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O.A.No. 276 of 2007

Laxmikanta Giri

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Applicant

Vrs.

Union of India and others

.....

Respondents

ORDER DATED 31st AUGUST 2007

This Original Application was filed on 24.8.2007 and placed before the Bench on 28.8.2007 for considering the question of admission. But the learned counsels for the applicant did not appear. The applicant appeared in person and prayed for leave to permit him to make submissions. When the learned counsels were engaged by the applicant, the applicant should not have been allowed to make submissions in person. But considering the fact that the Advocates have gone on strike before this Bench on the basis of purported resolutions passed by the CAT Bar Association, I permitted the applicant to appear in person and make submissions. In connection with lawyers' strike on Court work, I would like to refer to the decision of the Hon'ble Supreme Court in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, JT 2000 (Suppl.2) SC 546, wherein Their Lordships, in paragraphs 24, 27 and 28 of the judgment, have held that no advocate can take it for granted that he will appear in the court according to his whims and fancies or convenience. It would be against professional ethics for a lawyer to abstain from the court when the cause of his client is called for hearing or further proceedings. In appropriate cases the court itself can pass effective orders for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession and the defaulting Courts may also be contributory to the contempt of the Hon'ble Apex



✓ Court. Keeping in view the case law laid down by the Hon'ble Supreme Court, the materials available on record were perused, the applicant was heard in person, and order was reserved.

2. Applicant Laxmikanta Giri, while working as Loco Pilot, Goods, under the Chief Crew Controller, East Coast Railway, Khurda Road, Dist. Khurda, was issued with charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, vide Memo dated 29.7.2005 (Annexure A/1). The applicant had filed his written statement of defence on 3.8.2005 (Annexure A/2) denying the charges levelled against him. After inquiry, the inquiry report was submitted and the Disciplinary Authority by memo dated 22.2.2006 (Annexure A/4) communicated the copy of the inquiry report to the applicant and called upon him to submit his representation, if any, on the inquiry report. The applicant made his representation <sup>on 20.3.2006</sup> 20.3.2006 (Annexure A/5). Thereafter a re-enquiry was conducted. The report of re-enquiry was communicated to the applicant by the Disciplinary Authority, vide his letter dated 4.5.2007 (Annexure A/8). The applicant also submitted an additional representation dated 28.5.2007 (Annexure A/9) on the report of re-enquiry.

3. The Disciplinary Authority, after going through the case file and enquiry report and defence submitted by the applicant, agreed with the findings of the Inquiry Officer that the applicant was responsible for **derailment due to running at higher speed than the permissible limit.**

4. The Disciplinary Authority, by order dated 30.7.2007 (Annexure A/10) imposed on the applicant the **punishment of reversion to the post of Loco Pilot (Shunter) Gr.I for a period of 6 (six) months without cumulative effect in future**



✓ where his pay should be operated in the post of LP (Shunter)Gr.I in the scale of Rs.5000 to 8000/- as Rs.5600/- with effect from 01.09.2007. The Disciplinary Authority by the said order dated 30.7.2007, while imposing the above punishment, also observed that if the applicant wants to prefer any appeal against his decision, he could do so <sup>- before him.</sup> the next higher authority, i.e., ADRM/KUR within 45 days from the date of receipt of this letter. Along with the punishment order, the Disciplinary Authority has also passed a Speaking Order.

5. Being aggrieved by the order of punishment dated 30.7.2007 (Annexure A/10), the applicant preferred an appeal on <sup>filed</sup> 8.8.2007 (Annexure A/14) before the Appellate Authority praying for setting aside the order of punishment and also for keeping the punishment order in abeyance.

6. The applicant has filed this Original Application on 24.8.2007 before this Tribunal praying for quashing the punishment order dated 30.7.2007 (Annexure A/10). He has also prayed for interim relief to stay operation of the punishment order (Annexure A/10).

6. The applicant, <sup>has</sup> having preferred appeal on 8.8.2007 (Annexure A/14) against the order of punishment dated 30.7.2007 (Annexure A/10), cannot be deemed to have exhausted the alternative remedy in as much as the period of six months from 8.8.2007, i.e., the date when the appeal was preferred, has not expired by 24.8.2007, the date of filing of the O.A.. <sup>- Hence, he</sup> As the applicant has not exhausted the alternative remedy under Section 20(2)b) of the Administrative Tribunals Act, 1985. Therefore, in terms of the embargo contained in Section 20(1) of the Administrative Tribunals Act, 1985, the Original Application is not maintainable before Tribunal.



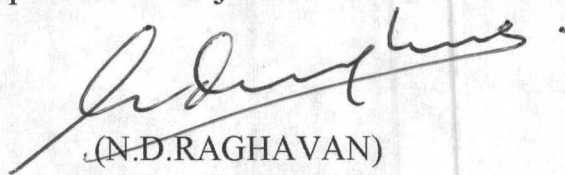


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7. The submission of the applicant, who appeared in person on 28.8.2007, is that as the punishment order has been directed to take effect from 1.9.2007, he will suffer irreparable loss and irremediable damages in as much as he will be reverted to a lower grade w.e.f. 1.9.2007. I have carefully considered the submission of the applicant. The applicant's appeal is pending with the appellate authority. He has made a prayer for setting aside the punishment order and also for keeping the punishment order in abeyance till disposal of the appeal. All punishments imposed by the disciplinary authority are subject to the result of the appeals before the appellate authority or any proceedings before the Court or Tribunal. In the event the delinquent employee is exonerated of the charge and the punishment order is set aside by the appellate authority, or Court/Tribunal, then the position of the concerned delinquent employee will be restored as it was before the punishment order was passed. Therefore, it cannot be held that the applicant has made out an exceptional circumstance/case where the Tribunal should entertain his O.A. before the alternative remedy of appeal is exhausted by him. Hence the submission of the applicant has no force. However, in the peculiar facts and circumstances of the case, the appellate authority will be well advised to dispose of the appeal within a period of 45 (forty-five) days from the date of receipt of copy of this order which shall be communicated by the applicant to the appellate authority by hand.

8. In the result, the Original Application is rejected with the aforesaid observations. No costs.

  
(N.D. RAGHAVAN)  
VICE-CHAIRMAN