

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00253 OF 2016
Cuttack, this the 26th day of April, 2016

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HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

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Bhagyarathi Behera aged about 45 years, S/O Sri Sukadeb Behera, At-Parakula, PO:- Pikarali, PS:- Patkura, Dist; Kendra, at present working as Income-tax Officer, Ward-2(4), Cuttack, O/o the Joint Commissioner of Income Tax, Range-2, Aayakar Bhawan, Shelter Chhak, Tulasipur, Cuttack.

.....Applicant

By the Advocate(s)-M/s. P.C. Sethi.

-Versus-

Union of India, represented through

1. Finance Secretary, Ministry of Finance, North Block, New Delhi-110001.
2. Principal Chief Commissioner of Income-tax Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007, Dist:- Khurda, Odisha.
3. Commissioner of Income Tax (Admn. & CO), Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007, Dist:- Khurda, Odisha.
4. Joint Commissioner of Income-tax, Range -2, Aayaker Bhawan, Shelter Chhak, Tulasipur, Cuttack, Odisha.
5. Sri Sanjeeb kumar Jha, Income-tax Officer(TDS), Aayaker Bhawan, Ainthapally, Sambalpur-768004, Odisha.
6. Sri B.K. Senapati, Income-tax Officer(I & CI), Aayakar Bhawan, Ainthapally, Sambalpur-768004, Odisha.
7. Sri Amiya Kumar Mahanta, Income-tax Officer(MSTU), Sipasarubali, Baliapanda, Puri-752001, Odisha.

.....Respondents

By the Advocate(s)- P.K. Mohanty

ORDER (ORAL)

A.K.PATNAIK, MEMBER (J):

Heard Mr. P.C. Sethi, Ld. Counsel appearing for the applicant and Mr. P.K. Mohanty, Ld. ACGSC appearing for the respondents, on whom a copy of this O.A. has already been served, and perused the materials placed on record.



2. Admittedly, this OA has been filed by the Applicant against the order of reversion dated 03.08.2009 from the post of IIT to the post of Sr. Tax Assistant issued by the Respondent No.3 and, it is not in dispute that the authority who passed the order is not the apex authority of the Department. In the hierarchy there are many authorities available above the authority who passed the order. The applicant has filed this OA without availing of the opportunity by way of making any representation to the next higher authority. When we posed this question, the learned counsel appearing for the applicant submitted that there is ~~no~~ provision under the rules to file any such representation. In our considered view that even if rule does not provide any such provision for making representation in the circumstances as in the present case, yet there is also no restriction for making any such representation before coming to the Tribunal in the instant OA. The reason behind making the provision in the section 20 of the A.T. Act, 1985 is to shorten the litigation and to avoid the hardship to the concerned employee by coming to the court as also to save the valuable time of the court. Further the object behind the provisions of section 20 of the AT Act ^{that} is all the remedies provided under the Service Rules should be exhausted, before one seeks redressal of grievance before this Tribunal. The manifest intention of the legislature behind incorporating said provision under the statute/rules must be respected and observed. The very fact that the said provisions of section 20 laid emphasis ^{on} exhausting of all the remedies unless given its full effect, the provisions of statutory rules would be rendered nugatory. All remedy does not exclude by way of making representation to the higher authority. In the circumstances, it is no more res integra that the court has the power to dismiss an application for judicial review if the applicant has not first used an internal review by way of availing the opportunity of representation available to the employee concerned. A court may require an applicant to have exhausted ^{his} ~~their~~ rights of any internal review procedure before bringing an application for judicial review. The court's longstanding view is that an applicant should exhaust all his internal remedies and/or appeal routes

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within an administrative regime before seeking judicial review. Although there are exceptions to this rule, the most prudent approach is to file a request of reconsideration to the authority before filing an application for judicial review.

3. As regards the submission of the learned counsel for the applicant that if this Tribunal does not incline to admit this OA appropriate order may be passed so that he can test it before the Hon'ble High Court is concerned, we may observe that there is a basic difference between the powers of the High Court conferred under Article 226 of the Constitution and those of this Tribunal under the Administrative, ^{Tribunals} Act, 1985. Under Article 226 of the Constitution, the High Court has certain constitutional powers to issue certain writs. In appropriate cases, the Hon'ble High Court can pass the necessary orders where alternative remedy is available, but so far as the Administrative Tribunals are concerned, they have to draw power from the provisions of the Administrative Tribunals Act, 1985. The said provision, as already referred to above, puts an embargo by virtue of Section 20 of the Administrative Tribunals Act, 1985 that a Tribunal shall not ordinarily interfere unless the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The present case cannot be termed to be one where an exception could be made. There is no urgency or such an act which would prompt this Tribunal to make a departure from the general provision. Once a right to approach the authority by way of making representation is available which having not been availed of by the applicant, we find no ground to entertain this OA; especially there being no urgency in the matter as the order of reversion which has been impugned in this OA being dated 03.08.2009 has already taken effect.

4. However, before parting with this case, for the ends of justice, we may observe that dismissal of this OA on the ground of non exhaustion of his right by way of making representation, shall not stand on the way of the authority to consider the representation, if the applicant, wishes to make, on the subject matter of dispute.

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5. Hence, we are not inclined to entertain this OA at this stage and therefore, without expressing any opinion on the merit of the matter this OA stands dismissed.


(R.C.MISRA)
MEMBER (A)


(A.K.PATNAIK)
MEMBER(J)

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