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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 187 & 188 OF 1999

Cuttack, this the 7th day of August, 2001

Pradipta Kumar Mangaraj (OA 187/99)
Jitendranath Jayadev (OA 188/99)....Applicants

Vrs.
Union of India and others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Sow
(SOMNATH SOW
VICE-CHAIRMAN
7.8.2001

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

In OA 187/99

Sri Pradipta Kumar Mangaraj,
son of late Sanatan Mangaraj,
Token Porter, At-Sarangoi,
P.S-Delanya, District-Puri

In OA 188/99

Sri Jitendranath Jayadev,
son of Sri Lokanath Jayadev
At-Sujanpur, P.O-Delang, Dist.Puri....Applicants

Advocates for applicants - M/s Sanjib
Mohanty
P.K.Sahu

1. Union of India, represented through its Secretary,
Ministry of Railway, At-Rail Bhawan, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach,
Calcutta.
3. Divisional Railway Manager,
South Eastern Railway,
At/PO-Khurda Road, Jatni,
District-Khurda.
4. Asst.Operating Manager, S.E.Railway, Khurda Road,
Khurda.
5. Sr.Divisional Personnel Officer, S.E.Railway, Khurda
Road, Khurda.....
Respondents

Advocates for respondents - M/s Ashok
Mohanty
R.Ch.Rath

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ORDER
SOMNATH SOM, VICE-CHAIRMAN

These two applications have been heard separately. But as the applicants are similarly situated and the prayers made by them in these O.As. are similar and as the respondents have filed similar counters and points for adjudication are the same, both these cases are being disposed of by a common order. Facts of both the cases are, however, set out separately.

2. In OA No.187 of 1999, the applicant is one Pradipta Kumar Mangaraj, son of late Sanatan Mangaraj. He has prayed for quashing the order dated 13.4.1999 (Annexure-8) dismissing him from Railway service with effect from 30.4.1999 and has also prayed for reinstatement in service with consequential benefits. The case of the applicant is that he was working as Casual Khalasi in different Railway Stations of Khurda Road Division, S.E.Railway. He was called for screening and appeared before the Medical Board and was duly selected for appointment to the post of Substitute Token Porter. He initially joined at Paradeep on 14.7.1994 and was later on transferred to Puri. While he was working at Puri, disciplinary proceeding was initiated against him. The applicant has stated that the charge against him was that he being Pradipta Kumar Mangaraj, son of Sanatan Mangaraj, has impersonated another person with the name Pradipta Kumar Mangaraj, son of Kelu Charan Mangaraj. The applicant has further stated that he attended the preliminary enquiry on 10.6.1998 along with his defence counsel when the next date of enquiry was fixed on 18.6.1998. The applicant has stated that on 18.6.1998 he became seriously ill and could not attend the enquiry and in his absence the enquiry was concluded and the order of dismissal was passed. The applicant has stated that in this case the disciplinary authority himself conducted the enquiry and this is illegal. On various other grounds he has challenged the enquiry report and the order of dismissal. It is not necessary to refer to the averments made by the respondents in their counter because these will be referred to while considering the submissions made by the learned counsel of both sides.

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3. In OA No.188 of 1999 the applicant is one Jitendranath Jayadev, son of Lokanath Jayadev. He has also stated that he was working as Casual Khalasi in different Stations of S.E.Railway. He was duly selected and appointed as Substitute Token Porter on 23.12.1992. He was initially posted at Bhubaneswar and later on transferred to Puri. While working at Puri, disciplinary proceeding was initiated against him in which the charge (annexure-2) was that while he is Jitendranath Jayadev, son of Lokanath Jayadev, he had impersonated another Jitendranath Jayadev, son of Baikuntha Bihari Jayadev. The applicant has stated that he attended the preliminary enquiry on 10.6.1998 along with his defence counsel like the applicant in the other O.A. and the next date of enquiry was fixed on 18.6.1998. The applicant has stated that on 18.6.1998 he fell seriously ill and could not attend the enquiry any further and the enquiry was held ex parte and he was dismissed from Railway service in the order dated 13.4.1999 (Annexure-3). The applicant has challenged the enquiry report and the punishment order on various grounds like denial of reasonable opportunity and illegality in the disciplinary authority conducting the enquiry, and on the above grounds he has come up with the prayer for quashing the order of dismissal and has asked for reinstatement with all consequential benefits.

4. We have heard the learned counsel for the petitioners and Shri Ashok Mohanty, the learned Senior Panel Counsel (Railways) and Shri R.Ch.Rath, the learned Panel Counsel(Railways) for the respondents and have perused the records.

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5. Before proceeding further it is to be noted that two other persons Pradipta Kumar Mangaraj, son of Kelu Charan Mangaraj and Jitendranath Jayadev, son of late Baikuntha Bihari Jayadev had earlier approached the Tribunal in OA Nos. 790 and 791 of 1994 alleging that they

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have been given appointment as Token Porter. But two other persons, Debendra Behera, impersonating as Jitendranath Jayadev and Damodar Pradhan, impersonating as Pradipta Kumar Mangaraj, are working as Token Porter in their place. The Tribunal in their order dated 30.10.1994, disposed of those two O.As. directing the respondents to conduct thorough enquiry into the matter and in case the allegations are found to be correct, then action against the impersonators should be taken. The respondents have stated in their counters in both the cases that after receipt of the above order of the Tribunal, enquiry was made and action was taken which ultimately resulted in dismissal of the present two applicants from service. It further appears that the genuine persons Pradipta Kumar Mangaraj, s/o Kelu Charan Mangaraj and Jitendranath Jayadev, son of Baikuntha Bihari Jayadev were appointed as Token Porters. These two genuine persons came up before the Tribunal in OA Nos. 550 and 545 of 1997 praying that they should be given seniority and all service benefits from the date the impersonators have been working in the posts meant for them. It is not necessary to refer to these two disposed of cases except to note that in paragraph 3 of the counter to OA No.550 of 1997 the Railway authorities have stated that on enquiry it was found that one Damodar Pradhan has impersonated himself as Pradipta Kumar Mangaraj and Debendra Behera has impersonated himself as Jitendranath Jayadev. Thus from a reference to the counter filed by the Railways, it appears that the persons who had impersonated themselves as Pradipta Kumar Mangaraj and Jitendranath Jayadev, are actually Damodar Pradhan and Debendra Behera respectively. Be that as it may in the

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present O.As. the learned counsel for the applicants has stated that as the applicants fell ill and could not attend the enquiry, the enquiry was conducted *ex parte* and thereby reasonable opportunity has been denied to them. We are unable to accept this contention because it is not believable, as has been submitted by the applicants in the two O.As. that both of them fell ill on 18.6.1998 and were unable to attend the enquiry. There is also no illegality in the disciplinary authority himself conducting the enquiry. These contentions are held to be without any merit and are rejected.

6. The respondents have stated and the applicants have ~~not~~ denied by filing any rejoinder that against the orders of dismissal from service these two applicants have not filed departmental appeals. Under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968, the petitioners have statutory remedy of filing departmental appeals against the impugned orders of dismissal from service. At this stage, it is profitable to refer to Section 20 of Administrative Tribunals Act, 1985, which runs as follows:

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"20. Application 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 grievance.

(2) For the purpose 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 the 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 purpose 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 to 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.*

A larger Bench of the Apex Court in the case of S.S.Rathore v. State of Madhya Pradesh, 1990 SCC (L&S) 50, while interpreting Section 20 of the Administrative Tribunals Act, 1985, observed as follows:

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."*

This ruling of the Apex Court was followed by the Full Bench of Hyderabad C.A.T. in B.Parameswar Rao v. Divisional Engineer (Telecommunications) reported in Full Bench Judgments of C.A.T.(1989-91) Vol.II Bahri Brothers page 250. In para-11 the Full Bench observed that where a statute itself provides for the starting point for filing of the application under

Section 19 of the Administrative Tribunals Act, 1985, normally no such application could be filed before the date. A person aggrieved can file an application under Section 19 of the Act when the cause of action arises, viz., when the impugned order is passed; provided the rules do not make provision for filing of an appeal/revision/representation. Where the law requires that the applicant exhausts his statutory remedy for redressal of his grievances under the relevant service rules, it is incumbent on the applicant to file an appeal/revision/representation, whichever is permissible under the rules to the authorities concerned and then wait for six months' time of the latter to decide the matter. There may be, however, cases where the authority concerned is not able to conclude the appeal, etc. within the period of six months. In such cases aggrieved person need not wait any further and on expiry of six months' period from the date of filing of appeal,etc., he can approach the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. In this Full Bench case, the applicant, a Telephone Operator was dismissed from service by the disciplinary authority. The applicant submitted an appeal to the appellate authority challenging the order of dismissal. A month later he filed Original Application before the Hyderabad Bench of the Tribunal. The Full Bench did not accept the plea of the applicant that he was not bound to wait any longer and he could come straightaway to the Tribunal seeking relief.

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7. It should not be understood that Section 20 of the Administrative Tribunals Act, 1985 ousts the jurisdiction of the Tribunal vested under Section 14 of the Act. All that Section 20 mentions that the Tribunal shall not ordinarily admit an application. In other words, it 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 after filing of such an appeal a period of six months had expired and no orders have been passed by the appellate authority. The Full Bench of Hyderabad C.A.T. held that the word "ordinarily" means that in an extraordinary situation or unusual event/ circumstance, the Tribunal may exempt the above procedure to be complied with and entertain the application and such instances are likely to be rare and unusual. In other words, "ordinarily" means "generally" and not "casually" and it cannot obviously mean "always".

Thus, it is clear that in order to persuade the Tribunal to use its discretion in entertaining and admitting the application under Section 19 of the Administrative Tribunals Act, 1985, even where the statutory remedy of filing appeal/representation has not been availed of or even when such appeal/representation though filed, six months' period has not elapsed, the relevant facts leading to such extraordinary situation and/or unusual event/circumstance for which the departmental remedies have not been availed of, have to be specifically pleaded in these applications.

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The applications under Section 19 of the Act before us are conspicuously silent about any such facts. On the other hand, in paragraph 6 of the applications, the applicants have misled the Tribunal by stating that they have availed of all the remedies available to them under the relevant service rules under the heading "Details of Remedies Exhausted" even though they were provided with right of appeal under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968. Thus, these Applications are not maintainable under Section 20 of the Administrative Tribunals Act, 1985.

8. The learned counsel for the petitioners submitted that as no enquiry was conducted, there was no opportunity for the two applicants to file appeals against the orders of dismissal from service. This contention is wholly without any merit. The two orders of dismissal from service, dated 13.4.1999 have been received by the applicants because they have filed the same along with O.As. and therefore, nothing prevented them from filing departmental appeals. In view of this, this contention of the learned counsel for the petitioners is rejected.

9. In view of our discussions above, we hold that the two O.As. are not maintainable and are also without any merit and the same are rejected. No costs.

10. In OA No.187 of 1999 the applicant has filed M.A.No.439 of 1999 and in O.A.No.188 of 1999 the applicant has filed M.A.No.492 of 1999 praying for payment of subsistence allowance and the respondents have filed counters to both these M.As. It was ordered that orders on these M.As. would be passed along with the orders on the O.As. The respondents in

their counters to the M.As. have stated that subsistence allowance has been paid to the applicants for some time. But thereafter Non-engagement Certificate has not been submitted by the applicants and therefore, subsistence allowance has not been paid to them. In view of this, we direct that till the date of dismissal from service the applicants should be paid subsistence allowance on their production of Non-engagement Certificate excluding the period for which they have already received subsistence allowance. The M.As. are accordingly disposed of.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
7/8/2001

CAT/Cutt.B/ 74L August, 2001/AN/PS