

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 31st DAY OF OCTOBER, 2000

Original Application No.1863 of ¹⁹⁹⁴ ~~2000~~

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.BISWAS, MEMBER(A)

Nokhey Lal, S/o Shri Indrapal,
Ex-Gangman, Gang No.36, under P.W.I
Fatehpur.

... Applicant

(By Adv: Shri Sudhir Agrawal)

Versus

1. Union of India through General Manager
Northern Railway, Baroda House, New Delhi.
2. The Senior Divisional Engineer(II)
Northern Railway, Allahabad.
3. The Assistant Engineer, Northern
Railway, Fatehpur.
4. Shri Rama Shanker, Assistant Engineer
Northern Railway, Fatehpur.
5. Shri K.P.Seth, Permanent Way Inspector
Kanpur/Enquiry Officer
6. Shri G.M.Pan, P.W.I.Fatehpur

... Respondents

(By Adv: Shri D.C.Saxena)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

A preliminary objection has been raised by Shri D.C.Saxena on behalf of respondents that this application is not legally maintainable for the reason that applicant approached this Tribunal against the order of his removal from service in consequence of disciplinary proceedings without availing the alternative remedy of appeal available to him under the rules. Learned counsel has also submitted that in his application, para 6, applicant made a mis-statement that against the order of punishment no appeal lies. learned counsel has placed before us paragraphs 25,27,31&32 of the counter affidavit, that appeal lies under Rule 17 of the CCS(CCA) Disciplinary & Appeal Rules 1968. Learned counsel also invited our attention to para 16 of the rejoinder affidavit wherein applicant has stated that after filing this OA he filed appeal

before the Divisional Railway manager, Allahabad which has been rejected on 6.10.1995. It has also been submitted that as the order of the Appellate Authority has not been challenged in this OA and copy of the same has not been brought on record this application is liable to be dismissed for the reason that the order of Punishing Authority stands merged with the order of the Appellate Authority.

Shri Sudhir Agrawal on the other hand, submitted that as the application has been admitted, it cannot be thrown out on the ground of alternative remedy after such a long time of six years. With regard to the order of the Appellate Authority it has been submitted that the Appellate Authority committed mistake in entertaining the appeal which was barred under Sub section(4) of Section 19 of the Act. Learned counsel has further submitted that merely because applicant filed his appeal against the order of punishment before the Appellate Authority it could not confer jurisdiction on the Appellate Authority which was barred under sub-section(4) of Sec.19 of the Act. The submission in short is that the embargo created under sub-section(4) of Section 19 of the Act is against the Authority and not against the Appellate Authority.

We have carefully considered the submissions of the learned counsel for the parties. however, we find force in submissions made by Shri D.C.Saxena counsel for the respondents. It cannot be disputed that in his application in para 6 applicant made averment that no appeal lies against the order of punishment. The order of admission was passed on this statement regarding exhausting the alternative remedy. Then applicant himself filed appeal during pendency of this application which has been rejected on 6.10.1995, even the order has not been brought on record. The learned counsel has laid emphasis regarding the bar created by sub-section(4) of Sec.19 of the Act which is being reproduced below:-

Sec.19-(1)-XXXXXXX

(2)-XXXXXXX

(3)-XXXXXXX

(4) "Where an application has been admitted by a Tribunal under Sub Section(3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

However,, it is difficult for us to know whether the Appellate Authorityy had knowledge of the fact that the present application is pending in this Tribunal. From perusal of section (4) of Section 19, it is clear that if appeal was filed during pendency of this application, the appellate authority, could seek direction from this tribunal. Normally this Tribunal prefers that appeal may be decided on merits. In these facts Appellate Authority cannot ~~claim~~ Bar created by Sub Sec(4) is not absolute but subject to direction of the Tribunal. The applicant himself invited the Appellate Authority by filing appeal and requested him to decide the same. Now after availing remedy the applicant cannot turn round and say that Appellate Authority acted illegally and without authority. The Statutory Rule that applicant should approach this court only after exhausting the alternative remedies contained in Section 20 though says that 'Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed all of the remedies available to him under the relevant Service Rules', the word 'ordinarily' confers judicial discretion on the tribunal to entertain applications even in such cases where alternative remedy has not been exhausted. But for that a case has to be made out that applicant shall suffer irreparable loss and injury or the order is such that availing of the alternative remedy shall not serve any useful purpose. We do

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not find any such circumstance in the present case. The order of punishment was passed on conclusion of the disciplinary proceedings in which applicant had participated by filing his reply.

The second important aspect is that appellate order has not been placed before us. It cannot be ascertained without perusal of the order as to what were the findings of the Appellate Authority. In these circumstances as the order of the Appellate Authority has been allowed to become final this application is liable to be dismissed on this ground. The application is accordingly dismissed. No order as to costs.

S. Dinesh
MEMBER(A)

R. D.
VICE CHAIRMAN

Dated: 31.10.2000

Uv/