

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 5TH DAY OF APRIL, 2002

Original Application No. 1551 of 1999

CORAM:

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

HON.MR.C.S.CHADHA, MEMBER(A)

1. Smt.Natho devi, widow
2. Vinod Kumar, son
3. Vinesh Kumar, son
4. Dinesh Kumar, son
5. Vineeta, daughter
6. Suneeta, daughter

All resident of Mchalla Lotahpura  
District Badaun.

(By Adv: Shri M.K.Upadhyay) ... Applicants

Versus

1. Union of India through Secretary  
Ministry of Communication  
New Delhi.Dak Bhawan, Sansad Marg  
New Delhi- 110 001
2. Superintendent of Post Offices  
Badaun(UP)
3. Sub.Divisional(Inspector Post)  
, South Sub-Division, Badaun

... Respondents

(By Adv: Shri S.C.Tripathi)

O R D E R(Oral)

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

By this OA u/s 19 of A.T.Act 1985 applicant has/e<sup>u</sup>  
challenged the order dated 7.8.1999 by which the  
punishment of removal from service has been awarded by  
the Disciplinary Authority on conclusion of the  
disciplinary proceedings, against original applicant 13hikhan<sup>u</sup>  
oral, who died on 11/8/2000, during pendency of this Act.<sup>u</sup>  
The facts in short of the case are that applicant  
was serving as EDMF in Arifpur Newada in district Badaun.

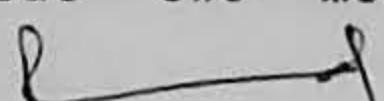
He was served with a memo of charge on 8.4.1982 alleging

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that he unauthorisedly absented from duty even after the expiry of the period of leave and remained absent for long period despite of the notices given to join duty. The applicant filed reply and denied the charges. The Enquiry officer was appointed who submitted report exonerating the applicant of the charges. However, the Disciplinary Authority by order dated 23.7.1984 awarded the penalty of removal from service. The applicant filed appeal which was dismissed on 1.5.1989. Both the aforesaid orders were challenged before this Tribunal in OA 391/90. The OA was allowed by order dated 10.9.1998 with the following direction:-

"Therefore, this OA is allowed and the impugned order passed by the Disciplinary Authority dated 23.7.1984 and the order passed by the Appellate Authority dated 1.5.1989 are hereby quashed and the case is remitted back to the concenre dauthority, who first of all will serve upon a copy of the order of disagreement alongwith the inquiry report to the applicant and thereafter the applicant shall file a representation against it within a period of one month, and after considering the representation filed by the applicant the Disciplinary Authority shall pass an order in accordance with law."

In pursuance of the aforesaid order memo of disagreement was served on the applicant on 8.6.1999. The applicant was required to file his explanation against the memo of disagreement. Notice was actually served on the applicant on 10.6.1999. However, as no application was submitted though about two months had passed the



Disciplinary Authority passed the order dated 7.8.1999 awarding penalty to the applicant of removal from service, aggrieved by which this OA has been filed.

Shri Tripathi counsel for the respondents, however raised a preliminary objection regarding maintainability of this OA on the ground that the applicant had a statutory remedy of appeal before the Appellate Authority which he had not availed and hence this OA is not legally maintainable u/s 20 of Administrative Tribunals Act 1985.

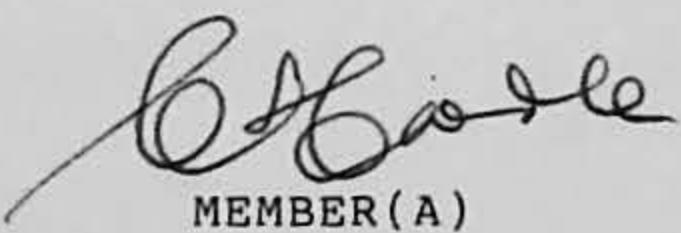
Shri M.K.Upadhyा learned counsel for the applicant, however, submitted that as the impugned order of punishment has been passed merely on the ground that applicant failed to submit his explanation to the memo of disagreement, while in fact applicant had sent his reply on 7.7.1999. The applicant was advised to file this OA directly as only short question was involved.

We have carefully considered the submissions of the counsel for the parties. However, in our opinion, for the reasons stated by the learned counsel for the applicant the statutory remedy of appeal could not be allowed to be by-passed. In appeal applicant could get rehearing on all the questions of fact and law including quantum of punishment, while in judicial review before this Tribunal he could only address the court on question as to how the impugned order suffers from any error of law. The applicant ought to have been advised to file appeal before coming to this Tribunal. Shri Upadhyा then submitted if the appeal is filed now it shall be highly time barred. We have heard counsel for the parties on this question also. This OA was filed on 9.12.1999. This Tribunal by order dated 10.1.2000 issued notice to the respondents to show cause as to why this OA may not be admitted. In pursuance of the aforesaid order this OA

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has been pending for admission. The applicant filed this OA under legal advice given to him. In the circumstances, in our opinion, in the ends of justice he should be given an opportunity to file appeal before the Appellate Authority which may be considered and decided on merits.

The OA is accordingly, disposed of finally with the liberty to the applicant to file appeal within three weeks before the Appellate ~~Authority~~<sup>Authority</sup>. The appeal if so filed, shall be treated within time and shall be decided in accordance with law within six months from the date of communication of this order. No order as to costs.

 C. H. Castle

MEMBER(A)

VICE CHAIRMAN

Dated: April 5, 2002

Uv/