

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn. No. OA 1061 of 1991

Date of decision: 16.5.91

B.B. Bhargava

Applicant

Vs.

Union of India & Ors.

Respondents

Present

Shri O.N. Moolri, counsel for the applicant.

CORAM

Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman
(J).

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

(Judgment of the Bench delivered by Hon'ble
Shri Justice Ram Pal Singh, Vice-Chairman (J).)

By this O.A., filed under Section 19 of the
Administrative Tribunals Act, 1985 (hereinafter referred as
'Act'), the applicant has prayed for

(i) an order that the respondents may allow the
applicant to continue in service uninterruptedly;
and

(ii) to order the refund and payment of Rs. 1944/-
illegally recovered from the salary of the appli-
cant.

2. The applicant was Assistant Station Master posted
in Sawai Madhopur station of Western Railways. His services
were terminated on 10.4.1991 after a departmental enquiry.
In his voluminous application, the applicant contends that
the penalty order has not been served upon him so far, and
there is no time to utilise the avenues of departmental remedy
and as it is a very urgent matter because he is likely to
suffer irreparable damage, the matter may be taken up without
any recourse to the departmental remedy. The applicant has

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also filed voluminous documents.

3. By order dated 6.5.1991, this O.A. was directed to be retained at the Principal Bench for adjudication under Section 25 of the Act. Admittedly, the applicant is a Railway employee and is governed by the Railway Servants (Discipline & Appeal) Rules of 1968 (hereinafter referred as 'Rules'). Part 3, Rule 6, of the Rules describe major penalties which can be imposed upon the railway employee after the departmental enquiry. Dismissal from service is one of the major penalties mentioned. Part 5, dealing with the provision of appeals in Rule 18, provides that the appeal shall lie where the major penalty has been imposed. Section 20 of the Act provides 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 rules as to redressal of grievances. As the remedy available to the applicant under the Rules was to file an appeal against the order of dismissal, the applicant without availing that remedy has directly filed this O.A. under Section 19 of the Act. The Act directs that the Tribunal shall not ordinarily admit an application. From the facts contained in the O.A., it does not disclose that any extraordinary situation exists that this O.A. should be admitted for adjudication even if the departmental remedy of appeal has not been availed of. In *B. Parmeshwara Rao Vs. D.E. Telecommunications, Dluru and Anr.* ((1990) 13 Administrative Tribunals Cases 774), the Full Bench of this Tribunal has laid down the principles and for convenience the concerned portion of the judgment is being reproduced:

“ Section 19 provides for making an application by a person aggrieved by order. But this provision is subject to other provisions of the Act. Section 20(1) postulates that the Tribunal shall not ordinarily entertain an application unless

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the applicant availed of all the remedies available under the service rules. Section 20(2) provides that all the remedies under the service rules for redressal of grievances shall be deemed to have been availed of, firstly, where the appeal/representation is decided and the person concerned is still aggrieved. And, secondly, where the appeal or representation has not been decided for a period of six months from the date of filing of the appeal etc. The Tribunal will ordinarily entertain an application where any of these two situation occurs. Section 20(2) enables an aggrieved party to approach the Tribunal immediately on the expiry of six months from the date of filing of the appeal/representation, even though the same has not been disposed of. Where the statute itself provides for the starting point for filing of the application under Section 19, normally, no such application can be filed before that date. (Paras 10 to 12)

The emphasis on the word "ordinarily" in Section 20(1) means that if there be an extraordinary situation or unusual event or circumstance, the Tribunal may exempt the above procedure being complied with, and entertain an application. Such instances are likely to be rare and unusual. (paras 13 to 16)

No application under Section 19 should ordinarily be admitted by the Tribunal unless the applicant has exhausted the remedy as indicated above. In other words, normally, and usually, such applications will be rejected as premature. However, where the Tribunal exercises its discretion treating it to be an exceptional or extra-

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ordinary case as contrasted to the word "ordinarily" it may be entertained and admitted ^{subject} to the other provisions of the Act."

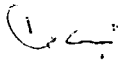
4. The word "ordinarily" has been considered by this Full Bench judgment and, according to it, it means that if there be an extraordinary situation or unusual event or circumstance, then the Tribunal may exempt the applicant from the rigors of the above laid down procedure in Section 20(1) of the Act. As stated earlier, no extraordinary situation or unusual event or circumstance has been indicated in the O.A. The subject again came for consideration by the apex court in the case of **S.S. Rathor Vs. State of Madhya Pradesh** (1989 (2) SCALE p. 510). Their Lordships of the Supreme Court observed:

"The cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date then cause of action shall be taken to have first arisen.

The position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made."

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5. Law, thus, appears to be settled in this regard that unless the departmental remedy of appeal is availed of, the OA will not lie before the Tribunal. Consequently, this O.A. cannot be admitted and no interim or final relief can be given to the applicant. Thus, this Tribunal shall not admit the O.A. because of the provisions contained in Section 20 of the Act. This O.A. is, therefore, dismissed without notice as premature.


(P.C. JAIN) 18/5/1992

MEMBER (A)


(RAM PAL SINGH) 16.5.92

VICE-CHAIRMAN (J)