CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA/050/00410/2020

Date of Order :05.11.2020

C O R A M

HON'BLE MR. M.C.VERMA, …… ……. JUDICIAL MEMBER
HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER

Arvind Kumar, son of Mathura Prasad, Resident of Village-Noorsarai Main Road, Post Office-Noorsarai, Police Station-Noorsarai, District-Nalanda (Bihar), PIN-803113.

…….

Applicant.

- By Advocate : Shri Om Prakash Singh.

-Versus-

1. The Union of India through the Comptroller and Auditor General of India, 9 Deen Dayal Upadhayay Marg, New Delhi-110024.
2. The Deputy Controller and Auditor General of India, 9 Deen Dayal Upadhayay Marg, New Delhi-110024.
3. The Principal Accountant General (Audit) Office of the Principal Accountant General, Birchand Patel Marg, Patna-800001.
4. The Accountant General (Accounts and Establishment), Bihar, Birchand Patel Marg, Patna-800001.
5. The Senior Audit Officer (Administration), O/o the Principal Accountant General (Audit), Bihar Indian Audit

& Accounts Department, Birchand Patel Marg, Patna-800001.

…… Respondents.

By Advocate :- Shri Bindhyachal Rai.

O R D E R [ORAL]

Per M.C.Verma, Member (Judl.):- Heard. Applicant has preferred OA against the order of the Disciplinary Authority whereby punishment of compulsory retirement has been imposed on him after conclusion of the disciplinary proceedings as well against the order of Appellate Authority which is confirmed the order of Disciplinary Authority.

2. Admittedly, no revision against the order of Appellate Authority has been preferred by the applicant. Attention of learned counsel appearing for applicant was drawn to Section 20 of A.T. Act and it is inquired from him that when provisions for revision under Rule 29 of CCS (CCA) Rules 1965 has been provided and whether OA without exhausting the remedy of revision is not premature and learned counsel vehemently argued that revision is

not mandatory and that the OA without preferring the revision is maintainable. He referred to Sub Section 2 and 3 of Section 20 of A.T. Act.

3. Shri Bindhyachal Rai after having received the advance copy of the OA has appeared for the respondents and he submits that OA is premature which may be disposed as being not maintainable as the applicant has not exhausted the remedy available to him under service rules. He also referred Rule 29.

> ***"20. Application not to be admitted unless other remedies exhausted –***
>
> *(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.*
>
> *(2) For the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievance,-*
>
> *(a) If a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules rejecting any appeal preferred or representation made by such person in connection with the grievance; or*
>
> *(b) Where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such*

person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

4. The word "ordinary" has been interpreted by the Hon'ble Supreme Court in Kailash Chandra's case [supra], relied upon by the Respondent No.5 and it was hold that it means "in the large majority of cases but not invariably. The Hon'ble Jharkhand High Court did consider the import of Kailash Chandra's case about word "ordinarily" , in case of Alok Goyal vs. Union of India & Ors.; Para 11 of said decision reads :- "11. As explained by the Supreme Court in Kailash Chandra vs. Union of India, the word "ordinarily" means in the large majority of cases but not invariably."

5. In the case of Govt. of Andhra Pradesh & Ors. Vs. P. Chandra Mauli and Anr. (cited supra), relied upon by respondent No. 5 Hon'ble Supreme Court hold that in a case where alternative

remedy could not be avoided, the High Court have not to entertain the writ petition. Para 9 & 15 of the decision are relevant and are being reproduced herein below:-

> "9. The High Court ought to have noticed that this was not a case where alternative remedy could be avoided. It was necessary, as rightly observed by the Tribunal in the first occasion, for Respondent 1 to avail alternative remedy. Further the High Court has considered the plea of mala fides in the writ petition. The Tribunal had not considered the case on merit. It had only directed Respondent No.1 to avail statutory remedy. That being so it was certainly not open to the High Court to go into a detailed examination of the alleged mala fide. "

6. It is not a case where the High Court should have entertained the writ petition when the Tribunal had disposed of the OA only on the ground of availability of alternative remedy. The impugned order is set aside. We make it clear that we have not expressed any opinion on the merits of the case.

7. In D.B.Gohil's case (cited supra), relied upon by respondent No. 5, Petitioner before Hon'ble Supreme court, without exhausting the remedy of appeal against the order of disciplinary authority did institute the OA on the file of the Tribunal and the Tribunal issued the notice observing: "It

transpires from the record that the order of the disciplinary authority is being challenged by the applicant without resorting to the remedy of appeal. However, Mr. Kureshi points out that this is the case whereof the disciplinary authority is rather forced to impose the penalty which also suggests that the appellate authority also will be forced to reject the appeal, even if it is preferred. CVC has taken a particular view in spite of findings of the enquiry officer as well as the disciplinary authority being inclined to agree with the findings of the enquiry officer. It has been overruled by CVC. Considering the grievance made and considering the nature of OA, we direct the issuance of notice to the respondent, returnable on 13.02.2004". Writ petition preferred by respondent was allowed by Hon'ble High Court holding that applicant of OA has not exhausted the remedy of appeal. Hon'ble Supreme Court while upholding the order of the Tribunal and setting aside the Order of High Court and interpreting scope of Section 20 (1) of CAT Act laid down that without being satisfied that applicant has availed of all the remedies available under the relevant Service Rules ordinarily an

OA shall not be entertained by the Tribunal but in exceptional case it can be entertained. Para 5 & 6 of the decision are relevant and hence are reproduced herein below:- " 5 Section 20(1) of the Administrative Tribunals Act, 1985 (`Act' for short) provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the appellant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The use of words "Tribunal shall not ordinarily admit the application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules" in Section 20(1) of the Act makes it evident that in exceptional circumstances for reasons to be recorded the Tribunal can entertain applications filed without exhausting the remedy by way of appeal. The Tribunal referred to Section 20 of the Act and rightly held that the matter involved substantial and important point of law about the binding nature of CVC's advice. The Tribunal was better suited to consider that issue as the appellate authority would also feel bound by the directions of the CVC. Therefore, it was one of the exceptional cases where the appellant

could approach the Tribunal without exhausting a departmental remedy of appeal. The High Court ignored that aspect. We are of the view that the High Court ought not to have allowed the writ petition on this technical ground. The order of the High Court cannot be sustained.

8. From bare perusal of Section 20[1] and judicial pronouncement about its scope, it evidently clear that ordinarily it is not proper for the Tribunal to entertain an OA without satisfying that that applicant has availed of all the remedies available under the relevant Service Rules but in exception circumstances, the Tribunal can entertain applications filed without exhausting of said remedy and the remedies available to him mean remedies available to him under the relevant service rules as to redressal of grievances in issue.

9. In the instant case as noted has preferred OA against the order of Appellate Authority. Rule 29 provides for scope for revision though learned counsel argued that revision is not

mandatory but it is a remedy available in the relevant service rules. Section 29 of CCS (CCA) Rules read as under :-

"29. **[Revision]**

(1) Notwithstanding anything contained in these rules-

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or

(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the appellate authority, within six months of the date of the order proposed to be revised or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 subject to the provisions of rule 19, and except after consultation with the Commission where such consultation is necessary :

Provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications or the Head of Department, as the case may be, unless-

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced until after-

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

Government of India's Instructions

(1) Procedure to be followed while proposing enhancement of the penalty already imposed on a Government servant :-

Instances have been brought to the notice of this Ministry in which when orders of punishment passed by the subordinate authorities were reviewed under Rule 29 (1) of the CCS (CCA) Rules, 1965, and a provisional conclusion reached that the penalty already imposed was not adequate, the authorities concerned set aside/cancelled the order of punishment already passed by the subordinate authorities and simultaneously served show-cause notices for the imposition of

higher penalties. Thereafter, the replies of the Government servants to show-cause notices were considered and the Union Public Service Commission also consulted, wherever necessary, before the imposition of enhanced penalties.

It is clarified that in case of the kind mentioned in the preceding paragraph, it is not appropriate to set aside/cancel the penalty already imposed on the Government servants, more so when the revising authority is the President, as strictly speaking cancellation of the penalty, if done in the name of the President amounts to modification by the President of the earlier order of the subordinate authority, for which prior consultation with the Union Public Service Commission is necessary under Regulation 5 (1) (c) of the UPSC (Exemption from Consultation) Regulations, 1958. The correct procedure in such cases will, therefore, be to take action in accordance with the first proviso to Rule 29 (1) of the CCS (CCA) Rules, 1965, without cancelling/setting aside the order of the subordinate authority. It is only at the final stage when orders are issued modifying the original penalty, that it would be necessary to set aside the original order of penalty."

10. The OA thus can be said to be preferred without exhausting the remedy available under the service rules. Therefore, being premature, the OA is dismissed.

Sunil Kumar Sinha] [M.C. Verma]
Member (A) Member (J)

Pkl/


Central Administrative Tribunal
सत्यमेव जयते
Patna Bench


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