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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A. No. 487 of 1992
Dated, this the 31st day of July, 1996

Corum :

1. Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
2. Hon'ble Mr. N. Sahu, Administrative Member

Shri Matia Naik, aged about 45 years, son of Late Arjun Naik of Village Jagannath Prasad, P.O. Madhya Khanda, P.S. Nuagaon, Dist.Puri, now working as Inspector, Central Excise and Customs, Range-I, Rourkela, PIN-769002, Dist. Sundargarh. ..... Applicant

By the Advocate - Mr. A.Rath

Versus

1. Union of India, represented through the Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi - 110 001.
2. Collector, Central Excise and Customs, Rajaswa Vihar, Bhubaneswar, Post Box No.166.
3. Additional Collector (P&V), Central Excise and Customs, Bhubaneswar, Post Box No. 166. ..... Respondents

By the Advocate - Shri Ashok Mohanty

Heard on : 26.6.1996

O R D E R

A.K. Chatterjee, VC

The applicant Sri Matia Naik, an Inspector of Central Excise and Customs was placed under suspension by an order dt. 15.2.90, which was followed by service of a major penalty charge-sheet dt.22.8.90 for unauthorised absence from duty. In this proceeding, a penalty was imposed by an order dt.16.6.92 withholding increments for four years. The instant application was filed on 21.9.92 to quash the order of the disciplinary authority and other appropriate order. The grounds taken by the applicant

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are that the entire proceedings were vitiated by malafide exercise of power and the enquiry was conducted without complying with the formalities and with material irregularity. It was also stated that the penalty imposed was disproportionate to the alleged offence.

2. The respondents have denied all material allegations and also contended that the application itself was not maintainable as the applicant did not prefer any appeal against the order imposing the penalty, although it was an appealable order and as such he had come to the Tribunal without exhausting the remedies available to him under the service rules.

3. The Ld.Counsel for both the parties were heard only on the question of maintainability of the application. It was urged on behalf of the applicant that Section 20(1) of the Administrative Tribunals Act, which provides that an application shall not ordinarily be admitted unless the applicant had availed himself of remedies available to him undet the service rules, cannot be pleaded as a bar in this case. as stated on behalf of the respondents because the application was already admitted. In other words, the contention raised on behalf of the Ld.Counsel for the applicant was that the question of maintainability on the ground under consideration cannot be raised after an application is admitted. It seems that there was some conflict of decisions among different Benches on this question and so far as this Bench is concerned, it was held in O.A.223/91 by a Division Bench that the question of maintainability can be raised even after admission. This view seems to be perfectly rational specially in a case, where the application is admitted ex-parte and the respondents had no opportunity to press this point before admission, If the law was otherwise, the position would be that the respondents would never have had an opportunity to

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raise the question of maintainability which does not stand to reason. Therefore, atleast in the present case, where the application was admitted even before service of notice upon the respondents, they cannot be estopped from raising this plea at the time of hearing.

4. Our attention was then drawn to Section 20(1) of the said Act, which lays down that ordinarily an application should not be admitted unless departmental remedies are exhausted. It was, therefore, urged on behalf of the applicant that the very use of the expression "ordinarily" suggests that it is not an inflexible rule that an application cannot be admitted unless the applicant avails the departmental remedies available under the service rules. Now, it appears to us that the expression "ordinarily" indicates that as a rule, the application should not be admitted unless departmental remedies are exhausted and it is only in exceptional cases that such admission is permissible under the law. The Ld. Counsel for the applicant has argued that the exceptional circumstance in the present case is that an appeal before the appellate authority would offer him no substantial relief as such authority had no power to grant stay of the order of penalty passed by the disciplinary authority. We see no merit in this argument because if it is regarded as an exceptional circumstance, then in every case of disciplinary proceeding ending with an order of penalty would be regarded as exceptional enabling the delinquent to come up to the Tribunal without preferring any appeal and Section 20(1) of the said Act would be rendered nugatory at least so far as this class of case is concerned. Further even if the penalty imposed by the disciplinary authority is not stayed by the appellate authority, the applicant would no doubt be entitled to have the increments restored and to all consequential financial benefits in the event

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of his success in the appeal. Therefore, even in the absence of a stay order in appeal, the position of the applicant will be smply vindicated if he is ultimately exonerated. Thirdly, it appears that the power to grant stay is inherrent in the constitution of every appellate authority and even in the absence of statutory provision, nothing stands in the way of passing a stay order in appropriate cases. Thus, the ground urged on behalf of the applicant to support this contention that itwas an exceptional case does not stand scrutiny and must be rejected.

5. Still another infirmity in the way of entertaining an application filed by an applicant before exhausting departmental remedies in a case like this, where finding of fact has been questioned, is that this Tribunal would have to act as an appellate authority and decide the disputed questions of fact if it were to entertain an application filed by the applicant without preferring an appeal to the appellate authority provided under the service rules. This Tribunal is not expected to normally enter into facts and, therefore, it is only just and proper and indeed in the interest of the applicant himself that he should first take an appeal and in case his grievance is not redressed by the appellate authority, he may approach this Tribunal.

6. For the reasons indicated above, it is held that the application cannot be entertained and it is accordingly rejected. However, we direct that the applicant, if so advised, may prefer an appeal against the order of the disciplinary authority before the appellate authority within three weeks from this date and if such an appeal is presented, the same shall not be treated as barred by limitation. We further direct that the applicant will have liberty to canvas before the appellate authority all the grounds urged in the present application.

7. No order is made as to costs.

(N. Sahu)
Member (A)

31/7/96

(A.K. Chatterjee)
Vice-Chairman