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3	13-11-96	In this Original Application the applicant seeks a direction to the Respondents to stop further recovery from the pay of the applicant until further orders. Facts briefly are that while working as a Cash Overseer, Sambalpur Head Post Office, the applicant was entrusted with a total cash remittance of Rs.55,500/- for conveyance to Jharupada N.D.T.S.O. (Rs.15,000/-) and (Rs.40,500/-) to Sambalpur Court NDTSO. Within a very short time during the day the entire amount of cash was stolen, as per the averment in the O.A., by a group of miscreants. The applicant was chargesheeted under Rule 16 of CCS (CCA) Rules,1965 by the Senior Superintendent of Post Offices, Sambalpur Division,Sambalpur. The disciplinary proceedings were concluded with the finding that xx the charges levelled against the applicant were proved. The impugned order of punishment imposed penalty of recovery of an amount of Rs.15,640/- in 34 equal monthly instalments from the applicant's salary from the month of July,1996. 2. When this matter came up for admission, it was noticed that the applicant had filed an appeal on 22.7.1996 to the Director of Postal Services,Sambalpur Region,Sambalpur, against the order of punishment dated 25.6.1996, praying for setting aside the order of punishment. The applicant has also requested the appellate authority to stop the recovery pending final decision of appeal. 3. It is in this background the question for consideration is whether this O.A. can be admitted. Learned	

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counsel for the applicant, Shri Ashok Kumar Misra cited 1968 CLT 898 to defend his claim that the Tribunal can and should entertain an appeal directly. He mentioned that the Madras Bench of the Central Administrative Tribunal has taken a similar view in this regard. I have carefully considered the submissions of Shri Ashok Kumar Misra, applicant's counsel and Shri Ashok Mohanty, learned Senior Standing Counsel.

4. 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 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 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 Judgments of CAT 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

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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."

It is true that there are instances where the appellate remedy cannot be efficacious to permit an applicant to secure timely protection.For 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 xxx can exercise its discretion. The present case is not of such a category

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as to warrant immediate acceptance of appeal shortcircuiting the departmental remedies available. The right of appeal is a statutory remedy in a disciplinary proceedings. When that 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. The applicant himself had mentioned that it approached the appellate authority to stay recovery till the disposal of the appeal. He has not waited for a decision in this regard. It would be appropriate for him to move the Director of Postal Services for staying recovery of the amount by the impugned order till the disposal of the appeal. If there is any delay in disposing of the appeal, the Director of Postal Services shall consider this request of the applicant and pass suitable orders in two weeks of his filing a petition in this regard.

With the above observation, the O.A. is disposed of - dismissed in limine - as not maintainable on the ground that other statutory remedies have not been exhausted.

(N.SAHU)
MEMBER(ADMINISTRATIVE)