Writ Petition No.1174/2013

31-01-2013

Mr Vikas Rathi, learned counsel for the petitioner.

The petitioner before this court has filed this present petition being aggrieved by his disqualification in the Special Class Railway Apprentice Examination, 2011, which relates to appointment in the Indian Railways Service of Mechanical Engineers, Mechanical Department.

The petitioner's contention is that he has been declared medically unfit for the mechanical examination. The petitioner has prayed for quashing of the findings of the Medical Board of Railways dated 29-03-2012 and findings of the appellate Medical Board dated 01-06-2012.

Heard learned counsel for the petitioner and perused the record.

In the present case, the petitioner is aggrieved by the findings arrived at by the Medical Board of Railways dated 29-03-2012 and findings of the appellate Medical Board dated 01-06-2012. The petitioner by virtue of his selection in the Special Class Railway Apprentice Examination, 2011 is ultimately claiming appointment as Mechanical Engineer in the Mechanical Department of the Indian Railways and therefore keeping in view the judgment delivered by the apex court in the case of ***L. Chandrakumar Vs. Union of India and others*** reported in ***(1997) 3 SCC 261*** this court is of the considered opinion that the petitioner has to approach the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 at the first instance.

The Apex court in the case of ***L. Chandrakumar Vs. Union of India and others*** reported in ***(1997) 3 SCC 261*** in paragraphs 79, 81, 90, 91, 92, 94 and 99

held as under :-

> **79.** We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdiction is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation is equally to be avoided.
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> **81.** If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Artilces 226/227 and that of this court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions o the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution. It is to be remembered that, apart from the authorization that flows form articles 323-A and 323-B, both Parliament and the State legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts. This power is available to Parliament under entries 77, 78, 79 and 95 of List I and to the State Legislatures under Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose.
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> **90.** 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 wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations 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. Moreover, even in these 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 of 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 Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out though the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Further more, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasized the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under article 227 of the Constitution. In R.K. Jain case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow up action has been taken pursuant to the suggestions. Such a measure would have improved

matters considerably. Having regard to both the afore stated contentions, we hold that all decisions of Tribunals, whether created pursuant to article 323-A or article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under articles 226/227 of the Constitution before a division bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme court under article 136 of the Constitution. In view of our above mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme court under article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under articles 226/227 of the Constitution and from the decision of the Division Bench of the High court the aggrieved party could move this court under article 136 of the Constitution.

94. The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively ie will apply to decisions rendered hereafter. To maintain the sanctity of judicial proceedings, we have involved the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered.

99. In view of the reasoning adopted by us, we hold that clause 2(d) of article 323-A and clause 3(d) of article 323-B to the extent they exclude the jurisdiction of the High Courts and the Supreme Courts under articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High courts under articles 226/227 and upon the Supreme court under article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the

> powers conferred by articles 226/227 and 32 of the Constitution. The Tribunals created under article 323-A and article 323-B of the Constitution are possessed of the rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

12. Keeping in view the aforesaid judgment of the apex court, the admission is declined. However, the liberty is granted to the petitioner to approach the Tribunal, in accordance with law.

No order as to costs.

c.c. as per rules.

(S.C. SHARMA)
JUDGE

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