

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 417 OF 1987.
XXX

DATE OF DECISION 7.9.1987.

SHRI BANNA RAM T Petitioner

K.K. SHAH Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS (W.RLY) Respondent(s).

N.S. SHEVDE Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

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 ? No
4. Whether it needs to be circulated to other Benches of the Tribunal. No

Shri Banna Ram. T,
Guard Super/Special 'A',
Baroda Division,
Residing at Railway Quarter No.577/5
Khokhra, Maninagar (E)
Ahmedabad.

..... Petitioner.

(Advocate : K.K. Shah)

Versus.

1. Union of India, notice to be
served through the General Manager,
Western Railway,
Churchgate, Bombay.

2. Divisional Railway Manager,
Western Railway,
Pratapnagar, Baroda.

3. Senior Divisional Operating Supdt.,
Western Railway,
Pratapnagar, Baroda.

4. Divisional Operating Supdt.,
Office of the Area supdt.'s Office,
Western Railway,
Kalupur, Ahmedabad.

..... Respondents.

(Advocate : N.S. Shevde)

O R D E R

O.A.No. 417 OF 1987.

Date : 7.9.1987.

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

In this application, the petitioner Shri Banna Ram T, Guard Super/Special 'A', working in the grade of Rs. 1600-2660/-, has challenged the validity of the order dated 6.7.1987, imposing penalty whereby he is reverted from the post of Guard Super/Special 'A' in the grade Rs. 1600-2660/- to 1200-2040/- (RPS) in the Goods Train Guard (Guard Gr.C) to a lower step for two years with future effect by the Divisional Office Superintendent, Ahmedabad (Annexure 'A-1'). He has prayed that the said impugned order imposing penalty be quashed and set aside as it is illegal, unjust and violative of Articles 14,16,

contd.....3/-

311(1) & (2) and also violative of Railway Servants (D&A) Rules 1968.

By way of interim relief he has prayed that the Respondents be restrained from implementing the impugned order pending hearing and disposal of the application.

2. When the matter came up for admission a question was raised to Mr. K.K.Shah, the learned counsel appearing for the applicant as to whether the applicant had availed of the remedies available to him under the relevant service rules by preferring an appeal before the competent authority. Mr. K.K.Shah stated that the applicant has preferred an appeal against the impugned order of penalty on 28.7.87 (Annexure-2). According to him, without waiting for the decision of the appellate authority, he has filed this application on 26.6.1987, as in his submission the impugned order is a nullity, because the charge sheet and the impugned order are not issued by the competent authority. In his submission when the order is a nullity being ex facie without jurisdiction, the alternative remedy would not be an effective remedy. In support of his submission he has relied on the case viz; (1) Ahmedabad Cotton Mfg. Co. V/s. Union of India & Ors. (18 G.L.R. p. 714), (2) Baradakanta Mishra V/s. High Court of Orissa & Another (A.I.R. 1976 S.C. 1899) & (3) Ram and Shyam Company V/s. State of Haryana (1985) 3 S.C.C. p. 269). Mr. N.S. Shevde, the learned counsel appearing for the Respondents, has opposed the admission on the ground that the applicant has not exhausted the remedy which is admittedly available to him as required under section 20 of the Administrative Tribunals Act, 1985.

3. At the outset, it may be stated that the principles laid down in the cases cited by Mr. Shah are quite too well known. The constitutional amendment under Article 226(3) has not introduced the non-certiorari clause but has only introduced a mere fetter as to the stage at which the writ jurisdiction should be exercised after exhausting the alternative efficacious normal remedy under the law. Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of a person adversely affected by it would lie to the High Court under Article 226 and such a petition cannot be

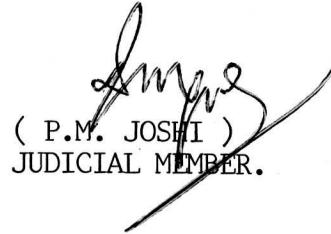
rejected on the ground that an appeal lies to the higher officer or the State Government.

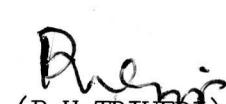
4. The requirement of the Rule contained in Section 20 of the Administrative Tribunals Act is that an applicant should avail of the remedies available to him under the relevant service rules as to redressal of his grievance by preferring an appeal, revision or representation as the case may be. If no final order has been passed by the competent authority with regard to the appeal preferred by him, he can file an application before the Tribunal after the expiry of the period of six month from the date of which such appeal was preferred or representation was made. It is true, the bar of alternative remedy has to be considered in the light of word "ordinarily" used in the Section 20 of the Act. The expression "ordinarily" has been judicially interpreted as meaning "in the large majority of cases but not invariably" in K.F.C.Bose V/s. Government of India (1986) 1 SCJ (CAT) 52, the Central Administrative Tribunal has held that the discretion of the Tribunal in the matter to be less wide then that of the High Court. When the remedy is available by preferring a departmental appeal the application should not be entertained by the Tribunal. It is not enough if only some of the remedies have been availed and not further remedies available under rules.

5. It is conceded that the impugned order is appealable under the Railway Servants (Discipline & Appeal) Rules 1968. As a matter of fact the applicant has preferred an appeal before the appellate authority on 28.7.1987 but within a month thereafter without obtaining the decision in the appeal or without waiting for the requisite period, the petitioner has moved this Tribunal by filing this application. He has therefore filed this application without exhausting the remedy as required under Section 20 of the Act. It is also admitted that the applicant has not raised any plea regarding competency or otherwise of the authority who issued the charge sheet in this regard till the conclusion of the departmental proceedings held against him. It is also conceded that this plea and the contention that the officer who has passed the order of penalty is not the competent authority,

have not been raised even in the appeal filed by the applicant. The reference to the rules made by Mr. Shah does not permit us to hold at this stage that the impugned order is a nullity, as contended. Having regard to the circumstances of the instant case including the merits of the applicants' contention and the conduct of the applicant, we are of the opinion that the applicant should be directed to exhaust the remedy available to him and satisfy the requirement of Section 20 of the Act before filing the application before this Tribunal.

6. In this view of the matter, the application is rejected in limine.


(P.M. JOSHI)
JUDICIAL MEMBER.


(P.H. TRIVEDI)
VICE CHAIRMAN.

MA/397/87
in
OA/417/87

(7)

CORAM : MR. P.H. TRIVEDI : VICE CHAIRMAN
MR. P.M. JOSHI : JUDICIAL MEMBER

25/2/1988

Heard Mr. K.K. Shah and Mr. N.S. Shevde learned counsel for the applicant and the respondent respectively. Mr. Shevde requests for some time to which Mr. Shah has no objection. Allowed, the case is adjourned to 13-4-1988 for final hearing.

Phirni
(P.H. TRIVEDI)
VICE CHAIRMAN

JM
(P.M. JOSHI)
JUDICIAL MEMBER

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