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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 260/00846 OF 2014
Cuttack, this the 26th day of November, 2014

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

.....
Sri Manmohan Mohapatra,
aged about 60 years,
S/o- late Purna Chandra Mohapatra,
of Vill./P.O. Siruli, P.S. Chandanpur, Dist. Puri,
Presently working as
Supt. of Railway Mail Service,
N. Division, Cantonment Road,
Cuttack-753001.

.....Applicant

Advocate(s)-M/s. S.K. Ojha, S.K. Nayak,

VERSUS

Union of India, represented through

1. Director General,
Department of Posts,
Government of India,
Dak Bhawan, New Delhi.
2. Chief Postmaster General,
Odisha Circle,
Bhubaneswar, Dist. Khurda-751001.

..... Respondents

Advocate(s)..... Mr. S.B. Jena

ORDER (ORAL)

A.K.PATNAIK, MEMBER (JUDL.):

Heard Mr. S.K.Ojha, Learned Counsel for the Applicant, and Mr. S.B.Jena, Ld. Addl. Central Government Standing Counsel appearing for the Respondents, on whom a copy of this O.A. has already been served, and perused the materials placed on record.



2. Applicant, who is working as Superintendent of Railway Mail Service N. Division, Cuttack, has been served with a Memorandum of Charges under Memo No. Inv/9-30/09/(Disc-II), dtd. 05.03.2014. Subsequently, an order of the Disciplinary Authority has been issued under Memo No. Inv/9-30/09/(Disc-II), dtd. 06.05.2014 directing for recovery of Rs. 70,000/- on the ground of contributory negligence. On the above background, this O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, with the following reliefs:

“(i) To admit the O.A.

(ii) To quash the Charge memo dtd. 05.03.2014 (Annex. A/3).

(iii) To quash the order No. Memo No. Inv/9-30/09/Disc-II, dtd. 06.05.2014 (Annex. A/5) passed by the Disciplinary Authority.

(iv) And pass such other order.....”

3. Mr. Ojha, Ld. Counsel for the applicant, submitted that as per the express provisions of the P&T Manual, Vol. III read with the DG posts Circular No. 15-9/74-INV, dtd. 10.02.1975 so also the order dtd. 24.06.2014 of this Tribunal passed in O.A.No. 958/12, it has been made clear that no recovery from the salary can be made or be fixed by the Disciplinary Authority alleging contributory negligence of a Supervising Authority as against the pecuniary loss caused to the department due to any misappropriation or otherwise. In spite of that, the Respondent No.2, without conducting any inquiry and without analyzing contributory negligence on the part of the applicant has fixed the recovery of Rs. 70,000/- from the salary of the applicant. He further submits that since the applicant is going to retire soon as he is already reaching the age of 60 years and, at this fag end of his service disciplinary proceeding has been initiated, he has



preferred appeal to the Director General Posts, i.e. Respondent No.1, on 30.06.2014 but till date no reply has been received from the said concerned authority.

4. Mr. S.B.Jena, Ld. ACGSC, submits that he has no immediate instruction if any such appeal has been filed by the applicant and, if so, the status thereof.

5. We find that Section 20 of the Administrative Tribunals Act, 1985 provides 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 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.


(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."



6. Though, in our view, this O.A. is premature to be entertained at this stage, but in agreement with the submission advanced by Mr. Ojha that the applicant is 60 years of age and is about to retire, without entering into the merit of this matter, we deem it proper to direct Respondent No.1 to consider the appeal of the applicant, if the same is still pending, and communicate the decision thereof, in a well-reasoned order to the applicant within a period of 90 (ninety) days from the date of receipt of a copy of this order. It is directed that if the appeal is still pending consideration and has not been disposed of then no coercive action will be taken against the applicant pursuant to Annexure-A/5 till disposal of the appeal. We make it clear that, if in the meantime the said appeal has already been disposed of then the result thereof be communicated to the applicant within a period of one month from the date of receipt of copy of this order.

7. With the aforesaid observation and direction, this O.A. stands disposed of at the stage of admission itself.

8. As prayed for by ^{the} Mr. Ojha, Ld. Counsel for the applicant, copy of this order, along with the paper book, be transmitted to Respondent No. 1 by Speed Post at the cost of the applicant, for which he undertakes to furnish the postal requisites by 28.11.2014.


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


(A.K.PATNAIK)
MEMBER(Judl.)