

Before M.M. Kumar & T.P.S. Mann, JJ.

SANJAY SHARMA,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

C.W.P. No. 9510/CAT of 2007

22nd March, 2011

Constitution of India, 1950—Art. 226—Chandigarh Administration Sports Department (Group 'C') Technical Recruitment Rules, 1990—Sports Department, Union Territory, Chandigarh (Group 'C') (Non-Ministerial Posts) Recruitment Rules, 2004—Appointment to post of Supervisor—Tribunal holding applicant entitled to be considered for promotion to post of Supervisor in accordance with 1990 Rules by applying principle of 'old vacancy old rule'—Rules do not contemplate appointment by promotion—Appointment is to be made by transfer or by deputation—Appointment by transfer from various officials of different department could not be regarded equivalent to promotion—Principle of 'old vacancy old rule' not applicable—Selection process already undertaken in accordance with 2004 rules ordered to be given effect to accordingly.

Held, that a perusal of the provisions of 2004 Rules would show that 50% posts are to be filled up by direct recruitment and remaining 50% by transfer from the Departments of Chandigarh Administration failing which by deputation. There is nothing in the rules, which would suggested that the appointment is to be made by promotion. Therefore, we are unable to persuade ourselves to accept the view of the Tribunal that the departmental candidates, who have been eligible would be considered for appointment by promotion. It is necessarily an appointment which is distinct that the appointment by promotion. The view taken by the Tribunal that such a rule is loosely being termed as 'promotion' in contra distinction to the use of the term for 'direct recruitment' is not sustainable. Therefore, we conclude that the rules do not contemplate appointment by promotion.

(Para 10)

Further held, that appointment by transfer from various officials of different department of Chandigarh Administration could not be regarded equivalent to promotion. Therefore, the view of the Tribunal is unsustainable in law. Once we have decided the controversy holding that the principle of 'old vacancy old rule' would not be applicable to the present case then the sealed cover of result of the petitioner has to be opened by the U.T. Administration Chandigarh and given effect to accordingly as the selection process was underaken in accordance with the 2004 Rules.

(Para 11)

Raman B. Garg, Advocate *for the petitioner*.

K.K. Gupta, Advocate *for respondent Nos. 2 to 4*.

Prabodh Mittal, Advocate *for respondent No. 5*.

M.M. KUMAR, J.

(1) The instant petition under Article 226 of the Constitution is directed against order dated 30th May, 2007 (P-7) passed by the Chandigarh Bench of the Central Administrative Tribunal (for brevity, 'the Tribunal') holding that the post of Supervisor in the Sports Department, U.T., Chandigarh, which is a Group 'C' Non-Ministerial Post, has to be filled up under the 50% quota by applying the principles governing appointment by promotion. On the basis of various judgments of Hon'ble the Supreme Court including the judgment rendered in the case of **Y.V. Rangaiah versus J. Sreenivasa Rao (1)**, it has been concluded by the Tribunal that the principle of 'old vacancy old rule' would apply and, therefore, the original applicant-respondent No. 5 Arun Kumar was held entitled to be considered for the available post of Supervisor in accordance with Rules which was applicable. He was otherwise held eligible under the old Rules before amendment. Accordingly, a direction has been issued to the respondent-Chandigarh Administration to consider his case for appointment to the post of Supervisor alongwith other departmental candidates under the Rules known as Chandigarh Administration Sports Department (Group 'C') Technical Recruitment Rules, 1990 (for brevity 'the 1990 Rules') and if found suitable by the DPC then grant him promotion with effect from the date to be decided by the competent authority.

(1) 1983 (3) S.C.C. 24

(2) The facts which have led to the filing of the instant petition may first be noticed. The original applicant-respondent No. 5 Shri Arun Kumar approached the Tribunal by filing O.A. No. 644-CH of 2004 seeking directions that he is entitled to be considered for appointment to the post of Supervisor. His case before the Tribunal was that he has passed Matriculation in second division and 10+2 in 3rd division. He was appointed as a Boatman in the Sports Department of Chandigarh Administration on 8th September, 1990. He also put forward the claim that he obtained distinction in Ist and IInd State Level Championship and also participated in the National Level Championship. He gained experienced of more than 13 years and has a clean service record. His case further was that appointment to the post of Supervisor by way of promotion is only an avenue to advance and that the post is required to be filled up *50% by direct recruitment and 50% by selection from amongst the departmental candidates by transfer*. Thus, there was no quota for appointment by promotion. According to the averments made by him, one post of Supervisor was lying vacant since 2003 before the amendment of the 1990 Rules, which took place on 26th May, 2004. His claim in nutshell was that he was required to be considered for promotion as per the old Rules governing the vacancy when it occurred and not in accordance with the latter rules known as the Sport Department, Union Territory, Chandigarh (Group 'C' Non-Ministerial Posts) Recruitment Rules, 2004 (for brevity, '**the 2004 Rules**'). He has sought application of the 1990 rules. Apart from the U. T. Administration, Chandigarh, the original applicant-respondent No. 5 also impleaded the Union of India as a party respondent although the petitioner Shri Sanjay Sharma was not a party to the proceedings before the Tribunal. The only difference between the 1990 and 2004 Rules for appointment to the post of Supervisor is that the 1990 rules *the qualification of matriculation with second division*, a good sportsman having attained distinction (I, II, III position) in State Level Championships is stipulated in addition to experience of maintenance of grounds and equipments with particular reference to the major recognized games. The desirable qualification is Graduation. On the other hand, *in the 2004 rules, the requirement is passing of 10+2 examination or Senior Secondary examination from a recognized*

Board or Institution in second division, knowledge of organizing sports tournaments or participation in State tournaments and having experience in maintenance of ground/sports fields with particular reference to the major recognized games. Therefore, a person, who is matric with second division has been made eligible under the 1990 rules but under 2004 rules, a person with 10+2 with second division has been made eligible. It is not disputed that original applicant-respondent No. 5 Arun Kumar did not have second division in 10+2 whereas the petitioner has the qualification of 10+2 second division but has did not have the qualification of matric with second division as per the old rules. Therefore, the controversy raised by the original applicant-respondent No. 5 before the Tribunal was that the old rules would govern the appointment on the post of Supervisor and he fulfilled the qualification prescribed under the old rules.

(3) The stand of the U.T. Administration before the Tribunal was that under Rule 4 of the '1990 Rules', the post has to be filled up as per the qualification, age limit and other connected matters prescribed in the schedule and the schedule provided for filling up 50% by direct recruitment and 50% by selection from amongst the departmental candidates by transfer in respect of Supervisor. A specific stand has also been taken by the U.T. Administration that there was no provision in the Rules to fill up the post on promotion. According to the averments made in written statement by the U. T. Administration, there were three vacant posts of Supervisors and two of them fell to the share of the direct quota and one of them was to be filled by transfer from departmental candidates by selection. According to their stand, it was the prerogative of the competent authority to prescribe qualifications according to requirements of the post which have been done by notifying the rules under Article 309 of the Constitution and that the original applicant-respondent No. 5 did not have the requisite qualifications.

(4) The Tribunal after hearing the arguments recorded an agreed statement made by both the parties that the vacancy of Supervisor had arisen earlier to the enforcement of the 2004 Rules, which were notified on 26th May, 2004. The Tribunal noticed the arguments of original applicant-respondent No. 5 that the principle of 'old vacancy old rule' is to be applied on the basis of the judgment rendered in the case of Y.V.

Rangaiah (*supra*) and other cases to which reference has been made in the impugned order. Thereafter, the Tribunal has expressed the opinion by holding as under :—

“We also notice that under the new rules, 50% appointments to the posts of Supervisor are to be made by direct recruitment, whereas the remaining 50% are to be filled up by giving an opportunity to the departmental candidates who are found eligible. This is loosely being termed as ‘promotion’ as contra distinguished from the terms used for ‘direct recruitment’. Such interpretation cannot be said to be illegal. However, considering this position under the law, we are of the opinion that applicant has a better claim for being considered under the provisions of the old rules of 1990.

In view of the above, this O.A. is disposed of with a direction to respondents to consider the case of the applicant for his appointment to the post of Supervisor alongwith other departmental candidates under the 1990 Rules, above-mentioned and, if he is found fit by the DPC, to promote him with effect from the date to be chosen by the competent authority. To this extent of one vacancy, meant for departmental candidates, for the post of Supervisor, the letter/requestion, Annexure A-1 dated 15th June, 2004, is quashed and set aside. Prayer of the applicant for declaring the new rules of 2004 as illegal is, however, rejected as we find no grounds made out for this. His further prayer, in the alternative, to relax the provisions of the rules, is also rejected.”

(5) The writ petitioner, who was not a party before the Tribunal, has questioned the aforesaid view of the Tribunal. A preliminary objection has been raised on behalf of original applicant-respondent No. 5 that the writ petition at the instance of the petitioner would not be maintainable because he was not a party before the Tribunal nor he has availed the remedy of filing review before the Tribunal. Learned counsel for the U.T. Administration also supported the arguments raised by learned counsel for the original applicant-respondent No. 5. However, on behalf of the writ

petitioner it has been submitted that the decision of the Tribunal cannot be overturned by invoking its jurisdiction under Section 19 of the Administrative Tribunal Act, 1985 (for brevity, 'the 1985 Act') which can only be questioned before the High Court under Article 226 of the Constitution. In support of his submission, learned counsel for the petitioner has placed reliance on the Division Bench judgment of Andhra Pradesh High Court rendered in the case of **S. Sai Babu versus Director General of Fire Services, A.P. Tank Bund Road, Hyderabad and four others, (2)** and argued that if a person is aggrieved by the decision given by the Tribunal then the only remedy available to him would be to challenge such an order under Article 226 of the Constitution before the High Court. Learned counsel for the petitioner has further submitted that the jurisdiction of the High Court under Article 226 of the Constitution are akin to the appellate jurisdiction as far as the order of the Tribunal is concerned and he seeks support from the judgment of Hon'ble the Supreme Court rendered in the case of **State of Punjab (now Haryana) and others versus Amar Singh and another (3)**.

(6) After hearing arguments on the preliminary issue, we find that there is no bar for a person aggrieved by the order of the Tribunal to approach this Court directly. The remedy of review firstly is not a regular remedy which the petitioner could have invoked as a matter of right. Moreover, review can be sought only on specified grounds which are restricted under Section 22 (3) (f) of the 1985 Act. As per the aforesaid provisions, the Tribunal has been vested with the same powers as the Civil Court while trying a suit in respect of the matter concerning review of its own decision. Accordingly, the review can be sought on the grounds specified under Order XL VII Rule 1 read with Section 114 of the Code of Civil Procedure, 1908 namely, discovery of new and important matter or evidence which was not within knowledge of the parties or could not be produced at the time when the decree was passed or order was made. The other grounds of review are that there is an error apparent on the fact of record or for any other sufficient reason. The review can be sought only if no appeal has been filed. For the aforesaid view, we place reliance on

(2) 2006 (5) S.L.R. 458

(3) AIR 1974 S.C. 994

paras 10 and 11 of the judgment rendered in the case of **Gopabandhy Biswal versus Krishna Chandra Mohanty and others** (4) which reads as under :—

- “10. In the present case, however, it is urged that the four applicants who filed the two review petitions before the Tribunal were not parties to the main petition. They were also not parties to the special leave petition filed before this Court which was dismissed. However, they are parties aggrieved and hence are entitled to apply for a review of the main judgment of the Tribunal. It is contended by them that the judgment of the Tribunal holding that the two cadres of Deputy Superintendent of Police and Assistant Commandant were a single cadre till 5th November, 1980, has affected the chances of promotion of the applicants and, therefore, the applicants, being persons aggrieved, are entitled to maintain such review petitions which they had not been parties to the earlier judgment as well as the earlier special leave petition. We will assume for the time being that the applicants are persons aggrieved. Even so, the question is whether they can have a judgment which has attained finality by virtue of an order of this Court, set aside in review. There is no doubt that as between the parties to the main judgment, the judgment is final and binding. The respondents, State of Orissa and Union of India, are, therefore, bound to give effect to the judgment of the Tribunal in TA No. 1 of 1989 in the case of Gopabandhu Biswal. If this is so, can a third party by filing a review petition get that same judgment reviewed and obtain an order that Gopabandhu Biswal is not entitled to the benefits of the directions contained in the main judgment since that judgment is now set aside? In our view this is wholly impermissible. It will lead to reopening a matter which has attained finality by virtue of an order of this Court. The applicants, even if they are persons aggrieved, do not have, in the present case, a right of review under any part of Order 47 Rule 1. Even under Order 47 Rule 1(2), the party not appealing from a decree or order can apply for review only on grounds other than the grounds of

appeal which were before the appellate court, and during the pendency of the appeal. In the present case all the grounds which were urged in review were, in fact, urged before the Tribunal at the time when the Tribunal decided the main application and they were also urged by the petitioner in the special leave petition which was filed before this Court. The special leave petition has been dismissed. The same grounds cannot be again urged by way of a review petition by another party who was not a party in the main petition.

11. According to the applicants certain documents though produced before the Tribunal were not noticed by the Tribunal in deciding the main matter. Even so, once a judgment of a Tribunal has attained finality, it cannot be reopened after the special leave petition against that judgment has been dismissed. The only remedy for a person who wants to challenge that judgment is to file a separate application before the Tribunal in his own case and persuade the Tribunal either to refer the question to a larger Bench or, if the Tribunal prefers to follow its earlier decision, to file an appeal from the Tribunal's judgment and have the Tribunal's judgment set aside in appeal. A review is not an available remedy."

(7) Accordingly, we are of the view that the Tribunal may not be clothed with the power to grant the remedy of review to the petitioner. In any case the grounds are limited, which would show that these grounds can be taken up only by a person, who was a party to the earlier proceeding. The reliance of the learned counsel for the petitioner on the Division Bench judgment of Andhra Pradesh High Court in the case of S.Sai Babu (*supra*) is well based and the position of law has been summed up on Paras 23, 24 and 25 by citing the judgment of Hon'ble the Supreme Court in **L. Chandra Kumar versus Union of India (5)**. Paras 23, 24 and 25 of the Division Bench judgment reads as under :—

"23. The areas of law, for which a State Administrative Tribunal acts as a court of first instance, are those specified in Sections 15 and 19 of the Administrative Tribunals Act. While a challenge to an administrative or legislative action, in areas of law for

which the Tribunals are constituted, can only be made by invoking the jurisdiction of the Tribunal in the first instance, is a person, who is not party to the proceedings before the Tribunal, not entitled to challenge the order of the Tribunal, invoking the jurisdiction of this Court under Article 226 of the Constitution of India ? The answer thereto, in our opinion, must necessarily be in the negative. One has to bear in mind the distinction between a decision of the Tribunal and the ratio laid therein. While the decision of the Tribunal is binding inter parties, the ratio laid down would only constitute a binding precedent, when a similar question arises for consideration before a subsequent Bench of the Tribunal. A decision of the Tribunal can be subjected to challenge before the Division Bench of the High Court, under Article 226 of the Constitution, either by a party to the decision or a person, who though not a party, is aggrieved thereby. If, however, an administrative action, as a consequence of the decision of the Tribunal, is to be challenged without the earlier decision of the Tribunal itself being called in question, then the person aggrieved has necessarily to invoke the jurisdiction of the Tribunal in the first instance before approaching this Court under Article 226 of the Constitution of India.

24. The contention, that a person aggrieved by an earlier decision of the Tribunal to which he was not a party must invoke the jurisdiction of the Tribunal in the first instance filing an application under Section 19 of the Administrative Tribunals Act, is based on a conjoint reading of the judgments of the Apex Court in [**L. Chandra Kumar versus Union of India**, AIR 1997 SC 1125] and [**K. Ajit Babu versus Union of India**, AIR 1997 SC 3277]. The submission, in substance, is that since the Apex Court in *L. Chandra Kumar* held that the Tribunals shall continue to act as courts of first instance and as in *K. Ajit Babu* it has been laid down that an application, under Section 19 of the Administrative Tribunals Act, can be filed against an earlier order of the Tribunal, a person who is aggrieved by the order of the Tribunal, but was not a party to the earlier proceedings, must first invoke the jurisdiction of the Tribunal by way of an application under Section 19 of the Administrative Tribunals

Act and only after inviting an order from the Tribunal would he be entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. This submission must be rejected at the threshold, for it is well settled that judgements are not to be read as statutes. A judgment is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation made therein nor what logically follows from the various observations made in it. Neither in *L. Chandra Kumar* nor in *K. Ajit Babu* did the question raised herein arise for consideration.

25. Even otherwise, the judgments of the Apex Court in *L. Chandra Kumar* and *K. Ajit Babu* do not support such a view. While the Apex Court in *L. Chandra Kumar 1*, held that the Tribunal shall act as the Court of first instance where administrative or legislative action is the subject matter of challenge, the judgment does not lay down that even against a judicial order of the Tribunal a person aggrieved thereby, but was not a party to the proceedings, must necessarily file an application under Section 19 of the Administrative Tribunals Act and only thereafter approach the High Court under Article 226 of the Constitution of India.”

(8) In view of the above, we proceed to decide the controversy on merit.

(9) The only issue which arises for our consideration is ‘whether the Rules provide for consideration of the case of the petitioner as well as of the original applicant-respondent No. 5 for the post of Supervisor by way of promotion or a method other than the promotion.’ In both the 1990 and 2004 Rules, the nature of appointment by method other than promotion contemplated is the same. Therefore, we cite the provisions of 2004 rules, which reads thus :—

- “3. Number of posts, classification and scale of pay-The number of posts, their classification and the scale of pay thereof, shall be as specified in columns 2 to 4 of the Schedule.
4. Method of recruitment, age-limit, qualifications etc.-The method of recruitment to the said posts, age-limit, qualifications and

other matters connected therewith shall be as specified in columns 5 to 15 of the Schedule.

Name of post	X	Classification of post	Scale of pay	Whether selection post or non-selection post	X	X	Educational and other qualifications required for direct recruitment	X	Period of Probation if any	Method of Recruitment, whether by direct recruitment or by promotion or by deputation transfer and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/ deputation/ transfer, grades from which promotion/ deputation transfer is to be made	X	X
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Supervisor	X	General Central Civil Services (Group 'C') Non-ministerial	Rs 5,400-160-5,800-200-7,000-220-8,100-275-8,925	Selection by Merit in case of direct recruitment	X	X	(i) Should have passed 10+2 Examination or Senior Secondary Part-II Examination from a recognized Board or Institution in 2nd Division. (ii) Having knowledge of organizing sports tournaments or participation in State Tournaments (iii) Having experience in maintenance of grounds/sports fields with particular reference to the major recognized games	X	Two years	(i) 50% by direct recruitment (ii) 50% by transfer from the departments of Chandigarh Administration, falling which by deputation	By transfer : From amongst the departmental officials of the Chandigarh who fulfill the essential qualification. By Deputation : From amongst those holding analogous posts in the State Governments of Punjab or Haryana or Chandigarh Administration on regular basis in the identical or same		

(10) A perusal of the aforesaid extracted rules would show that 50% posts are to be filled up by direct recruitment and remaining 50% by transfer from the Departments of Chandigarh Administration falling which by deputation. There is nothing in the rules, which would suggest that the appointment is to be made by promotion. Therefore, we are unable to persuade ourselves to accept the view of the Tribunal that the departmental candidates, who have been made eligible would be considered for appointment by promotion. It is necessarily an appointment which is distinct than the appointment by promotion. The view taken by the Tribunal that such a rule

is loosely being termed as 'promotion' in contra distinction to the use of the term for 'direct recruitment', is not sustainable. Therefore, we conclude that the rules do not contemplate appointment by promotion. If that conclusion is correct then the next question would be whether the ratio of the judgment rendered in the case of Y.V. Rangaiah and other cases would apply so as to conclude that the principle of 'old vacancy old rule' is attracted to the facts of the present case. The aforesaid principle was developed to ensure that the right of an employee working in the feeder cadre for a long time, who has acquired eligibility for promotion is not defeated as such his legitimate expectation to advance in his career, by amendment of the rules is not adversely affected making him ineligible for promotion. It is considered to be a right in the nature of vested right and the law has given protection to such a right so as to enable an incumbent of a post to advance in his career. However, no such right would exist when an appointment is to be made by transfer or by deputation as is contemplated by Rules 3 and 4 read with entry 4 of the schedule of the 2004 Rules. When a person is appointed on transfer basis there is no element of legitimate expectation involved. Naturally there would be no right in the nature of a vested right. To say that a rule contemplating appointment by transfer would be another name for an appointment by promotion would not be acceptable. Therefore, the principle laid down in a catena of judgment led by Y.V. Rangaiah's case (*supra*) would have no application to the cases of appointment by transfer or by deputation. In support of the aforesaid view, we place reliance on the observations made by Hon'ble the Supreme Court in the case of **Inder Jeet Khurana versus State of Haryana and others (6)**. In that case promotion to the post of Tehsildar was regulated by statutory rules known as Haryana Revenue (Group 'B') Service Rules 1988. There were three feeder channels, namely 40% of the posts could be filled by promotion and the other 40% by direct recruitment. The rest of 20% posts were to be filled by transfer and the candidates from four different departments were within the zone of consideration. The argument that 20% quota post by transfer be filled by applying the rules governing promotion namely seniority-cum-merit has been rejected and the distinction between the appointment 'by transfer' and 'by promotion' has been pointed out by observing in para 12 as under :—

“12. The post of Tehsildar is in the hierarchy consisting of District Revenue Officers, Tehsildars, Naib Tehsildars etc. in the Revenue Department. On the other hand, Ziledars belong to a

different cadre in the Irrigation Department, where the promotional post is Deputy Collector. The Head Assistants in Directorate of Land Records belong to yet another cadre. Where the **appointments** were from different cadres, they were treated as '**Transfer**' as contrasted from advancement in position from the same cadre (Naib Tehsildar to Tehsildar) which was treated as 'Promotion'. Thus, for the purpose of the Rules, upward movement in the cadre was referred to as 'promotion'; but from a different cadre was called as '**transfer**'. Rule 9(2) prescribed 'seniority-cum-merit' as the method of **recruitment** only for 'promotion' under Rule 9(1)(b)(ii) and Rule 9(1)(a), that is advancement from Naib Tehsildar to Tehsildar and Tehsildar to District Revenue Officer. If the intention was to prescribe seniority-cum-merit as the method of **recruitment** for **transfers** also, it would have been so provided in Rule 9(2). The reference to 'promotion' in Rule 9(2) should be read with reference to the use of the said word 'promotion' in rule 9(1), in contradistinction from '**transfer**'. It, therefore, follows that the mode of **recruitment** for **transfer** is not seniority-cum-merit, as contended by the appellants."

(11) In the present case the nature of appointment contemplated by the rule has already been highlighted namely appointment by selection. In the light of the view expressed in Inderjeet Khurana's case (*supra*) it cannot thus, be concluded that appointment by transfer from various officials of different department of Chandigarh Administration could be regarded equivalent to promotion. Therefore, the view of the Tribunal is unsustainable in law. On 26th June, 2007, an interim order was passed by the learned Single Judge directing that the petitioner was to be interviewed provisionally on 27th June, 2007 for the post of Supervisor as interviews were said to be fixed for the said date subject to the condition of eligibility under the 2004 rules. It was further directed that his result be kept in a sealed covered. In pursuance of the aforesaid order, the sealed cover has been produced before us, which we have perused. Once we have decided the controversy holding that the principle of 'old vacancy old rule' would not be applicable to the facts of the present case then the sealed cover has to be opened by the U.T. Administration, Chandigarh and given effect to

accordingly as the selection process was undertaken in accordance with the 2004 rules. The sealed cover may be resealed and handed over to learned counsel for the U.T. Administration, Chandigarh.

(12) The writ petition is disposed of in the above terms. Let the needful be done within 15 days from the date of receipt of certified copy of this order.

R.N.R.