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D.N. Sahoo -Vrs- UOI

Admission Sl. No.03
O.A. No.260/00816/15

Order dated 14th December, 2015.

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

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

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Heard Mr. S.K. Ojha, Ld. Ld. Counsel appearing for the applicant and Mr. C.M. Singh, Ld. ACGSC appearing for the Respondents on whom a copy of this O.A. has already been served on the question of admission and perused the materials placed on record.

2. The applicant presently working as Audit Officer under Respondents Organization has approached this Tribunal challenging the legality and validity of the order dated 02.11.2015 at Annexure-A/20, by virtue of which, Accountant General (General & Social Sector Audit), Odisha, (Respondent No.5) being the Disciplinary Authority, on conclusion of disciplinary proceedings initiated against him under Rule 14 of CCS(C, C & A) Rules, 1965 has imposed punishment of compulsory retirement that has taken effect from 02.11.2015. It reveals from the record that applicant has not preferred any appeal against the aforesaid punishment order passed by the Disciplinary Authority. When questioned as to why applicant did not choose to prefer any appeal which is a statutory remedy available to him under the

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relevant service rules, Mr. Ojha, Ld. Counsel, replied that applicant has moved this Tribunal in the instant Original Application taking recourse to Section 20 of the A.T., Act, 1995. To buttress his arguments, Mr. Ojha drew our attention to the provisions of Section of 20(1) which states that ***"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 grievance"***. Based on this provision Mr. Ojha emphatically submitted that the present O.A. has an attribute of extraordinary situation in-as-much as the authority who is not competent to initiate disciplinary proceedings has so initiated and imposed punishment on the applicant. Therefore, according to Mr. Ojha, the whole of the charges framed against the applicant being at the instance of an incompetent authority, the entire proceedings are vitiated and therefore, whatever punishment has been imposed by the said authority is non-est in the eye of law.

3. We have considered the submissions made by the Ld. Counsels for both the sides. We would like to mention that in a matter of disciplinary proceeding, the point regarding competency or otherwise of the Disciplinary Authority to initiate disciplinary proceedings and consequently impose punishment arises for determination only when the Appellate Authority fails to apply his mind to the appeal preferred against an order of punishment imposed

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by the Disciplinary Authority. In the instant case, appeal to the appellate authority against the punishment order is statutory which cannot be abnegated on the ground of extraordinary situation. If at this stage, the Tribunal, entertains this Original Application for adjudication, it would amount to stepping into an area which otherwise falls within the domain of the Appellate Authority.

4. Secondly, the Tribunal in judicial review ought to have been provided with adequate materials establishing that no such appeal is permissible against the order of the Disciplinary Authority. This apart the Appellate Authority in consideration of appeal is not divested with the powers to fully exonerate the applicant of the charges. Therefore, in the absence of any appeal being preferred to the Appellate Authority against the order of the Disciplinary Authority, we do not feel it inclined to hold that applicant is a person aggrieved within the scope and meaning of Section 19 of the AT Act, 1985. Considered from this view point, the O.A. as laid suffers from non-exhaustion of departmental remedy.

5. Coming to the point urged that the instant Original Application is of an extraordinary nature by the reason that the incompetent authority has initiated the disciplinary proceeding and imposed punishment, at the coast of repetition, we would say that this point has to be gone into by the Appellate Authority while considering the appeal and in case he fails to so consider,

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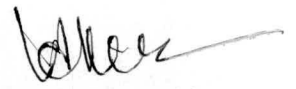
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there is every scope of judicial review by the Tribunal. Therefore, we are not convinced that any such extraordinary situation is involved so as to admit this Original Application. However, nothing prevents the applicant from preferring an appeal against the order of punishment to the Appellate Authority urging the grounds that ^{rel} has been urged in this O.A. and we hope and trust that the Appellate Authority will certainly consider the same in accordance with the rules of law.

6. For the reasons stated above, the Original Application is rejected without being admitted. No costs.



MEMBER(A)



MEMBER(J)

K.B.