

Union of India and another *v.* Birbal Dass and another
(A. L. Bahri, J.)

under section 19(2) of the Act. It cannot be said that the accused-petitioner had not discharged the onus as the seals were found intact by the Food Inspector and the samples were taken only after 19 days of the purchase of liquor from the above referred Corporation, no further proof was required regarding the keeping of the whisky in the same condition in which it was purchased from the Corporation.

(9) For the foregoing reasons, the conviction and sentence for the above referred offences being not sustainable, the same are hereby set aside by accepting this revision petition. The fine, if paid, shall be refunded.

R.N.R.

Before : A. L. Bahri, J.

UNION OF INDIA AND ANOTHER,—*Petitioners.*

versus

BIRBAL DASS AND ANOTHER,—*Respondents.*

Civil Revision No. 3508 of 1989.

February 15, 1990.

Administrative Tribunal's Act, 1985—Ss. 2, 14—Civilian employed with M.E.S.—Such employee allotted Government accommodation—Claim for exchange of such accommodation—Refusal to consider such claim by authorities—Suit for Mandatory injunction—Jurisdiction of Civil Court—Whether barred.

Held, that in view of section 14(b) (iii) of the Act, it is made clear that Administrative Tribunal will have jurisdiction in all service matter concerning a civilian (not being a member of All-India Service or a person referred to in clause (c) appointed to any defence service or a post connected with defence. In view of the provisions of the Act, Civil Court has no jurisdiction to entertain the suit as allotment of Government accommodation would be a matter relating to service of a civilian though working in the military.

(Para 3)

Petition under Section 115 C.P.C. read with section 227 of the Constitution of India, praying that the revision petition be accepted and the order of the trial court under challenge be set aside and the plaint be ordered to be returned to the respondent for presentation in the proper court.

CLAIM IN REVISION : *For setting aside the orders dated 27th September, 1989 passed by Additional Senior Sub-Judge, Patiala.*

V. K. Sharma, Advocate, for the Petitioners.

R. B. S. Chahal, Advocate, for the Respondent No. 1.

ORDER

A. L. Bahri, J.

(1) This revision petition is directed against order dated September 27, 1989 passed by Additional Senior Sub Judge, Patiala holding that Civil Court had the jurisdiction to try the suit.

(2) Birbal Dass plaintiff is employed as Pump House Operator with M.E.S. (Military) at Patiala. He was allotted Government accommodation of Type-I. He wanted exchange of the Government house of Type-II which request was not being accepted by the Garrison Engineer, Military Engineering Service, Patiala that he approached the Civil Court in a suit seeking direction to the defendants Union of India and the Garrison Engineer to allot Type-II house to him. In fact, he wanted allotment of House No. 48/2, which was lying vacant at that time and sought mandatory injunction in this respect. The suit was contested by the defendants *inter alia* on the ground that Civil Court had no jurisdiction to try the suit, in view of the provisions of the Administrative Tribunal's Act, 1985. Learned counsel for the petitioners has argued that Birbal Dass was working as Civilian in the Army. The provisions of the Act are applicable to such a person. Section 2 and 24 of the Act read as under :—

“2. Act not to apply to certain persons.—

The provisions of this Act shall not apply to—

(a) any member of the naval, military or air forces or any other armed forces of the Union;

(b) (omitted by Act, 19 or 1986);

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- (c) any officer or servant of the Supreme or of any High Court;
- (d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or in the case of a Union territory having a Legislature of that Legislature.

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 —

- (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 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 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 appointment. *Explanation*—For the removal of doubts, it is hereby declared that reference to “Union” in this sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government, of India and to corporations (or societies) owned or controlled by Government not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different clauses of, or different categories under any class or local or other authorities or corporation or societies.

(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 except the Supreme Court the Constitution 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; 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.”

(3) The Court below placed reliance on section 2(a) as reproduced above in coming to the conclusion that the provisions of the Act would not apply to the plaintiff. However, in view of section 14(b)

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(iii) of the Act, as reproduced above, it is made clear that Administrative Tribunal will have jurisdiction in all service matters concerning a civilian (not being a member of All India Service or a person referred to in clause (c) appointed to any defence service or a post connected with defence. In view of the provisions of the Act, as referred to above, Civil Court has no jurisdiction to entertain the suit as allotment of Government accommodation would be a matter relating to service of a civilian though working in the military.

(4) For the reasons recorded above, this revision petition is allowed and the order of the trial Court dated September 27, 1989 is set aside. The plaint is ordered to be returned to the plaintiff for being filed in the Court of competent jurisdiction. There will be no order as to costs.

S.C.K.

Before : J. V. Gupta, J.

SHREEYANS PAPER MILLS LTD.,—*Petitioner.*

versus

THE STATE OF PUNJAB THROUGH THE SECRETARY TO GOVERNMENT, PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 788 of 1986

May 22, 1989

Punjab Municipal Act, Ss. 66, 68, 69 and 85—Limitation for filing appeal—Thirty days—Commencement of Limitation—Appeal filed within one month after publication of notice—Such appeal held within limitation.

Held. that the appeal is to prefer within one month after the publication of the notice prescribed by section 66 or section 68 or after the date of any final order under section 69 as the case may be. It is the common case of the parties that the present assessment order was passed in pursuance of the notice issued under section 65/67 of the Act. The said assessment order will be deemed to have been passed under Section 66 read with section 68 and that being so, the appeal could be preferred within one month after the publication of the notice prescribed thereunder. There is nothing to suggest that any such publication was made. The only action taken after