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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NOS. 66 TO 68 OF 2007
Cuttack, this the 4th day of April, 2007

Utkal Bhusan Routray, etc.	.....	Applicants
Vrs.		
Union of India and others	.....	Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not?

2) Whether it be sent to Principal Bench of the Central Administrative Tribunal or not?

(B.B.MISHRA)
ADMINISTRATIVE MEMBER

(N.D.RAGHAVAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NOS. 66 TO 68 OF 2007
Cuttack, this the 4th day of April 2007

CORAM:
HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN
AND
HON'BLE SHRI B.B.MISHRA, ADMINISTRATIVE MEMBER

.....

In OA 66 of 2007
Utkal Bhusan Routray,a ged about 45 years, son of late Dibakar Routray, permanent resident of Ichhatirtha Nilaya, Routray Bhawan, At/PO Khutuni, P.S.Gurudijhatia, Dist.Cuttack, at present working as Head Goods Clerk, East Coast Railway,Cuttack, Railway Colony Qr.No. T-29(F), P.O. College Square, Dist. Cuttack

In OA 67 of 2007
Arjuna Charan Jena, aged about 59 years, son of late Bairagi Charan Jena, permanent resident of village Shyamsundarpur, P.O.Srimantapur, P.S.Simulia, Dist.Balasore, at present working as Senior Goods Clerk, East Coast Railway, Cuttack, Railway Quarter No. M/SC/2©, Near Railway Station P.O. College Square, Dist. Cuttack

In OA 68 of 2007
Abhimanyu Sethy,aged about 56 years, son of late Mohan Sethy, permanent resident of villagel Pandia, P.S. Purusottampur, Dist.Ganjam, at present working as Head Goods Clerk, East Coast Raiwlay, Nirgundi, At/PO Harianta, P.S.Tangi, Dist. Cuttack.

..... Applicants

Advocates for the applicants - M/s Dhuliram Pattanayak, N.S.Panda, N.Biswal and S.K.Rath.

Vrs.

In all three O.As.

1. Union of India, represented through its General Manager, East Coast Railway, Chandrasekharpur, At/PO Chandrasekharpur, Dist.Khurda.
2. Divisional Railway Manager, East Coast Railway, At-Khurda Road, P.O.Jatni, Dist. Khurda.
3. Senior Divisional Commercial Manager, East Coast Railway, Khurda Road, P.O.Jatni, Dist. Khurda.
4. Divisional Commercial Manager, East Coast Railway, Khurda Road, P.O.Jatni, Dist.Khruda

5. Senior Divisional Personnel Officer, East Coast Railway, At-Khurda Road, P.O.Jatni, Dist. Khurda ..... Respondents

Advocate for the Respondents – None.

ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRAMN

1. The applicants in these Original Applications are presently working as Head Goods Clerk, Senior Goods Clerk, and Head Goods Clerk respectively in the East Coast Railway. During March and April 2000 the applicants were working as Goods Supervisors at Cuttack. Disciplinary proceedings were initiated against them in September 2002 for their alleged misconduct relating to one common incident. They have filed these O.As. for quashing the disciplinary proceedings and the punishment orders and for a direction to the Respondents to refund the amount recovered from their salary. The averments contained in the O.A. are more or less similar. The Respondents are also common.

2. For appreciation of the facts and submissions made in all the three O.As., we proceed to refer to the detailed pleadings of the applicant and the submissions made by the learned counsel appearing for the applicant and the learned Standing Counsel (Railways) in O.A.No. 66 of 2007. It is pertinent to mention here that the learned counsels appearing for the applicants in all the three cases are same and the Respondents in those cases being common, we have taken into consideration the submissions made by the learned Standing Counsel (Railways). Having grounded on the identical facts involving common questions of law, besides common counsel, all –

the three Original Applications are being dealt with in this common order passed at the stage of admission.

3. The case of the applicant, to put in a nutshell, is as follows. The applicant was appointed as a Junior Clerk in the Railway by order dated 17.8.1981 and promoted to the post of Senior Clerk in the year 1988 and thereafter to the post of Head Goods Clerk in the year 1998. While working as Head Goods Clerk at Cuttack, he was served with a charge-sheet dated 11.9.2002 containing two articles of charge (Annexure A/1) which read as follows:

> "ARTICLE 1
>
> Shri U.B.Routray has manipulated the removal timings of Rice Consignment from a rake of 40 BCN received ex UMB/ROP and unloaded at CTC at 11. 00 hours on 24.4.2000. He had shown the consignment as removed on the same day i.e. 24.4.2000 under Gate Pass Nos. 472950, 472951 and 472952 wilfully, causing los of Railway revenue due to non-realisation of wharfage charges, even though the consignment was physically removed on 24.4.2000, 25.4.2000 and 26.4.2000.
>
> ARTICLE 2
>
> He has also manipulated the removal timings of salt consignment from a rake of 30 BOXC received ex NAC and unloaded at CTC at 15.00 hours on 12.3.2000. He had shown the consignment as removed on the same day i.e. 12.3.2000 under Gate Pass Nos. 472654, 472655 and 472656 wilfully, causing loss of Railway revenue due to non-realisation of due wharfage charges, even though the consignment was physically removed on 14.3.2000."

3.1 The applicant submitted his explanation on 21.9.2002 (Annexure A/2) and an Inquiry Officer was appointed on 25.11.2002 (Annexure A/3). Upon conclusion of the enquiry, the Inquiry Officer submitted the report of enquiry dated 30.8.2006 which was furnished to the applicant by letter dated 13.9.2006 (Annexure

A/7). The Inquiry Officer found that the applicant failed to enter the actual date of removal of goods in the Delivery Book leading to loss of Railway revenue as brought out in the articles of charge. The applicant submitted his representation on 27.9.2006 (Annexure A/8) on the enquiry report. The disciplinary authority by order dated 30.11.2006 (Annexure A/9), after going through the charge memorandum, the enquiry proceedings, enquiry report, the defence statement and representation filed by the applicant, found the applicant guilty of improper maintenance of records and consequent loss of Railway revenue in the form of wharfage charges and considering the gravity of the offence, imposed upon the applicant the punishment of reduction of his pay by two stages in the scale of Rs.5000-8000/- for a period of two years with cumulative effect. Along with the order of punishment, the disciplinary authority enclosed the Speaking Order.

3.2 Being aggrieved by the punishment order (Annexure A/9), the applicant preferred appeal on 9.1.2007 (Annexure A/11) to the appellate authority, i.e., the Senior Divisional Commercial Manager, East Coast Railway, Khurda Road (Respondent No.3). The applicant immediately after preferring the appeal, submitted a representation on 16.1.2007 (Annexure A/12) to the appellate authority praying for stoppage of recovery of Rs.400/- from his pay.

3.3 The applicant has submitted that the explanations offered by him in the written statement of defence to the charges have not been duly considered by the disciplinary authority. That the Inquiry Officer has failed to follow the principles of natural justice in the enquiry. That the evidence collected during the enquiry was not

properly assessed by the Inquiry Officer. That no opportunity of personal hearing was afforded to the applicant by the disciplinary authority before passing the order of punishment. That the Divisional Commercial Manager, being not his disciplinary authority, is not competent to impose the punishment on him. That the authorities have acted mala fide in effecting recovery from the pay of the applicant. That the punishment order is illegal, arbitrary and an outcome of non-application of mind, besides being violative of Articles 14, 16(1) and 311(2) of the Constitution of India.

3.4 Pointing out the above purported irregularities and illegalities in the disciplinary proceedings and the punishment order, the applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') for quashing the entire disciplinary proceedings and the punishment order and for a direction to Respondent No.5 to refund the amount recovered from his salary.

4. The matter came up, for the first time, on 26.2.2007 for hearing on the question of admission. When we expressed our view that the Original Application is too premature and that as the applicant has preferred the appeal only on 9.1.2007(Annexure A/11) to the appellate authority who has not yet passed the final order and as the period of six months from that date has not expired, the applicant shall not be deemed to have availed the alternative remedy available to him under the rules as to redressal of his grievances and therefore, Section 20(1) of the Act is a bar for the Tribunal to entertain the Original Application, the learned counsel appearing for the applicant prayed for an adjournment to substantiate his stand with case laws.

and the matter was adjourned to 2.3.2007. The learned counsel for the applicant also prayed for adjournment of the matter for the said purpose again on 2.3.2007. On 6.3.2007 we heard the learned counsel for the applicant as well as the learned Standing Counsel (Railways), who was present in the Court.

5. The learned counsel for the applicant submitted that there was no bar for the applicant to file the Original Application without waiting for six months after filing the appeal against the impugned order of punishment. That Section 20 of the Act nowhere lays down that the applicant has to wait for six months before filing the application under Section 19 of the Act against the order of punishment where an appeal had been filed before the appellate authority. That the applicant had availed the alternative remedy by filing an appeal. That he had also a right to approach the Tribunal, as he was aggrieved by the order of punishment. That he was, therefore, not required to wait for six months after the passing of the order of punishment, and he could certainly file an application under Section 19 of the Act challenging the punishment order. That under the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as 'the Discipline and Appeal Rules"), the appellate authority was obliged to dispose of the applicant's appeal within a period of one month from the date of its submission. That the appellate authority having failed to act in accordance with the Discipline and Appeal Rules, the applicant shall be held to have exhausted the departmental remedy and can maintain the Original Application

Reliance was placed on the decisions following :

(i) *Shri Kishore Chandra Pattanayak vs. State of Orissa and others*, OA No.111 of 1986, decided by Division Bench of Cuttack Bench of the Tribunal on 14.8.1987;
(ii) *S.S.Rathore v. State of Madhya Pradesh*, AIR 1990 SC 10;
(iv) *U.P.State Spinning Co.Ltd. v. R.S.Pandey and another*, 2006 SCC (L&S) 78; and
(iv) *The Railway Board and others v. P.R.Subramaniyam and others*, AIR 1978 SC 284.

6. The learned Standing Counsel (Railways) submitted that there is provision in the Discipline and Appeal Rules which requires the appellate authority to consider and dispose of the appeal against the punishment order within a period of one month and that since the appellate authority has not acted in accordance with rules, he faily raised no objection for the Tribunal to dispose of the Original Application with direction to the appellate authority to consider and dispose of the appeal preferred by the applicant within a stipulated period, which may be in accordance with Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as the "Procedure Rules")

7. In the context of the above, the following questions arise for our consideration:

(i) Whether it is incumbent on an applicant to await the result of the appeal/representation/revision, statutorily provided, for a period of six months?
(ii) Whether an applicant can approach the Tribunal even before the decision is taken in the alternative remedy provided?
(iii) Whether a Railway employee-applicant shall be deemed to have availed of the alternative remedy available to him under the

relevant rules where no final order has been made by the appellate authority in the appeal preferred by such employee, if a period of one month from the date on which such appeal was preferred has expired?

(iv) Whether there is any provision in the Discipline and Appeal Rules which mandates the appellate authority to consider and dispose of the appeal preferred to him against the punishment order within a period of one month?

(v) Whether the applicant has made out a prima facie case showing exceptional circumstances for the purpose of maintaining the Original Application without awaiting for the result of the alternative departmental remedy of appeal?

8. We have very carefully considered the matter and we are of the view that the answers to the questions formulated above will depend on the interpretation of Section 20 read with Sections 19 and 21 of the Act. Section 19(1) and (4) reads as follows:

> **"19. Applications to tribunals.-** (1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.
>
> xxx xxx
>
> (4) Where an application has been admitted by a Tribunal under sub-section (3)\, every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter thereafter be entertained under such rules."

Section 20(1) and sub-section (2)(a) and (b) read 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 service 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 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 other 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.

Section 21(1)(a)(b) reads as under:

> "21. **Limitation**- (1) A Tribunal shall not admit an application,-
>
> (a) in a case where a final order such as is mentioned in clause (a) of Sub-section(2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
>
> (b) if a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

Section 19(1) provides that an application may be made to the Tribunal by a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal, but for the redressal of his grievances, it makes the above provisions subject to other

provisions of the Act. In other words, it means that until an order has been passed which causes a grievance to the applicant, he cannot approach the Tribunal under Section 19 of the Act. Under Section 20(1) even if an application is made under Section 19 of the Act, the Tribunal shall not ordinarily admit such 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 grievances.

9. Section 20(2) of the Act provides that 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, firstly, where after filing the appeal/representation under the relevant service rules, it has been decided and he is still an aggrieved person, and secondly, where the said appeal or representation has not been decided for a period of six months from the date of the filing of an appeal, etc. The Tribunal has to entertain such application, only where any of the above two situations occurs. It will be seen that in the latter event even though no order is passed by the appellate authority, yet the statute lays down a fiction, by introducing a deeming clause in Section 20(2) of the Act stipulating that "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" . Where the statute itself provides for the starting point of filing of the application under Section 19 of the Act, normally no such application can be filed before that date. This being the scheme of the Act, it has to be examined whether it is imperative for every applicant to exhaust the remedy of statutory appeal for redressal of grievances before he comes to the Tribunal under Section 19 of the Act. The language of Section 20 of

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the Act uses the words: "A Tribunal shall not ordinarily admit an application...." which 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, if after the filing of such an appeal, a period of six months has expired and no order has been made by the appellate authority. The emphasis on the word "ordinarily" means that if there be an extraordinary situation or unusual event or exceptional circumstance, the Tribunal may exempt the above procedure from being complied with and entertain the application. Such instances are likely to be rare and that is why the expression "ordinarily" has been used. There can be no denial of the fact that the Tribunal has power to entertain an application even though the period of six months, after the filing of the appeal, has not expired, but such power is to be exercised rarely and in exceptional cases.

10. The word "ordinarily" used in Section 20 of the Act came up for judicial consideration by the Hyderabad Full Bench of the Central Administrative Tribunal in the case of *B.Parameshwara Rao v. The Divisional Engineer, Telecommunications, Eluru and another*, O.A. No. 27 of 1990,decided on 12.4.1990, reported in CAT (F.B.) Vol.II 250. The Full Bench of the Tribunal, relying on the decisions reported in the case of *Putta Ranganayakulu and others*, AIR 1956 A.P. 161, *Kailash Chandra v. Union of India*, AIR 1961 SC 1346, and *K.J.C.Bose v. Government of India and another*, ATR 1986 CAT 169=1986(1) SLJ 52, wherein the meaning of the word "ordinarily" has been explained, and also on the basis of the meaning of the word "ordinarily" occurring in *Corpus Juris Secundum Vol.67*, held that the power to

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entertain an Application under Section 19 of the Act, even before exhaustion of the statutory remedy of appeal, etc., in service matters, is not the usual feature, but an extraordinary, unusual or uncommon feature and that normally and usually, such application will be rejected or declined as pre-mature. It has been held that where the Tribunal exercises its discretion treating it to be exceptional or extraordinary case as contrasted to the word "ordinarily", the Original Application may be entertained and admitted subject to other provisions of the Act. In taking this view, the Full Bench also relied on the decision of the Hon'ble Supreme Court in the case of *S.S.Rathore v. State of Madhya Pradesh (supra)*. Their Lordships in the said case considered the provisions of Section 20(1) of the Act and observed as follows:

> "The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallised on the line laid down under Section 20 of the Administrative Tribunals Act.
>
> In this background if the original order of punishment is taken as the date when cause of action first accrues for purposes of Article 58 of the Limitation Act, great hardship is bound to result. On one side, the claim would not be maintainable if laid before exhaustion of the remedies; on the other, if the departmental remedy though availed is not finalised within the period of limitation, the cause of action would no more be justiciable having become barred by limitation. Redressal of grievances in the hands of the departmental authorities takes an unduly long time. That is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance, this approach has to be deprecated and authorities on whom power is vested to dispose of such matters as

expeditiously as possible. Ordinarily, a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation."

(Emphasis supplied)

Their Lordships, quoting the provisions of sub-sections (2) and (3) of Section 20 of the Act, observed:

> "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 when the order of the higher authority where a statutory remedy is 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."

Their Lordships observed in paragraph 22:

> "It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made...."

(Emphasis supplied)

11. The Hyderabad Full Bench of the Tribunal in *B.Parameshwara Rao's case (supra)*, on a reference being made by a Division Bench of the Tribunal at Hyderabad, was considering the conflicting views taken by the Chandigarh Bench in the case of *Sital Singh v. Union of India and others*, 1989(1)ATLT 150=1989(2)SLJ 414(CAT) and by the Guwahati Bench in the case of *Jnananda Sarma Pathak, IPS v. Union of India,* 1987(2) ATC 657=1987(1)SLJ 104(CAT). The Chandigarh Bench of the Tribunal took the view that an applicant is not bound to wait for six months and there is no bar in Section 21 of the Act for his filing an application earlier whereas the

Guwahati Bench declined to grant any exemption from the operation of Section 20 of the Act and rejected the application as not maintainable on the ground that the remedy available under law had not been exhausted. In paragraph 25 of the judgment, the Full Bench of the Tribunal held as follows:

> ".....we are unable to hold that the view taken by the Chandigarh Bench is correct. It is true that there is no bar in Section 21 of the Act for filing an application. The provision of limitation in Section 21 of the Act prescribes the period during which the application can be filed. It has a period of commencement as well as a period of conclusion. The period of commencement begins on the passing of an appellate order under the service rules or on the expiry of six months from the date of the filing of the appeal etc. under the service rules in case no order has been passed by the Appellate Authority. xxx"
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> (Emphasis supplied)

In the concluding paragraph 26 of the judgment, the Full Bench observed that the use of the word "ordinarily" connotes a discretionary power in the Tribunal, but that power has to be exercised in rare and exceptional cases and not usually or casually and that in a suitable case the Tribunal could entertain an application under Section 19 of the Act. The similar is the view taken by a Division Bench of this Bench of the Tribunal in *Shri Kishore Chandra Pattanayak's case (supra)*.

12. In a recent decision in the case of *U.P.State Spinning Co.Ltd. v. R.S.Pandey and another*, 2006 SCC(L&S) 78, the Hon'ble Supreme Court considered the question of maintainability of a writ petition before the High Court where alternative remedy by way of appeal though available was not exhausted. The Hon'ble Apex Court, after analyzing a large number of decisions on the questions of

availability of alternative statutory remedy and maintainability of a writ petition, observed in paragraph 16 as follows:

> ".....There are two well-recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings themselves are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

Their Lordships further observed in paragraphs 20 as follows:

> "20. In a catena of decisions it has been held that writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

Their Lordships in paragraph 24 of the judgment in *U.P.State Spinning Co.Ltd.'s case (supra),* which relates to departmental proceedings and punishment of dismissal of the employees from service, conclusively held that the High Court was not justified in entertaining the writ petition filed by the employees.

13. In the case before us the facts stand contradistinction. The disciplinary proceeding was initiated against the applicant, the charge sheet was served on him, the domestic enquiry was held, the Inquiry Officer submitted the report finding the charge proved against the applicant, the enquiry report was supplied to him, the applicant

submitted representation on the enquiry report, and the disciplinary authority imposed the punishment. Being aggrieved by the order of punishment (Annexure A/9), the applicant preferred the statutory appeal on 09.01.2007 through proper channel. After forwarding of the same by the concerned authority, it must have taken some time for the memorandum of appeal to reach the appellate authority whereas the applicant filed the present Original Application on 22.2.2007 challenging the punishment order dated 30.11.2006 (Annexure A/9) passed by the disciplinary authority. It has been stated in the Original Application that the applicant has preferred appeal on 9.1.2007 before the appellate authority.

14. In course of hearing, the learned counsel appearing for the applicant submitted that under the Discipline and Appeal Rules the appellate authority was obliged to consider and dispose of the appeal within a period of one month from the date of its submission and that the appellate authority having failed to dispose of the appeal within the period prescribed under the Rules for disposal of the appeal, the applicant can maintain the Original Application before the Tribunal in as much as the requirement of availing of the remedy available to him under the relevant service rules as to redressal of his grievance has been complied with.

15. It was further urged by the learned counsel that the applicant shall be deemed to have exhausted the remedy available to him under the relevant service rule as his appeal was not disposed of by the appellate authority within a period of one

month prescribed in the Discipline and Appeal Rules and that the requirement of expiry of a period of six months from the date on which the appeal was preferred, as contained in Section 20(2)(b) of the Act, is not applicable to the case of the applicant. That as by operation of the order of punishment, the applicant will continue to get less pay due to non-disposal of his appeal by the appellate authority within a period of one month, he has filed the Original Application before the Tribunal under Section 19 of the Act without waiting for the expiry of the period of six months as provided in Section 20(2)(b) of the Act, and the Tribunal, in consideration of the said exceptional circumstance and the non-compliance of the principles of natural justice as well as the irregularities/illegalities committed by the Inquiry Officer and the Disciplinary Authority in conducting the disciplinary proceedings and passing the order of punishment, should entertain the same.

16. In order to examine the contention of the applicant with regard to time limit for disposal of appeal, we have referred to Rules 17 to 24 of the Discipline and Appeal Rules. Rule 17 prescribes the orders against which no appeal lies, Rule 18 prescribes orders against which appeal lies, Rule 19 prescribes the appellate authorities, Rule 20 prescribes the period of limitation for appeals, Rule 21 prescribes form and contents and submission of appeal, Rule 22 prescribe consideration of appeal, Rule 23 prescribes implementation of orders in appeals, and Rule 24 prescribes special provisions for non-gazetted staff. The aforesaid Rules 17 to 24, contained in Part V of the Discipline and Appeal Rules, which were made by the

President of India in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution of India, nowhere prescribe that the appellate authority shall consider and dispose of the appeal within a period of one month . We have referred to the Railway Servants (Discipline & Appeal) Rules,1968 (4th Edition 1991) by M.L.Jand (Bahri Bros) and found that the gist of the Railway Board's letter dated 11.6.1971, which speaks about the time limit for disposal of appeal, has been printed at pages 264 and 265. The relevant portion is quoted here-in-below:

> "**Time limit for disposal of appeals by Appellate Authority**.-In Board's letter No. E(D&A) 69 RG 6-3 dated 14.2.1969, it was inter alia laid down that all appeals should receive prompt attention and should be disposed of within a reasonable time, and if it is anticipated that an appeal or a petition cannot be disposed of within a month of its submission, an acknowledgement or an interim reply should be sent to the individual within a month.
>
> (2) As a result of discussion in the meeting of the National Council held on the 25th and 26th September 1970, on the above subject, the Board have further decided as under:
>
> (a) The appellate authority should give high priority to the disposal of appeal and ensure that no appeal suffers delay in disposal beyond a period of one month from the date of its receipt by the appellate authority.
>
> (b) In case the appellate authority anticipates delay in disposal of certain appeals beyond a period of one month, he should submit to the next higher authority a detailed statement of such appeals together with reasons for delay beyond one month.
>
> (c) The said next higher authority should go into the reasons for the delay and take remedial steps, wherever necessary, to have the pending appeals disposed of, as far as possible within the period of one month, even if it is required to relieve the Appellate Authority of his normal work so as to

enable him to dispose of the appeals within one month. This review where appropriate should be done by Divisional Superintendent in Divisions and Heads of the Departments in the Headquarters.

(d) Where the Appellate Authority is the General Manager himself he should submit the statements of such pending appeals as are likely to be delayed beyond one month together with the reasons for such delay, to the Railway Board for information and such action as they may consider necessary.

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(b) **For disposal** – No time limit has been prescribed in the rules for disposal of an appeal and it has been seen that the disposal of appeal, in fact takes a lot of time, the reasons for delay may be –

(i) The Appellate Authority being busy otherwise, or
(ii) The Disciplinary Authority not sending full case and remarks on the appeal to the Appellate Authority.

The Government has considered this aspect and have directed that –

(i) Although a high priority is to be given to the disposal of appeals, yet the authority may have its hands full otherwise. In such cases either the Appellate Authority may be relieved of his normal work to the extent necessary for disposal of pending appeal. If it is not enough, the Government may by general order under Rule 19 redistribute the appellate work among more authorities of the same rank.

(ii) A separate detailed statement of appeals pending for over a month should be submitted by the Appellate Authority to the next higher authority indicating reasons for delay in disposal and further time likely to be taken in the disposal. The higher authority may take appropriate action to ensure quick disposal."

(Emphasis supplied)

17. From the above instructions of the Railway Board contained in its letter dated 11.6.1971, it is found that keeping in view the practical difficulty on the part of the appellate authority and prescribing the recourse to be adopted in the event of delay in disposal of the appeal beyond one month, the Railway Board by the said letter has issued directive to the appellate authority to give high priority to the disposal of appeal and ensure that no appeal suffers delay in disposal beyond a period of one month from the date of its receipt by the appellate authority and that in case the appellate authority anticipates delay in disposal of certain appeals beyond a period of one month, he should submit to the next higher authority a detailed statement of such appeals together with reasons for delay beyond one month. Perhaps it is this instruction contained in the Railway Board's letter dated 11.6.1971 on the basis of which the learned counsel submitted that the Discipline and Appeal Rules mandate disposal of the appeal within a period of one month. It was submitted that the instruction issued by the Railway Board in the letter dated 11.6.1971 has the force of rule and it has been so held by the Hon'ble Supreme Court in the case of *Railway Board and others v. P.R.Subramaniyam and others*, AIR 1978 SC 284. We have gone through this decision and found that Their Lordships have clearly observed that the instruction/circular issued by the Railway Board, having general application, has the force of rules made under Rule 157 of the Indian Railway Establishment Code, Vol.I, framed by the President of India under Article 309 of the Constitution of India. The Indian Railway Establishment Manual, Vol.I

has been framed by the Railway Board in exercise of the powers delegated to it under the said Rule 157 of the Indian Railway Establishment Code, Vol.I. Their Lordships have quoted the Prefatory Note to the Indian Railway Establishment Manual, Vol.I, that the provisions of the Manual do not supersede the rules contained in any of the Indian Railway Codes and in case of conflict the latter should prevail and that the Manual may not be referred to the final authority. Thus, the circular/letter/instruction dated 11.6.1971, which has the force of rules made under Rule 157 of the Indian Railway Establishment Code, Vol.I, will not amend and/or supplant the Discipline and Appeal Rules which were made by the President in exercise of powers conferred on him under the proviso to Article 309 of the Constitution of India. Accordingly, the conclusion is inevitable that the Discipline & Appeal Rules do not mandate disposal of appeal within a period of one month.

18. In this connection, we would like to refer to the Department of Personnel, Government of India, C.S.'s O.M. No.39/42/70-Estt.(A), dated the 15th May,1971, the gist of which has been printed as paragraph (1) of Government of India's Instructions, below Rule 27 of the Central Civil Services (Classification, Control & Appeal) Rules,1965 (vide Swamy's Compilation Central Civil Services (Classification, Control & Appeal) Rules, By Muthuswamy & Brinda (28th Edition 2003), page 104, which is quoted below:

"(1) **Time limit for disposal of appeals**.-The following suggestions have been examined in order to achieve quicker disposal of appeals:-

(a) the need for and the feasibility of appointing additional Appellate Authorities wherever the present workload of Appellate Authorities is unduly heavy; and

(b) the prescribing of a procedure by which the position regarding pending appeals could be reviewed by higher authorities at periodical intervals so as to take suitable and timely remedial action.

(2) The two suggestions mentioned in Para 1 have been examined. Although the Appellate Authorities are expected to give a high priority to disposal of appeals, there might be cases in which the hands of the Appellate Authority are too full and it may not be able to devote the time and attention required for the disposal of appeals within a short period. In such case, the Appellate Authority can be relieved of his normal work to such an extent as would be necessary to enable him to devote the required time and attention to the disposal of the appeals pending before him by redistribution of that work amongst other officers. If, however, the number of appeals received or pending with any particular Appellate Authority is very large, the appellate work itself could be redistributed as far as possible among a number of officers of equivalent rank and in any case not below the rank of the Appellate Authority through a general order issued in exercise of the powers under Rule 24 of the CCS (CCA) Rules.

(3) As regards prescribing procedure for review of the position regarding pending appeals, it has been decided that, apart from the provisions laid down in the Manual of Office Procedure whereby cases pending disposal for over a month are reviewed by the appropriate higher authorities, a separate detailed statement of appeals pending disposal for over a month should be submitted by the Appellate Authority to the next higher authority indicating particularly the reasons on account of which the appeals could not be disposed of within a month and the further time likely to be taken for disposal of each such appeal, along with the reasons therefore. This would enable the appropriate higher authority to go into the reasons for the delay in the disposal of appeals pending for more than a month, and take remedial steps wherever necessary, to have the pending appeals disposed of without further delay. In cases where the Appellate Authority is the President under Rule 24 of the CCS (CCA) Rules, 1965, the aforesaid statement should be submitted to the Secretary of the Ministry/Department concerned for similar scrutiny." (Emphasis supplied)

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As pointed out earlier, the Discipline & Appeal Rules do not prescribe time limit for disposal of appeal. Similar is the situation with the Central Civil Services (Classification, Control and Appeal) Rules,1965, the applicability of which extends to a large number of Central Government organizations. On the basis of this executive instruction by the Government of India, as contained in the O.M. dated 15.5.1971, it is difficult to say that the CCS (CCA) Rules stood amended and a time limit of a period of one month for disposal of appeal has been prescribed therein.

19. In view of our discussions in the preceding paragraphs, we find no substantial force in the contentions of the learned counsel that the Discipline & Appeal Rules mandate disposal of the appeal within a period of one month and that the appellant can maintain an application under Section 19 of the Act before the Tribunal without waiting for expiry of the period of six months.

20. That apart, the applicant having admittedly preferred the statutory appeal against the punishment order, cannot be allowed to maintain an application under Section 19 of the Act on the plea that the appellate authority has failed to dispose of his appeal within a period of one month and therefore, the cause of action has arisen for him to approach the Tribunal for redressal of his grievance. We have carefully considered this submission. The Tribunal having been created under the Act, shall be guided by the provisions of the Act and the Rules made thereunder, but not by the circular/letter/instruction issued

by the Railway Board. The stipulation: "Subject to the other provisions of the Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal, may make an application to the Tribunal for the redressal of his grievances" contained in Section 19(1) of the Act, puts 'a person' under an obligation to comply with the other provisions of the Act for maintaining an application. Hence, in the instant case, the compliance with the requirement of expiry of a period of six months from the date on which the appeal was preferred, is a sine qua non to maintain an application under Section 19 of the Act before the Tribunal. So far as the case of the present applicant is concerned, the provisions of Section 19 are to be read with the provision of Section 20(2)(b) of the Act. We, therefore, have no hesitation in holding that the applicant has to comply with the requirement of Section 20(2)(b) of the Act for the purpose of maintaining an application under Section 19 of the Act. We are also of the view that the applicant has not been able to make out a prima facie case of exceptional circumstances, more so convincingly, especially as irreparable, which entitle him to maintain the O.A. without exhausting the departmental remedy of appeal and/or without waiting for the expiry of the period of six months from the date the appeal was preferred before the appellate authority.

21. Another aspect of the matter is that if the Tribunal admits the application filed by the applicant, then by operation of the provisions contained

in sub-section (4) of Section 19 of the Act the statutory appeal before the appellate authority in relation to his punishment shall abate. Thereby the appellate authority, who is vested with the statutory power to consider and decide the appeal preferred by the applicant and is also supposed to ensure transparency and fairness in the decision making process of the administration at the specified level, will be restrained from exercising its functions. It is pertinent to mention here that Part VI of the Discipline and Appeal Rules provide for revision under Rule 25 and review under Rule 25-A. In exercise of the power of revision, the President, or the Railway Board, or the General Manager of a Railway Administration and other designated authorities of the Railway Administration may, at any time, either on his own or its own motion or otherwise, call for the records of any inquiry and revise any order made under the Discipline and Appeal Rules, and may confirm, modify or set aside the order, or confirm, reduce, enhance, or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or remit the case to the authority which made the order, etc. Similarly, in exercise of the power of review, the President may, at any time, either on his own motion or otherwise review any order passed under the Rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review, etc. If the interpretation put forward by the applicant is accepted by the Tribunal and the Original Application is admitted,

by the Tribunal, then there will be floodgate of litigations before the Tribunal by all Railway employees/officers who, inter alia, feel aggrieved by any order passed against them in disciplinary proceedings and whose appeals against the punishment orders are not disposed of within a period of one month from the date of filing and all proceedings, referred to above, shall abate under Section 19(4) of the Act, thereby frustrating the statutory provisions of appeal, revision and review and preventing all the aforesaid authorities from exercising their powers.

22. We have also considered the submission that the O.A. filed by the applicant may be disposed of with direction to the appellate authority to dispose of the appeal within a stipulated period. In support of this contention, our attention was drawn to the provisions contained in Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987. We have gone through the said provisions and found that the provisions of Rule 24 are invoked during pendency or after disposal of an Original Application. If any order is passed by the Tribunal on an Original Application or Miscellaneous Application duly entertained by it, the Tribunal can subsequently make such orders or give such directions, as may be necessary or expedient, to give effect to the same, or to prevent abuse of its process, or to secure the ends of justice. By invoking these provisions, the present Original Applications, which ~~is~~ are not maintainable, cannot

be disposed of by giving **direction** to the appellate authority to dispose of the appeal within a stipulated period.

23. We would, however, pass our **observation** that the appellate authority, keeping in mind the instructions issued by the Railway Board in its letters dated 14.2.1969 and 11.6.1971, should give high priority to the disposal of the appeal preferred by the applicant. It is made clear that the appellate authority, while considering the applicant's appeal dated 09.01.2007 (Annexure A/11), shall not be swayed away by any of our observations made in the preceding paragraphs and shall, in accordance with law, decide the appeal, as expeditiously as possible, preferably within a couple of months from the date of receipt of this order.

24. In the result, these Original Applications, being premature, are not maintainable and are, therefore, rejected in limine, however, with our obiter dicta supra.

25. The Registry of the Bench is directed to communicate copy of this order, along with copy of the O.A. in each case, to the Respondents by Registered Post, for information and necessary action.

(B.B.MISHRA)
ADMINISTRATIVE MEMBER

(N.D.RAGHAVAN)
VICE-CHAIRMAN

PPS