

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO./309/93
T.A.NO.

DATE OF DECISION 19.1.2000

Joy Moothadan Korath & ors. Petitioner

Mr. P.H. Pathak Advocate for the Petitioner [s]
Versus

Union of India & ors. Respondent

Mrs. P.J. Davawala Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.RAMAKRISHNAN VICE CHAIRMAN

The Hon'ble Mr. A.S. SANGHAVI MEMBER (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

1. Joy Moothadan Korath
 2. Central Govt. Fishing Seamen's Association through :
 Br.Secretary, Shri P.V.Mathew,
 C/o, Modern Tyres,
 Old Police Station Road,
 Porbandar.

Applicants

Advocate Mr.P.H.Pathak

Versus

1. Union of India, Through :
 Secretary,
 Ministry of Food Processing
 Industry, Govt. of India,
 Panchsheel Bhavan, Khel Gaon Marg,
 New Delhi.

2. Directorate General,
 Fisheries Survey of India,
 Bptawala Chambers,
 Sir P.M.Road,
 Bombay.

3. Sr.Fishing Schentist,
 Fisheries Survey of India,
 K.G.Road, Sitla Chowk,
 Porbandar.

respondents

Advocate Mrs.P.J.Davawala

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J U D G M E N T
IN
O.A.NO.309/93

Dt. 19/1/2000

Per Hon'ble Mr.A.S.Sanghavi

Member [J]

The applicants have challenged the order passed by the respondent no.3 on dated 31.5.93 treating the period of service from 1.5.93 as dies non and have prayed that the said order be quashed and set aside and all of them be paid the salary for the said period. The applicant and the other crew members of the ship M.F.C. Yellow Fin along with the skipper of the said ship were given the sailing programme on dated 7.5.93 whereby they were to sail on dated 11.5.93 for survey programme etc. and to return back on 30.5.93. Mr. B.Ashwathama was the skipper of the ship and the crew members along with Chief Engineer, comprised of other ten members. However, on

account of the applicant no.2. association having given a call for agitation regarding mess amount, the crew member had not paid any mess charges to the skipper and had also not collected the mess allowances from the Board. This has resulted into the skipper being not in a position to store the provisions for the mess of the crew on the ship and was therefore, compelled not to proceed with the ship at the High Sea. He had conveyed his inability to sail vessel without the food provision on dated 13.5.93 and had asked for necessary instructions from the respondents no.2. He and other members were thereafter given a memo by the respondent no.3 and ultimately on dated 31.5.93 it was decided by the respondent no.3. that the period of 1.5.93 onwards be treated as dies non so far as the service of the crew members along with skippers was concerned. This order of the respondent no.3. is challenged by the applicants by filing this O.A. It is contended by them that all the crew member had remained present on the ship during the relevant period and nobody had refused to obey the order of sailing or to obey to do

the work on the ship and therefore, no question of imposing any penalty arose. It is also contended that the respondent no.3. was not competent to withhold the salary for the whole month and that the action of the respondent no.3. was arbitrary and illegal.

2. The respondents have resisted the application and in their reply have contended inter alia that since no appeal is preferred against the said order of dies non, this application is not maintainable. It is also contended by the respondents that the impugned order was passed by the competent authority after following the legal formalities and given an opportunity of being heard to the concerned crew members. It is denied by the respondents that the employees had performed their duties and have contended that the duty of the applicant and others was to carry out the survey as per the sailing programme and since the ship had not left for high sea and no fishing work was carried out, the duty assigned to the applicants and others were not performed. They have admitted that the applicant and other employees had agitated about mess advance but

have contended that this agitation should not a cause for non sailing of the vessel. It was open to the individual crew members to take mess advance or carries own food at his own costs. Since they had resorted to the agitation and not carry out the work, it was a misconduct and since no work was done, no salary was paid. They have denied that the order of the respondent no.3. is not in any way arbitrary and the discriminatory or illegal and have urged that the O.A. be dismissed with costs.

3. We have heard Mr.Pathak, learned advocate appearing for the applicants and Mrs.Davawala, learned advocate appearing for the respondents. Before advertiring to the rival contentions, we would like to point out that by way of interim relief, the salary for the period of 1.5.93 to 10.5.93 was paid to the applicants and the others and the respondent no.3. was also directed to make the payment of salary for the month of July on dated 31.7.93. There is no dispute that the vessel yellow fin was skippered by D.Ashwathama and that the skipper as well as the crew

members were given sailing programme for the ship to start the voyage from 11.5.93 to 30.5.93 for fishing as well as survey operations. It is also not in dispute that the ship could not and did not sail as per the sailing programme and the reason given for the same was the refusal of the crew members to collect the mess advance and to pay the mess charges for bringing the food provisions on the ship. It appears that prior to the sailing orders, the members of the applicant no.2 association were agitating about inadequacy of the mess allowances and were demanding the mess allowances at enhanced rate. They had therefore refused to collect the mess allowances and also refused to pay mess charges which resulted into non storage of the provisions on the ship. The skipper of the ship, Ashwathama, had therefore, not ordered the ship to sail high sea and had asked for the instructions from the respondent no.3. The respondent no.3. had however, served a memo to the skipper as well as crew members for having not taken the ship as per the sailing programme and ultimately on dated 31.5.93 ordered that the period from 1.5.93 would be treated

as dies non under the provisions of CCS[CCA] Rules and accordingly they would not be entitled for their salary from 1.5.93 onwards. This O.A. is thereafter filed on 10.6.93 challenging this order of dies non on the part of the respondent no.,3. Mrs.Davawala, learned advocate appearing for the respondents has however, at the out set raised the preliminary contention that the O.A. was not maintainable in view of the fact that the prior to the filing of the same, remedy available by way of departmental appeal is not exhausted by the applicants and therefore, the O.A. should be dismissed. There is no dispute that prior to the presentation of this O.A., no appeal is preferred against the impugned order of the respondent no.3. and hence, now the question arises as to the effect of non availing of the remedies available to the applicants.

4. Section 20[1] of the A.T.Act, 1985 lays down as under:-

"A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance."

5. This section, therefore, makes it abundantly clear that under ordinary circumstances the applicant will not be maintainable if it is preferred without availing of the remedies available to the applicant under the relevant service rules. Now the memo given to the skippers as well as other crew members by the respondent no.3. speaks about the action to be taken against them under the provisions of CCS[CCA] Rules. It is no doubt true that the punishment of dies non imposed by the respondent no.3. is not prescribed under rule 11 of the CCS[CCA] Rules and as such it cannot be considered to be a penalty imposed within the meaning of rule 11 of CCS[CCA] Rules. However, this penalty of dies non is not unknown in service jurisprudence and the remedy for its ultimate effect is provided under rule 23. There is no dispute that the effect of the order of dies non is to be deprived an employee of the salary of that month or the period for which the order was passed. Rule 23 of CCS[CCA] Rules provide for appeal by employee against certain orders and sub rule iv of rule 23 provides that an appeal lies against the order which denies or varies to his

disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement. Since the effect of the impugned order of the respondent no.3. was to deny the payment of salary to the applicants and others, the order was clearly appealable as provided under 23 [iv] of the CCS[CCA] Rules. Since no appeal is preferred by the applicants prior to the filing of this O.A. even though the appeal was provided under the rules, it cannot be gain said that the applicants have not availed of the remedy available to them prior to the filing of this O.A.

6. Mr.Pathak, learned advocate appearing for the applicants has submitted that the Tribunal has already admitted this application, and once the application is admitted, the provisions of section 20 [2] become redundant and the O.A. should be decided on merit. We are unable to appreciate the submission made by Mr.Pathak. Mere admission without any speaking order cannot go to show that this Tribunal had condoned the non preferring of the available remedy prior to the filing of this O.A. On the contrary, the

subsequent provisions of the A.T.Act makes it abundantly clear that the cause of action for filing the O.A. would start only after the final order of appellate authority is passed where the appeal was preferred and where no such order is made, then the six months period from the date of preferring of the appeal or making of the representation. The question of limitation as well as accrued of the cause of action are generally considered, at the time of final hearing of the O.A.. The admission of the O.A. cannot be construed as condoning the mandatory provisions of section 21 of the A.T.Act. In the case of **S.S.Rathor Vs. State of M.P.** reported in **AIR 1990 SC 10,** while dealing with this aspect of the matter, the supreme court has observed as under:-

" We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of

the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

7. This has also been made clear in the decision of the Full Bench of Tribunal in the case of D.Paraameshwar Rao Vs. Divisional Engineer Telecommunications Eluru [Full Bench Judgments of CAT Vol II page 250] where it is laid down that section 20 requires exhaustion of alternative remedies available before approaching the Tribunal and that in exceptional and extraordinary cases, such an application may be entertained without exhaustion of the remedy. It is further observed by the Full Bench as under:-

" A person aggrieved can file an application under section 19 of the Act when the cause of action arises namely when the impugned order is passed provided the rules do not make provisions for filing of an appeal/revision/representation,"

8. Since the question of cause of action is paramount consideration, in deciding the O.A., the admission of the O.A. cannot be a ground for assuming that the question regarding exhaustion of the alternative remedy is condoned by the Tribunal or given a go by by the Tribunal. The same can very much be agitated at the time of final hearing of the O.A. as the same goes to the very root of the maintainability of the O.A. A matter can be admitted by the court or the Tribunal on finding that there is some *prima facie* case put forward by the applicant or the petitioner for resolution but that does not mean that any other contentions that would be available to the respondents would stand condoned by mere admission of the O.A. Hence, we find no substance in the submission made by Mr.Pathak that once the O.A. is admitted, the Tribunal cannot entertain the question of non exhaustion of the alternative remedy by the applicants prior to the filing of the O.A. On the contrary, we find that this question is very much alive for adjudication and this was even made clear by our order dated

20.3.98. We also find that order admitting the O.A. does not speak anything about the non compliance of the provisions of rule 20[1] of A T Act and therefore, there is no ground to believe that the Tribunal had condoned the question of applicants having not exhausted of the remedies prior to the filing of this O.A.

9. From the above discussion, we have no other alternative but to conclude that the O.A. is not maintainable in view of the applicants not availing of the remedy of appeal under rule 23[iv] of the CCS[CCA] rules against the impugned order. Since the application is not maintainable on this preliminary ground, the same deserves to be rejected. The O.A. is therefore, rejected with no order as to costs.

A. S. Sanghavi
 [A.S.Sanghavi]
 Member [J]

V. Ramakrishnan
 14/1/2005
 [V. Ramakrishnan]
 Vice Chairman

S. Solanki

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

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of 19

Transfer application No.

Old Writ Pet. No.

CERTIFICATE

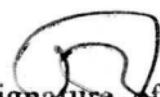
Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 24-01-2000

Countersigned:

Dinesh Kumar

Section Officer/Court Officer.


Signature of the
Dealing Assistant.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE O.A. / 309 / 93

NAME OF THE PARTIES Zay M - (Couth & Ors.
VERSUS
U.O.I. & ORS.

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Documents found in 'C' part 1 to 20
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