

Present: Shri G.D. Bhandari, Counsel for the applicant.

Shri B.K. Aggarwal, Counsel for the respondents.

As agreed to by Counsel for both the parties, we have heard the question of admission of the application, as counsel for the respondents opposed the continuance of the interim relief as well as the admission of the application.

2. The sole relief that is claimed in this application is for quashing the memorandum of charges dated 8.5.1990 issued against the applicant. The imputation therein is that the applicant while functioning as Station Master, KDZ absented himself from duty without authority and thereby failed to maintain absolute integrity and devotion to duty.

3. It is urged in the application that the alleged unauthorised absence is not based on facts but is a concoction and fabrication, as the applicant had earlier approached this Tribunal with certain other applications and had obtained orders in his favour.

4. Under Section 19 of the Administrative Tribunals Act, 1985, a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal may make an application for the redressal of his grievance. *Prima Facie* the issue of a memorandum of charges calling upon a government servant to submit his reply in response to the same cannot be said to be an order within the ambit of Section 19 of the Act. Assuming that it can be considered as an order, since no civil consequence at all flows from that order, an original application challenging the same on the ground that the factual imputation contained therein is not true cannot be entertained under Section 19 of the Act. We are conscious of the fact that in a case where *ex facie* the memorandum of charges is void, a government servant may be entitled to approach the Tribunal. But on going through the averments in the application, we are not able to find any plea to indicate that the memorandum of charges is *ab initio* void.

5. The counsel for the applicant submitted that in a case where the memorandum of charges is issued in violation of statutory rules or in violation of the principles of natural justice it can be challenged. It was admitted by him that there is no violation of statutory rules so far as the impugned memorandum of charges is concerned but it was stressed that there has been violation of the principles of natural justice. We are not able to accept the submission. In the

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first place, there is no place to this effect in the application. Secondly the violation that was emphasised by the counsel at the time of argument was that the memorandum of charges is intended to harass the applicant. That does not involve any violation of any known principle of natural justice.

6. Pursuant to the memorandum of charges, it is very well open to the applicant to appear before the disciplinary authority and submit his written statement of defence wherein he can urge that the facts, on the basis of ~~which~~ the imputation has been made, are all untrue. If, even thereafter the disciplinary authority decides to proceed with the inquiry, it is open to the applicant to participate in the inquiry and to satisfy the disciplinary authority that the imputation is not true. It may be that the disciplinary authority finds ~~against~~ the applicant and imposes a penalty on the basis of ~~the~~ memorandum of charges, when it may be open to the applicant to approach the appropriate forum challenging the same.

7. We are of the view that the application cannot be entertained, which is accordingly rejected.

dr. k. r. nair
(I.K. Resgotra) 4/2/90
Member (A)

G. Sreedharan Nair
(G. Sreedharan Nair)
Vice Chairman

G. Sreedharan Nair
(9-7-1990)