

1987.

Shri Chuni Lall Malhotra Petitioner

Shri K.L.Bhatia, Advocate for the Petitioner(s)

Union of India & Others **Respondent s.**

Advocate for the Respondent(s)

**The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.**

**The Hon'ble Mr. Kaushal Kumar, Member.**

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches ? No

(K. Madhava Reddy).  
Chairman  
8.12.1987.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.

REGN. NO.1759/87.

December 8,1987.

Shri Chuni Lall Malhotra ... Applicant.

Vs.

Union of India & others ... Respondents.

CORAM:

Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member.

For the applicant ... Shri K.L.Bhatia, counsel.

(Judgment of the Bench delivered by Hon'ble  
Mr. Justice K.Madhava Reddy, Chairman).

In this application under Section 19 of the Administrative Tribunals Act,1985, the applicant calls in question the order No.120 TRS/11/19/5/87/MI dated 18.11.1987 issued by the D.M.E. (Chg.), New Delhi (Annexure-I) removing him from service on two charges levelled against him. It is admitted that against this order, an appeal lies. In fact the order dated 18.11.1987 communicated to the applicant states that he may prefer an appeal to the Sr. D.M.E., NDLS within 45 days of the receipt of the order. Under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968, against the order of removal from service, an appeal lies. No such appeal has been preferred. Section 19(1) of

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the Administrative Tribunals Act specifically directs that "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". Sub-Section (1) of Section 20 of the Act directs that "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".

While this provision vests discretion in the Tribunal to entertain an application even if all the remedies available under the relevant service Rules have not been availed of, the circumstances of the particular case must justify deviating from the injunction contained therein. Shri K.L.Bhatia, learned counsel for the applicant, however, relies upon our judgment in CHARAN SINGH Vs. UNION OF INDIA & ORS (1) to contend that this application is maintainable although the remedy of appeal is not availed of. By that judgment this Bench did not lay down that in every case the applicant could invoke the jurisdiction without availing the statutory remedy of appeal provided under the Service Rules. In fact it lays down "where the service Rules do not empower the Authorities to stay the order howsoever just the case may be and howsoever erroneous

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(1) ATR 1986(2) CAT 643.



the order under appeal ~~xxxxx~~ or review may be illegal, that may, in the circumstances of the particular case, constitute a valid ground for entertaining an application under Section 19 without insisting upon the applicant to avail of all the remedies of appeal or review provided under the Service Rules". It is further held therein that "whether a petition under Section 19 should be entertained without insisting upon the applicant to exhaust all the remedies is a matter to be considered on the facts and circumstances of each case and no hard and fast rule can be laid down in this regard".

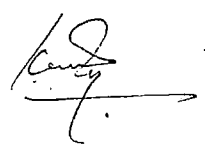
In the circumstances of that case, which was a case of reversion and in which the Appellate Authority was not vested with the power to stay the order of reversion, we had thought fit to entertain the application under Section 19 without insisting upon the applicant to <sup>avail</sup> the alternative remedy of appeal. Having gone into the facts of the present case, we find that the impugned order is one of removal from service on grounds of misconduct. Irrespective of whether the Appellate Authority could stay the order of removal or not, in our opinion, it would <sup>be</sup> inadvisable to entertain an application under Section 19 by-passing the injunction contained in sub-Section (1) of Section 20. It is contended that the charges levelled against the applicant have not been properly enquired into and that



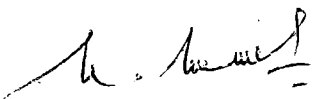
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the evidence placed do not establish the charges and even if the charges are proved, the penalty imposed is too excessive. In disciplinary matters coming up before the Tribunal under Section 19 of the Administrative Tribunals Act, this Tribunal will not sit as a Court of appeal. The Appellate Authority is competent to go into both questions of fact and law which almost always arise in disciplinary proceedings when a penalty is imposed on proof of certain charges. It would, therefore, ordinarily be inappropriate to entertain an application directly under Section 19. It would also not be in the interest of the applicant to move the Tribunal without availing the alternative remedy of appeal under the Service Rules. Once this Tribunal is moved, sub-Section (4) of Section 19 would be a bar to entertaining an appeal under the relevant Service Rules governing the disciplinary proceedings.

Shri Bhatia, learned counsel for the applicant faced with this situation requested that this Tribunal should stay the impugned order and permit him to prefer an appeal. We are afraid, such a course is not at all advisable. This Tribunal cannot be used under Section 19 to pass interlocutory orders pending the filing and disposal of an appeal under the Service Rules. Either we entertain an application under Section 19 and consider it on its own merits in which event even an appeal, if any, already filed, ~~xxx~~ would abate or refuse to entertain the



application unless the applicant avails of the alternative remedy. It would not be appropriate for this Tribunal to stay the operation of the impugned order and direct the respondents to hear the appeal in regard to sub-Section (1) of Section 20. This application is, therefore, dismissed as pre-mature. The applicant may prefer an appeal and if the appeal is not disposed of or if he is aggrieved by any order made therein, he may move the Tribunal. Subject to the above observations, this application is dismissed.

  
(Kaushal Kumar)  
Member  
8.12.1987.

  
(K. Madhava Reddy)  
Chairman  
8.12.1987.