from today. Furthermore, strict vigilance shall be maintained. If any illegal mining is detected, a report shall be submitted to the Chief Secretary. In any case, monthly report shall be submitted to the Chief Secretary by the Department about the position regarding different mines. We may clarify that the investigation shall not be confined to the conduct of respondent No. 8 or 9 only. It shall be into the conduct of all the lessess and the concerned officers/officials of the department. The investigation shall be completed by the Central Bureau of Investigation at the earliest possible, preferably within six months.

(27) The writ petition is disposed of in the above terms. No. Costs.

R.N.R.

Before G.S. Singhvi and Nirmal Singh, JJ.

R.S. DOON,—*Petitioner*

versus

CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH BENCH, CHANDIGARH AND OTHERS,—*Respondents*

C.W.P. No. 4692/C of 2001

4th April, 2001

Administrative Tribunals Act, 1985—S. 24—Constitution of India, 1950—Art. 226—Promotion to the Indian Administrative Service—UPSC approving the recommendations of the Selection Committee—Challenge thereto—Tribunal staying the appointments of the selected candidates by passing an ex parte *interim order without assigning any reason—Whether violative of the mandate of Section 24—Held, yes—Before passing an* ex parte *interim order, Tribunal is duty bound to consider all ingredients, like irreparable loss, balance of convenience and above all, public interest.*

Held, that a bare reading of the order dated 1st January, 2001 passed by the Tribunal staying the appointments of the selected

candidates makes it clear that the Tribunal has not assigned any reason whatsoever which may give an indication of the application of mind to the necessity of passing an *ex parte* order in violation of the bar contained in the substantive part of Section 24. It does not deal with the issue relating to the loss which the applicant may have suffered if the interim order had not been passed. It is also conspicuously silent about the reason which prompted the Tribunal to make a departure from the rule that copies of the application for stay should be served upon the affected party and opportunity of hearing should be given to such party before an order of interim stay is passed. It can, thus, be said that the *ad-interim* stay order passed by the Tribunal is *per-se* violative of Section 24 of the Act and on that ground alone, it is liable to be quashed.

(Para 11)

Rajiv Atma Ram and K.K. Gupta, Advocates, *for the petitioner.*

Dr. Balram K. Gupta, Advocate, *for respondent no. 2.*

JUDGEMENT

G.S. Singhvi, J.

(1) Whether a Tribunal constituted under the Administrative Tribunals Act, 1985 (for short, the Act) can pass *ex parte* interim order without complying with the mandate of proviso to Section 24 of the Act is the main question which arises for determination in these petitions filed for quashing of the order dated 1st January, 2001 passed by the Central Administrative Tribunal, Chandigarh Bench (hereinafter described as 'the Tribunal'),—*vide* which it stayed the appointments of the petitioners and proforma respondents to the Indian Administrative Service.

(2) A perusal of the record shows that the petitioners, respondent No. 2 and proforma respondents are holding substantive appointments in the Haryana Civil Service (Executive Branch). Their cases were considered by the Selection Committee constituted under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955

(for short, 'the Regulations') in December, 2000 for promotion to the Indian Administrative Service against the vacancies of the years 1998, 1999 and 2000. The recommendations of the Selection Committee were approved by the Union Public Service Commission. Thereafter, Public Grievances and Pension (Department of Personal and Training) issued notification dated 3rd January, 2001 under Regulation 7(3) of the Regulations notifying the appointment of the petitioners and proforma respondents. On the following day i.e. 4th January, 2001 the Gvoernment of India issued another notification under Rule 8(1) of the Indian Adminsitrative Service (Recruitment) Rules, 1954 (hereinafter referred to as 'the 1954 Rules') read with Regulation 9 of the Regulations and Rule 3 of the Indian Adminsitrative Service (Probation) Rules, 1954,—*vide* which the selected candidates were appointed to the Indian Administrative Service on probation.

(3) In the meanwhile, respondent No. 2 filed an application under Section 19(1) of the Act questioning the constitution of the Selection Committee and the recommendations made by it. She also applied for stay of the appointments of the selected candidates. On 1st January, 2001, the Tribunal issued notice to the respondents and stayed the appointments of the petitioners and proforma respondents. Six of the non-applicants (most of whom are petitioners in C.W.P. No. 4927-CAT of 2001) filed a miscellaneous application before the Tribunal on 12th January, 2001 for vacation of the *ex parte* stay order. The same was registered as M.A. No. 72 of 2001. After 3 days, petitioner—R.S. Doon filed M.A. No. 73 of 2001 for placing on record copies of notifications dated 3rd January, 2001 and 4th January, 2001. He also averred that in pursuance of these notifications, the selected candidates have joined on 22nd January, 2001. M.A. No. 108 of 2001 was filed on behalf of the Government of Haryana for vacation of *ex parte* interim order on the ground that the selected candidates have submitted joining reports in pursuance of the notifications dated 4th January, 2001 and continuance of interim order was adversely affecting the official work. Likewise, a miscellaneous application was filed on 24th January, 2001 by the Government of India for placing on record the copies of notifications dated 3rd January, 2001 and 4th January, 2001 with a prayer that the Tribunal may give direction about further course of action. The common strain of the case set up by the petitioners, the Government of India and the Government of Haryana was that the

notifications dated 3rd January, 2001 and 4th January, 2001 had been issued by the Government of India before the communication of order dated 1st January, 2001 and the selected candidates had submitted joining reports. They also averred that the stay of the appointments to the Indian Administrative Service was highly detrimental to the public interest and the interest of service and that the applicant (respondent No. 2 herein) was not going to suffer irreparable injury if the selected candidates were allowed to take charge.The applicant (respondent no. 2 herein) filed replies to some of these applications in which she pleaded for continuation of the interim order.

(4) In the writ petition, it has been averred that despite repeated requests, the Tribunal has failed to decide the application filed for vacation of the interim order and the case is being adjourned from time to time on the pretext of the non-filing of written statements by the Union of India and the Union Public Service Commission (respondent Nos. 1 and 2 before the Tribunal) and in this manner, they were being deprived of their legitimate right to take charge of the posts in the Indian Administrative Service. They have referred to the order dated 13th December, 2000 passed in M.A. No. 1345 of 2000 (in O.A. No. 874 of 2000 *Abhay Singh versus Union of India and others*) and the order dated 16th March, 2001 passed in O.A. No. 209 of 2001 *Mohan Lal Kaushik versus Union of India and others* to show that in other cases involving challenge to the recommendations made by the Selection Committee, the Tribunal had declined to stay the appointments, but without considering the relevant factors and the mandate of Section 24, it granted *ex parte* interim order which is being continued from time to time.

(5) At this stage, we consider it necessary to observe that various miscellaneous applications filed by the petitioners and others were duly registered and put up before the Tribunal, but without adverting to the prayer made therein, the Tribunal has adjourned the case on different dates. This is clearly borne out from the typed copies of the order-sheets of O.A. No. 1078 of 2000 *Neelam P. Kasni versus Union of India and others* (Annexure P13). A reading of these order-sheets shows that while passing *ex parte* order on 1st January, 2001, the Tribunal had fixed the next date as 16th January, 2001, on which date the case was adjourned to 12th February, 2001 with the direction

that the interim order will continue till further orders. On 24th January, 2001, notice of miscellaneous application No. 108 of 2001 was given for 12th February, 2001. On 30th January, 2001, the miscellaneous application filed on behalf of the Government of India was adjourned to 12th February, 2001. On 12th February, 2001, the case was adjourned to 27th February, 2001, on which date amended O.A. filed on behalf of the applicant was taken on record. The written statements filed on behalf of some of the non-applicants were also taken on record and the case was adjourned to 16th March, 2001 in view of the request made by the counsel for the Government of India for the purpose of filing written statement. On 16th March, 2001, the case was adjourned for one month. It is, thus, clear that on 12th February, 2001, 27th February, 2001 and 16th March, 2001, the Tribunal did not pass any order on the miscellaneous applications filed by the petitioners, the Government of India and the Government of Haryana for vacation of the interim stay and this is the reason why the petitioners have sought intervention of this Court by invoking its jurisdiction under Article 226 of the Constitution of India.

(6) Shri Rajiv Atma Ram argued that the order dated 1st January, 2001 passed by the Tribunal staying the appointments of the petitioners and proforma respondents should be declared illegal and quashed because it is *ex facie* violative of the mandate of Section 24 of the Act. Learned counsel laid emphasis on the fact that in terms of proviso to Section 24, the Tribunal is required to record reasons for passing *ex parte* stay order and argued that it has committed a serious illegality by staying the appointment of the selected candidates without assigning any reason and ignoring the fact that the applicant would not have suffered any loss if an interim order, like the one impugned in the writ petitions had not been passed. He further argued that the stay of the appointments of the selected candidates is highly deterimental to the public interest and, therefore, the impugned order may be nullified and a direction may be issued to the State Government to issue posting orders of the selected candidates. Dr. Balram Gupta controverted the arguments of Shri Rajiv Atma Ram and submitted that this Court should not exercise its jurisdiction under Article 226 of the Constitution of India for quashing the impugned order which is essentially an interlocutory order. Learned counsel further submitted

that the Tribunal had stayed the appointment of the selected candidates after duly considering the averments made in the application of respondent No. 2 about the grave illegalities committed in the process of selection. Learned counsel further submitted that the matter is fixed for hearing on 16th April, 2001 and, therefore, the ends of justice would be met by directing the Tribunal to hear and finally decide the application of respondent No. 2.

(7) We have given serious thought to the respective arguments.

(8) Section 24 of the Act which prescribes the conditions for making of interim orders reads as under :

"24. Conditions as to making of interim orders,—Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceeds relating to, an application unless—

(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter:

Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expirty of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the

Tribunal has continued the operation of the interim order."

(9) An analysis of the provisions quoted above shows that the substantive part of Section 24 begins with a non-obstante clause and contains a bar against the grant of interim order by the Tribunal, whether by way of injunction or stay or in any other manner unless copies of the application for stay and the documents supporting the plea for interim order are furnished to the opposite party and opportunity of hearing is given to such party. Proviso to Section 24 which is substantially similar to Article 226 (3) of the Constitution and Order 39 Rule 3 of the Code of Civil Procedure does empower the Tribunal to dispense with the requirements of supplying of copy of the stay application to the affected party and giving of opportunity of hearing to such party if it is satisfied that but for the passing of an interim order, the applicant will suffer such a loss which cannot be adequately compensated in terms of money. However, exercise of power under the proviso is hedged with several conditions and unless the same are satisfied, the Tribunal cannot pass an *ex parte* interim order. One of the conditions enshrined in the proviso is that the Tribunal must record reasons for making a departure from the normal rule of not granting interim order without supplying copy of the application for stay and giving of opportunity of hearing and such reasons must show that the loss likely to be suffered by the applicant cannot be adequately compensated in terms of money. The other condition is that *ex parte* interim order if not vacated earlier, shall cease to have effect after expiry of 14 days from the date on which it is made unless copies of the application have been served upon the affected party before the expiry of that period and the Tribunal has continued the operation of the interim order.

(10) In the light of the above, it is to be seen whether the order, dated 1st January, 2001 passed by the Tribunal satisfies the conditions embodied in Section 24 and its proviso and whether there was any justification to continue the *ex aprte* interim order without deciding the applications filed by the petitioners and some of the respondents for vacation of the same. For this purpose, it will be useful to reproduce the order, dated 1st January, 2001. The same reads as under :

"Present : Mr. R.K. Sharma, counsel for the applicant.

Notice to show cause for 16th January, 2001.

Appointments of the private respondents meanwhile are stayed.

At the asking of the Court, Mr. H.C. Arora, Senior Standing Counsel for U.O.I. accepts notice on behalf of respondent nos. 1 and 2.

Process dasti qua respondent nos. 3 to 14."

(11) A bare reading of the above extracted order makes it clear that the Tribunal has not assigned any reason whatsoever which may give an indication of the application of mind to the necessity of passing an *ex parte* order in violation of the bar contained in the substantive part of Section 24. It does not deal with the issue relating to the loss which the applicant (respondent No. 2 herein) may have suffered if the interim order had not been passed. It is also conspicuously silent about the reasons which prompted the Tribunal to make a departure from the rule that copies of the application for stay should be served upon the affected party and opportunity of hearing should be given to such party before an order of interim stay is passed. It can, thus, be said that the *ad-interim* stay order passed by the Tribunal is *per se* violative of Section 24 of the Act and on that ground alone, it is liable to be quashed.

(12) We are further of the view that there was no justification, legal or otherwise, for staying the appointments of the selected candidates. The entertaining of the application filed by respondent No. 2 under Section 19(1) of the Act can, at the best, suggest the existence of a *prima facie* case. However, that by itself was not sufficient for staying the appointments of the selected candidates and in our considered opinion, before passing an order, like the one impugned in these petitions, the Tribunal was duty-bound to consider the other ingredients, like irreparable loss, balance of convenience and above all, public interest. It hardly need an emphasis that in the cases involving adjudication of the disputes relating to selection, appointment,

promotion, seniority etc., the Courts and the Tribunals must, before passing an interim order, satisfy themselves about the existence of all ingredients like, *prima facie* case, irreparable loss, balance of convenience and above all, public interest.

(13) In *Ranbir Chandra* v. *Union of India and others* (1), a Division Bench of Delhi High Court made a lucid exposition of law on the subject of interim order in relation to a case involving challenge to the appointment made on the post of Commissioner of Income-tax. While dealing with the issue of irreparable injury and balance of convenience, the Division Bench observed as under :

"Irreparable Injury.

No direct injury, muchless an irreparable one could be shown to be caused to any of the persons filing the writ petition by the impugned order. The said order enabled the Government to appoint the appellant to the post of a Commissioner of Income-tax. Whether any of the persons filing the writ petition would be affected by it is doubtful. The promotion to the post of Income-tax Commissioner is by selection and on merit. The re-fixation of seniority of the appellant which placed him above some persons previously above him does not mean that by the mere gain in seniority the appellant was entitled to be appointed as a Commissioner of Income-tax.The appointment could be made only by selection. It is not known which and if so how many of the persons filing the writ petition would be selected for appointment to the post of a Commissioner of Income-tax. They could only urge that the appellant was made senior to them. They could not urge, however, that selection was made on the basis of seniority. Assuming that some of persons filing the writ petition would also be selected as Commissioners of I.T. and would be junior to the appellant because of the earlier promotion of the appellant based on the impugned order, it cannot be said that this would be the result of the impugned

(1) 1978 (2) S.L.R. 340

order. On the contrary, it would be the result of the eligibility of the appellant to be considered for selection. That eligibility was given to him sheerly by considerations of justice. The first priniciple in entertaining a writ petition and in granting relief is to redress injustice and to advance the cause of justice. The facts are such that injustice had been done to the appellant. The redressing of such injustice was not meant to harm the interests of others. At any rate, it cannot be said to cause any injustice to the writ petitioners. The extraordinary powers of this Court under Article 226 should not be exercised unless considerations of justice demanded.

Balance of Convenience

It is the general rule in writ petitions filed by civil servants that the impugned administrative action of the Government is set aside if the writ petition succeeds. The balance of convenience is in favour of not suspending the operation of the Government order. For, the individual writ petitioner can always be given the appropriate reliefs if his writ petition succeeds. The Government is a Government of law. It always implements the decisions of the Courts giving such reliefs to the writ petitioners. But it is extremely unusual for this Court to stop the operation of the Government order merely because the writ petition seems to make out a *prima facie* case. There are various considerations against such a course. Since ordinarily it is the business of the Government and the Union Public Service Commission to go into the facts of a particular case of a civil servant, their examination of facts and decision to do justice in such a case is not ordinarily interfered with by this Court. The issue of a stay against the Government order obstructs the functioning of the Government. Such obstruction should be avoided initially, unless it becomes inevitable when the writ petition is disposed of on merits. Rights of third parties also get prejudiced by premature stay suspending the operation of administrative action for which no compensation can be

> available or sufficient. It is, therefore, only an extraordinary case that stay is granted in a writ petition by the civil servant against the Government."

(14) In *Dr. Narayan* v. *R. Vaidyanath and others* (2), a learned Single Judge of Karnataka High Court, while setting aside an order of injuction passed against the appointment of Reader in Political Science in the University, observed as under :

> "I also do not see how the balance of convenience lies in issuing an order of interim injunction restraining defendant 3 from assuming charge of the post of the Reader in Political Science in the Univesity. He is not going to displace the plaintiff since the plaintiff is not holding that post. If the plaintiff succeeds, defendant 3 will have to vacate the post and a fresh appointment will have to be made. The litigation may take several years before it is finally concluded. Is any Court justified in keeping the post of a Reader in the University vacant by issuing an order of injunction and thereby making the students suffer? In writ petitions under Article 226 of the Constitution where appointments made by the Government, Universities, local bodies etc., are challenged, this Court, to my knowledge, has not issued interim order restraining the candidates appointed from assuming charges of the posts to which they were appointed unless it be a case where by such appointment, the petitioner is going to be displaced. If this Court in exercise of its discretion under Article 226 of the Constitution will not issue an interim order of the nature prayed for by the plaintiff, is a subordinate court justified in making the order under revision?
>
> This case is a clear warning to the High Court of the unlimited mischief caused by the abuse of power to grant temporary injunctions. Hitherto, litigation in service matters was confined to the High Court in proceedings under Article 226 of the Constitution. If this Court does not interfere with

(2) AIR 1975 Karnataka 117

the order made by the Court below, it will encourage parties to start litigation in subordinate Courts challenging appointments made by the State Government or other authorities, and, if the Subordinate Courts indiscriminately issue temporary injunctions, administration may get paralysed."

(15) In our opinion, even though the first of the above-mentioned two cases was decided by the High Court in exercise of L.P.A. jurisdiction and the second case was decided in exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure, the principles laid down therein are quite relevant and deserve to be applied to the case in hand for quashing the impugned order because, the Tribunal has committed a serious illegality by staying the appointments of the selected candidates ignoring the mandate of proviso to Section 24 of the Act and the fact that the applicant would not suffer any injury, muchless, irreparable injury and balance of convenience and public interest were clearly against the passing of such interim order. What has surprised us the most is that in the two cases involving the challenge to the selection of the petitioners and the proforma respondents, the Tribunal declined the prayer of the stay, but in the third case, all the appointments have been stayed without having regard to the fact that such stay would be highly detrimental to the public interest.

(16) We are further of the view that in cases, like the one filed by respondent no. 2, balance of convenience is always against the grant of interim order. If the Tribunal is to allow the application filed by respondent no. 2, then at the best, the selection of the petitioners and proforma respondents would be nullified with a direction to convene review Selection Committee for the purpose of making fresh selection. At that stage, respondent no. 2 may or may not be selected. If she is selected and appointed, it may be possible to entertain her claim for ante-dating the promotion and grant of consequential relief. However, if the application is ultimately dismissed, it would not be possible for the Tribunal to direct retrospective appointments of the selected candidates or give a direction to the official respondents to pay them

salary for the period they were prevented from discharging duties as members of the Indian Administrative Service. Thus, the Tribunal was not, at all, justified in passing the order under challenge.

(17) For the reasons mentioned above, C.W.P. No. 4692-CAT of 2001 is allowed. Order dated 1st January, 2001 passed by the Tribunal, which was continued on 16th January, 2001 till further orders, is quashed subject to the direction that the notifications issued after 1st January, 2001 and the orders which may be issued hereafter shall remain subject to the final adjudication of the application filed by respondent no. 2 and other similarly situated persons.

(18) In view of the fact that order dated 1st January, 2001 has been quashed, the other two petitions i.e. C.W.P. Nos. 4927-CAT of 2001 and 4928-CAT of 2001 are disposed of as infructuous.

R.N.R.

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