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O.A.No.780 of 1996.

3. 12.11.1996. Heard Sri Ganeswar Rath, counsel for the applicant and Sri U.B.Mohapatra, Additional Standing Counsel for the respondents. In this O.A. the applicant seeks quashing of the order of punishment dated 4.8.96 vide Annexure-5. By this order the Superintendent of Post Offices, Keonjhar Division, respondent No.4, has held that the applicant be awarded a punishment of compulsory retirement from service with immediate effect. The order was dated 21.8.96. Against this order, the applicant filed an appeal to the Director, Postal Services, Sambalpur Division, Sambalpur under Rule 23 of the CCS(CCA) Rules. This appeal was dated 18.9.96.

2. The sole question before me is as to whether this O.A. deserves to be admitted in view of the statutory appeal pending before the appellate authority under Rule 23 of the CCS(CCA)Rules.

3. Sri Ganeswar Rath, counsel for the applicant, has drawn my attention to the decisions reported in (1988) 8 ATC 911(para-14) (Thakur Prasad Pandey v. Union of India and others); (1988 6 ATC 152 (para-35) (P.S.Chawla v. Union of India); AIR 1982 SC 82 (V. Vellaswamy v. I.G.of Police, Tamil Nadu, Madras and others) and AIR 1987 SC 2186 (page 2189) (Smt.Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur). Learned counsel Sri Rath has stressed on the decision of the Supreme Court in AIR 1987 SC 2186 (supra). The apex Court held that it is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Art.226 of the Constitution on the ground of existence of an alternative remedy. Learned counsel for the applicant has taken me through the averments.

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He stated that the disciplinary authority is himself a witness to the incident of alleged misconduct and therefore he should not act as the disciplinary authority (page-9 para-5.3 of the application). He stated that the Inquiry Officer committed a grave error in refusing to supply the documents and to produce the additional witnesses cited by him in his requisition. He further stated that the disciplinary inquity entailed a flagrant violation of the principles of natural justice resulting in a very severe major punishment of compulsory retirement.

4. Opposing the aforesaid contention of Sri Rath, Sri Mohapatra, Additional Standing Counsel for the respondents stated that once a statutory appeal is filed, the appellate authority is seized of the matter. All these objections can as well be raised before the appellate authority. A decision by a superior Court will only short-circuit the statutory remedy available. The applicant can get all the reliefs if he succeeds in the appeal on merits before the appellate authority. The statutory remedy will become redundant if the O.A. is admitted.

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5. The Hon'ble Supreme Court in case of S.S. Rathore v. State of Madhya Pradesh (AIR 1990 SC 10) referred to the scheme of the Act and laid down that exhausting statutory remedies before approaching the Tribunal is a very important condition. At paragraph-16 of the judgment, the Hon'ble Supreme Court held that the Rules relating to the disciplinary proceedings do provide for an appeal against punishment imposed on public servants and the purport of Section 20 of the A.T.Act is to give effect to the Disciplinary Rules. Thus exhaustion of

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remedy available thereunder is a condition precedent to maintain the claims under the A.T.Act. A Full Bench of the C.A.T., Hyderabad Bench in B. Parameshwara Rao v. The Divisional Engineer, Telecommunications, Eluru and another (Vol. II of the Full Bench Judgements of C.A.T.250) followed the decision in the case of S.S.Rathore and explained the meaning and connotation of the word "ordinarily" occurring in Section 20 of the Act :

> "12. The question now is whether it is imperative for every applicant to exhaust the statutory remedy of appeal for redressal of service matters before he comes to the Tribunal under Section 19 of the Act. The wordings of Section 20 of the Act use the words : The Tribunal shall not ordinarily admit an application - which means that ordinarily it will not be open to the Tribunal to admit an application under Section 19 of the Act where the statutory provision for appeal, etc., had not been availed of. It will be deemed to have been availed of if after the filing of such an appeal a period of six months have expired and no orders have been passed by the appellate authority. The emphasis on the word "ordinarily" means that if there be an extraordinary situation or unusual event or circumstance, the Tribunal may exempt the above procedure being complied with and entertain such application. Such instances are likely to be rare and unusual. That is why the expression "ordinarily" has been used. There can be no denial of the fact that the Tribunal has power to entertain an application even though the period of six months after the filing of the appeal has not expired but such power is to be exercised rarely and in exceptional cases."

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It is true that there are instances where the appellate remedy cannot be efficacious to permit an applicant to secure timely protection. For

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instance, in the case of suspension, if the act of suspending the Government servant is challenged on the ground of mala fides or on the ground of jurisdiction, asking the applicant to avail the appellate remedy may not meet the desired relief. The appellate process is time-consuming and may not be perceived to come to the rescue of the applicant and protect him from violation of his fundamental rights. While the act of suspension itself is under challenge and the applicant suffers the ignominy of suspension, a writ remedy probably enables him to obtain quick relief. This is one of the instances. There may be others where the Tribunal can exercise its discretion. The present case is not of such a category as to warrant immediate acceptance of appeal shortcircuiting the departmental remedies available. The right of appeal is a statutory remedy in a disciplinary proceeding. When the said appeal is pending, entertaining this O.A. would amount to ignoring what the statute has created as a remedy. With regard to the power of interim stay, the appellate authority is not entirely powerless.

6. It is only in extraordinary circumstances this Court admits the O.A. and disposes of the grievance of the applicant directly. In this case, the applicant had been awarded the punishment of compulsory retirement and that punishment order has been implemented. Even if this Court admits this O.A. it cannot direct the petitioner to be restored to his service unless this petition is disposed of on merit. It is true that there are very important points made out by the learned counsel for the applicant. It is also true that these very important points can be

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agitated before the appellate authority. If because of the pendency of the appeal, the applicant suffers from any irreparable loss which can only be relieved by a prompt intervention from this Court, that may be a ground. That is not the case here. There may be other situations where this Court can come to the conclusion that the relief prayed for by the petitioner can be met by this Court more expeditiously than any other statutory fora. Such a situation does not appear to have prevailed in this case. All the same, I would direct the appellate authority the Director of Postal Services, Sambalpur Division, Sambalpur to dispose of the appeal within a period of four months from the date of receipt of a copy of this order. With this direction, the O.A. is disposed of.

Copy of this petition with enclosures shall be sent to the Director of Postal Services who is the appellate authority and other copies with annexures be returned to the applicant with permission to use them, if necessary, after the disposal of the appeal.

DJ.

Narasimhasahu
(N. SAHU) 12/11/96
MEMBER (ADMINISTRATIVE).

Order no-3 Dt- 12-11-96

A copy of Order alongwith the notice may be sent to all O/P by Regd Post/AD. Copy of Order may be given to both Counsels

Advt
15/11/96

S.O-(CT)

Received copy
Adv 15/11/96