CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2060/90

New Delhi, This the 25th Day of October 1994

Hon'ble Shri Justice S.C.Mathur,Chairman

Hon'ble Shri P.T.Thiruvengadam,Member(A)

Shri Nathu Ram
S/o Shri Ganga Sahai
ex-Daftri, Union Public Service Commission
Dholpur House, New Delhi.
...Applicant

By Shri G D Bhandari, Advocate

Versus

1. The Secretary
Union Public Service Commission
Dholpur House, New Delhi 110011.

2. The Under Secretary(Admn)
Union Public Service Commission
Dholpur House, New Delhi 110011.

3. Shri B.D.Sharma
Under Secretary
Union Public Service Commission
Dholpur House, New Delhi 110011.

4. The Director of Estates
Nirman Bhawan
New Delhi. ....Respondents

By Mrs Shyamala Pappu, Senior Counsel with
Mrs B . Rana, Advocate

O R D E R(Oral)

Hon'ble Shri Justice S.C.Mathur, Chairman

1. This original application is directed against the order of removal from service dated 25.7.90. At the relevant time, the applicant was holding the post of Daftry. The order of removal was passed after holding disciplinary proceedings against him. The disciplinary proceedings and the order of removal from service have been challenged on a number of grounds. The learned counsel during the course of the argument stressed the various points

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raised in the application. While replying to the arguments of the learned counsel for the applicant, the learned counsel for the respondent submitted that the present application was barred in view of the provision contained in section 20 of the Administrative Tribunals Act 1985 which enjoins that the 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. On 21.10.94 we had dictated an order rejecting the application on account of the failure of the applicant to exhaust the alternative remedy of appeal provided under CCS(CCA) rules. This order had been dictated in the absence of the learned counsel for the applicant. The learned counsel for the applicant appeared afterwards and prayed for time to cite authorities in support of the preposition that the plea of mantainability under section 20 cannot be raised after the argument of the applicant had commenced. We accepted the prayer of the learned counsel for applicant and gave him opportunity to advance arguments. The case was directed to come up to-day. To-day we have heard the learned counsel for the applicant on the plea of non-maintainability of the application raised on behalf of the respondents.

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2. As already indicated the order of removal from service was passed on 25.7.90, and the application in this Tribunal was filed on 4.10.90. In para 6 of the application, the applicant has given details of the remedies exhausted by him. Para 6 reads as under:

> "The applicant declares that he has availed of all the remedies available to him under the relevant service rules etc. Chronologically the details of representations made and the outcome of such reprsentations have been given in para 4 and all are indicated in the List of Documents. This applicant humbly prays that in view of the enormity of the grievance which has resulted to the applicant who is a poor class IV employee, this Hon'ble Tribunal be pleased to exempt the applicant from the application of provision section20(1) of the Administrative Tribunals Act 1985." (emphasised)

After making this statement certain citations have been quoted.

3. From the above extract it would be seen that the applicant's plea was that he had availed of all the remedies available to him under the relevant service rules. The nature of remedy available to him under the service rule was not indicated in this paragraph nor elsewhere in the application.

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4. Reply to the aforesaid paragraph 6 is contained in para 6 of counter affidavit which reads as follows:

> "Para 6 is wrong hence denied. The applicant has not challenged the order in appeal, as provided under the rules, the present application is, therefore, premature and liable to be dismissed by this Hon'ble Tribunal."

5. Applicant has filed rejoinder affidavit, in para 45 of which he has stated that the "rejection of appeal orders are also not speaking and have been passed in a most mechanical manner." Again in para 47 it has been stated "It is incorrect to say that the application was filed before the Appellate Authority passed his orders on the appeal. The applicant waited for a sufficiently long time and in terms of the provisions of the Act, after waiting for six months, he filed the OA. The applicant is not bound under any law or rule to go on waiting indefinitely so as to come under the bar of limitation." From these averments made in the application and the rejoinder affidavit it is clear that the applicant has been making contradictory statements. Originally he tried to be conveyed to the Tribunal that appeal had been preferred and had been disposed of. The same impression he tried to convey through para 45 of the rejoinder in which it was stated

that the Appellate Authority's order was non-speaking. In para 47 the applicant comes with the averments that appeal had been preferred but the Appellate Authority had not passed any order and he waited for 6 months for the appeal to be disposed of and it was only thereafter that the present application was filed. The averment made in para 47 is factually incorrect. Date of removal order and the date of filing of application have already been mentioned hereinabove. From the said dates it would appear that the original application was filed in the Tribunal before the expiry of 6 months from the date removal order was passed. The applicant's claim of waiting for 6 months is false and incorrect.

6. The learned counsel for the applicant submits that section 20 is not mandatory in nature. It confers discretion upon the Tribunal to entertain application even if alternative remedy has not been availed of. The learned counsel for the applicant has made reference to two words used in section 20. The first word is "ordinarily" and the second word is "admit". It is true that in view of the use of the word "ordinarily" the Tribunal may admit an application even though alternative remedy has not been availed of. To this extent the learned counsel for the applicant may be correct in submitting that the Tribunal is not powerless to entertain an application where a remedy

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exists but has not been availed of. The question still survives - what are the cases in which the Tribunal may entertain an application even though the alternative remedy has not been exhausted. For a proper answer to the question, Section 20(1) bears reproduction.

Section 20(1) reads as under:-

"The 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 the redressal of grievances."(emphasised)

The emphasised expressions make the requirement of the provision imperative. What is requirement of the provision? To obtain a certain satisfaction; what is satisfaction to be obtained? That all the remedies available under the relevant service rules have been availed of. This requirement casts a duty upon the applicant to point out in his application all the remedies available to him under the service rules and then to state whether the said remedies have been availed of or not. This finds statutory recognition in Form I of Appendix A to the Central Administrative Tribunal(Procedure)Rules 1987 framed by the Central Government in exercise of the power conferred by Section 35 of the Act. Form I is a modal form of an application under Section 14 of the

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the remedy which admittedly exists, he will have to state facts and reasons for claiming exemption from the normal rule.

9. In the present case the applicant has made contradictory statements mentioned above obviously to hoodwink the Tribunal. His action is most dishonest and despicable. There is no material on record for not applying the ordinary rule laid down in Section 20(1).

10. The learned counsel has cited the Full Bench authority of the Tribunal in B.Parameshwara Rao Vs The Divisional Engineer, Telecommunications, Eluru and Another(Full Bench CAT 1989-91 Volume II by Sahri Brothers page 250). In paragraph 12 of the report it is observed as under:

> "The emphasis on the word'ordinarily' means that if there be an extra-ordinary situation or unusual event or circumstance, the Tribunal may exempt the above procedure being complied with and entertain the application. Such instances are likely to be rare and unusual. That is why the expression'ordinarily' has been used. There can be no denial of the fact that the Tribunal has power to entertain an application even though the period of six months after the filing of the appeal has not expired <u>but such power is to be exercised rarely and in exceptional cases</u>." (emphasised)

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Act. It enumerates the matters which are required to be stated in the application. Under para 6, the applicant is required to state the remedies exhausted by him before approaching the Tribunal. Thereafter the applicant is required to make a declaration in the following form:-

> "The applicant hereby declares that he has availed of all the remedies available to him under the relevant service rules,etc."

7. The above are statutory requirements and they cannot be taken casually. It is in the context of these statutory requirements that the meaning of the term"ordinarily" has to be understood. Ordinarily the application is not to be entertained if alternative remedy exists but has not been availed of. In exceptional circumstances it may be entertained even though the remedy exists but has not been availed of. The Tribunal will have to apply its mind to the facts stated in the application in order to come to a proper conclusion. If no facts are stated or relevant facts are not stated, the Tribunal is deprived of the opportunity of taking a correct decision.

8. To enable the Tribunal to take a proper decision it is necessary for the applicant first to state whether any remedy exists under the service rules or not and then to state where remedy exists, whether the same has been exhausted or not. It flows as a corollary that where the applicant approaches Tribunal without exhausting

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11. The above observation instead of helping the applicant goes against him. The applicant has not placed on record any extra-ordinary situation or any unusual event or situation for not availing the remedy of appeal available under the service rules. The ordinary rule therefore prevails.

12. The learned counsel next cited Collector, Land Acquisition Anant Nag Vs Kasiji AIR 1987 SC 1353. This authority only lays down that in dealing with application for condonation of delay under section (5) of the Limitation Act the State and the Private Litigants have to be treated at par and the State enjoys no privilaged position. This authority is therefore, of no assistance to the applicant.

13. JT 1993(6) SC 331 SP Changal Varaya Naidu(dead) by LR Vs Jagnnath(dead) by LRs and others was relied upon by the learned counsel for the respondents. It was held in this case that the applicant who made false averments disentitled himself to relief and he could be thrown out of the Court at any stage. In view of the deliberately false and misleading statements made by the applicant he is liable to be thrown out even at this stage.

14. The learned counsel submits that the objection of alternative remedy can be raised only at the admission stage. The bar under section 20(1) is statutory and therefore a respondent has a statutory right to plead it. He cannot be deprived of this right by an ex-parte order of

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admission. In the present case the order of admission was passed without notice to the respondent. After the service of the notice, it raised it in its reply which was the first opportunity to do it.

15. The learned counsel for the applicant Shri G D Bhandari submitted that the order of admission is not ex-parte as it was passed in the presence of the learned counsel for respondent, Smt. B Rana. Smt. B Rana denied the insinuation. The order sheet of 9.10.1990 and the circumstances of the case negative the plea of Shri G D Bhandari. The application was filed in the registry on 4.10.1990 without serving notice upon the respondents either personally or through Counsel. The application was put up before a Division Bench for the first time only after 4 days on 9.10.1990 when the admission order was passed. The order sheet records the presence of Shri G D Bhandari only. It does not record the presence of any one for the respondents. The order of 9.10.90 requires notice to be issued 'Dasti'. There was no occasion to direct 'Dasti' service if the respondents were represented before the Bench.

16. We are satisfied that the present is not a case in which the Tribunal should ignore the bar created by section 20(1) of the Act. The application is accordingly liable to be rejected.

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17. In view of the above, the application is rejected with costs to the contesting respondents which are quantified at Rs.500/-.

(P.T.THIRUVENGADAM)
Member(A)
25-10-94

(S.C.MATHUR)
Chairman
25-10-94

LCP