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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 266/98

New Delhi: this the 9<sup>th</sup> day of November, 1999.

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A).

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Shri Pawan Kumar,  
S/o Late Shri Biru Mal,  
R/o 604, Jai Jagdamba Society,  
Ambica Apartments,  
Sector-14, Rohini,

New Delhi

.... Applicant.

(By Advocate: Shri P. P. Khurana).

Versus

1. Lt. Governor,  
Delhi, Raj Niwas,  
Civil Lines,  
Delhi.

2. Addl. Commissioner of Police,  
Southern Range,  
Police Headquarters,  
I.P. State,  
New Delhi -0002 .

.... Respondents.

(By Advocate: Shri Rajendra Pandita)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns the Disciplinary Authority's order dated 24.12.97 (Annexure-A1) purported to have issued under Article 311(2)(b) of the Constitution without holding a departmental enquiry against him.

2. We have heard applicant's counsel Shri Khurana and respondents' counsel Shri Rajendra Pandita on the preliminary objection taken by respondents in their reply that the OA is not maintainable as applicant has not exhausted the departmental remedies of filing an appeal before approaching the Tribunal through this OA.

3. Shri Khurana has invited attention to the corresponding paragraph of applicant's rejoinder and has contended that since the impugned order dated 24.12.97 dismissing applicant has been passed under Article 311(2)(b) of the Constitution, it does not provide for any appellate procedure. It is argued that no departmental remedy can supersede the constitutional procedure, and hence no appeal lies against the impugned order dated 24.12.97.

4. We are unable to agree with this argument advanced by Shri Khurana. The impugned order dated 24.12.97 is not a Presidential order issued by/in the name of the President as an order issued under Article 311(2)(c) of the Constitution would be, and notwithstanding the fact that it has been issued purportedly in exercise of the powers vested with the Disciplinary Authority under Article 311(2)(b) of the Constitution, we hold that an appeal would be against that order before the competent authority in the absence of any rule, instruction or judicial pronouncement shown to us by Shri Khurana to the contrary. This view is strengthened by a perusal of the Tribunal's order dated 7.9.98 in OA No. 285/98 Ex. Constable Chhote Lal Vs. UOI & Ors. in which that applicant was aggrieved by the disciplinary authority's order dismissing him from service in exercise of the powers under Article 311(2)(b) of the Constitution and the appellate order rejecting his appeal (emphasis supplied). This clearly establishes that an appeal lies against the impugned order dated 24.12.97.


5. Under the circumstance the preliminary objection raised by respondents succeeds. The OA is

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dismissed as being premature. If after exhausting the available departmental remedies any grievance still survives it will be open to applicant to agitate the same through appropriate original proceedings in accordance with law, if so advised. No costs.

  
( KULDEEP SINGH )  
MEMBER (J)

  
( S. R. ADIGE )  
VICE CHAIRMAN (A).

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