

(8)6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 402 OF 1986.
Tax No.

DATE OF DECISION 21-11-1986.

SHRI R.S. PARMAR & ORS. Petitioners.

MR. P.S.CHARI. Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No.*

(67)

JUDGMENT

O.A.No. 402 OF 1986.

Date : 21-11-1986.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioners, viz; (1) Shri R.S. Parmar (Head Clerk), (2) Shri I.G. Parmar (U.D.C.), (3) Shri K.M. Parmar (U.D.C.), are working in the office of the Regional Provident Fund Commissioner, at Ahmedabad. They are placed under suspension by three separate but similar orders dated 6.11.1986 passed by the Regional Provident Fund Commissioner, Gujarat State. The petitioners challenge the validity of the said orders, which read as under :-

"Whereas a case against Shri K.M. Parmar, Upper Division Clerk, in respect of a criminal offence under Section 114 and 394 of Indian Penal Code is under trial before the 5th Court of the Metropolitan Magistrate, Ahmedabad.

Now, therefore, the undersigned in exercise of the powers conferred by Sub-Rule (1) of Rule 6 (Part IV) of the Employees' Provident Fund Staff (Classification, Control & Appeal) Rule, 1971, hereby places the said Shri K.M. Parmar, Upper Division Clerk under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force, the headquarter of Shri K.M. Parmar, Upper Division Clerk should be Ahmedabad and the said Shri K.M. Parmar, Upper Division Clerk shall not leave the Headquarter without obtaining the previous permission of the undersigned".

2. When the petitioners apprehended the issuance of the aforesaid order and being aggrieved by the same, they filed this application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') on 7.11.1986. Mr. J.D. Ajmera appeared for the respondents in response to the notice served upon them. Mr. Ajmera sought time for filing

the reply and objections. Accordingly, the case was adjourned to 18.11.1986. However in the meantime, the implementation of the impugned orders of suspension was stayed till further orders. The respondents have now filed the Affidavit-in-Reply on behalf of the respondents and they have also placed the copies of the orders of suspension, which according to the respondents have been sent under Registered-post, as they had refused to accept the same. It is inter-alia contended that the Regional Provident Fund Commissioner being the competent authority, has passed the impugned orders and the facts stated therein justify the issuance of such order of suspension qua the petitioners. It was further contended that the orders of suspension passed under Rule 6 of the Employees Provident Fund Staff (Classification, Control and Appeal) Rules, 1971, are appealable under Rule 19 of the said Rules. It is conceded that "the Central Provident Fund Commissioner to the Central Government", is the appellate authority. The period of limitation for filing appeal is 45 days from the date on which a copy of the order appealed against is delivered to the appellant under Rule 21. According to Mr. J.D. Ajmera, the present application can not be entertained as the petitioners have not exhausted the alternative remedy available to them under the Rules by preferring an appeal before the appellate authority as envisaged under section 21 of "the Act." It is however contended by Mr. P.S. Chari, the learned counsel for the petitioners that when the petitioners are able to show jurisdictional error on the face of the impugned order, they should not be directed to prefer an appeal and the Tribunal should entertain the application and decide the same on merits. We had also allowed him to argue on merits in order to

determine whether a prima facie of jurisdictional error was borne out, as contended. In this regard he had also cited several authorities.

3. The main question that comes up for consideration in this case is whether the relief sought for by the applicant in this case should be decided by the Tribunal even though the petitioners have not exhausted the departmental remedies open to them. It is true that in this case the petitioners have not exhausted the statutory right of appeal which is provided to them under the disciplinary rules. While taking us through the provisions contained under Rule 6 of the aforesaid Rules, it is contended by Mr. Chari, the learned counsel for the petitioners, that the impugned orders are ex facie illegal and void as ~~as~~ Respondent No.2 had not obtained the approval of the Government before passing the impugned orders of suspension. He has also assailed the impugned orders on the ground that the respondent No.2 has not assigned any reasons in the impugned orders which may justify him to take the action as required under Rule 6. At this stage, we do not consider it proper to express our opinion on the points raised by Mr. Chari, as we are convinced that these and other questions raised by the petitioners can be well decided by the appellate authority. The petitioners should exhaust the alternative remedy open to them under the statutory disciplinary rules. It is true the Tribunal has not only to see whether the competent authority has jurisdiction to pass the impugned order, but also whether the power exercised by him is valid or not. Now, to pronounce any opinion on the issues which have been raised by the learned counsel for the petitioners would really amount to sitting as an appellate authority over the disciplinary authority.

It is, therefore, appropriate that having regard to the circumstances of this case, the appellate authority under the disciplinary rules be given an opportunity to sit in appeal against the impugned order in this case. In the present case the petitioners have ample time to prefer an appeal within the prescribed period of limitation. Perhaps the petitioners might have a fear that when such an appeal is filed, the decision may not be forthcoming in the near future and it would be difficult for them to obtain a stay order against the impugned order.

4. Accordingly, having taken all these factors into account, we hereby direct the petitioners to prefer an appeal to the appellate authority under the disciplinary rules against the impugned orders dated 6.11.1986, within two weeks from the date of this order and also direct the said appellate authority to take up for consideration the appeal when submitted by the petitioners and decide it before 31st January 1987. It is further directed that the interim stay issued earlier in this case vide order dated 10.11.1986, shall remain operative till 31st January, 1987.

5. With these directions, the present application stands disposed of with no order as to costs.

21/11/86
① (BIRBAL NATH)
ADMINISTRATIVE MEMBER.

Singh
(P.M. JOSHI)
JUDICIAL MEMBER.