

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 540 OF 1993.
Tax No.

DATE OF DECISION 28-10-94

Mr. D.P. Shaladia, Petitioner

Mr. P.K. Handa, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent(s)

Mr. N.S. Shevde, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V. Radhakrishnan, Member (A).

The Hon'ble Mr. Dr. R.K. Saxena, 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 ? *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 ? *yes*

Authority, Annexure A-1 and of the Appellate Authority ~~pass~~

seeking quashment of the punishment orders of Disciplinary

The applicant has approached this Tribunal

(f)

Member

Per Hon'ble Dr. R.K. Saxena

O.A. 5400E 1993

Date: 28-10-94

In

JUDGMENT

Advocate

Mr. N.S. Shrivde.

Respondents.

Ahmedabad.

4. Baroda Division, ARM Office,
Divisional Commr. Manager,

Baroda.

3. S.R. Divisional Commr. Manager,
Western Railway, Baroda Division

Baroda.

2. The Divisional Rly. Manager,
Baroda Division, Pratapnagar,

Bombay.

1. Union of India
Ministry of Railways
Notice to be served through
The General Manager,
Western Railway, Churchte,

versus

Advocate

Mr. P.K. Handa

Applicant.

Ahmedabad.

D.P. Shaladia
Block No.2, Bhakti Nandan Park
Society, G.I.D.C., Dharwad

Annexure-A passed on 29-5-1990 and 4-6-1993 respectively.

By the order of the Disciplinary Authority he was compulsorily retired from service ^{which} ~~and~~ was upheld by the Appellate Authority.

2. The brief facts of the case are that the applicant was Head-Booking-Clerk at Ahmedabad. He was also discharging the duties of Refund-Clerk. It is alleged that during the period January 1988 to January 1989, the applicant had refunded an amount of Rs. 10,337.00 of the used Upper Class Tickets ignoring the visible erasers, alterations and tempering with endorsements of train number and the date. He had also failed to obtain cancellation forms after being signed by the persons seeking refund and in most of the cases full signatures were not obtained. Thus it is alleged that he had failed to maintain absolute integrity, exhibited lack of devotion to duty, and acted in a manner unbecoming of Railway Servant. For this mis-conduct charge-sheet, dated 31-5-1990, Annexure A-2, with article of charges was served on him. The inquiry officer was appointed, who conducted the inquiry and submitted his report to the Disciplinary authority holding that the charges were estab-

-lished. Consequently the Disciplinary Authority passed the impugned order of punishment which was upheld by the Appellate Authority.

3. This application has been preferred challenging the order of punishment passed by the Disciplinary Authority and upheld by the Appellate authority on several grounds including that there was no evidence against him, there were illegalities in the procedure of inquiry because the documents particularly duty-charts was not furnished, and proper appreciation of evidence was not made. It is also contended that the Disciplinary Authority did not pass the speaking order.

4. The respondents contested the case and came out with the pleas that the applicant has not exhausted all the remedies provided under the Rules. The inquiry was contended to have been legally done and there was no infirmity or illegality of the procedure or evidence. It was also averred that it was conducted fairly and when the charges were found established against the applicant, he was punished, considering the entire evidence, and reasoned order was passed.

5. We have heard the learned counsel for the applicant as well as the respondents and have perused the record.



6. First of all we shall take up the preliminary objection if the applicant before approaching the Tribunal, had exhausted all the alternative remedies as prescribed under section 20 of the Administrative Tribunals Act, 1985. Section 20 of the Administrative Tribunals Act, 1985 reads as under;

" Applications not to be admitted unless other remedies exhausted. — (1) 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 grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, —

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules rejecting any appeal preferred or representation made by such person in connection with the grievance ; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date

on which such appeal was preferred or representation was made, has expired.

(3) For the purposes of sub-sections (1) and (2) any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

The perusal of this section makes it clear that the Tribunal should not ordinarily admit an application unless it is satisfied that all remedies available to him have been availed of. In this connection, the averment made by the applicant in para 6 is in the following words:

"Details of remedies exhausted"

The applicant declares that he has availed of all the remedies available to him under relevant service rules, etc. "

Before dealing with the facts on this point, it would also be necessary to find out as to what remedies are available to a Railway Servant on a **Disciplinary Action** being taken against him. The Railway Servants (Discipline and Appeal) Rules, 1968 describes several remedies. Part V deals with Appeals. Rule 18 under this Part V makes the orders of penalty appealable. Then

there is part VI which deals with Revision and Review. Rule 25 speaks of Revision whereas 25-A deals with Review. In this way, these rules prescribe not only appeal as a remedy available to the Railway Servant but also prescribes Revision and Review thereafter. Now the question arises whether the applicant in the present case - was required to exhaust the remedies of Revision and Review or not. It is an admitted position that the applicant had filed only an appeal and it was dismissed and the punishment order of the Disciplinary Authority was upheld. He directly approached the Tribunal making clear declaration that he had availed of all the remedies. The contention of the learned counsel for the applicant is that it is not necessary for a Railway Servant to exhaust other remedies such as Revision or Review. His contention is that the Railway Servant is required only to file a departmental Appeal and if the same is rejected, he can approach the Tribunal without seeking further remedies of Revision and Review. In this connection, he drew our attention to several decisions of the Tribunal in which seeking of other remedies was not ^{found} ~~not~~ necessary, and if other remedies were not sought that did not operate as an absolute bar for approaching the Tribunal. His other argument is that even if it operates as bar, it should have been taken into consideration at the time of admission only and the objection at the time of final hearing cannot be

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raised. Our attention has been drawn to the case A.N. Ram Krishna Nair Vs. Divisional Engineer Telegraphs, 1987 (3) CAT 589 in which Madras Bench was of the view that it did not operate as an absolute bar. Similar view was taken in Amarnath Vaish Vs. Union of India (1987) 4 ATC 606 Jodhpur, Braj Kishore Singh Vs. Government of Bihar (1990) 12 ATC 501. The learned counsel for the respondents on the other hand argued that non-exhaustion of other available remedies does operate as bar and in this connection reliance was placed on K.J.C. Bose Vs. Government of India, (1986) 1 CAT 52, Hari Prakash Vs. Union of India (1987) 4 ATC 582. Our attention has also been drawn to the full Bench decision of the Tribunal in the case B. Parmeshwara Rao Vs. Divisional Engineer Telecommunication, 1990 13 ATC 774. In this case, the Full Bench considered the divergent views taken by the Tribunal about the necessity or otherwise of availing the alternative remedies prescribed under the Rules. The answer of the Full Bench of the Tribunal was that an application under section 19 of the Act, even before availing of the remedy provided by the statute or statutory Rules, could not be entertained generally or always. The statutory right of appeal has to be exhausted before the application under section 19 of the Act was admitted by the Tribunal in exercise of the powers under section 20 of the Act. It was again clarified in para 21 which reads :

" This leads to the conclusion that no application under section 19 of the Act should ordinarily be admitted by the Tribunal unless the applicant

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has exhausted the remedies as indicated above. In other words, normally and usually such applications will be rejected or declined as premature. However, where the Tribunal exercises its discretion treating it to be exceptional or extraordinary case as contrasted to the word "ordinarily", it may be entertained and admitted subject to other provisions of the Act."

This view was formed by the Full Bench of the Tribunal on the law laid down by their Lordships of Supreme Court in the case S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10 in which the exhaustion of all remedies prescribed under the rules was found necessary.

7. In view of this legal position and the admitted facts in the case that besides, filing an appeal, remedies of Revision and Review were not availed of, we find that the application is not maintainable because the exceptional circumstance of ignoring the remedies of Revision and Review, have not been pointed out.

8. The learned counsel for the applicant, as ~~has~~ already observed, also argued that the power under section 20 of the

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Administrative Tribunals Act should be taken into consideration only at the time of admission and not thereafter. It may be mentioned here that this application came for admission on 27-9-1993 and on that very date after hearing the learned counsel for the applicant, it was admitted. We have already pointed out that the applicant had made declaration in para 6 that all remedies available to him, were availed of. If the said declaration was factually incorrect, the applicant cannot be allowed to argue that the objection about maintainability of application cannot be raised subsequently. As a matter of fact, the applicant ought to have come with correct declaration because he is supposed to give a verification at the end of the application admitting the correctness of the averments made in different paragraphs of the application. We therefore, hold that the objection about the ^{plea of} ~~bar~~ ^{being not} cannot be heard at the time of final hearing, does not hold good and is rejected.

9. No doubt ~~the~~ arguments were advanced on other points also but taking into consideration the fact that the application is not maintainable because of the bar under section 20 of the Act and the applicant may now approach the authorities to seek the remedies left over, it would not be proper for us to express any view about other points because expression of views may influence the authorities who are required to dispose of Revision and Review.

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10. On the consideration of all these facts, we come to the conclusion that this application is not maintainable as discussed above. The applicant may, if he opts, ~~not~~ go in Revision and in such an event the Revisional Authority should not take the plea of limitation because the applicant had been prosecuting his case before the Tribunal either in ignorance of the provisions or being under the wrong interpretation of the provisions itself. The application is disposed of accordingly.



(Dr. R.K. Saxena)
Member (J)



(V. Radhakrishnan)
Member (A)

*AS.