

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 22 of 1994

Allahabad this the 01st day of May, 1997

Hon'ble Dr. R.K. Saxena, Judicial Member  
Hon'ble Mr. D.S. Baweja, Admn. Member

Baij Nath a-ged about 39 years S/o Late Ram Khelawan resident of Padari Bazaar, Post Office Padari Bazaar District Gorakhpur, employed in the office of Garrison Engineers(Air Force), Gorakhpur.

APPLICANT

By Advocate Sri D.K. Agrawal

Versus

1. Union of India through Defence Secretary, Govt. of India, Ministry of Defence, New Delhi.
2. The Engineer-in-Chief, Army Headquarters, D.H.Q., P.O., New Delhi.
3. Chief Engineer, HQ Central Command, Lucknow.
4. Chief Engineer, HQ Bamrauli, Allahabad.
5. Commander, Works Engineers, Allahabad.

RESPONDENTS

By Advocate Sri Prashant Mathur.

O R D E R ( Oral )

By Hon'ble Dr. R.K. Saxena, Member (J)

This is the petition moved under Section 19 of the Administrative Tribunals Act, 1985 by the applicant - Baij Nath challenging the impugned order of punishment dated 11.2.1993 whereby two increments of the applicant were withheld with cumulative effect.

2. The facts of the case are that the applicant was serving as Charge Mechanic in the office of the

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Garrison Engineer (in AireForce), Gorakhpur. He was served with a charge-sheet in November, 1990 by the Garrison Engineer on the ground that the applicant had claimed First Class Railway fare for outward journey quoting a particular ticket which was not issued from Gorakhpur Railway Station and thus, the applicant was stated to have tried <sup>to get</sup> the benefit of fare of 1st class to which he was not entitled. The case of the applicant is that the documents on which reliance was placed by the respondents, the <sup>copy</sup> copies were not furnished despite the repeated request. It is also contended that the competent authority to punish the applicant was Engineer - in - Chief whereas the impugned order was passed by the Commander, Works Engineer and thus, he claims to have been punished by an incompetent authority. The ground to assail the impugned order is also that the defence assistance was not provided to him and, therefore, the applicant was deprived in defending himself properly. It is also claimed that the impugned order was passed <sup>application of</sup> without an approach of mind and, therefore, it was liable to be set aside.

3. It appears that the order of punishment was challenged by the applicant in appeal by filing the same on 20/5/93 but the appellate authority did not decide the same and, therefore, the applicant was compelled to approach the Tribunal through this O.A. on 04.1.1994.

4. The respondents have contested the case on several grounds. It is pointed out that before the

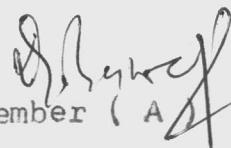
appeal could be disposed of, the O.A. was preferred and thus, it was not maintainable. It is also averred that the order of punishment was passed by the competent authority and there was no illegality in the order under challenge. It is, however, urged that the O.A. be dismissed.

5. The applicant filed rejoinder, reiterating the facts which were mentioned in the O.A.

6. We have heard Sri D.K. Agrawal and Sri Prashant Mathur, and have also perused the record.

7. The learned counsel for the applicant has raised several points starting from the maintainability of the charge-sheet to the competence of the punishing authority and pointing out the defects in the procedure. It is also contended that the appeal was preferred against the order of punishment but because it was not decided, the applicant approached this Tribunal. The main question, therefore, arises whether the appeal which is still pending disposal be directed to be disposed of. It is provided under the Administrative Tribunals Act, 1985 that a persons who feels aggrieved of an order ~~shall~~ <sup>or</sup> first exhaust all the remedies available. The rational behind this provision is that the remedy may be made available at the earliest and at the door step. It is for this reason that Section 20 of the Act is incorporated ~~in~~ creating such a bar. The other provision is that every proceeding pending before filing an application under Section 19 of the Act, shall abate.

The scope is so wide <sup>as</sup> to include appeal or representation and it was clearly mentioned that they shall not be ~~entitled~~ thereafter. In view of this legal position, it is clear that the appeal which was filed by the applicant, abated after the O.A. was preferred here and was admitted. There is no denying <sup>a</sup> fact that the scope of appeal is wide than the scope of judicial review before the Tribunal. The points which have been raised by the learned counsel for the applicant, can well be discussed and answered by the appellate authority. Keeping this fact in view, we find that the appeal which stands abated, should be directed to be taken up by the appellate authority and be disposed of. The applicant is also directed that if the said appeal is not traceable, he may submit another copy of the appeal before the appellate authority which shall not raise the question of limitation. Besides, the appellate authority is also directed to consider all the points and disposed of the appeal within a period of 3 months from the date of receipt of copy of this order, by way of speaking order. The O.A. is disposed of accordingly. No order as to costs.

  
Member ( A )

  
Member ( J )

/M.M./