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O.A. No. 770 OF 2006.

Order dated 15th November, 2006.

Applicant an Assistant Engineer of Postal Civil Sub Division, Cuttack having faced the order of punishment of removal from service under Annexure-A/3 dated 28th August, 2006 & under Annexure-A/4 dated 04.09.2006 preferred appeal before the Secretary, Department of Telecommunications cum Chairman, Telecom Commission, Government of India, Sanchar Bhawan, New Delhi (Respondent 1). No reply having been received on his appeal, even after expiry of near about two and half months, he has approached this Tribunal in the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 praying to quash the orders of punishment being bad in law.

Heard Mr. Ganeswar Rath, Learned Counsel for the *Applicant*, and Mr. U.B.Mohapatra, Learned Senior Standing Counsel for the Respondents (on whom a copy of this OA has been served).

Mr. Mohapatra, Learned Counsel for the Respondents has submitted that since without giving breathing time to

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the Respondents to take decision on the appeal of the Applicant, this OA being a premature one should not be entertained at this stage. To this, Learned Counsel appearing for the Respondents has submitted that the Applicant has illegally been deprived of his livelihood by the Respondents. Though he has preferred appeal on 4th September, 2006 the Respondents sat over the appeal and, therefore, two and half months cannot be said to be unreasonable/insufficient so as to enable this Tribunal to entertain this OA for dispensation of justice to the Applicant. By drawing our attention to Section 20 of the A.T.Act,1985, he has submitted that since the Legislation has used the word 'ordinarily', there cannot be any prohibition to entertain an application even without exhausting the other remedies available to a Govt. Servant. He has fervently prayed for entertaining this OA.

Before proceeding further in the matter, we would like to quote Section 20 of the A.T.Act,1985 which reads as under:

**"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 rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the

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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 of 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 purposes 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."

Admittedly, the word 'ordinarily' has received due consideration in many cases in past and it was held that in case where substantial injury would be caused unless the Tribunal entertains the matter Section 20 shall not stand as a bar. But this case clearly comes under sub section 2 (b) of Section 20 and, therefore, the argument advanced by Learned Counsel appearing for Applicant to entertain

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this OA even before the stipulated period provided in the Act has no merit.

However, there is some force in the submission of Learned Counsel appearing for the Applicant that as he is out of job and the Appellate Authority has already taken two and half months time to dispose of the appeal of applicant, he may be directed to dispose of the appeal of applicant within a short period.

In view of the above, while declining to entertain this Original Application, for the ends of justice, the **Respondents especially Respondent No.2 is hereby directed to dispose of the appeal of the Applicant, with a reasoned order within a period of 30 (thirty) days from the date of receipt of copies of this order and communicate the result thereof to the Applicant.**

With the observations and directions made above, this OA is disposed of at this admission stage by leaving the parties to ^ebar₁ their own costs.

Send copies of this order along with copies of the O.A. to the Respondents and free copies of this order be given to Learned Counsel for both sides.

BBJ
MEMBER(A)


VICE CHAIRMAN