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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A. No. 258 of 1995
Cuttack, this the 31st day of July, 1996

Coram :

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

Panchanan Naik, s/o Sri Rameswar Naik, aged about 33 years, at present working as Junior Telecom Officer(Estimate), office of the Telecom District Engineer, Bolangir, at/PO/Dist: Bolangir, Permanent resident of Dabakani, Post Kurul, Dist: Bolangir ..... Applicant

By the Advocate : Mr.Ajit Rath

Versus

1. Union of India, represented by its Secretary.
2. Director, Telecom, Sambalpur, At/PO/Dist:Sambalpur.
3. General Manager, Office of the Chief General Manager, Telecom, Orissa, Bhubaneswar, Dist: Khurda. ..... Respondents

By the Advocate : Mr.P.N. Mohapatra

Heard on : 25.6.1996

O R D E R

A.K. Chatterjee, VC

The applicant while working as a Junior Telecom Officer in the office of the Telecom District Engineer, Bolangir was served with a major penalty charge-sheet on 16.3.1992 for gross mis-conduct and failure to maintain absolute integrity as he had submitted forged Mark Sheets of B.Sc.(Hons) Examination held by Sambalpur University and got his appointment on its basis. An enquiry was held in which the applicant participated and ultimately, an order of dismissal was passed

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by the disciplinary authority on 4.5.95 as it was found, inter alia, on the basis of the evidence on record including the testimony of the Assistant Registrar of the said University that the applicant had scored only 369 marks out of 600, while he had submitted a Mark-Sheet indicating that he had secured 544 marks. The applicant has alleged that there was no evidence at all of any forgery being committed by him and that there was procedural irregularity in conducting the enquiry and as such the proceeding and consequently the penalty order are liable to be struck down. The instant application was filed on 12.5.95.

2. The respondents in their counter have denied all material allegations of the applicant and has questioned the maintainability of the application as it has been filed within days of preferring the appeal against order of penalty before the appellate authority which was still pending.

3. The Learned Counsel of both the parties were heard only on the point of maintainablity of the application.

4. Now Section 20(1) of the Administrative Tribunals Act prohibits the Tribunal from ordinarily admitting an application unless it is satisfied that the applicant had availed himself of all the remedies available to him under the relevant service rules for redressal of his grievance. The Ld.Counsel for the applicant has laid emphasis on the expression "ordinarily" occurring in Section 20(1) and urged that it does not operate as an absolute bar to admit an application even before exhausting the departmental remedies available to an applicant. It was also urged in this connection that since the appellate authority had no statutory power to stay the order of penalty passed by the disciplinary authority, the applicant had no

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option but to move this Tribunal to continue in service. It was also pointed out that the appeal was still pending even after a long time and in case it was disposed of, the applicant could suitably ~~ordinarily~~ amend the application.

5. We have given our anxious consideration to the arguments on behalf of both the parties and we find ourselves unable to share the view of the Ld.Counsel for the applicant. The very use of the expression "ordinarily" in Section 20(1) necessarily suggests that as a rule, an application shall not be admitted unless departmental remedies are exhausted and it is only in exceptional circumstances that an application to quash a proceeding and order of penalty can be admitted before the departmental remedies in the shape of an appeal to the appellate authority are availed of. The Ld.Counsel for the applicant has stated that the exceptional circumstance in this case was that the appellate authority had no power to stay the operation of the order of penalty passed by the disciplinary authority. This contention deserves consideration but merits rejection. If this is regarded as an exceptional circumstance, then every case of a disciplinary proceeding visited with an order of penalty would be regarded as exceptional enabling the delinquent to come up to the Tribunal even without taking any appeal and Section 20(1) of the Act would be rendered nugatory atleast so far as this class of case is concerned. Further even if no stay of penalty order of dismissal is granted by the appellate authority, the applicant would no doubt be entitled to be honourably re-instated with all consequential benefits in the event of his success in the appeal. Thus, even if no stay order is passed in appeal, the position will be amply

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vindicative if he is ultimately exonerated. Thirdly, 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 the contention that the present application can be entertained even though filed within days of preferring an appeal do not stand scrutiny and must be rejected.

6. The fact that the appeal has remained pending even after long time and that in case it is disposed of, the applicant would make suitable amendment to the application is not considered relevant for deciding the question of maintainability. In fact, u/s.19(4) of the A. T. Act, as soon as an application is admitted by the Tribunal, any proceeding for redressal of the same grievance pending before such admission abates and unless otherwise directed by the Tribunal, no appeal in relation to such matter can be entertained. Therefore, as soon as the present application was admitted, the hands of the appellate authority were tied and he could not possibly proceed with the appeal thereafter. In such situation, no question can also arise of making any amendment to the original application if the appeal is decided in the meantime.

7. The Ld.Counsel for the applicant has urged that the question of maintainability cannot be canvassed by the respondents after the application has been admitted and he has cited some decision of different Benches of the Tribunal. It seems that there was some conflict of decisions among different Benches 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

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rational specially in a case where the application is admitted ex-parte and the respondents had no opportunity to press this contention at that stage. If the law is held to be otherwise, the position would be that the respondents would never have had an opportunity to raise the question of maintainability which does not stand to reason. Therefore, atleast in the present case, where an application is admitted before service of notice upon the respondents, they could not be estopped from raising this plea at the time of hearing. The Ld.Counsel for the applicant has also drawn our attention to Section 21(1)(b) of the A.T. Act and has stated that as the appeal before the appellate authority remained pending even after six months of its presentation, the present application would be barred by limitation if he did not come within one year from the expiry of six months. This contention is not relevant so far as the question of maintainability is concerned and the applicant could very well wait atleast for six months after presentation of the appeal and then approach the Tribunal if the appeal still remained pending as in that case he could be said to have availed of the departmental remedies and would also be well within the period of limitation prescribed by law.

8. The applicant had also filed an application for contempt being M.A. No. 470 of 1995 alleging that inspite of Tribunal's order dated 18.5.95 staying the operation of the impugned order of dismissal from service, he was relieved of his position. The record reveals that the order releasing the applicant was passed on 5.5.95, while the order said to have been violated was made on 18.5.95. Further the order dated 18.5.95 was despatched by the Registry on or about 30.5.95 and received by

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the respondents on or about 2.6.95. There might have been some delay in communicating the order of release to the applicant as in the meantime, he had proceeded on leave on account of his wedding, but the fact that the order releasing him was made on 5.5.95, is enough to show that no contempt rule for violation of the order dated 18.5.95 can be issued.

9. On the above premises, we hold that the application cannot be entertained and it is accordingly rejected. The applicant will, however, be at liberty to urge all the grounds taken by him in the present application in any subsequent O.A., which may be filed by him in accordance with law after disposal of the appeal to the appellate authority. No order is made as to costs.

10. The interim order made on 18.5.1995 is recalled and this disposes of M.A. 421 of 1995 filed by the respondents on 20.6.95 for vacating the same.

11. M.A. 470 of 1995 does not call for any action and it is accordingly disposed of.

(N. Sahu) 31/7/96
Member(A)

(A.K. Chatterjee)
Vice-Chairman