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

UNION OF INDIA—*Petitioner*

versus

P. LAL, IPS, & OTHERS—*Respondents*

C.W.P. No. 6196 of 1998

4th July, 2001

Constitution of India, 1950—Art. 226—All India Service (Conditions of Service—Residuary Matters) Rules, 1960—Rls. 2 & 3—All India Service (Discipline & Appeal) Rules, 1969—Rl. 8—All India service (Death-sum-Retirement Gratuity) Rules, 1958—Rl. 16(2A)—State Govt. initiating disciplinary proceedings against an IPS Officer on the charges of wilful absence from duty and going abroad without permission—Officer seeking voluntary retirement from service with a request for withdrawal of the chargesheet—Acceptance of request by the State Govt.—Govt. of India rejecting application without a prior notice of 3 months & asking the Officer to submit a fresh application—State Govt. again requesting the Govt. of India for dispensing with the requirement of 3 months notice—Govt. of India accepting the request—Officer filing application for withdrawal of his request—Govt. of India on the recommendation of the State Govt. accepting the request—Challenge thereto—Tribunal setting aside the order while holding that the relationship of master & servant between the Officer & the Govt. of India severed on acceptance of employment by the Officer under a foreign company—Tribunal failing to deal with the main issues relating to legality of the orders of the Govt. of India—Govt. of India has no jurisdiction to entertain the request of the State Govt. for acceptance of application seeking voluntary retirement by dispensing with the requirement of 3 months notice—Decision of the Govt. of India accepting the request for voluntary retirement conveyed to State Govt. was non est—Officer entitled to treat himself as continuing in service—No illegality by the Govt. of India in entertaining the request for withdrawal of application—Dropping of disciplinary proceedings only with a view to facilitate the voluntary retirement of the Officer—Action

of the Govt. giving a clean chit to the Officer wholly unwarranted & unjustified—On withdrawal of the request for voluntary retirement, the State Govt. is under an obligation to take comprehensive view of the conduct of the Officer—Writ allowed, order of Tribunal set aside while directing State Govt. to take appropriate decision on the charges against the Officer.

Held that, a perusal of the impugned order shows that the Tribunal allowed the application filed by Shri P. Lal by observing that acceptance of employment under a foreign company was clearly indicative of the intention of Shri R. K. Sharma to sever his relation with the Govt. It further observed that Shri R.K. Sharma had exhibited highly contumacious conduct first by seeking termination of the enquiry proceedings by giving out that he was seeking voluntary retirement from service then taking up employment with a foreign company and finally withdrawing the request for voluntary retirement. It is, thus, clear that the Tribunal did not deal with the main issues relating to legality of the decisions conveyed by the Govt. of India to the Govt. of Punjab,—*vide* letters, dated 2nd March, 1995 and 14th August, 1997. Therefore, it must be held that order, dated 3rd February, 1998, is vitiated by an error of law warranting interference by this Court under Article 226 of the Constitution of India.

(Para 31)

Further held, that there is no escape from the conclusion that the Govt. of India had committed grave illegality by entertaining the request made by the Govt. of Punjab for acceptance of application, dated 5th May, 1993, by dispensing with the requirement of three months notice. As a logical corollary to this, it must be held that the decision of the Government of India conveyed to the Govt. of Punjab,—*vide* letter, dated 2nd March, 1995, was *non est* and, therefore, Shri R.K. Sharma was entitled to treat himself as continuing in service and was not even required to submit application, dated 18th April, 1995, for withdrawal of his request for voluntary retirement. In any case, the decision taken by the govt. of India to allow him to withdraw the request for voluntary retirement cannot be termed as illegal or vitiated due to want of jurisdiction.

(Para 32)

Further held, that the State Government is bound to revive the disciplinary proceedings initiated in January, 1993, because the same were put to an end only with a view to facilitate the voluntary retirement of Shri R. K. Sharma, which could not have been possible during the pendency of the disciplinary proceedings. Therefore, keeping in view the fact that he has withdrawn, the request for voluntary retirement, the competent authority of the Govt. is duty bound to take a comprehensive decision in the matter and Shri R.K. Sharma cannot be given advantage of a totally unwarranted note recorded by the then Principal Secretary of the Home Department or the agenda item placed before the screening Committee. The manner in which attempt has been made by the Officers of the Home Department of the Govt. of Punjab to give him a clean chit cannot but be termed as wholly unwarranted, unjustified and detrimental to the morality of the service.

(Paras 38 & 41)

Administrative Tribunals Act, 1985—Ss. 3(q), 14, 15 & 19(1)—Constitution of India, 1950—Art. 226—Govt. of India accepting the request of an IPS Officer for withdrawal of the application for voluntary retirement—Tribunal entertaining an application questioning the legality of the decision of the Govt.—Decision of the Govt. not affecting the applicant directly—Whether the applicant has *locus standi* to invoke jurisdiction of the Tribunal—Jurisdiction & Powers of the Tribunal—Ambit & Scope, stated.

Held that, there does not appear to be any valid ground to give a restricted meaning to the provisions of Sections 14 & 15 read with Sections 3(q) and 19 of the 1985 Act so as to confine jurisdiction, powers and authority of the Tribunals to entertain applications which directly affect the service matters/service conditions of the applicant. If a narrow view is taken about the authority and jurisdiction of the Tribunal to entertain applications only against actions, decisions or orders which directly affect the applicant, then the very object of creating special machinery for adjudication of the service disputes will get defeated because in that event, more than one judicial forums will have the jurisdiction to entertain different types of service disputes. This will totally destroy the scheme of the 1985 Act. Therefore, keeping in view the well recognised rule that if two interpretations of a statute are possible, then the Court would adopt the one which furthers the object

of the legislation and makes it purposeful and discard that which may defeat its object. We hold that the Tribunals constituted under the 1985 Act have the jurisdiction to entertain the complaints or dispute in respect of recruitment, matters relating to recruitment, service matters and matters connected therewith or incidental thereto. Thus, the application filed by Shri P. Lal fell within the ambit of Section 19 read with Section 3(q) of the 1985 Act and the Tribunals did not commit any illegality by entertaining the same.

(Paras 22 & 28)

(1) C.W.P. No. 6196 of 1998

Rakesh Tiku, Senior Central Government Standing Counsel
with M.S. Guglani, Additional Central Government
Standing Counsel, for the Petitioner.

Rajiv Atma Ram, Advocate for respondent No. 1

Rupinder Khosla, Deputy Advocate General Punjab for
respondent No. 2

Dr. Balram K. Gupta, Advocate for respondent No. 3

(2) C.W.P. No. 6461 of 1998

Dr. Balram K. Gupta, Advocate for the petitioner.
Rakesh Tiku, Senior Central Government Standing Counsel
with M.S. Guglani, Additional Central Government
Standing Counsel, for respondent No. 1.

Rupinder Khosla, Deputy Advocate General Punjab, for
respondent No. 2.

Rajiv Atma Ram, Advocate for respondent No. 3.

JUDGMENT

G. S. Singhvi, J.

(1) These petitions are directed against order, dated 3rd February, 1998, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, the Tribunal),—*vide* which O.A. No. 1161 of 1997—*P. Lal v. Union of India and others* was allowed and order, dated 14th August, 1997 passed by the Central Government accepting the request made by Shri R.K. Sharma (respondent No. 3 in C.W.P. No. 6196 of 1998 and petitioner in C.W.P. No. 6461 of 1998) for withdrawal of the application for voluntary retirement was quashed.

(2) The facts necessary for deciding the issues raised in the writ petitions are that after serving Indian Army from 1965 to 1972, Shri R.K. Sharma joined the Indian Police Service (for short, IPS) (Punjab Cadre) on 16th July, 1972. From January, 1982 to 30th September, 1990, he remained on deputation in Research and Analysis Wing of the Ministry of Home Affairs, Government of India. He was repatriated to the parent State on 1st October, 1990. However, instead of reporting for duty before the competent authority of the Government of Punjab, he proceeded on leave and reported for duty only on 30th September, 1991. He was posted as Deputy Inspector General of Police, Computerisation and Wireless, Punjab. After 21 days, he applied for ex-India leave from 24th October, 1991 to 10th November, 1991 on the ground of illness of his mother, who was staying in London with his sister. He left India without getting the leave sanctioned. While in London, he applied for extension of leave. By an order dated 20th January, 1992, the Government of Punjab sanctioned earned leave in his favour for the period from 24th October, 1991 to 10th January, 1992 with a clear indication that no further extension would be given. His request for further extension of leave was expressly declined by the Government of Punjab,—*vide* memo no. 7/11/91-5H(i)-2261/5309, dated 9th June, 1992. However, he did not report for duty till 12th April, 1993 when he submitted joining report before the Director General of Police Punjab. In the meanwhile, he submitted application dated 22nd June, 1992 for voluntary retirement from IPS w.e.f. 31st October, 1992, but withdrew the same,—*vide* communication, dated 13th July, 1992 addressed to the then Director General of Police, Punjab. His request for further extension of leave was again declined by the competent authority and disciplinary proceedings were initiated against him under Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969 (for short, 'the 1969 Rules') on the following charge :—

“You, Shri R.K. Sharma, I.P.S. is hereby charged as under :—

- (i) That while you posted as DIG, Computerisation and Wireless, Punjab, left India for England without getting the Ex-India leave sanctioned by the competent authority.
- (ii) That your extension in leave from 11th January, 1992 to 30th June, 1992 was rejected,— *vide* Govt. letter No. 7/

11/92-5H(i)/3261/5309, dated 9th June, 1992 and accordingly you were directed to join duty but you failed to comply with the orders of the govt.

(iii) That you are still on leave without the sanction of the Government.

2. Your above acts amount to grave misconduct on your part which is unbecoming of a public servant and thus you have violated All India Service (Conduct) Rules, 1968."

(3) The memo containing the above reproduced charge was sent to Shri R.K. Sharma by the Director General of Police, Punjab alongwith his letter dated 14th January, 1993. However, before any tangible progress could be made in the departmental enquiry, he submitted application dated 5th May, 1993 to the Director General of Police, Punjab seeking voluntary retirement from service with the request that the chargesheet may be withdrawn. He also deposited Rs. 30,870.00 in lieu of three months advance notice. Paragraphs 2 and 3 of his application read as under :—

"*Vide* memo No. 1-16/93/Con.-SA-5/1289, dated 14th January, 1993, I was issued a charge sheet as to show cause why disciplinary proceedings against me should not be initiated for having violated the All India Service (Conduct) Rules, 1968. In this respect I may be permitted to submit that I never intended to violated any of the provisions of the All India Service (Conduct) Rules, 1968 which is evident from my past record. Since the circumstances were so compelling and serious that I was left with no alternative but to apply for extension of leave. My continuous illness was the cause for my inability and even when I was still not permitted by the doctor to travel. I rejoined my duty on 12th April, 1993 in compliance of the orders of the State Govt. It is requested that keeping the above facts in view the chargesheet may kindly be withdrawn.

I have not been keeping good health since September, 1990 and has been undergoing perpetual spells of medical problems. I have been under treatment in India as well as abroad but there has not been full recovery so far and under

the circumstances, it is not possible to continue my official service. It is requested that I may kindly be permitted to proceed on voluntary retirement with immediate effect as per rules applicable to All India Service Officers. An amount of Rs. 30870.00 in lieu of 3 months advance notice has been deposited in the treasury as per receipt attached.”

(4) The Director General of Police, Punjab forwarded his application to the Principal Secretary to Govt., Punjab, Department of Home Affairs and Justice,—*vide* memo no. 1-16/93/Con. SAA-5/17242 dated 17th June, 1993 with the recommendation that the charge-sheet regarding wilful absence from duty may be withdrawn. The State Government accepted his recommendation and,—*vide* memo no. 1/194/93-3H(I)/23201, dated 9th November, 1994, disciplinary action was dropped against Shri R.K. Sharma.

(5) The application submitted by Shri R.K. Sharma for voluntary retirement from service was rejected by the Central Government on the ground that there is no provisions in the rules for allowing an I.P.S. officer to make payment in lieu of three months notice. This was conveyed to the Chief Secretary, Government of Punjab,—*vide* wireless message no. 31012/4/93-IPS. II, dated 27th September, 1993. On receipt of that communication, the Government of Punjab in Home Department sent letter No. 1/194/93-3H(I), dated 29th September, 1993 to the Central Government with the request for waiver of three months notice. This too was rejected by the Government of India,—*vide* fax message No. 31012/3/94-IPS. II, dated 13th September, 1994. After about two months, the Department of Home Affairs and Justice, Government of Punjab sent letter No. 1/194/93-3HI(I)/24614, dated 29th November, 1994 to the Secretary, Government of India, Ministry of Home Affairs reiterating that the application of Shri R.K. Sharma for voluntary retirement may be accepted by mentioning that he had not been attending duty since 5th May, 1993. The relevant extracts of this letter are reproduced below :—

“I am directed to refer to Govt. of India, MHA’s Fax Message No. 31-12/3/94—IPS. II, dated 13th September, 1994, on the subject noted above and to state that Sh. R.K. Sharma, IPS (Pb : 1967) had applied for premature retirement on 5th May, 1993 with immediate effect. He deposited a sum

of Rs. 30,870.00 only in the Punjab Treasury in lieu of 3 months notice period as he is not keeping good health. The Government of India have not acceded to his request regarding waiving of three months notice period and have required a fresh request from the Officer for the purpose alongwith recommendations of the State Government.

2. In this connection, it is informed that the Officer is probably abroad and is not attending the Office since 5th May, 1993 and his correspondence address is not known to the State Govt. Therefore, it is again requested that if possible, three months notice period may be considered from the date of submission of his original application i.e., 5th May, 1993 and he may be allowed premature retirement w.e.f. 3rd August, 1993, so that out-standing matter could be finalised.”

(6) This time, the Government of India accepted the request of the State Government and ordered retirement of Shri R.K. Sharma w.e.f. 3rd May, 1993 by dispensing with the requirement of three months notice envisaged under Rule 16(2A) of the All India Service (Death-cum-Retirement Gratuity) Rules, 1958 (for short, 'the 1958 Rules'). A copy of order dated 2nd March, 1995 passed by the Government of India was sent to Shri R.K. Sharma by the Director General of Police, Punjab alongwith letter dated 25th April, 1995 at his address given in the application dated 5th May, 1993 i.e. R-862, New Rajinder Nagar, New Delhi-110060. It was also sent by hand through Shri Suraj Pal, Constable No. 82/754. The registered letter was not returned by the postal authorities and Shri Suraj Pal reported that as per Shri Kasturi Lal, house owner, no person with the name of R.K. Sharma lived in that house.

(7) In the meanwhile, Shri R.K. Sharma submitted application dated 18th April, 1995 to the Home Secretary, Government of India seeking to withdraw his request for voluntary retirement with immediate effect. His application was rejected by the Government of India and this was conveyed to the Government of Punjab,—*vide* letter No. 3012/3/94-IPS. II, dated 20th June, 1995. On coming to know of this decision, Shri R.K. Sharma submitted representation dated 20th July, 1995 for reconsideration of his request by asserting that order dated 2nd March,

1995, had not been served upon him. He repeated this request,—*vide* representation dated 4th March, 1996. The State Government also recommended for acceptance of his request for being allowed to withdraw the application for voluntary retirement. After considering the same, the Government of India accepted the request made by Shri R.K. Sharma. This was conveyed to the Chief Secretary, Government of Punjab,—*vide* letter No. 31012/3/94-IPS. II, dated 14th August, 1997 (Annexure P12 in C.W.P. No. 6196 of 1998 and in Annexure P13 in C.W.P. No. 6461 of 1998).

(8) At this stage, we deem it appropriate to mention that on receipt of letter dated 2nd March, 1995,— *vide* which the Government of India conveyed the acceptance of Shri R.K. Sharma's application for voluntary retirement, the Director General of Police, Punjab sent letter dated 26th June, 1996 to him alongwith pension papers, but he did not give any response either to that letter or D.O. letter No. 8131/A-I, dated 28th May, 1996, sent by the Inspector General of Police, (Provisioning), Punjab. This continued to be the position despite the fact that,—*vide* order dated 22nd November, 1996, the Government of Punjab regularised his absence from duty by granting *ex-post facto* sanction for grant of 37 days earned leave, 229 days half pay leave and 532 days extra-ordinary leave and the Director General of Police, Punjab passed consequential order dated 27th February, 1997, for re-fixation of his pay.

(9) Shri P. Lal (respondent No. 1 in C.W.P. No. 6196 of 1998 and respondent No. 3 in C.W.P. No. 6461 of 1998), who is also a member of the IPS, Punjab Cadre (1969 batch) filed an application (O.A. No. 1161 of 1997) before the Tribunal for quashing order dated 14th August, 1997, by contending that the Government of India did not have the jurisdiction to entertain application dated 18th April, 1995, submitted by Shri R.K. Sharma for withdrawal of his request for voluntary retirement. He also levelled allegation of *mala fides* by asserting that the impugned order had been passed due to extraneous reasons.

(10) In their written statements, Union of India, the State of Punjab and Shri R.K. Sharma questioned the *locus standi* of Shri P. Lal to invoke the jurisdiction of the Tribunal by contending that order dated 14th August, 1997 did not affect his conditions of service. They also averred that no illegality had been committed by the Government

of India by accepting the application of Shri R.K. Sharma for withdrawal of his request for voluntary retirement. Shri R.K. Sharma also pleaded that order dated 2nd March, 1995 was ineffective qua him because the same had not been conveyed to him and that there was no bar in the rules to the acceptance of application for withdrawal of his request for voluntary retirement.

(11) After hearing the parties, the Tribunal allowed the application of Shri P. Lal by making the following observations :—

- “8. The moot point for determination in this case is as to how long, and till when the relationship of master and servant survived between Respondent No. 3 - R.K. Sharma and the Government. In the circumstances of the present case, respondent—R.K. Sharma proceeded abroad on 23rd October, 1991, on grounds of his mother's illness in the United Kingdom without formal sanction of leave. It was after one and a half year that he reported to the office of the Director General of Police, Punjab on 12th April, 1993, and requested for posting. When he was charge-sheeted by the State Govt., he submitted his request for voluntary retirement and withdrawal of the charge-sheet and without waiting for Government orders, again proceeded abroad. It has not been controverted that while he was abroad, he had taken up employment in the private sector. We are of the view that respondent R.K. Sharma has not performed public duty, nor done police work since the year 1991 i.e. for the past 7 (seven) years. In the meanwhile, he submitted his notice for voluntary retirement proceeded abroad, and took private employment in USA. This amounted to effective severance of the relationship of master and servant between respondent R.K. Sharma and the Government. This severance has also attained finality. Respondent No. 1—Government of India had no jurisdiction to pass the impugned order accepting withdrawal of notice of voluntary retirement as the relationship of master and servant between R.K. Sharma—respondent No. 3 and Government of India no longer existed. The effect of this impugned order is a lateral entry into service which is not permissible under the existing rules. To our mind the question of serving a copy of

Government order on an officer would arise in cases where the officer is continuing on duty, waiting for the Government orders. In the present case, respondent R.K. Sharma by his actions as enumerated above, did not wait for Government orders, out severed his relationship of master and servant with the Government, proceeded abroad, and took up employment in the private sector. He cannot go back on this now. A number of decisions were pressed upon us. However, we see no need to make a reference to them as the facts of the present case are specific and unusual, and not covered by the earlier decision in the matter.”

(12) The petitioners have challenged the Tribunal’s order of the following grounds :—

- (a) The reasons assigned by the Tribunal for quashing order dated 14th August, 1997, are irrelevant and extraneous to the issue relating to jurisdiction, power and authority of the Government of India to entertain application dated 18th April, 1995, submitted by Shri R.K. Sharma for withdrawal of his request for voluntary retirement.
- (b) Shri P. Lal did not have the *locus standi* to invoke jurisdiction of the Tribunal because order dated 14th August, 1997 passed by the Government of India did not affect his conditions of service and the likely adverse impact on his seniority or chances of promotion did not warrant entertaining of the application by the Tribunal.
- (c) The decision contained in the Government of India’s letter dated 2nd March, 1995, was *non est* and, therefore, no illegality was committed by it by entertaining application dated 18th April, 1995, submitted by Shri R.K. Sharma for withdrawal of his request for voluntary retirement.

(13) In his written statement, Shri P. Lal has supported the Tribunal’s order and has averred that the writ petitions should not be entertained because Shri R.K. Sharma is guilty of highly contumacious conduct. He has placed on record a number of documents to show that after submitting application for voluntary retirement, Shri R.K. Sharma had become Director of M/s California Design and Construction India

Ltd. and he had also taken employment under M/s California Design and Construction INC, U.S.A. and negotiated and entered into several contracts with the Government of Haryana, but concealed all these facts from the Government of Punjab as well as Government of India. He has further averred that Shri R.K. Sharma had submitted application dated 5th May, 1993 with the sole object of avoiding the disciplinary action initiated against him under Rule 8 of the 1969 Rules and as soon as the Government of Punjab decided to drop the charge-sheet, he submitted application dated 18th April, 1995 for withdrawal of request for voluntary retirement. Not only this, he deliberately avoided acceptance of letter dated 2nd March, 1995 sent by the Government of India conveying acceptance of his request for voluntary retirement. Still further, Shri P. Lal has averred that Government of India's decision to accept the application dated 5th May, 1993 had become final and effective because the same had been duly communicated to the Government of Punjab which had sent the same to Shri R.K. Sharma at his last given address and, therefore, application dated 18th April, 1995 was not maintainable and the same was rightly rejected,—*vide* letter dated 10th June, 1996.

(14) Before proceeding further, we deem it proper to mention that after conclusion of the arguments, Shri P. Lal filed C.M. No. 27489-90 of 2000 in C.W.P. No. 6196 of 1998 for placing on record additional affidavit dated 18th November, 2000 along with Annexures R1/26 to R1/29 to show that between 1995 and 1997, Shri R.K. Sharma had actively represented M/s California Design and Construction INC for the purpose of award of contract for construction, erection and commission of ten sewage treatment plants under Yamuna Action Plan. He also filed C.M. No. 27491-92 of 2000 in C.W.P. No. 6461 of 1998 for placing on record additional affidavit dated 18th November, 2000 and documents Annexures R3/26 to R3/29. C.M. No. 28355-56 of 2000 was also filed on behalf of Shri R.K. Sharma for placing on record his affidavit dated 27th November, 2000 and documents Annexures P35 to P40 to show that he has no longer Director of M/s California Design and Construction India Ltd.

(15) We may also mention that while hearing C.W.P. No. 14542 of 2000 filed by M/s California Design and Construction India Ltd. for quashing the action taken by the Income-tax authorities to recover tax from the payment made to it by the Government of Haryana, counsel

representing the petitioner in that case had produced a copy of the agreement entered into between his client and the State of Haryana which was signed by Shri R.K. Sharma on behalf of the petitioner-company as its director and he had represented to the Government of Haryana that he was the Managing Director of the said company. After taking note of this, we had directed the listing of these petitions for further consideration. On 20th November, 2000, counsel appearing for Union of India in C.W.P. No. 6461 of 1998 sought adjournment to place on record an affidavit on behalf of Government of India explaining its position on the issue of employment of Shri R.K. Sharma. Thereafter, Shri R.K. Mitra, Deputy Secretary, Ministry of Home Affairs, New Delhi filed an affidavit dated 25th November, 2000 stating therein that the Government of India had never made a statement that Shri R.K. Sharma had not taken employment with a foreign company. At the same time, he averred that it is for the State Government to take appropriate action in the matter.

(16) We shall now deal with the questions which arise for determination in these petitions. The first and the foremost question which merits consideration is whether Shri P. Lal had the *locus standi* to file application before the Tribunal and the latter had the jurisdiction to entertain his prayer for quashing the decision taken by the Government of India to accept the application of Shri R.K. Sharma for withdrawal of his request for voluntary retirement.

(17) Shri Rakesh Tiku, Shri M.S. Guglani and Dr. Balram K. Gupta referred to the provisions of sections 3(q), 14 and 19 of the Administrative Tribunals Act, 1985 (for short, the 1985 Act) and argued that the Tribunal could not have entertained the application filed by Shri P. Lal because the decision contained in letter dated 14th August, 1997 did not affect his conditions of service. They submitted that Shri R.K. Sharma is senior to Shri P. Lal and, therefore, the latter did not have the right to question the legality of the decision taken by the Government of India to accept the application dated 18th April, 1995 submitted by the former for withdrawing his request for voluntary retirement. Learned counsel further submitted that mere possibility of restoration of seniority of Shri R.K. Sharma and its consequential adverse impact on the chances of promotion of Shri P. Lal did not give jurisdiction to the Tribunal to entertain the application against the decision contained in letter dated 14th August, 1997. In support of this

argument, learned counsel relied on *Ramchandra Shankar Deodhar and ors. vs. State of Maharashtra and ors. (1) Mohammad Shujat Ali and others vs. Union of India and others (2) State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and ors (3). K. Jagadeesan Vs. Union of India and others (4), Union of India and others vs. S.L. Dutta and another. (5) and Union of India and others vs. N.Y. Apte and others (6).*

(18) On the other hand. Shri Rajiv Atma Ram argued that the Tribunal did not commit any legal error by entertaining the application of Shri P.Lal because it has the jurisdiction, powers and authority to entertain all types of disputes and complaints with respect to recruitment and conditions of service and matters connected therewith. He submitted that jurisdiction of the Tribunal is not confined to the entertaining of an application in a matter which may directly affect the applicant and in appropriate cases, it can nullify an action, decision or order which may indirectly affect the applicant. He further argued that the decision taken by the Government of India would have directly affected the seniority of his client in the rank of Inspector General of Police and, therefore, he had every right to challenge the same by filing an application under the 1985 Act. Learned counsel strongly relied on the decision of the Supreme Court in *Lakhi Ram vs. State of Haryana (7)* in support of his argument on the standing of Shri P.Lal to file the application before the Tribunal.

(19) We have given serious thought to the respective arguments. For the purpose of deciding the ambit and scope of the Tribunal's jurisdiction, it will be useful to refer to the preamble of the 1985 Act and the provisions contained in Sections 3(q) ; 14(1), (3), 15(1), (3) and 19(1) of the said act. The same read as under :—

“Preamble

An Act to provide for the adjudication or trial by the
Administrative Tribunals of disputes and complaints with

- (1) 1974 (1) SLR 470.
- (2) 1975 (3) SCC 76.
- (3) 1982 (1) SLR 697.
- (4) 1990 (2) SLR 59.
- (5) 1991 (1) SCC 505.
- (6) 1998 (6) SCC 741.
- (7) 1981 (3) SLR 110.

respect to recruitment and conditions of service of persons appointed to public services and posts 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 or society owned or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto.

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- 3.(q) "Service matters", in relation to a person, means all matters relating to the conditions of his service 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, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects—
- (i) remuneration (including allowances), pension and other retirement benefits ;
 - (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation ;
 - (iii) leave of any kind ;
 - (iv) disciplinary matters ; or
 - (v) any other matters whatsoever.

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) in relation to—

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- (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 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 (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 (or society) or other body, at the disposal of the Central Government for such

[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].

- (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 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 (or society) and pertaining to the service of such person in connection with such affairs.

15. Jurisdiction, powers and authority of State Administrative Tribunals.—(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except Supreme Court) in relation to—

- (a) recruitment and matters concerning recruitment, to any civil service of the State or to any civil post under the State ;
 - (b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society owned or controlled by the State Government ;
 - (c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation or society or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.
- (3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal for a State 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 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 (b) of sub-section (1) of this section 14] appointed to any service or post in connection with the affairs of such local or other authority or corporation (or society) and pertaining to the service of such person in connection with such affairs.

19. Applications to Tribunals.—(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.— For the purposes of this sub-section, “order” means an order made-

- (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government; or
- (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation referred to in clause (a).”

(20) A reading of the preamble reproduced above shows that the main object behind the enactment of the 1985 Act was to create special adjudicatory forum for resolution of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union etc. and thereby reduce the burden of regular Courts and also to provide speedy remedy to the persons having complaints in respect of recruitment, matters relating to recruitment and conditions

of service. For achieving this object, the Tribunals created under the 1985 Act have been bestowed with the jurisdiction, powers and authority exercisable by all Courts [except the Supreme Court and by virtue of the decision of the 7 Judges Bench in *L. Chandra Kumar vs. Union of India and others*, (8) the High Courts under Article 226 of the Constitution of India] immediately before the date of enforcement of the Act in relation to all service matters including recruitment, promotion, pay, remuneration, pension' etc. "The factors, like prescription of shorter period of limitation, 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 are clearly indicative of the Parliament's intention to create specialised forums having exclusive jurisdiction to deal with the disputes and complaints with respect to recruitment etc. "The use of expressions recruitment and matters concerning recruitment, all service matters concerning " and pertaining to the service of such person in Sections 14 and 15 of the 1985 Act shows that the powers conferred upon the Tribunal are wide and pervasive and cover all aspects of the service disputes including those relating to pre-recruitment and post-retirement. Therefore, it must be held that the Tribunals created under the 1985 Act can entertain the disputes and complaints with reference to actions, decisions and orders which may not affect the applicant directly, but may affect him indirectly.

(21) In this context, it will be appropriate to mention that by virtue of Section 28 (unamended of the 1985 Act, jurisdiction of the High Courts and even the Supreme Court to directly entertain petitions involving determination of service disputes and complaints had been excluded. This position was changed after the judgment of the Constitution Bench in *S.P. Sampath Kumar Vs. Union of India*, (9) the jurisdiction of the Supreme Court to entertain petitions under Article 32 of the Constitution was restored. After judgment of Seven-Judges Bench in *L. Chandra Kumar's case*, the position underwent further change and by virtue of judicial interdiction, High Court's power to entertain petitions under Articles 226 and 227 of the Constitution in relation to service disputes was restored. While doing so, their Lordships

(8) J.T. 1997 (3) SC 589

(9) 1985 (4) SCC 458

of the Supreme Court observed that the Tribunals will continue to perform a supplemental role in discharging powers conferred by Articles 226/227 and 32 of the Constitution of India. Some of the observations made in this respect in paragraph 101 of the judgment of seven-Judges Bench are reproduced below :—

“The jurisdiction conferred upon the High Courts under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is 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 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal 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 approach the High Courts even in cases where they question the ires of statutory legislation (except where the legislation which creates the particulars Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

(22) It is thus clear that the Tribunals continue to have exclusive jurisdiction to entertain all types of service disputes and complaints subject, of course, to the jurisdiction of the Supreme Court to directly entertain petitions under Article 32 of the Constitution of India. Therefore, there does not appear to be any valid ground to give a restricted meaning to the provisions of Sections 14 and 15 read with Sections 3(q) and 19 of the 1985 Act so as to confine jurisdiction, powers and authority of the Tribunals to entertain applications which directly affect the service matters/service conditions of the applicant. If a narrow view is taken about the authority and jurisdiction of the Tribunal to entertain applications only against actions, decisions or orders which

directly affect the applicant, then the very object of creating special machinery for adjudication of the service disputes will get defeated because in that event, more than one judicial forums will have the jurisdiction to entertain different types of service disputes. This will totally destroy the scheme of the 1985 Act. Therefore, keeping in view the well recognised rule that if two interpretations of a statute are possible, then the Court would adopt the one which furthers the object of the legislation and makes it purposeful and discard that which may defeat its object, we hold that the Tribunals constituted under the 1985 Act have the jurisdiction to entertain the complaints or dispute in respect of recruitment' matters relating to recruitment, service matters and matters connected therewith or incidental thereto.

(23) The wide and pervasive scope of the jurisdiction and powers of the Tribunal has also been recognised by the Full Benches of Andhra Pradesh, Madhya Pradesh and Madras High Courts. In *K. Naga Raja versus The Superintending Engineer, Irrigation Department, Chittoor (10)* a Full Bench of the Andhra Pradesh High Court analysed the relevant provisions of the 1985 Act and held as under :—

“It is thus clear that recruitment is an earlier part of the process which culminates in appointment. Selection is part of recruitment process and proceeds appointment. Notifying the vacancies, inviting applications, put to test their written or oral test and interview, test their written or oral test and interview, selection and approval for appointment are all different steps in the process of recruitment. So, it would not have made any difference if the Preamble to the Administrative Tribunals Act and Sections 14 and 15 thereof would have used the term recruitment merely and avoided the use of the work matters concerning recruitment inasmuch as matter concerning recruitment would have been deemed to be included in recruitment itself. The use of the phrase matters concerning recruitment preceded by the work and conjunction recruitment and is definitely suggestive of legislative intent to make the provision wide in its import so as to include the matters concerning recruitment all so as to include in matters concerning recruitment all such matters as could unwittingly be left

out of recruitment. Such an interpretation would also advance the object behind enactment of Tribunals Act

It is well known that Art.323-A and Art. 323-B finding place in Part XIV-A of the Constitution were so inserted by 42nd Amendment with the idea of lessening the burden of Courts and ensuring speedy dispensation of justice in service matters through adjudicatory bodies called Administrative Tribunals. What necessitated insertion of Art.323-A in the Constitution and enactment of Administrative Tribunals Act has been noticed and stated by the Supreme Court in S.P. Sampat Kumar-I [1985](4) S.C.C 458] and S.P. Sampat Kumar-I [1987](1) L.L.J.128]. The Tribunals are meant to be substitute for High Courts for relieving them of mounting backlog of cases of assuring quick settlement of service disputes in the interest of public servants. The Tribunals Act is a remedial piece of legislation. In construing a remedial Act, the Court ought to give widest operation which the language of the Act will permit

Having interpreted the term recruitment as we have done, consistently with the law laid down by the Supreme Court, we are of the opinion that we see no justification in carving out jurisdiction to the Courts from the jurisdiction of the Administrative Tribunals by drawing a distinction between 'pre-recruitment matters' and 'recruitment matters', for, such a distinction would be not real, but merely a distinction without any difference. What has been called 'pre-recruitment' disputes in some of the decisions is nothing but a dispute concerning recruitment within the meaning of the Act and the dispute or complaints with respect to recruitment within the meaning of Art.323-A of the Constitution. Such a dispute would lie within the jurisdiction of the Administrative Tribunals

Section 19 of the Tribunals Act referred to and relied on by the learned counsel for the respondent finds place in Chapter IV entitled Procedure, while Sections 14 and 15 are to be found in Chapter III entitled Jurisdiction, power and

authority of Tribunals'. Section 19 is merely a procedural or machinery provision which cannot be pressed into service for limiting down the scope of substantive provisions contained in Sections 14 and 15 of the Tribunals Act

(24) In *Dr. Usha Narawariya versus State of M.P. and another*(11) a Full Bench of Madhya Pradesh High Court held that the word "recruitment" appearing in Sections 14 and 15 of the 1985 Act includes all matters concerning recruitment, process of recruitment and the result of recruitment. Their Lordships further held that the provisions of Section 19 are procedural and cannot be relied upon for limiting the scope of substantive provisions contained in Sections 14 and 15. Paragraphs 21 and 28 of that judgment, which contain discussion on this subject read as under :—

"21. It is thus clear that the recruitment is an earlier part of the process which culminates in appointment. Notifying the vacancies, inviting applications, their scrutiny, finalisation of list of such eligible candidates as would be put to test, their written or oral test and interview, selection and approval for appointment, are all different steps in the process of recruitment. So, it would not have made any difference if the Preamble to the Administrative Tribunals Act and Sections 14 and 15 thereof would have used the term "recruitment" merely and avoided the use of the words "matters concerning recruitment" inasmuch as "matters concerning recruitment" would have been deemed to be included in 'recruitment' itself. The use of the phrase "matters concerning recruitment" proceeded by the word and conjunction 'recruitment' and is definitely suggestive of legislative intent to make the provision wider in its import so as to include in "matters concerning recruitment" all such matters as could unwittingly be left out of "recruitment". Such an interpretation would also advance the object behind enactment of Tribunals Act.

28. Section 19 of the Tribunals Act referred to and relied on by the learned counsel for the respondents finds place in Chapter IV entitled—Procedure, while Sections 14 and 15

are to be found in Chapter III entitled—Jurisdiction, power and authority of Tribunals. Section 19 is merely procedural or machinery provision which cannot be pressed into service for limiting down the scope of substantive provisions contained in Sections 14 and 15 of the Tribunals Act. The Rules framed under the Act in exercise of delegated legislative power conferred by the Act itself can also not be utilised for construing the provisions of the Act and determining the length and breadth of the various substantive provisions contained in the Act. Presumably the view taken by the Division Bench in *Betal Singh Mahore's* case (*supra*) would not have been what it is, if only several decisions noticed by us hereinabove would have been placed before that Division Bench also. *Betal Singh Mahore's* case was not correctly decided. It is overruled.”

(25) In *Government of Tamil Nadu and others vs. P. Hepzi Vimalabai (supra)*, a Full Bench of Madras High Court over-ruled the judgment of a Division Bench of that Court in *Chairman, Railway Recruitment Board, Madras vs. S. Raban Peter*,⁽¹²⁾ and held that the jurisdiction conferred upon the Tribunal under Sections 14 and 15 cannot be curtailed by making a reference to the procedural provisions contained in Chapter-IV of the Act. Some of the observations made in that decision are reproduced below :—

“ In our view, the use of expression ‘matters concerning recruitment’ is wide enough to cover and include all matters concerning recruitment. There is no warrant to make a distinction between ‘pre-recruitment matters’ and ‘recruitment matters’. We are of the opinion that the view expressed by the Division Bench in *Raban's* case that only in service candidates can raise disputes in respect of matter pertaining to recruitment and not a person is not acceptable. On the contrary, recruitment is a process which would cover within its ambit all the necessary steps commencing from the state or notifying the vacancies and ending with appointment of selected candidates. The fact that the definition of the expression service matters in S.3(q) of the Act does not make any reference to recruitment is wholly

irrelevant. Recruitment is separately referred to in the preamble as well as in the relevant provisions of the Act. In addition thereto, the expression conditions of service of persons appointed is also found. S.3(q) of the Act is applicable to persons appointed to service. That is why that section does not make any reference to recruitment.

XX XX XX XX XX XX XX

S.19 of the Act, which deals with the making of applications to the Tribunals, is merely procedural and in our opinion, the said provision is wide enough to cover any matter which falls within the jurisdiction of the Tribunal. We have already explained the scope and jurisdiction of the Tribunal to deal with all disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service and posts in connection with substantive provisions of Ss. 14 and 15 of the Act. Form I, which was framed under S. 19 of the Act, cannot also, in our view; be pressed into service to understand, the scope of jurisdiction of the Tribunal under Ss. 14 and 15 of the Act.”

(26) We respectfully agree with the views expressed by the three High Courts and hold that the jurisdiction of the Tribunal is not limited to the entertaining of an application in respect of the service matters defined in Section 3(q) and in appropriate cases, the Tribunal can entertain an application which may strictly not fall within the ambit of that expression, but may relate to other expressions used in Sections 14 and 15 of the Act.

(27) In view of the above discussion, we hold that the Tribunal did not commit any jurisdictional error by entertaining the application filed by Shri P.Lal.

(28) We are further of the view that the application filed by Shri P.Lal fell within the ambit of Section 19 read with Section 3(q) of the 1985 Act and the Tribunal did not commit any illegality by entertaining the same. The facts brought on the record of the writ petitions show that during the absence of Shri R.K. Sharma, Shri P. Lal and others had been promoted as Inspector Generals of Police. They

may not have been reverted if Shri R.K. Sharma was promoted as Inspector General of Police with retrospective effect. However their seniority would have certainly been affected by virtue of effective implementation of decision contained in letter dated 14th August, 1997. Therefore, we do not find any valid ground to entertain the objection raised on behalf of the petitioners to the *locus standi* of Shri P.Lal to file the application before the Tribunal.

(29) In so far as the judgments relied upon by the learned counsel for the parties are concerned, we do not consider it necessary to deal with the same because in none of them the provisions of the 1985 Act have been interpreted.

(30) The next question which merits consideration is whether the Government of India had the jurisdiction to entertain the application dated 18th April, 1995 submitted by voluntary retirement. The argument of the counsel for the petitioners is that order dated 2nd March, 1995 passed by the Government of India was non est and, therefore, it did not commit any illegality by entertaining the application dated 18th April, 1995. Shri Rakesh Tiku referred to Rule 16(2) and (2A) of the 1958 Rules to show that giving of three months, previous notice in writing to the State Government concerned constitutes a condition precedent to the entertaining of the request for retirement and argued that application dated 5th May, 1993 submitted by Shri R.K. Sharma without such notice could not have been entertained by the Government of India by exercising the power under Rule 3 of All India Service (Conditions of Service-Residuary Matters) Rules, 1960 (for short, the 1960 Rules) and precisely this was the reason for which his application was rejected,—*vide* communications dated 27th September, 1993 and 13th September, 1994. However, without any fresh application, the Government of India erroneously entertained the communication sent by the State Government and illegally accepted the so-called request made by Shri R.K. Sharma for voluntary retirement and when this was realised, the decision contained in letter dated 2nd March, 1995 was reconsidered and the request made by him,—*vide* application dated 18th April, 1995 was accepted. Learned counsel further argued that the reasons assigned by the Tribunal for setting aside the decision contained in letter dated 14th August, 1997 are totally erroneous and, therefore, the impugned order should be declared as

vitiated by an error of law and quashed. Shri Rajiv Atma Ram controverted the submissions of the counsel for the petitioners and argued that the Government of India could not have entertained application dated 18th April, 1995 submitted by Shri R.K. Sharma for withdrawal of his request for voluntary retirement because the same had already been accepted and that decision had been conveyed to the Government of Punjab,—*vide* letter dated 2nd March, 1995 and also to Shri R.K. Sharma,—*vide* letter dated 25th April, 1995 sent by the Director General of Police, Punjab. He further argued that after having rejected the application dated 18th April, 1995,—*vide* letter dated 18th June, 1996, the Government of India could not have reviewed its decision and granted leave to Shri R.K. Sharma to withdraw his request for voluntary retirement. Learned counsel made a pointed reference to the documents placed on the record of the writ petition to show that the order passed by the Government of India accepting Shri R.K. Sharma's application for voluntary retirement was sent to him at the address given in the application dated 5th May, 1993, but he had deliberately avoided its acceptance with a view to create ground for submission of application dated 18th April, 1995. He relied on Rules 2 and 3 of the 1960 Rules and argued that the Government of India's decision to dispense with the requirement of three months previous notice did not suffer from any legal infirmity and, therefore, there was no occasion for it to review the decision conveyed *vide* letter dated 2nd March, 1995. He also relied on the instructions contained in circular no. 4427-2pp-78/17892 dated 7th June, 1998 and submitted that by virtue of Rule 2(b) of the 1960 Rules, those instructions would be deemed to be applicable in the case of Shri R.K. Sharma justifying dispensing with the requirement of three months previous notice. Another facet of the argument of Shri Rajiv Atma Ram is that by accepting employment in a foreign company, Shri R.K. Sharma would be deemed to have given up his service as a member of IPS and, therefore, acceptance of his request for voluntary retirement was quite in order.

(31) We have given serious thought to the arguments of the learned counsel. A perusal of the impugned order shows that the Tribunal allowed the application filed by Shri P. Lal by observing that acceptance of employment under a foreign company was clearly indicative of the intention of Shri R.K. Sharma to sever his relation with the government. It further observed that Shri R.K. Sharma had

exhibited highly contumacious conduct first by seeking termination of the enquiry proceedings by giving out that he was seeking voluntary retirement from service, then taking up employment with a foreign company and finally withdrawing the request for voluntary retirement. It is, thus, clear that the Tribunal did not deal with the main issues relating to legality of the decisions conveyed by the Government of India to the Government of Punjab,—*vide* letters dated 2nd March, 1995 and 14th August 1997. Therefore, it must be held that order dated 3rd February, 1998 is vitiated by an error of law warranting interference by this Court under Article 226 of the Constitution of India.

(32) De hors the above conclusion, we deem it proper to consider the question as to whether the Government of India could entertain application dated 18th April, 1995 submitted by Shri R.K. Sharma. The decision of this question is directly dependent on the determination of the issue relating to the legality of its decision to accept application dated 5th May, 1993. In this respect, it is important to bear in mind that as early as in September, 1993, the Government of India had unequivocally rejected application dated 5th May, 1993 with an observation that it was not possible to waive off three months notice period simply because he had deposited three months pay in lieu thereof. This was conveyed to the Government of Punjab,—*vide* Wireless Message dated 27th September, 1993 and was reiterated,—*vide* fax dated 13th September, 1994. It is not clear from the record as to whether these messages were conveyed to Shri R.K. Sharma, but this much is certain that he did not submit fresh application for voluntary retirement. However, on being asked by the Government of India to send his fresh request, the Government of Punjab in the Department of Home Affairs sent memo dated 29th November, 1994 for dispensing with the requirement of three months notice and acceptance of his original application dated 5th May, 1993 and by acting on that communication, the Government of India passed the order which was conveyed to the Government of Punjab,—*vide* letter dated 2nd March, 1995. In our opinion, the decision conveyed by the Government of India,—*vide* Wireless Message dated 27th September, 1993 had the effect of disposing of the application submitted by Shri R.K. Sharma for voluntary retirement from service and in the absence of fresh request by him, the Government of India did not have the jurisdiction or authority to entertain the request made by the Government of Punjab to accept his original (non-existent) application for voluntary retirement and pass

order dated 2nd March, 1995. Indeed, it is not the case of Shri P.Lal that Shri R.K. Sharma had submitted any application after 27th September, 1993 for voluntary retirement from service. Therefore, there is no escape from the conclusion that the Government of India had committed grave illegality by entertaining the request made by the Government of Punjab for acceptance of application dated 5th May, 1993 by dispensing with the requirement of three months notice. As a logical corollary to this, it must be held that the decision of the Government of India conveyed to the Government of Punjab,—*vide* letter dated 2nd March, 1995 was non est and, therefore, Shri R.K. Sharma was entitled to treat himself as continuing in service and was not even required to submit application dated 18th April, 1995 for withdrawal of his request for voluntary retirement. In any case, the decision taken by the Government of India to allow him to withdraw the request for voluntary retirement cannot be termed as illegal or vitiated due to want of jurisdiction.

(33) In view of the above, we do not consider it necessary to decide the question as to whether the Government of India could have invoked Rule 3 of the 1960 Rules to dispense with the requirement of three months, notice contemplated by Rule 16(2A) of the 1958 Rules.

(34) Before concluding, we consider it necessary to take cognizance of the submission of Shri Rajiv Atma Ram, counsel for Shri P. Lal that even if the Court finds some legal infirmity in the Tribunal's order, relief should not be granted to the petitioners because Shri R.K. Sharma had misused his position as a member of the IPS and acted as an agent of a foreign company to help it in getting contracts from the Government of Haryana. He made pointed reference to certificate of incorporation of California Design and Construction India Ltd. (filed in C.W.P. No. 6196 of 1998 alongwith C.M. No. 27489-90) to show that Shri R.K. Sharma was one of the Directors of that company. He also referred to the documents marked as Annexures R3/1, R3/2, R3/26, R3/27 and R3/29 to show that Shri R.K. Sharma had taken up employment under M/s California Design and Construction Inc., USA and represented the said company before the various governmental authorities for procuring contracts on its behalf and argued that relief should be declined to him because he had taken up employment of a private company while in government service. Learned counsel lamented that instead of taking serious note of the gross misconduct

committed by Shri R.K. Sharma, some high ranking officers of the Government of Punjab have been busy in manipulating the record in order to facilitate his promotion to the higher posts. Learned counsel pointed out that despite the undertaking given by Shri R.K. Sharma not to claim seniority over P. Lal and the interim order dated 15th July, 1998 passed by this Court in C.W.P. No. 6196 of 1998 that he will not claim seniority over respondent-P. Lal, efforts have been made to make him senior to the latter by giving retrospective promotion and in complete disregard of the observations made by the Government of India on the issue of disciplinary action, efforts are being made to bail him out without holding any enquiry. Dr. Balram K. Gupta, counsel for Shri R.K. Sharma entered a caveat on this issue and submitted that in 1995, his client had agreed to become a member of the Board of Directors of the company at the instance of his friend Shri Malkeet Singh Sidhu, but, later on, he had resigned from the directorship. He further submitted that his client had worked on behalf of M/s California Design and Construction Inc., U.S.A. in an honorary capacity and this cannot be treated as misconduct within the meaning of All India Service (conduct) Rules, 1968.

(35) In order to deal with the rival arguments in a correct perspective, it will be useful to refer to some of the documents produced by the parties. The particulars of these documents which have been placed on the record of C.W.P. No. 6461 of 1998 are given below :—

- (1) Annexure R3/28 is the photostat copy of the Certificate of Incorporation issued by the Additional Registrar of companies, NCT of Delhi and Haryana on 26th October, 1995 for incorporation of California Design and construction India Ltd. It is accompanied by other documents including a photostat copy of Form No. 32 in which Shri R.K. Sharma has been shown as one of the Directors of the company. Out of 4 other Directors, two are nationals of U.S.A. and remaining two are Indian nationals. Photostat copy of Form No. 29 containing the consent of Shri R.K. Sharma to become a Director of the company has also been filed with the Certificate of Incorporation.
- (2) Annexure R3/26 is photostat copy of Invitation for Bid and Standard Form for Agreement signed by Shri R.K. Sharma

in his capacity as Director of the Company.

- (3) A photostat copy of power of attorney dated 4th October, 1996 executed by Shri R.K. Sharma in his capacity as Managing Director of California Design and Construction Inc. in favour of Shri Tarun Sharma has also been filed.
 - (4) Annexure R3/1 (in C.W.P. No. 6461 of 1998) is a typed copy of letter dated 1st August, 1997 sent by Shri R.K. Sharma in his capacity as Managing Director of California Design and Construction Inc. to Shri Tarun Sharma in the matter of deposit of fake vouchers.
 - (5) Annexure R3/2 (pages 1 to 11) are copies of letters sent by Shri R. K. Sharma to the Engineer-in-Chief, Haryana P.W.D. Public Health Branch, Chandigarh and other officers of the department in connection with commissioning of sewage treatment plants at various places.
 - (6) Annexure P35 is the list of Directors of California Design and Construction India Ltd. as on 7th August, 2000. This document has been placed on record by Shri R.K. Sharma alongwith C.M. No. 28355-56 of 2000. It does not contain his name.
 - (7) Annexures P36 to P40 filed with C.M. No. 28355-56 of 2000 are the copies of Director's report for the years 1995-96 to 1999-2000.
 - (8) Annexure P20 filed with C.W.P. No. 6196 of 1998 is a copy of the affidavit allegedly given by Shri Malkeet Singh Sidhu to the effect that Shri R.K. Sharma was neither employed nor a Director of California Design and Construction Inc., but he used to take guidance and consultation from him.
- (36) The record produced by the learned Deputy Advocate General shows that by an order dated 17th August, 1998, the Governor of Punjab had allowed Shri R.K. Sharma to join the Punjab Police as DIG (Admn.) IRB, Patiala with the stipulation that the matter's regarding disciplinary proceedings pending against him when he sought premature retirement and seniority etc. will be decided after

final out-come of C.W.P. Nos. 6461 and 6196 of 1998. However, in complete disregard of the specific observation contained in the Government of India's letter dated 14th August, 1997 to the effect that the State Government shall take appropriate action with regard to the absence etc. against Shri R.K. Sharma and stipulation contained in the order passed by the Governor of Punjab that the matter regarding disciplinary proceedings will be decided after final outcome of the writ petitions, some officers of the Government of Punjab tried to manipulate the record with the avowed object of helping Shri R.K. Sharma to avoid disciplinary action. This is borne out from the following facts :—

- (i) When the Director General of Police forwarded the representation made by Shri R.K. Sharma for retrospective promotion as Inspector General of Police w.e.f. 27th May, 1992 with a suggestion that appropriate decision may be taken keeping in view the facts relating to previous enquiry, the then Principal Secretary, Home, Punjab recorded note dated 24th March, 1999 that the suggestion made by the Director General of Police was uncalled for because the period of absence had already been regularised.
- (ii) When the agenda was prepared by the officers of the Home Department for consideration by the Screening Committee which was to meet for empanelment of the IPS officers for promotion to the rank of Inspector General of Police, a totally misleading statement was made in favour of Shri R.K. Sharma by recording the following note :—

“The State Government has decided not to reopen the disciplinary proceeding/charge-sheet which was dropped while considering notice of voluntary retirement of Shri R.K. Sharma. No other vigilance/departmental enquiry is pending against this officer.”

(37) By relying upon the aforesaid note, the Screening Committee recommended Shri R.K. Sharma for empanelment for promotion to the post of Inspector General of Police and on that basis, he was promoted as such with retrospective effect from 11th January, 1992.

(38) In our opinion, the note contained in the agenda prepared by the Home Department was patently incorrect and was a successful attempt to over-reach the order of the Governor because, in a fact, no

decision had been taken by the government on the issue of the re-opening of the disciplinary proceeding/charge-sheet which had been dropped in 1994 by accepting the request of Shri R.K. Sharma for voluntary retirement. At the hearing, we had asked the learned Deputy Advocate General to produce the documents to show that the government had taken a conscious decision not to re-start disciplinary proceedings against Shri R.K. Sharma in respect of serious charges for absence of duty and going abroad without prior permission. In reply, learned government counsel had candidly stated that no such document has been made available to him. In our considered opinion, the note dated 24th March, 1999 recorded by the then Principal Secretary, Home Department, Punjab scuttling the suggestion made by the Director General of Police, on the issue of re-initiation of disciplinary proceedings and the misleading agenda note prepared by the Home Department cannot be made basis for giving a clean chit to Shri R.K. Sharma. We are further of the view that in the normal circumstances, the State Government is bound to revive the disciplinary proceedings initiated in January, 1993 because the same were put to an end only a view to facilitate the voluntary retirement of Shri R.K. Sharma, which could not have been possible during the pendency of the disciplinary proceedings. Therefore, keeping in view the fact that he has withdrawn, the request for voluntary retirement, the competent authority of the government is duty-bound to take a comprehensive decision in the matter and Shri R.K. Sharma cannot be given advantage of a totally unwarranted note recorded by the then Principal Secretary of the Home Department or the agenda item placed before the screening Committee.

(39) At this stage, we deem it proper to observe that in the recent past, the country has seen a new and dangerous phenomenon, namely, taking of employment of private companies—Indian as well as foreign, by Army and civilian officers after their retirement. These retired Officers use their old connections in the government establishments for striking deals on behalf of such companies. At times, they act as liaison Officer of the company and use their erstwhile position for securing favours for such companies and in the process, compromise the public interest. It is, therefore, high-time that the Government of India and the State Governments should suitably amend the Conduct Rules to prohibit government Officers holding high position from taking employment with private companies - Indian as well foreign.

(40) The facts of this case show that after repatriation from an important position in the Research and Analysis Wing of the Government of India, Shri R.K. Sharma did not join duty till 30th September, 1991 and after remaining in his parent cadre for about one month, he left the country without seeking permission from the competent authority and did not join duty till 12th April, 1993. On 5th May, 1993, he applied for voluntary retirement and then virtually disappeared from the scene for next five years. During this period, he became instrumental in the incorporation of California Design and Construction India, Ltd. and also acted as Director/Managing Director of a foreign company, namely, M/s California Design and Construction Inc., U.S.A. and secured contracts on its behalf. At this stage, it would not be proper for us to express any conclusive opinion on the issue whether by becoming a member of the Board of Director of California Design and Construction India Ltd. and acting as Managing Director/Director of a foreign company for securing contracts in favour of that company, Shri R.K. Sharma had misused his position as an Officer of the IPS, who had earlier worked in Research and Analysis Wing of Government of India, but we do not have the slightest hesitation to observe that his activities during the absence from service warrant a thorough enquiry by the State Government and this cannot be avoided on any ground whatsoever. The suggestion made by Dr. Balram K. Gupta that Shri R.K. Sharma had taken an honorary assignment with California Design and Construction India Ltd. to give technical advice to his friend Shri Malkeet Singh Sidhu is too innocent to be accepted. It is impossible to agree with the learned counsel that his client was not aware that while in government service, he could not become Director of a private company or take up assignment under a foreign company and by doing so, he would be violating the Conduct Rules. However, as already mentioned above, these are the issues which need detailed consideration by the government at appropriate level.

(41) Notwithstanding the fact that we have refrained from expressing any opinion on the merit of the allegations already levelled against Shri R.K. Sharma or which may be levelled hereafter, we are constrained to observe that the manner in which attempt has been made by the Officers of the Home Department of the Government of Punjab to give him a clean chit cannot, but be termed as wholly unwarranted, unjustified and detrimental to the morality of the service.

The observation made by the then Home Secretary, Punjab about the dropping of enquiry and regularisation of the period of absence are totally uncalled for. We have not been able to appreciate as to why the concerned Officer made those observations ignoring the fact that disciplinary proceedings initiated in 1993 were dropped solely because Shri R.K. Sharma had made a request for voluntary retirement and in the order dated 17th August, 1998, it was specifically mentioned that the matter regarding disciplinary proceedings pending against Shri R.K. Sharma will be decided after final outcome of the two writ petitions. There cannot be any doubt that if Shri Sharma had not sought voluntary retirement, the enquiry would have been taken to its logical conclusion. Whether or not he would have been ultimately punished on the charge of absence from duty or going abroad without prior permission, becoming Director of a private company and taking up employment under a foreign company is not an issue on which we are called upon to express opinion, but in view of the clear observation made by the Government of India in the order dated 14th August, 1997 and the stipulation contained in order dated 17th August, 1998, the Government of Punjab is under an obligation to take comprehensive view of the conduct of Shri R.K. Sharma and take appropriate decision.

(42) In the result, the writ petitions are allowed, Order dated 3rd February, 1998 passed by the tribunal is set aside. This shall be subject to the direction that Shri R.K. Sharma shall not be assigned seniority over Shri P. Lal and other Officers, who had been promoted during his absence from duty till the government takes a comprehensive decision on the allegations of his absence from duty, going abroad without prior permission, taking up employment with a foreign company and joining the Board of Directors of a company registered in India and he is exonerated in the departmental enquiry, if any, held in these matters. The State Government is directed to take appropriate decision in the matter within a period of six months without being influenced by the fact that the enquiry initiated in 1993 was dropped *vide* letter dated 9th November, 1994 and wholly unwarranted observations recorded by the then Home Secretary, Punjab in his note dated 24th March, 1999 and the agenda prepared in 1999 for empanelment of IPS Officers for promotion to the rank of Inspector General of Police.
