

10

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1258/1991

DATE OF DECISION : 26.8.1991

DR. M. R. PRABHAKAR

... APPLICANT

-VERSUS-

THE ADMINISTRATION OF U.T.

OF DAMAN & DIU & OTHERS

... RESPONDENTS

SHRI S. S. TIWARI, COUNSEL FOR APPLICANT

SHRI I. J. NAIK, COUNSEL FOR RESPONDENT NO.2

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 _

Hon'ble Shri P. C. Jain, Member (A) :

In this application under section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to ~~be~~^{as} as 'the Act') the applicant who is a Medical Officer, Primary Health Centre, P. O. Moti Daman, has prayed for quashing two orders dated 22.4.1991 :

- (1) by which his absence from headquarters from 9.9.1990 to 16.9.1990 was decided as unauthorised and also treated as dies-non (Annexure-IX), and
- (2) by which he was administered a warning on the allegation of misleading the Administration by wrong facts (Annexure-X).

2. On notice on admission and interim relief to the respondents, the respondent No.2, viz., Secretary, Health, Administration of Daman and Diu, Moti Daman, has filed

Cen.

11

a reply opposing the application and also taking the objection that the O.A. is premature inasmuch as the applicant has filed the O.A. without exhausting the departmental remedy. Learned counsel for respondent No.2 has also filed a personal affidavit to the effect that the statement of the learned counsel for the applicant that no appeal is provided against the orders of the Administrator of Union Territory of Daman and Diu, is factually incorrect and that an appeal is certainly provided against the orders of the Administrators of Union Territories and that the appeal lies before the President of India.

3. We have perused the material on record and have also heard the learned counsel for the parties on admission and interim relief. It may be stated here that on 4.6.1991 a Bench of this Tribunal had given the following interim directions :

"The DPC, if not already held, shall not consider the order of 22.4.1991 (Annexure A-IX and A-X) to the prejudice of the applicant for a period of 14 days."

On 18.6.1991 when the case came up before the Vacation Bench, the learned counsel for the applicant stated that he did not wish to press the interim reliefs prayed for in sub-paras (a), (c) and (d) of para 9 of the O.A. and as such the same were rejected. As regards prayers (a) and (b) of para 9, the learned counsel for the respondents stated that the impugned orders dated 22.4.1991 will not be considered by the DPC for the year ending 31st March, 1991, in view of the fact that the said remarks pertain to April, 1991.

Clean

4. We may first take up the objection that the O.A. is premature in accordance with the provisions of section 20 of the Act. In para 6 of the O.A. the applicant has stated "that no useful purpose would be served by making a representation to the Administration since Administration has unilaterally decided to harm the service career of the applicant, to make a representation would be futile effort." In the oral submissions learned counsel for the applicant contended that a warning entered in the confidential note amounts to "censure" and as such a penalty under C.C.S. (C.C.A.) Rules, 1965 and that as the impugned orders have been passed by the respondent No.2 "vide order in the name of the Administrator of Daman and Diu" no appeal lies against these orders.

5. We have carefully considered the contentions of the learned counsel for the applicant on the question of exhaustion of departmental remedy and we are of the considered view that these are not tenable. Section 20 of the Act lays down 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. Whether the impugned orders amount to punishments in terms of Rule 11 of the C.C.S. (C.C.A.) Rules, it may be stated that a warning, written or oral, and whether entered or not in the confidential report of the Government servant, is not one of the punishments prescribed in Rule 11 of the Rules *ibid*. Further, it was clarified in Government of India, Ministry of Home Affairs O. M. No. 39/21/56-Ests(A) dated 13.12.1956 that a written warning, admonition or reprimand is different from 'censure' which is a punishment

See

prescribed under Rule 11 of the Rules *ibid*. It was further clarified that the mere fact that it is mentioned in the character roll does not convert the warning, etc., into 'censure'. However, in Government of India, Ministry of Home Affairs, D.P. & A.R. O.M. No.22011/2/78-Est.(A) dated 16.2.1979 it was clarified that where a copy of the warning is also kept in the confidential report dossier, it will be taken to constitute an adverse entry and the officers so warned will have the right to represent against the same in accordance with the existing instructions relating to communication of adverse remarks and consideration of representations against them. (emphasis supplied). It is thus clear that even if the warning administered to him is not taken to be a punishment, the applicant had a right to represent and as such in terms of the provisions of section 20 of the Act *ibid*, the applicant was duty bound to exhaust this remedy before approaching the Tribunal.

6. We may also discuss the position of the case in the event of the warning being considered as 'censure' and as such, a punishment, and we may see whether the contention of the learned counsel for the applicant that no appeal lies against such an order, is legally valid or not. If the warning is taken to be a punishment amounting to 'censure' obviously it will be covered by the provisions of the CCS (CCA) Rules, 1965. Rule 22 of the Rules *ibid* lays down the cases in which no appeal shall lie. Three types of cases are mentioned here. The second and third types of cases are not relevant for our purpose. The first case is where an order has been made by the President. In the case before us, the impugned orders have not been passed by the President and as such, it cannot be stated that no appeal

Clem

14

- 5 -

lies against these orders. Rule 23 of the Rules ibid provides that a Government servant may prefer an appeal against an order imposing any penalty specified in Rule 11. Thus whether the impugned orders amount to punishment or not, the applicant had a departmental remedy open to him -- in case it amounts to punishment to prefer an appeal, which in this case, would lie to the President of India, or he had a right to represent in terms of the O.M. dated 16.2.1979 already referred to above.

7. From the aforesaid discussion, it is clear that the applicant has deliberately chosen not to avail of the departmental remedy as prescribed in section 20 of the Act. Accordingly, the O.A. is premature and dismissed as such.

We leave the parties to bear their own costs.

U. C. Jain 24/8/1991
(P. C. Jain)
Member (A)

Ram Pal Singh 20.8.91
(Ram Pal Singh)
Vice Chairman (J)