

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**O. A. NO. 307 OF 2013
CUTTACK, THIS THE 21st DAY OF MAY, 2013**

**CORAM
HON'BLE SHRI R.C.MISRA, MEMBER (ADMN.)**

.....

Ashok Kumar Pradhan,
aged about 43 years,
S/o. Akshaya Kumar Pradhan,
Vill/P.O./P.S.- Telkoi,
Dist. Keonjhar,
Presently working as Senior Section Engineer,
Electrical (TRS), Angul.
At/P.O./Dist-Angul

...Applicant

(Advocate(s) : Mrs. K.P.Mishra, S.Mohapatra, T.P.Tripathy, L.P.Dwivedy)

VERSUS

Union of India Represented through

1. Divisional Manager,
East Coast Railway,
Khurda Division, Khurda.
At/PO/Dist- Khurda.
2. Additional Divisional Railway Manager,
East Coast Railway, Khurda Road,
Dist. Khurda, ODISHA
3. Sr.DRR(TRS), Electric Loco Shed,
East Coast Railway, Angul,
At/PO/Dist-Angul, ODISHA
4. Satish Kuamr,
Sr. DEE/TRS/Angul,
At/PO/Town/Dist-Angul, ODISHA.
5. Union of India represented through its
General Manager, East Coast Railwlay,
Chandrasekharpur, Bhubaneswar,
Dist- KHURDA.

... Respondents

(Advocate: Mr. T. Rath)

ORDER

SHRI R.C.MISRA, MEMBER (ADMN.) :

Shri K.P.Mishra, Ld. Counsel for the applicant, and Shri
T.Rath, Ld. Standing Counsel representing the Respondent-Railways, are
present. Heard on the question of admission of this O.A.



1

2. Ld. Counsel for the applicant submitted that in this O.A. he has assailed the order of dismissal from service passed on 16.04.2013 pursuant to a disciplinary proceeding initiated by Respondent No. 4 against the applicant. The disciplinary authority had issued a charge memo for minor penalty proceeding and after receiving the defence statement from the applicant, he was issued a charge sheet for major punishment which indicated his bias. The applicant had approached this Tribunal in O.A.114/13 making a prayer to change the disciplinary authority on the ground that the disciplinary authority was biased against him. The Tribunal in that case directed the Additional Divisional Railway Manager, East Coast Railways, who was the Appellate Authority, to consider and dispose of the representation which was already before him by the applicant for changing the disciplinary authority. It was further directed by the Tribunal that till the disposal of the applicant's representation further action in pursuance of the charge sheet will remain stayed. The appellate authority, viz. Additional DRM, Khurda Road, considered the representation of the applicant as directed by the Tribunal and also the apprehension that was expressed by the applicant that he may not get justice in case of continuation of the same disciplinary authority, ^{and he} came to the conclusion that the change of disciplinary authority was not admissible under the provision of the Railway Servants (D&A) Rules, 1968 and, accordingly, complied with the orders passed by the Tribunal in O.A. No. 114/13. Thereafter, the disciplinary authority passed an order on 16.04.2013 coming to a finding that the applicant is guilty of the charges ^{levelled} ~~labeled~~ against him and decided to impose major penalty of dismissal from railway service with immediate effect. He sanctioned 50% of his pension and 50% of his gratuity as admissible as

Pradhan

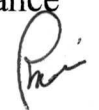
compassionate allowance for survival of his family members. In the order, he mentioned that the applicant may prefer appeal to the appellate authority i.e. ADRM, Khurda Road against this punishment order within a period of 45 days from the date its receipt. In the present O.A. the applicant has come up with a prayer for quashing the order of dismissal dated 16.04.2013, which is filed at Annexure-A/14 to the application.

3. On a query made to the Ld. Counsel for the applicant, he submitted that appeal has not been preferred to the appellate authority in this disciplinary proceeding matter although such liberty was given in the punishment order that an appeal may be filed within 45 days of the date of receipt of the punishment notice. When asked as to why the appeal was not filed, Ld. Counsel for the applicant has extensively pleaded that the disciplinary authority has been very much biased against the applicant and has initiated the disciplinary proceeding and issued the punishment order with ill-will and malice towards him. The inquiry has been conducted in violation of the principles of natural justice since the Inquiry Officer himself asked as many as 133 questions to the applicant, which are irrelevant to the issue in question, only in order to harass him. Ld. Counsel for the applicant further pleaded that appellate authority is also equally biased in this case because he refused to change the disciplinary authority by order dated 10.04.2013 even after the direction was issued by this Tribunal to consider the applicant's representation alleging bias against the disciplinary authority. On these grounds, Ld. Counsel for the applicant pleaded that filing of appeal in the matter of disciplinary proceeding, in the present case, will be mere formality because the applicant does not expect any justice from the appellate authority, who is already said to be biased against the applicant.



9
He, therefore, pleaded that the Tribunal should admit this case even though the appeal in the disciplinary proceeding case has not been filed and the provision of Section 20 of the AT Act regarding exhausting available remedy has not been satisfied. Ld. Counsel for the applicant has cited judgment of the Apex Court in Civil Appeal No. 3528/07 in D.B.Gohil vs Union of India and others to strengthen his submission. In the said case, the Hon'ble Apex Court has held as follows:

“Section 20 (1) of the Administrative Tribunals Act, 1985 ('Act' for short) provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the appellant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The use of words “Tribunal shall not ordinarily admit the applicant unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules” in Section 20(1) of the Act makes it evident that in exceptional circumstances for reasons to be recorded the Tribunal can entertain applications filed without exhausting the remedy by way of appeal. The Tribunal referred to Section 20 of the Act and rightly held that the matter involved substantial and important point of law about the binding nature of CVC's advice. The Tribunal was better suited to consider that issue as the appellate authority would also feel bound by the directions of the CVC. Therefore, it was one of the exceptional cases where the appellant could approach the Tribunal without exhausting the departmental remedy of appeal. The High Court ignored that aspect. We are of the view that the High Court ought not to have allowed the writ petition on this technical ground. The order of the High Court cannot be sustained. In view of the above, we allow the appeal, set aside the order of the High Court and remit the matter to the High Court for fresh consideration of the writ petition on merits in accordance with law”.



4. The centrality of the pleadings of Ld. Counsel for the applicant is, therefore, that Section 20 of the AT Act 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. He has contended in this present case that available remedies have not been taken resort to by the applicant since he has not filed the appeal before the appellate authority but his emphasis is on the word "Ordinarily". Here is a case, he pleads, where the appellate authority is already biased against the applicant and filing of appeal before him will be of no avail because he does not expect any justice from the appellate authority. The Tribunal, therefore, should not treat this as an ordinary case and should admit this O.A. even though the available remedies have not been exhausted.

5. Sri T.Rath, Ld. Standing Counsel for the Respondents, has on the other hand submitted that the applicant should have availed of the remedies of filing an appeal before the specified appellate authority. Unless he has availed of his remedies in the disciplinary proceeding his application should not be admitted in the Tribunal. His other submission is that the appellate authority in compliance of the direction of this Tribunal in O.A. No. 114/13 passed an order dated 10.04.2013 in which he decided that change of disciplinary authority was not admissible. This order of the appellate authority has not been challenged by the applicant. Sri Rath has also cited the judgment of the Apex Court in Civil Appeal No. 207/84 (AIR1990 SC 10 in S.S.Rathore vs State of Madhya Pradesh in which the Apex Court has decided as under:



In the case of service dispute the cause of action must 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 month's 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."

6. I have heard Ld. Counsel for both the sides and have also perused the record.


7. The thrust of the argument put forth by the Ld. Counsel for the applicant is that Section 20 of the AT Act provides that Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of grievance and this does not apply to situation which is out of ordinary. In the present case, although statutorily an appeal forum is available to the applicant, he apprehends that justice will not be provided on the ground that the disciplinary authority and the appellate authority are both biased against him. He has mentioned certain facts about the inquiry report as well as refusal of the appellate authority to change the disciplinary authority as the grounds for such an apprehension. However, such an apprehension should not be the basis for not availing of remedy which is available under the statute. When the appeal petition is filed, the appellate authority is duty bound and expected to dispose of the appeal in accordance with the statutory rules as well as the principles of natural justice. In



disciplinary case, the appeal forum is provided not as a perfunctory mechanism but as an effective forum in which the charged officer gets an opportunity to put forth his case. Therefore, the appellate authority is also expected to have a detailed application of mind and pass a reasoned order to decide the appeal. Therefore, there is no reason for not approaching this appellate forum. The judgment of the Hon'ble Apex Court as cited by the Ld. Counsel for the Respondents, has decided ^{on} the point of limitation that cause of action in a service dispute must be taken to arise not from the date of original adverse orders but on the date when the order of higher authority where statutory remedy is provided entertaining the appeal or representation is made. It has been further laid down by the Hon'ble Apex Court in the said judgment that this principle has no application when the remedy available is not provided by law. In case of disciplinary proceeding such a remedy is statutorily available and, therefore, it is quite clear that cause of action for such cases will arise from the date when the appeal is disposed of.

8. Learned counsel for the applicant has cited the judgment of the Hon'ble Apex Court in Civil Appeal No.3528/2007 in the case of D.B. Gohil vs. Union of India and Others, the relevant portion of which has been quoted earlier in this order.

In that case the Hon'ble Apex Court had observed that the Tribunal referred to Section 20 of the A.T.Act and rightly held that the matter involved substantial and important point of law about the binding nature of CVC's advice. Further, the Tribunal was better suited to consider that issue as the Appellate Authority would also feel bound by the directions of the CVC. Based upon this ground, the Hon'ble Apex Court held that it



was one of the exceptional cases where the appellant could approach the Tribunal without exhausting the departmental remedy of appeal.

9. Looking at the facts of this matter, it is quite evident that no such exceptional situation has been brought out by the learned counsel for the applicant in the present case based upon which any extraordinary situation could be claimed under Section 20 of the A.T.Act. Except for an apprehension that the appellate authority may be prejudiced no other argument has been given for not exhausting the available departmental remedy which is statutory in case of disciplinary proceedings.

10. On the other hand, based upon the principle as decided by the Hon'ble Apex Court in the case of S.S.Rathore vs. State of Madhya Pradesh, which has been discussed already, a relief that is statutorily provided must be exhausted by the applicant before he could approach the Tribunal for relief.


I, therefore, do not agree with the learned counsel for the applicant that any extraordinary or exceptional situation has been established in this case.

11. Considering the various arguments that have been put forth by the Ld. Counsels and also the case laws, which have been cited, I do not find any reason to admit this case until the appeal petition is filed by the applicant before the appellate forum as provided under statute and also disposal of the same by the concerned authority. I would, therefore, direct the applicant to file an appeal before the concerned appellate authority within a period of 15 days from the date of this order and on receipt of this appeal, the appellate authority will dispose of the same as per the rules and as expeditiously as possible.



12. With these observations and directions, the Original Application is disposed of at the stage of admission.

13. Copy of this order along with paper book be sent to the Respondents during the course of the day. Free copies of this order be also made over to the Ld. Counsels appearing for the parties.


(R.C.MISRA)
MEMBER (Admn.)

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