

5. Order dated 5.7.2000

No Advocate from the side of the applicant present. This is the 5th time this application has been filed for hearing on admission. Even on the last four ~~occasions~~ occasions no Advocate for the applicant turned up. As we entertained doubt regarding maintainability of this application we cannot suo motu pass orders without hearing the counsel for the applicant. It is no use waiting further in anticipation of arrival of the Advocate. It is already 12.15 p.m. Heard Shri K. Nayak, Addl. Standing Counsel for the respondents and perused the records. Set up on 7.7.2000 for delivery of orders.

*S. J. Am
vice-chairman
S. J. Am*

6. ORDER DATED 7.7.2000

Member(s)

Applicant while serving as Extra Departmental Branch Post Master, Bhimpur B.O. has been dismissed from service in a disciplinary proceedings by order dated 11.10.1999 of the disciplinary authority, i.e. Senior Superintendent of Post Offices, Berhampur Division (Res.2). In this Original Application filed on 9.2.2000 he prays for quashing that order of the disciplinary authority. There is no mention in the pleadings consisting of 9 typed pages that he has preferred any departmental appeal.

Rule-10 of P & T E.D.A. (Conduct & Service) Rules, 1964, provides for filing appeal against an order imposing penalty by the disciplinary to the authority to whom the disciplinary authority is immediately subordinate. Rule-11 prescribes period of limitation for such appeal. Since the pleading is ~~not~~ silent it is presumed that the applicant has not availed this right of departmental appeal and approached this Tribunal direct.

Section 20(1) of the Administrative Tribunals Act lays down that a Tribunal shall not ordinarily admit an application unless it is

is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Sub-section 2 explains what "all the remedies" under Sub-section(1) means. According to this, if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rule rejecting any appeal preferred or representation made by such person in connection with the grievance ; or where no such final order has been made, if a period of six months from the date on which such appeal was preferred or representation made had expired.

As earlier stated in this O.A. there has been no mention that any departmental appeal as provided under Rule-10 of E.D.A.(Conduct & Service) Rules has been preferred by the applicant. Hence under Section 20(1) of the A.T.Act there is embargo on this Tribunal not to admit this application. It is true that the Tribunal does not lack its inherent jurisdiction under Section 14 of the A.T.Act to entertain ~~any~~ such application. But what the Sec.20 (1) says is that it shall not ordinarily admit. In other words the Tribunal under special and exceptional circumstances can admit an application even if the applicant has not availed other departmental remedies available to him. In that event it is for the applicant to plead in the Original Application what those exceptional and/or special circumstances are. In the absence of any such pleading, the Tribunal cannot presume that the applicant has special and exceptional circumstances for not preferring the departmental appeal.

Since the applicant has not exhausted the right of departmental remedies available before approaching this Tribunal, we are not inclined to admit this Application. The Application is accordingly dismissed for not being admitted.

Before closing we make it clear that in case a departmental appeal preferred by the applicant is pending before the appellate authority, the latter is free to dispose of appeal according to law. If in case the applicant has not preferred any appeal at all, since it is a case of dismissal, we deem it

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

fit and to allow the applicant a chance to prefer departmental appeal within 45 (Forty-five) days from to-day in which case the appellate authority shall not reject the appeal on the ground of limitation and deal with the appeal as per rules.

Registry to communicate the copies of this order to both sides forthwith.

J. M. M.
VICE-CHAIRMAN

7.7.2000

J. M. M.
MEMBER (JUDICIAL)

Copies of order
may be sent
to the court
for both

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