 1997 (2) SLP I

It was thought that setting up of Administrative Tribunals would not only reduce the burden of the Civil Courts and the High Courts and thereby give them more time to deal with other cases, but would also provide to the persons covered by the 1985 Act speedy relief in respect of their grievances.

(8) We may now notice some of the provisions of the 1985 Act which have bearing on the decision of the issue raised in this petition. Section 3(q) defines the service matters. Section 14 deals with jurisdiction, powers and authority of the Tribunals. sections 19 and 20 contain the procedure for invoking the jurisdiction of the Tribunals. Section 21 prescribed the period of limitation. Section 22 lays down the procedure and powers of the Tribunals. Section 28 contains the exclusion clause and Section 29 provides for transfer of pending cases.

(9) An analysis of the aforementioned provisions shows that the Tribunals have been bestowed with all the jurisdiction, powers and authority exerciseable by all Courts (except the Supreme Court and by virtue of the decision of the 7 Judges Bench in L. Chandra Kumar's case (supra) by the High Court Articles 226 of the Consitution of India) immediately before the date of enforcement of the 1985 Act, in relation to various service matters including recruitment, promotion, pay, remuneration, pension etc. The prescription of the limitation of one year from the date of accrual of cause, conferment of power upon the Tribunals to devise their own procedure, express exclusion of the jurisdiction of all other Courts except the Supreme Court ( and now of the High Courts) and transfer of the pending suits and other proceedings to the Tribunals is clearly indicative of the Parliament's intention to create specialised forum for expeditious adjudication of the service disputes of the employees falling within the jurisdiction of the Tribunals. The wide amplitude of the jurisdiction and powers conferred upon the Tribunals imposed upon them a corresponding obligation to decide the service disputes in a manner which would instil confidence in the employees as well as the government. This is possible only if the Tribunals decide the disputes brought before them by applying the standards of judicial adjudication which necessarily postulates passing of a reasoned order. Sub-section (3) of Section 19 does empower the Tribunals to summarily reject an application filed under sub-section (1) thereof, but having regard to the scheme of the 1985 Act and wide amplitude of the powers vested in them, the Tribunals are bound to exercise this power with great care and circumspection and cogent reasons will have to be recorded for dismissing an application at the, admission stage. The use of the expression "after recording its reaons" in the second part of sub-section (3) of Section 19 represents statutory emboidiment of one of the facts of rules of natural

justice, i.e., speaking order. The word reasons has not been defined in the 1985 Act or the rules but the setting and context in which it appears leaves no doubt that the reasons required to be recorded by the Tribunals must be cogent and germane to the subject-matter of application.

(10) In view of the above, we have no hesitation to hold that even while summarily dismissing an application, the Tribunal is under a statutory obligation to record cogent reasons. This conclusion of ours is amply supported by some of the observations made in L. Chandra Kumar's case (supra). In that case, their Lordships of the Supreme Court considered the ambit and scope of Article 323-A and B of the Constitution of India in the context of the provisions of the 1985 Act and held that the jurisdiction vested in the High Courts under Article 226 cannot be excluded by means of a Parliamentary enactment. In the course of the judgment, their Lordships referred to Chapter VIII of the II Volume of "Malimath Committee Report" in which the functioning of the Tribunal constituted under the 1985 Act has been adversely commented and observed as under :

> "In the years that have passed since the Report of the Malimath Committee was delivered, the pendency in the high Courts has substantially increased and we are of the view that its recommendation is not suited to our present context. That the various Tribunals have not performed up to expectations is a self-evident and widely acknowledged truth. However, to draw an inference that their unsatisfactory performance points to their founded on a fundamentally unsound principle would not be correct. The reasons for which the Tribunals were consitututed still persist ; indeed, those reasons have become even more pronounced in our times. We have already indicated that our consitutional scheme permits the setting up of such Tribunals. However, drastic measures may have to be resorted in order to elevate their standards to ensure that they stand up to constitutional scrutiny in the discharge of the power of judicial review conferred upon them.
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> We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot be wholly excluded. It has been contended before us that the tribunals should not be allowed to adjudicate upon matter's where the vires of legislature is questioned, and that they should restrict themselves to handling matters where constitutional

issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Morever, even in the special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. *The High Court will also have the benefit of a reasoned decision on merit which will be of use to it in finally deciding the matter."*

(11) A careful reading of the above quoted observations shows that one of the reasons which prompted their Lordships to uphold the consitutionality of the provisions conferring wide powers upon the Tribunals was that they would use their expertise in deciding the service disputes and would pass reasoned orders which would enable the High Courts to effectively exercise the power of judicial review under Articles 226 and 227 of the Constitution of India.

(12) The question as to whether the Tribunals constituted under the 1985 Act should record reasons in support of their orders deserves to be considered from another angle. It is now well settled that the principles of natural justice are multi-dimensional and the Courts have applied them in variety of cases for invalidating judicial, quasi-judicial and administrative decisions/orders/actions. One of the facets of these principles is that every judicial and quasi-judicial authority/body must assign reasons in support of its order. The requirement of recording of reasons by such authorities/bodies has been treated as an integral part of their duty to act in consonance with the rules of natural justice.

The only exception to this rule is where the statute itself excludes the applicability of the principles of natural justice or there are compelling reasons to relieve the judicial/quasi-judicial authority of its obligation to record and communicate reasons in support of its decision. In *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder* (2), *Bhagat Raja* v. *Union of India* (3), *State of Punjab* v. *Bakhtawar Singh* (4), *M/s Mahabir Parshad Santosh Kumar* v. *State of U.P.* (5), *M/s Ajantha Industries and others* v. *Central Board of Direct Taxes New Delhi and others* (6), *The Siemans Engineering and Manufacturing Co. of India Ltd.* v. *Union of India and another* (7), and *S.N. Mukherjee* v. *Union of India* (8), the Supreme Court has repeatedly emphasised the necessity of passing speaking orders by quasi-judicial authorities. A lusid enunciation of law on the subject has been made in *M/s Testeels Ltd.* v. *M. Desai Conciliation Officer and another* (9), In that case, Bhagwati, J. (as his Lordship then was) made a panoramic survey of the Indian, American, English and Australian judicial trends on the subject and then observed as under :—

> "The necessity of giving reasons flows as a necessary corolloary from the rule of law which constitutes one of the basic principles of the Indian Consitutional set up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimises arbitrariness in the decision-making process.
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> Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under Art. 226 and the Supreme Court under

(2) AIR 1961 SC 1169
(3) AIR 1967 SC 1606
(4) AIR 1972 SC 2083
(5) AIR 1970 SC 1302
(6) AIR 1976 SC 437
(7) AIR 1976 SC 1785
(8) AIR 1990 SC 1984
(9) AIR 1970 Gujarat I

Art. 32 of the Constitution. These Courts have the power under the said provisions to quash by *certiorari* a quasi-judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon, then they will be subject to judicial scrutiny and correction."

(13) In *Siemens Engineering and Manufacturing Co. of India Ltd.* v. *Union of India (supra)*, a three Judges Bench of the Supreme Court highlighted the need of recording the reasons by the Tribunals by making the following observations ;

*"If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them.* Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons be to given in support of an order is, like the principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

(14) In a recent decision *State of West Bengal* v. *Higher and State Audit Acnt. Service Association and others (10)*, the Supreme Court quashed the order of the Tribunal constituted under the 1985

(10) JT 2000 (7) SC 322

Act solely on the ground that it was cryptic and devoid of reasons. The observations made by the Supreme Court in this respect read as under :

> "Perusal of the order will disclose that there is hardly any application of mind by the Tribunal to the relevant facts or law arising in the case. It is a very cryptic order and does not disclose any reason at all."

(15) On the basis of above discussion, we hold that while deciding applications filed under the 1985 Act, the Tribunals are under a legal duty to record cogent reasons disclosing application of mind to the issues of fact and law and such applications cannot be decided summarily unless the Tribunal concerned comes to the firm conclusion that the claim made by the applicant is frivolous or vexatious.

(16) For the reasons mentioned above, the writ petition is allowed. The impugned order is set aside with a direction to the Tribunal to admit the application filed by the petitioner and decide the same on merits after hearing the parties.

*S.C.K.*

*Before A.B.S. Gill & V.S. Aggarwal, JJ*

BRIG. SATYA DEV (Retd.)—*Petitioner*

*versus*

STATE OF HARYANA & OTHERS,—*Respondents*

*C.W.P. No.* 4827 of 2000

20th March, 2001

*Constitution of India, 1950—Arts. 14,16 & 226—Haryana Civil Services (Punishment & Appeal) Rules, 1987—Rls. 4 & 7—Appointment of an Ex-serviceman on the recommendations of duly constituted high powered Selection Committee—Appointment letter envisaged termination of service on the abolition of the post or for other reasons—Termination from service being no longer required—post continues to exist-Plea that the appointment was required to be on tenure basis rather than on continuous basis and that it was not in accordance with the guidelines, not tenable—Nothing adverse against the petitioner and no short-coming found in his functioning—No show cause notice served and no opportunity of hearing given—Violation of Arts. 14 and 16—Writ allowed while quashing the termination order.*