

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.2363/1990

DATE OF DECISION: April 30, 1991

JAGDISH RAMCHANDANI

... APPLICANT

VS.

UNION OF INDIA & ANR.

... RESPONDENTS

Shri J. K. Bali

... Counsel for Applicant

Shri Romesh Gautam

... Counsel for Respondents

CORAM : HON'BLE MR. JUSTICE RAM PAL SINGH, V.C.(J)
HON'BLE MR. P. C. JAIN, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgment ? *yes.*
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the judgment ? *No.*
4. To be circulated to all Benches of the Tribunal. *No.*

(P.C. Jain)
(P. C. Jain)
Member (A)

(Ram Pal Singh)
Vice Chairman (J)

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.A.2363/1990

Date of Decision : *April 30, 1991*

JAGDISH RAMCHANDANI

... APPLICANT

VS.

UNION OF INDIA & ANR.

... RESPONDENTS

Shri J. K. Bali

... Counsel for Applicant

Shri Romesh Gautam

... Counsel for Respondents

CORAM : HON'BLE MR. JUSTICE RAM PAL SINGH, V.C.(J)
HON'BLE MR. P. C. JAIN, MEMBER (A)

J U D G M E N T

(Judgment of the Bench delivered by
Hon'ble Shri P. C. Jain, Member (A))

.....

1990

In this application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'), the applicant, who is working as Senior Parcel Clerk in the Delhi Division of the Northern Railway, has assailed the order dated 29.8.1990 (Annexure A-2) by which the penalty of reduction with immediate effect from the stage of Rs.1320/- in the scale of Rs.1200-2040/- (RS) to the stage of Rs.1260/- for a period of one year with cumulative effect was imposed, and letter dated 24.10.1990 (Annexure A-1) by which he was informed that the Senior Divisional Superintendent, New Delhi had provisionally come to the conclusion that the penalty imposed vide order dated 29.8.1990 being not adequate should be enhanced suitably and it was proposed to impose an enhanced penalty of removal from service against which he was required to submit his representation, if any, within 15 days from the date of receipt of that communication. The applicant has prayed that both the above impugned orders may be quashed.

Clerk

2. The respondents have filed their reply and the applicant has also filed his rejoinder. We have perused the material on record and have also heard the learned counsel for the parties at the admission stage itself. The respondents have raised a preliminary objection to the effect that as the applicant has not exhausted the departmental remedies available to him under the service rules, the OA is not maintainable in the present form. It is also stated that the OA is premature as the decision of the appellate authority is yet to be given, and even after the decision of the appellate authority the applicant has right to approach the revising authority in case he is aggrieved by the decision of the appellate authority. Another preliminary objection is that as the applicant is working in Meerut which comes within the jurisdiction of the Allahabad Bench of the Tribunal and no prayer was made or orders passed under Section 25 of the Act *ibid* for retaining the OA at the Principal Bench, the Principal Bench does not have territorial jurisdiction. In his rejoinder, the applicant has stated that he had submitted an appeal dated 22.9.1990 (Annexure A-8) against the penalty imposed by the disciplinary authority vide Annexure A-2, and vide Annexure A-1 dated 24.10.1990 he has been given a notice to show cause as to why the above penalty should not be enhanced. In view of this he felt that submission of a representation was not likely to secure justice to the applicant and as such he was constrained to approach the Tribunal. It is also stated that he submitted his representation with reference to the letter dated 24.10.1990 vide Annexure A-9. This representation is dated 20.11.1990. As regards the objection of territorial jurisdiction, he has stated that

Ce.

(X)

he is working under the administrative control of the officers located at Delhi and he is aggrieved by the orders issued by officers at Delhi, and as such the Principal Bench has jurisdiction in the matter.

3. Section 20 (1) of the Act stipulates 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." As per Sub-Section (2) of Section 20, "a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, — (a) if a final order has been made by Government or other authority or office 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." It cannot be disputed that the remedy of preferring an appeal against the punishment order passed by the disciplinary authority and of filing a revision against the order passed in appeal, are the remedies provided under the Railway Servants (Discipline & Appeal) Rules, 1968. As admittedly no order on the appeal preferred by the applicant has yet been passed nor a period of six months had passed from the date of preferring the appeal till the OA was filed on 14.11.1990, it cannot be held that the applicant has availed of all the remedies available to him under the relevant service rules.

Cen

9

4. The question of interpretation of Section 20(1) of the Act came before a Full Bench of the Tribunal in OA No. 27/1990 decided on 12.4.1990. The Full Bench held as below :

"In view of the clear pronouncement by their Lordships in the case of S. S. Rathore (Supra)*, we are of the opinion that the view taken by the Chandigarh Bench that an application under Section 19 of the Act can be filed even without exhausting the remedy of appeal/representation under service rules is not correct. The view taken by the Chandigarh Bench in the case of Shital Singh (supra)** is, we say so with great respect, incorrect and must be over-ruled. We order accordingly."

The Full Bench also held :

"that the use of the word 'ordinarily' connotes a discretionary power in the Tribunal but as indicated earlier, that power has to be exercised in rare and exceptional cases and not usually and casually."

There is nothing unusual or extraordinary in the case before us to warrant use of the above discretionary powers in the facts and circumstances of the case before us.

5. Learned counsel for the applicant cited 1978 (2) SLR page 17 - Calcutta High Court, and 1981 (2) SLR 185 - Calcutta High Court in support of his contention that the Court can interfere even during the pendency of the disciplinary proceedings. We are bound by the judgment of the Full Bench of the Tribunal as above.

6. In view of the foregoing discussion, and without going into other rival contentions of the parties, we are of the view that the O.A. is premature and dismiss

*S. S. Rathore Vs. State of Madhya Pradesh : AIR 1990 SC 10.

**Shital Singh Vs. Union of India & Ors. : 1989 (1) ATLT 150.

Cl.

the same accordingly. Needless to say that if the applicant is aggrieved after he has exhausted all the remedies available under the relevant service rules, he would be free to approach the Tribunal in accordance with law, if so advised. We leave the parties to bear their own costs.

Ceci
30/4/1991
(P. C. Jain)
Member (A)

Ram Pal Singh
30.4.91
(Ram Pal Singh)
Vice Chairman (J)