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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1085/1991

DATE OF DECISION: 23.05.1991

SURAJ BHAN

... APPLICANT

VS.

UNION OF INDIA & ORS ,

... RESPONDENTS

SHRI V. P. SHARMA

... COUNSEL FOR APPLICANT

SHRI B. K. AGGARWAL

... 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

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

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By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, a Fitter, C & W Superintendent's Office, Northern Railway, Rewari (Haryana), seeks the following relief :

"That the Hon'ble Tribunal may be pleased to pass an order, directing the respondents to stay the operation of the order dt. 29.12.82 by which the applicant has been ordered to be terminated from service till final disposal of the appeal and review petition filed by the applicant. Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

The applicant has also prayed for the following ad-interim relief :

"That the Hon'ble Tribunal may be pleased to pass an order, restraining the respondents to relieve the applicant from the duty on the basis of impugned order dt. 29.10.82, as the case of the applicant is on strong iron footing as the impugned order of removal dt.29.12.82 is void on the basis of Supreme Court judgment of Ranjan Khan and Tribunal judgement of P. K. Sharma if at this stage the applicant is not granted the adinterim relief then the applicant shall suffer irreparable loss."

(Ver)

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2. On issue of a notice to the respondents on admission and interim relief, Shri B. K. Aggarwal, Advocate, appeared for the respondents. We have heard the learned counsel for both the parties on admission and interim relief.

3. The facts, as very briefly stated, which are relevant for the issue before us are as below :

While working as a Fitter, C & W Depot, Rewari, the applicant was issued a memorandum of charge-sheet dated 30.1.1982. He is stated to have been dismissed from service vide order dated 10.11.1982 issued on 18.11.1982. The applicant had filed Civil Suit No. 691/82 in the Court of Sub-Judge, Rewari in which he had sought a declaration that the charge-sheet and the inquiry conducted against him were null and void and also to restrain the respondents from terminating his service before attaining 58 years of age. He filed an amended plaint on 30.4.1985 seeking the following reliefs :

- (i) to declare the charge-sheet, the inquiry and the orders dated 29.10.82 and 10.11.82 of the fourth respondent as null and void; and
- (ii) to direct the respondents from terminating his service before attaining the age of 58 years.

The aforesaid Civil Suit was received by the Tribunal on transfer under Section 29 of the Act *ibid* and was given registration number as TA-67/87. The same was disposed of vide judgment dated 8.4.1991. The operative part of the judgment is reproduced below :

"9 Having considered all aspects, we dispose of this application with the following directions :

(a) In so far as this application is concerned, we dismiss it as such an application does not lie until the statutory remedy of appeal is exhausted. The interim injunction issued on 30.11.82 by the Lower Court is vacated.

(b) The fourth respondent is directed to serve on the applicant a copy of the final order passed by him in the disciplinary proceedings by Regd. post acknowledgement due as early as possible and at any rate, within one month from the date of service of this order.

Ce.

(5)

(c) Our order, however, will not stand in the way of the applicant from filing an appeal against the order of the disciplinary authority, alongwith an application for interim stay of that order, before the competent appellate authority, within one month from the date of receipt of the disciplinary authority's order as directed in (b) above.

(d) In case such an appeal is filed, the appellate authority shall not dismiss it on the ground of its being barred by limitation, but dispose it of on merits in accordance with law as expeditiously as possible and in any case within a period of six months from the date of filing of such an appeal."

4. In pursuance of the above order the applicant states that he made a representation dated 15.4.1991 to the D.R.M., Northern Railway, Bikaner Division, Bikaner praying that the appellate authority may be pleased to pass an order of staying the operation of impugned order of removal dated 29.10.1982 till the final order of all the authorities including the revisional authority. Any other relief as the learned appellate authority deem fit and proper may also be granted to the applicant. The applicant has stated that he had gone to DRM's Office, Bikaner for handing over the same but it was not taken from him. Hence he had sent it by way of registered post. The date of sending the same by post has not been stated and the postal stamp on the photo copy of the same (Annexure A-14), though not very legible, yet shows that it has been sent on 24.4.1991. This OA has been filed on 30.4.1991.

5. Learned counsel for the applicant submitted at the Bar that he has not yet filed the appeal against the order of dismissal as a copy of the same has not yet been received by the applicant in pursuance of the directions of the Tribunal as in para 9(b) of the judgment dated 8.4.1991. It was also urged that if the operation of the dismissal order is not stayed, it would cause the applicant irreparable loss as the respondents might relieve the applicant from his duties. Learned counsel for the respondents submitted that the OA is pre-mature and as such cannot be admitted nor any interim relief can be granted.

Cer.

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6. It may be stated at the outset that, as also stated by the learned counsel for the applicant at the Bar and as is also evident from the OA itself, this application has been filed only for the grant of interim relief. The main relief prayed for in the OA as well as the interim relief prayed for are virtually the same; the order of punishment is not a subject matter of this OA. Thus the OA in effect amounts to a prayer for review of the judgment dated 8.4.1991 in respect of the direction in para 9(c) of the aforesaid judgment. The Bench obviously did not consider it proper or necessary to stay the operation of the punishment order pending the disposal of the appeal which was allowed to be filed by the applicant even at this late stage; the Bench permitted the applicant to also file an application for interim stay of the order of punishment before the competent appellate authority. The same has been sent by post only on 24.4.1991, and it cannot be stated that the same had ^{even} been received by the appellate authority by the time this OA was filed.

7. Learned counsel for the applicant cited the judgment of the Tribunal in the case of Shri Charan Singh Vs. Union of India & Ors. (ATR 1982 (2) CAT 643) in which it was held that "where the service rules do not empower the authorities to stay the order howsoever just the case may be and howsoever erroneous the order under appeal or review may be illegal, that may, in the circumstances of the particular case, constitute a valid ground for entertaining an application under Section 19 without insisting upon the applicant to avail of all the remedies or appeal or review provided under the service rules." It was also held that "whether a petition under section 19 should be entertained without insisting upon the applicant to exhaust all the remedies is a matter to be considered on the facts and circumstances of each case and no hard and fast rule can be made in this regard."

Ce.

In that case the petitioner was directed to present himself in the office of Senior D.C.S., Northern Railway at Jhansi and receive the written order of reversion on 7.7.1986. It was further directed that if the applicant files any appeal against the order within two weeks, the appellate authority shall entertain and dispose of the same on merits. It was also directed that if any adverse order is made by the appellate authority, the applicant may file a review application within a month of the service of the appellate order. The Tribunal further directed that there shall be interim stay pending disposal of the appeal and the review, if any, filed. In the case before us this aspect of the matter has already been dealt with by a Bench of this Tribunal in its judgment dated 8.4.1991, and as such, this is not an issue on which it is open to us to take a fresh view. Moreover, the entire question of availment of departmental remedies before approaching the Tribunal, after the judgment in Shri Charan Singh's case (supra) was pronounced on 1.7.1986, had come up for consideration before a Full Bench of the Tribunal in OA-27/90 - Shri G. Parmeswara Rao Vs. Regional Engineer, Telecommunication, Eluru & Anr. An application for review of the judgment/order could be filed by the applicant under Rule 17 of the C.A.T. (Procedure) Rules, 1987, or the applicant could file a Civil Misc. Appeal with SLP before the Hon'ble Supreme Court. As we are of the considered view that the prayer made in this OA cannot be granted except through a process of review or by an order in appeal, as discussed above, we hold that the OA is not maintainable and is dismissed as such leaving the parties to bear their own costs.

Ce 23/5/85
(P. C. JAIN)
MEMBER (A)

23/5/85
(RAM PAL SINGH)
VICE CHAIRMAN (J)