

3

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/0043 of 2015

Cuttack this the 2<sup>nd</sup> day of February, 2015

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Shri Radha Krushna Sahoo  
aged about 54 years  
S/o. of late Padma Charan Sahoo  
Permanent resident of Rudrapur  
PO-Naharakanta  
Via-Balianta  
PS-Balianta  
Dist-Khurda  
At present working as ASRM(Hq.)RMS-BG Division  
Berhampur

...Applicant

By the Advocate(s)-M/s.G.Rath

S.Rath

B.K.Nayak-3

D.K.Mohanty

-VERSUS-

Union of India represented through

1. The Director General of Posts  
Ministry of Communications  
Department of Posts,  
Dak Tar Bhawan  
New Delhi-110 001
2. Chief Post Master General  
Orissa Circle,  
Bhubaneswar  
Dist-Khurda-110 001
3. The director of Postal services  
O/o. the Post Master General  
Berhampur Region  
Berhampur-760 001
4. The Director of Postal Services  
Sambalpur Region  
Sambalpur-768 001



...Respondents

By the Advocate(s)-Mr.S.Barik

**ORDER****R.C.MISRA, MEMBER(A):**

Applicant, who is presently working as ASRM(Hq.)RMS-BG Division, Berhampur has filed this Original Application making a prayer that the order dated 12.1.2015 of the Respondents awarding punishment of recovery of Rs.1,19,902/- in twelve equal installments commencing from the pay of January, 2015 and withholding of one increment for a period of 24 months without cumulative effect because of his contributory negligence may be quashed by this Tribunal. His further prayer is for quashing the charge sheet issued against the applicant as at Annexure-A/1.

2. The learned Senior Counsel for the applicant submitted that the Director of Postal Services, Sambalpur Region (Res.No.3) issued a Memo dated 15.5.2013 under Rule-16 of CCS(CCA) Rules, 1965 calling upon the applicant to show cause on the allegation that because of his fault another employee of the Postal Department has been able to commit fraud. The applicant submitted an exhaustive reply to this Memo and after about two years of the issue of the Memo, applicant received the order of punishment of recovery of Rs.1,19,902/- in twelve equal installments and withholding of one increment for a period of 24 months without cumulative effect. The contention of the learned Senior Counsel for the applicant is that the disciplinary proceeding drawn against the applicant is against the sound principles of law as laid down by various judicial pronouncements since for contributory negligence the disciplinary proceedings are not sustainable. His further submission is that the order of punishment was dated 12.1.2015 and thereafter, applicant has filed an appeal to the concerned Appellate Authority on 23.1.2015. Copy of



5  
this appeal petition has been filed at Annexure-A/4 and this has been preferred to the Post Master General, Berhampur Region.

3. We have heard Shri G.Rath, learned Senior Counsel for the applicant and Shri S.Barik, learned ACGSC for the Respondents on the question of admission of this O.A.

4. Shri Rath was asked to clarify on the point as to why this O.A. will be admitted in the Tribunal in view of the fact that the applicant has moved an appeal petition to the appropriate authority only on 23.1.2015 and immediately, thereafter on 28.1.2015, he has filed this O.A. before the Tribunal. It was also further pointed out to him that Section 20 of the A.T.Act, 1985, provides that the "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 grievance. Section 20(2) further provides as under.

For the purpose 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 the 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.



5. It is quite evident that only in a case where the appeal has been filed, but has not been disposed of for at least six months from the date on which such appeal was preferred, then only, a person shall be deemed to have availed of all the remedies available to him under the relevant service rules. In the instant O.A., the appeal was filed only on 23.1.2015 and the O.A. was filed on 28.1.2015 and therefore, it cannot be inferred that the applicant has availed of the remedies available to him under the relevant service rules.

6. Shri Rath in response to clarification sought by this Tribunal has drawn our attention to two decisions of the Hon'ble Supreme Court, as under.

- i) Popcorn Entertainment & Another vs. City Industrial Development Corpn (AIR 2008 SC 48).
- ii) M/s.Dhampur Sugar Mills Ltd. Vs. State of U.P. (2007) 9 SCC 593.

7. We have perused the decisions relied on by Shri Rath. In Popcorn Entertainment(supra), the Hon'ble Supreme Court in Paragraph-47 has observed as follows.

"We have given our careful consideration to the rival submissions made by the respective counsel appearing on either side. In our opinion, the High Court has committed a grave mistake by relegating the appellant to the alternative remedy when clearly in terms of the law laid down by this Court, this was a fit case in which the High Court should have exercised its jurisdiction in order to consider and grant relief to the respective parties. In our opinion, in the instant case, 3 of the 4 grounds on which writ petitions can be entertained in contractual matter were made out and hence it was completely wrong of the High Court to dismiss the writ petitions. In the instant case, 3 grounds as referred to in Whirlpool Corpn. have been made out and accordingly the writ petition was clearly maintainable and the High Court has committed an error in relegating the appellant to the civil court".



8. In M/s.Dhampur Sugar Mills Ltd.(supra), the Hon'ble Supreme Court in Paragraph-16 has observed as follows.

"As to alternative remedy available to the writ petitioner, a finding has been recorded by the High Court in favour of the writ-petitioner and the same has not been challenged by the State before us. Even otherwise, from the record, it is clear that the decision has been taken by the Government. Obviously in such cases, remedy of appeal cannot be termed<sup>(sic)</sup> as alternative, or equally efficacious. Once a policy decision has been taken by the Government, filing of appeal is virtually from 'Caesar to Caesar's wife', an 'empty formality' or 'futile attempt'. The High Court was, therefore, right in overruling the preliminary objection raised by the respondents".

9. In the first cited decision, the Hon'ble Supreme Court has observed that the High Court has committed a grave mistake by relegating the appellant to the alternative remedy when clearly in terms of the law laid down by this Court, this was a fit case in which the High Court should have exercised its jurisdiction in order to consider and grant relief to the respective parties.

10. In the 2<sup>nd</sup> decision, similarly, the Hon'ble Apex Court has observed that the remedy of appeal cannot be termed as an alternative or equally efficacious.

11. Relying on the above two decisions of the Hon'ble Supreme Court, Shri Rath has pleaded that just because the applicant has filed an appeal petition, the Tribunal is not debarred from entertaining this O.A. to decide the matter.

12. Per contra, learned ACGSC submitted that since in this matter applicant has already filed an appeal petition only on 23.1.2015, the Tribunal should not entertain this matter and <sup>should</sup> allow the Appellate Authority to decide the matter as per the rules.

8

13. We have given our anxious consideration to the arguments advanced by the learned counsel for both the sides and also perused the judgments of the Hon'ble Supreme Court, as cited by Shri Rath.

14. The Tribunal is governed by the provisions of A.T.Act, 1985 and the provisions of Section 20 has been discussed above in detail. Section 20 specifically makes a mention that 'ordinarily the Tribunal shall not 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'. The use of the word "ordinarily" leads to an inference that only in an extraordinary situation, the Tribunal can entertain an application even without other remedies having been exhausted. No such extraordinary situation is revealed from the facts of this case as submitted by the learned Senior Counsel for the applicant nor has he taken such a position while presenting his case.

15. The other relevant point for discussion is that the order of punishment has been imposed on the applicant under Rule-16 of CCS(CCA) Rules which is in regard to procedure for imposing minor penalty. Chapter-VII of the said Rules is devoted to APPEALS, which means that the statute itself provides for making appeals against the orders of the Disciplinary Authority. Therefore, it is not any representation we are looking at. But it is a statutory appeal which the applicant has preferred against the order of punishment and the appeal having been filed just a few days back, the period of six months as provided in the A.T.Act is not yet over. It is further to be noted that any proceeding started under the CCS(CCA) Rules is in the nature and character of a quasi-judicial proceeding and therefore, before intervening in the process, the Tribunal is bound to satisfy itself whether the statutory avenues as available to the



9

applicant have been exhausted or not. After having considered the matter in depth, we do not consider it appropriate to admit this O.A. at this stage and also consider the steps taken by the applicant in filing this O.A. as premature.

On the above grounds, the O.A. not being admitted is rejected at the outset. No costs.

**(R.C.MISRA)**  
**MEMBER(A)**

BKS

**(A.K.PATNAIK)**  
**MEMBER(J)**