

13

O.A. No. 228 of 2007  
Binod Baral ... Applicant  
Versus  
UOI & Ors. ... Respondents

Order dated 12<sup>th</sup> October, 2009.

C O R A M  
THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)  
A N D  
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

Applicant was a Postal Assistant of the Department of Posts. He was removed from service at the conclusion of the disciplinary proceedings initiated against him under Rule 14 of CCS (CC&A) Rules, 1965 vide order under Annexure-5 dated 29<sup>th</sup> December, 2006 which order he challenges in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 with prayer to quash the said order under Annexure-5 and direct the Respondents to reinstate him in service with grant of all consequential service and financial benefits.

2. Respondents filed their counter inter alia opposing the stand taken by the Applicant in his Original Application. They have also taken the question of maintainability of this OA for having approached this Tribunal without exhausting the departmental remedies by way of filing appeal against the order of the disciplinary authority as provided under Rules. Applicant has also filed rejoinder more or less reiterating the stand taken in his Original Application as also refuting some of the points taken by the Respondents in their counter.

2

14

3. Heard Learned Counsel for both sides and perused the materials placed on record.

4. It has been admitted by Learned Counsel for the Applicant that against the order of the disciplinary authority imposing the punishment of removal under Annexure-5 as per Rules appeal lies to next higher authority. But he approached this Tribunal without availing of the opportunity of filing the appeal as provided under the Rules. His contention is that since appeal period is over if this OA is dismissed on the ground of approaching this Tribunal without exhausting the remedy as per rules then the applicant would be deprived of getting justice. Hence he craves leave to file appeal to the appellate authority within a stipulated period. He also prayed for direction to the Appellate Authority to consider the said appeal of the applicant on merit instead of rejecting the same on the ground of limitation. This was not objected to by the proxy Counsel Mr.P.R.J.Dash, appearing for and on behalf of Mr. U.B.Mohapatra, Learned Senior Standing Counsel for the Respondents. Section 20 of the A.T. Act, 1985 clearly prohibits entertaining an Application without exhausting the departmental remedies provided under the Rules. The Applicant should have availed of the opportunity of preferring appeal as provided under the Rules. However, considering the submission of the Learned Counsel for the Applicant that dismissal of this OA on technical ground would cause injustice to him, without expressing any opinion on the merit of the matter, this Original Application is disposed of with liberty to the Applicant to avail of

2

15  
the opportunity of preferring appeal to the Appellate authority within a period of thirty days hence. On receipt of such appeal, the Appellate Authority is hereby directed to consider and dispose of the same on merit within a period of 60 days thereafter and communicate the result thereof to the Applicant.

There shall be no order as to costs,

L K appan  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

C.R. Mohapatra  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)