

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 425 of 1991
~~TAX NO.~~

DATE OF DECISION 3.4.1992

Shri K.T. Nanaiah Petitioner

Shri P.K. Pandya Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri R.R. Tripathy for Advocate for the Respondent(s)
Shri B.B. Naik.

CORAM :

The Hon'ble Mr. A.B. Gorthi : Member (A)

The Hon'ble Mr. R.C. Bhatt : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *no*
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 K.T. Nanaiah : Applicant
(Advocate : Shri P.K. Pandya)

VS.

Union of India & Ors. : Respondents
(Advocate: Shri R.R. Tripathy for
Shri B.B. Naik)

O R A L - O R D E R

O.A. No. 425 of 1991

Date : 3.1.1992

Per : Hon'ble Shri R.C. Bhatt : Member (J)

Heard learned advocate Mr. P.K. Pandya for the applicant. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, against the order passed in departmental enquiry by the Deputy Collector (P&V) Custom and Central Excise, Rajkot. It is very apparent from the order produced by the applicant at Annexure -A, that the order shows that an appeal against this order (alongwith a copy of this order) lies with the Collector, Customs and Central Excise, Rajkot, within a period of forty-five days from the date of which the copy of the order appealed against is delivered to the ~~applicant~~ ^{appellant}. The learned advocate for the applicant submits that though the applicant has not filed an appeal to the Collector, he can come directly to the Tribunal because

he is likely to be adversely effected because of various previous orders one after other. The Full Bench of the Central Administrative Tribunal has decided in B.Parmeshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru and another in O.A. No. 27 of 1990 decided on 12.4.1990 and reported in Full Bench Judgement of Central Adminisitrative Tribunal (1989-1991) Vol. II, ^{that in} the combined ^{19, 20 and 21 M.R.L.} reading of three section^s shows one aggrieved by order can come to the Tribunal, but before that he should file appeal/representation etc., still if such appeal etc. is not disposed of within six months then he can come to Tribunal even without such disposal. It is an admitted fact that the applicant has not filed any appeal to the Collector though he was advised to do so as per para 1 of the order Annexure-A. Learned advocate for the applicant drew our attention to Section 20 (1) of the Administrative Tribunals Act and the meaning of the word 'ordinarily' decided by some other Bench of this Tribunal, that the applicant can approach the Tribunal in exceptional circumstances. The Full Bench in B. Parmeshwara Rao's case has in para 12 and 13 discussed this point that the meaning of the word 'ordinarily' is that the Tribunal should not undertake the application unless alternative available remedies are exhausted. It is held that 'ordinarily' means normally or usually and not extraordinarily or exceptionally. It is helad that to

come to the Tribunal two things are required viz., one must have filed an appeal/representation etc., and wait for six months as discussed in para 22 of the judgement.

2. having heard the learned advocate and perusing the documents we are not satisfied that this is such an rare, exceptional case where under Section 20(1), this Tribunal should entertain such application. We are bound to follow the direction which have been given in Full Bench decision. In our opinion this is an case in which normally and usually the applicant ought to have filed an appeal to the Collector. Learned advocate for the applicant submitted that it would be futile for the applicant to approach the Collector because previously he had applied his mind to the case and had adjudicated the matter. However, it is not possible to agree with this submission because that was a case of the previous litigation and now fresh Disciplinary Authority has considered and decided the case on 9.10.1991. The apprehension in the mind of the applicant is that if he again goes to the Collector ⁱⁿ ~~for~~ appeal he may receive the same fate as he received in the previous enquiry proceedings. Learned advocate for the applicant also submitted that previously the Full Bench had observed that the power under Section 20 (1) of the Administrative Tribunals Act is analogous to Article 22¹ of the Constitution of

India. Though he has not cited this decision before us. In our opinion the latest decision of the Full Bench which we have quoted above in B. Parameshwara Rao's case clearly gives the guidelines to us, and that being the latest decision we follow it. At the cost of repetition we say that this is not an exceptional case and therefore we do not decide to admit it. The applicant has challenged the order on the ground of violation of principle of natural justice and the Statutory Provisions and Rules while according to him the prescribed mode of enquiry was not followed. We have considered the submissions and we find no substance in any of the contentions and the matter is dismissed summarily. The applicant if he so desires may prefer appeal against the order of the disciplinary authority to the Collector who may dispose of the appeal as early as possible. ^{re} ~~No order as to Contd.~~

Renu
(R.C.BHATT)
Member (J)

transcript
(A.B. GORTHI)
Member (A)

*Ani.