

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

RVW 376 of 2024
IA NO: CAN 3 of 2024
Union of India & Ors.
Vs.
Shri Bachan Pandey
In
W.P.C.T 221 of 2024

For the Review Applicants : Mr. Asok Kumar Chakraborty, Ld. A.S. G
 Mr. D.N. Ray, Sr. Adv.
 Ms. Sayani Roy Chowdhury, Adv.

For writ petitioner / : Mr. Atarup Banerjee, Adv.
 Union of India : Mrs. Sarda Sha, Adv.

Hearing Concluded on : February 06, 2025
 Judgement on : April 07, 2025

DEBANGSU BASAK, J.:-

1. Review applicant has sought review of order dated November 11, 2024 passed in WPCT 221 of 2024.

2. Learned Additional Solicitor General appearing for the review applicant has submitted that, the review applicant is the Deputy Registrar of Central Administrative Tribunal, Kolkata Bench. He has submitted that, the review applicant is aggrieved by

the order under review since, the order under review holds that, a

Single Member of the Central Administrative Tribunal is not competent to hear and dispose of an original proceeding filed before Central Administrative Tribunal on merits.

3. Learned Additional Solicitor General has relied upon **2005 Volume 4 Supreme Court Cases 741 (Board of Control for Cricket in India and Another vs. Netaji Cricket Club and Others)** and contended that, the review applicant is entitled to seek review of the judgment and order under review. He has contended that there is a mistake on the part of the Court in the judgment and order under review which requires correction. He has also contended that, the review applicant is a party aggrieved by the judgment and order under review and therefore is entitled to file and maintain the review application.

4. Learned Additional Solicitor General has referred to Section 5(6) of the Administrative Tribunals Act, 1985 and Rule 18 (c) as well as Appendix I, Schedule Serial No. 19 of the Central Administrative Tribunal Rules of Practice, 1993 and contended that, an original application can be posted before a Single Member Bench and that, such Single Member Bench can deal with the same in accordance with the procedure prescribed therein.

5. Learned Additional Solicitor General has submitted that, Bench is defined in Section 3 (e) while a Member is defined in

Section 3 (i-a) of the Act of 1985. He has contended that a member means both Judicial and Administrative of a Tribunal and it includes the Chairman. Consequently, according to him, a Single Member Bench can decide an original application on merits even if such Single Member Bench is an Administrative member of the Tribunal.

6. Learned Additional Solicitor General has contended that, the earlier two Division Benches of the Calcutta High Court did not consider the Rules of 1993 or the ratio of the judgment laid down in **1997 Volume 3 Supreme Court Cases 261 (L. Chandra Kumar vs. Union of India and Others)** in their correct perspective. He has referred to paragraphs 25, 26 and 99 thereof in particular.

7. Learned Additional Solicitor General has drawn the attention of the Court to a decision of the Gujarat High Court reported at **2013 GUJ HC 17461 (Ravjibhai Thakor vs. Union of India)** and submitted that, the issue as to whether an Administrative Member can decide an original application on merits sitting singly was answered by the Gujarat High Court by holding that the Administrative Member cannot do so. Gujarat High Court had relied upon **2002 Volume 10 SCC 338 (M.P vs. B.R. Thakare and Ors.)**. He has contended that the view of the

Gujarat High Court was incorrect and that a Special Leave Petition is pending directed against **Ravjibhai Thakor (supra)**.

8. Learned Additional Solicitor General has contended that, when **B.R. Thakare and Ors. (supra)** was pronounced, the Rules of 1995 were not in place and at least the same were not taken into consideration. Therefore, the issues that have fallen for consideration were not answered by **B.R. Thakare and Ors. (supra)**.

9. Learned advocate appearing for the Railway Authorities has adopted the submissions advanced on behalf of the review applicant by the learned Additional Solicitor General. She has contended that, **L. Chandra Kumar (supra)** was referred to by the two co-ordinate Benches.

10. The issues that have fallen for consideration before us are:-

- (i) whether the review applicant is entitled to apply for review of a judgment and order passed in a proceeding in which it was not a party ?
- (ii) whether the judgment and order under review contains any error warranting review of the same ?
- (iii) if the answers to the previous two issues are in favour of the review applicant then the relief that the parties are entitled to ?

11. The private respondent had suffered a disciplinary proceeding at the behest of the railway authorities. Two chargesheets dated September 26, 2013 and February 17, 2014 had been issued against the private respondent, by the railway authorities. Enquiry officer had submitted a report dated April 16, 2017 as against the private respondent. Disciplinary authority had passed an order of punishment dated August 27, 2018. Disciplinary authority had imposed a minor punishment of recovery from the pay of the private respondent being the pecuniary loss to the tune of Rs. 22,49,780.65 caused to the railway administration by the negligence of the private respondent. The private respondent had preferred an appeal therefrom which was dismissed by the appellate authority by an order dated January 24, 2022.

12. The private Respondent herein had approached the Central Administrative Tribunal by way of an original application being No. 350 of 2022 seeking relief with regard to the Memorandum of Chargesheet dated September 26, 2013 and the Memorandum of Chargesheet dated February 17, 2014 and the disciplinary proceedings held thereunder. The private respondent had sought quashing of the disciplinary proceedings and orders passed therein. The private respondent had also prayed for grant of all

consequential benefits and an order directing the railway authorities to refund the recovered amount with interest.

13. Deputy Registrar, Central Administrative Tribunal, Kolkata Bench has applied for review of the order dated November 11, 2024 passed in WPCT 221 of 2024. The review applicant has contended that, given the powers of the Chairman of the Central Administrative Tribunal, the original application of the private respondent was duly assigned to the Single-Member of the Kolkata Bench of the Central Administrative Tribunal for hearing and disposal. The order under review has curtailed the power of the Chairman, Central Administrative Tribunal erroneously and therefore, the order under review affected the right of the Chairman, Central Administrative Tribunal, irrespective of the rights of the parties to the litigation in which the order under review was passed.

14. Code of Civil Procedure, 1908 has provided the substantive right of review under Section 114 thereof. Section 114 has laid down that, any person considering himself aggrieved may apply for review of the judgement which passed the decree or made the order and the Court may make such order thereon as it thinks fit.

15. Code of Civil Procedure, 1908 has laid down the procedural aspect of a review of a judgement and order in Order 47 thereof.

Rule 1 (1) of Order 47 again has recognised that, any person considering himself aggrieved by a decree or order from which an appeal is allowed but from which no appeal is being preferred, can apply for review to the Court which has passed the judgement and order subject to the fulfilment of the conditions laid down therein.

16. The review applicant is not a party to the proceedings in which the order under review has been passed. However, the order under review has, as rightly pointed out on behalf of the review applicant, every potential of curtailing the powers of the Chairman of the Central Administrative Tribunal in allocating business to the Single-Member of the Central Administrative Tribunal. This affectation of the right of the Chairman, Central Administrative Tribunal has come about irrespective of the rights of the parties to the proceedings.

17. In a given case, the order under review may be acceptable to the parties to the proceedings in which such order was passed. However, the same may have affected rights of person who is not a party to the proceeding. In order to allow such person whose right has been affected by an order passed on a proceeding in which such person is not a party, to apply for review to the Court which has passed the order under review, the provisions of review enshrined in the Code of Civil Procedure, 1908 is so couched so as

to include “any person”. A non-party to a proceeding in which the order under review was passed has to establish that subsisting rights of such non-party stood affected by the order under review apart from the fact that the order under review suffers from an error apparent on the face of the record.

18. The private respondent had filed the original application before the Central Administrative Tribunal which is established under the provisions of the Administrative Tribunal Act, 1985 and is governed, inter alia, by the Central Administrative Tribunal (Procedure) Rules, 1987 and the Central Administrative Tribunal Rules of Practice, 1993.

19. Section 5 of the Act of 1985 has provided for the composition of Tribunals and Benches thereof. It has provided as follows: –

“5. Composition of Tribunals and Benches thereof.—(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.

[(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.]

(3) [* * * *]*

*(4) Notwithstanding anything contained in sub-Section (1) [***] the Chairman—*

[(a) may, in addition to discharging the functions of the Judicial Member or the Administrative Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Administrative Member, of any other Bench;]

(b) may transfer [a Member] from one Bench to another Bench;

[(c) may authorise [the Judicial Member] or the Administrative Member appointed to one Bench to discharge also the functions of [the Judicial Member or the Administrative Member, as the case may be] of another Bench; and]

(d) may, for the purpose of securing that any case or cases which, having regard to the nature of the questions involved, requires or require, in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than [two members], issue such general or special orders, as he may deem fit.

[Provided that every Bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative Member.]

(5) [* * *]*

(6) Notwithstanding anything contained in the foregoing provisions of this Section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as [a Bench] consisting of a Single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify:

Provided that if at any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of [two members], the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to, such Bench as the Chairman may deem fit.

[(7) Subject to the other provisions of this Act, the Benches of 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.

(8) Subject to the other provisions of this Act, the places at which the principal Bench and other Benches of a State Administrative Tribunal shall ordinarily sit shall be such as the State Government may, by notification, specify.]”

20. Sub-section (6) of Section 5 of the Act of 1985 has authorised the Chairman or any other Member authorised by the Chairman to function as a Bench consisting of a Single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases on such matters pertaining to such classes of cases as the Chairman may by general or special order specify. The only proviso to such sub-section has laid down that, if at any stage of the hearing of such case on matter it appears to the Chairman or such member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two members the case on matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to, such Bench as the Chairman may deem fit.

21. The Act of 1985 has defined terms used therein such as, Administrative Member, Bench, Chairman, Judicial Member, and Member which are as follows: –

“3. Definitions. – In this Act, unless the context otherwise requires,-

[(a) “Administrative Member” means a Member of a Tribunal who is not a Judicial Member within the meaning of clause (i);]

(e) “Bench” means a Bench of a Tribunal;

(g) “Chairman” means the Chairman of a Tribunal;

(i) “Judicial Member” means a Member of a Tribunal appointed as such under this Act, and includes the Chairman [* *] who possesses any of the qualifications specified in sub-Section (3) of Section 6;*

(i-a) “Member” means a Member (whether Judicial or Administrative) of a Tribunal, and includes the Chairman [* *];”*

22. The Act of 1985 has defined a Member to mean both a Judicial and Administrative of a Tribunal and to include the Chairman of the Tribunal. Section 5 (6) of the Act of 1985 has authorised the Chairman or any Member of the Tribunal authorised by the Chairman to function as a Bench consisting of a Single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as Chairman may by general or special order specify.

23. Section 5 (6) of the Act of 1985 has not distinguished between a Judicial or an Administrative Member. It has used the word “Member” while delineating the powers of the Chairman of the Tribunal to assign matters of hearing to a “Member” for

hearing and disposal. It has expressly provided that such assignment by the Chairman to a Member board be an assignment to a Bench having the power, jurisdiction and authority of the Tribunal.

24. Central Government in exercise of powers under Section 22 of the Act of 1985 had promulgated the Central Administrative Tribunal Rules of Practice, 1993 which came into effect from November 1, 1993. Rule 18 thereof has provided for posting of cases for admission/orders before the Bench which is as follows: –

“18. Posting of cases for admission/order before the Bench.- (a) Subject to the orders of the Chairman/Vice-Chairman of the concerned Bench, all registered applications/petitions shall be posted for admission/orders before the appropriate Bench on the next working day. The notice of posting shall be given by notifying in the daily cause list for the day.

(b) Before placing the records of the case for admission/order, the Registry shall state in brief in the column “Notes of the Registry” of the Order Sheet, the date of presentation and registration, the subject-matter of the application and the date of posting before the Bench and fill up the columns in file covers “A” and “B”.

(c) The category of cases specified in Appendix-I to these Rules as may be amended by the Chairman from time to time, may as far as possible be posted before the Single-Member Bench and dealt with in accordance with the procedure prescribed therein.

(d) The constitution of Benches and distribution of work shall be as per the orders/directions given in Appendix-II to these Rules, as may be modified by the Chairman from time to time.”

25. Rule 18 (c) of the Rules of Practice 1993 has allowed the Chairman to create a category of cases as specified in Appendix-I to the Rules of Practice 1993 and as amended by the Chairman from time to time, as far as possible to be posted before the Single Member Bench and dealt with in accordance with the procedure prescribed therein.

26. Appendix-I has been amended from time to time by the Chairman. Chairman of the Central Administrative Tribunal in exercise of his powers under Section 5 (6) of the Act of 1985 has issued a notification dated December 18, 1991 in supersession of the earlier notification dated March 1, 1988 authorising a Single Member to exercise jurisdiction, powers and authority of the Tribunal in respect of the cases specified in the schedule thereto, with effect from January 1, 1992 subject to the procedure laid down therein. Chairman of the Central Administrative Tribunal has issued a notification dated April 4, 2000 adding to the schedule to Appendix-I. Chairman has made further additions to Appendix-I on September 8, 2016 and September 10, 2021.

27. The private respondent had approached the Central Administrative Tribunal challenging an order of the disciplinary authority as affirmed by the appellate authority imposing a minor punishment as against him. The last notification dated September

10, 2021 issued by the Chairman of the Central Administrative Tribunal has added “cases relating to minor penalties” to the list/schedule of single Bench cases with effect from September 10, 2021.

28. By the order under review, we had taken note of the fact that the writ petition of the private respondent was directed against the judgement and order dated April 3, 2024 passed in original application No. 350 of 2022 by an Administrative member sitting singly. We had taken note of the unreported judgement and order dated July 19, 2021 passed by the coordinate Bench in WPCT 151 of 2011 and an order dated April 17, 2011 passed in RVW 164 of 2010 by another coordinate Bench.

29. In RVW 164 of 2010 a coordinate Bench has taken note of ***L Chandra Kumar (supra)*** as also ***B R Thakare (supra)*** and held that, a Single Member Bench consisting of Administrative Member cannot decide an original application pending before the Central Administrative Tribunal. This view has been followed by another coordinate Bench in WPCT 151 of 2011. We have followed and applied such two decisions of the coordinate Bench in the order under review.

30. Power of the Chairman to assign matters to a Single Member of the Tribunal has received the consideration of the Supreme Court in ***L Chandra Kumar (supra)***.

31. ***L Chandra Kumar (supra)*** has upheld the Constitutional validity of the Act of 1985. With regard to Section 5 (6) of the Act of 1985 it has held as follows: –

“25. In Amulya Chandra case [(1991) 1 SCC 181 : 1991 SCC (L&S) 145 : (1990) 14 ATC 911] a Division Bench of this Court had to consider the question whether a dispute before the Central Administrative Tribunal could be decided by a single Administrative Member. The Court took note of sub-Section (2) of Section 5 of the Act which, as we have seen, stipulates that a Bench of a Tribunal under the Act should ordinarily consist of a Judicial Member and an Administrative Member, as also the relevant observations in Sampath Kumar case [(1987) 1 SCC 124 : (1987) 2 ATC 82] , to conclude that under the scheme of the Act, all cases should be heard by a Bench of two Members. It appears that the attention of the Court was not drawn towards sub-Section (6) of Section 5 which, as we have noticed, enables a Single Member of a Tribunal under the Act to hear and decide cases.”

“98. Since we have analysed the issue of the constitutional validity of Section 5(6) of the Act at length, we may now pronounce our opinion on this aspect. Though the vires of the provision was not in question in Dr Mahabal Ram case [(1994) 2 SCC 401 : 1994 SCC (L&S) 642 : (1994) 27 ATC 97] , we believe that the approach adopted in that case, the relevant portion of which has been extracted in the first part of this judgment, is correct since it harmoniously resolves the manner in which Sections 5(2) and 5(6) can operate together. We wish to make it clear that where a question involving the interpretation of a statutory provision or rule in relation

to the Constitution arises for the consideration of a Single Member Bench of the Administrative Tribunal, the proviso to Section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Members, one of whom must be a Judicial Member. This will ensure that questions involving the vires of a statutory provision or rule will never arise for adjudication before a Single Member Bench or a Bench which does not consist of a Judicial Member. So construed, Section 5(6) will no longer be susceptible to charges of unconstitutionality.”

32. B R Thakare (supra) has considered an order of the Madhya Pradesh Administrative Tribunal. It has noticed that, in the matter of allotment of cases, no rules had been framed. It has also noticed the order of the Chairman of the State Administrative Tribunal on the subject. In such context, it has set aside the order passed by the Tribunal. Even while doing so, it has observed that, it was not resting the decision on lack of jurisdiction of a Single Member of the Tribunal as the Court was more concerned with the administration of justice. It has observed that, to have proper administration of justice while allotting work to a Single Member, whether Judicial or Administrative, the Chairman should keep in mind the nature of the litigation and where questions of law and its interpretation are involved, they should be assigned to a division Bench of which one of them is a Judicial member.

33. ***L Chandra Kumar (supra)*** has recognised that, Section 5 (6) enables a Single Member of a Tribunal under the Act of 1985 to hear and decide cases. It has however held that, where, a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a Single Member Bench of the Administrative Tribunal, the proviso to Section 5 (6) will automatically apply and the Chairman of the Tribunal concerned shall refer the matter to a Bench consisting of at least two members, one of whom must be a Judicial member.

34. The test to be applied while considering the issue as to whether a Single Member be it Administrative or Judicial can hear an original application or not, is to evaluate: –

- (i) whether the nature of the case falls within any notification issued by the Chairman of the Administrative Tribunal exercising powers under Section 5 (6) of the Act of 1985 or not and if so,
- (ii) whether, such original application involves interpretation of a statutory provision or rule in relation to the Constitution or not. In the event, the first of the two tests is answered in the affirmative, that is to say, there exists no notification allowing a Single Member to decide the subject matter of the

original proceedings and the second test is answered in the negative then, the original proceedings can be heard by a Single Member.

35. In the event, the first of the two tests is answered in the affirmative, that is to say, there exists no notification allowing a Single Member to decide the subject matter of the original proceedings and the second test is answered in the negative then, the original proceedings can be heard by a Single Member.

36. In the facts of the present case, under the notification dated September 10, 2021 issued by the Chairman of the Central Administrative Tribunal read in conjunction with the earlier notification dated September 18, 2016, a Single Member could exercise the jurisdiction, powers and authority of the Tribunal in respect of “cases relating to minor penalties”, amongst others. The original application filed by the private respondent before the Central Administrative Tribunal has assailed the decisions taken by the railway authorities in the disciplinary proceedings initiated as against the private respondent in which, a minor penalty was imposed.

37. We have perused the prayers made in the original application by the private respondent before the Central Administrative Tribunal. We have not found that the prayers made

in the original application involves interpretation of any statutory provision or rule in relation to the Constitution. Therefore, the original application could be heard by the Single Member of a Central Administrative Tribunal pursuant to the notifications dated September 10, 2021 read with September 18, 2016 issued by the Chairman of the Central Administrative Tribunal exercising powers under Section 5 (6) of the Act of 1985.

38. We did not take into consideration such aspects of the matter while we had passed the order under review dated November 11, 2024.

39. The decisions of the two coordinate Benches cannot be read to be in conflict with or in derogation of the binding precedent of ***L Chandra Kumar (supra)***. In the fact scenario of those two cases before the two coordinate Benches, there is every possibility of those two cases falling within the exceptions noted in paragraph 98 of ***L Chandra Kumar (supra)***. In the facts of the present case, we have not found any material to suggest that the present case falls within the exception noted in paragraph 98 of ***L Chandra Kumar (supra)***.

40. ***Board of Control for Cricket in India (supra)*** has held that, an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when

there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. What would constitute sufficient reason would depend upon the facts and circumstances of the case and is wide enough to include a misconception of fact or law by a Court or even an advocate.

41. On the strength of the ratio of ***Board of Control for Cricket in India (supra)*** we review our order dated November 11, 2024. On review, we recall such order. Since we have not decided the merits of the writ petition in which, we passed the order dated November 11, 2024 by setting aside the order of the Tribunal under challenge in such writ petition, as it was passed by a Single Member, we direct the Department to place W.P.C.T 221 of 2024 in the monthly list of April, 2025.

42. In view of the discussions above, we answer the first issue in the affirmative and in favour of the review applicant. The second issue is also answered in the affirmative and in favour of the review applicant. The third issue is answered by recalling the order under review and placing WPCT 221 of 2024 for final hearing in the monthly list of April, 2025 since, merits of such writ petition was not decided and it was disposed of purely on the basis of our

understanding of the lack of jurisdiction of a Single Member to hear an original application.

43. RVW 376 of 2024 along with all connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

44. I agree.

[MD. SHABBAR RASHIDI, J.]