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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 24.8.1995

OA No. 321/95

S.N. Shrimali

...

Applicant.

V E R S U S

Union of India & Ors.

...

Respondents.

Mr. Kamal Dave, Counsel for the applicant.

Mr. V.D. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. N.K. Verma, Adm. Member.

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BY THE COURT:

Heard Shri Kamal Dave and Shri V.D. Vyas.

2. The applicant in this OA has alleged transfer from the post in a Station to which he was transferred on mutual request with another official between the two Railways i.e. Western Railway and Northern Railway. As per the transfer order placed at Annexure A/3 dt. 10.5.1995, the applicant was transferred and posted under AD at Jodhpur vice Shri Shiv Karan Meena, SSO (A/c). However, on 4.8.1995, the applicant was transferred to Bhatinda and one Mr. Vyas was ordered to join in his place at Jodhpur. The applicant

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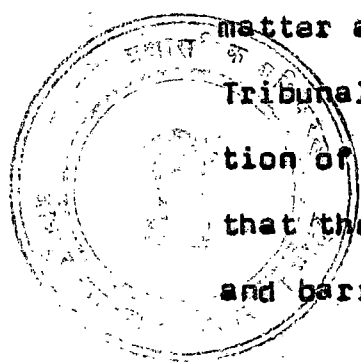
came to this Tribunal on 9.8.1995 and obtained an interim stay against the operation of the impugned order dated 4.8.1995. The respondents who were asked to file a reply against admission as well as interim order have taken a preliminary objection that the petitioner has rushed to the Tribunal without exhausting the alternate remedy available to him and, therefore, the application is barred by law. It has also been averred that the transfer order has yet not been served on the applicant as he by his own admission has stated that he obtained a copy of the transfer order without the same being officially served on him. Hence there is no cause of action in the matter. As regards the merit of the case, a detailed reply has been furnished to which the learned counsel for the applicant has in anticipation of the order of this Bench filed a rejoinder with a copy in advance served on the respondents. During the course of arguments, Shri Kamal Dave also pointed out that the reply filed by the respondents is not by a proper person as the Accounts Officer who is impleaded as respondent No. 3 cannot under the Government Orders file a reply on behalf of the respondents No. 1 and 2 as he is not an Officer of the rank of Under Secretary to the Government of India or above. Shri Kamal Dave reiterated the point that the applicant has been transferred out of Jodhpur only to accommodate the person of their choice when the applicant had a right to continue at Jodhpur in view of the fact he

specifically requested for a posting at Jodhpur and had not completed three months after his transfer.

2. The matter before me is for admission of the case as provided under Section 20 of the Administrative Tribunals Act, 1985, and for a decision whether it is a fit case for admission. Section 20 of the Act is very clear about the fact 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 grievances. While the learned counsel for the respondents has pointed out the facts that the applicant has not availed of all the remedies available to him, he has not spelt out what that alternate remedies are available and who are the competent authorities to deal with the matter or issue. Learned counsel for the applicant also pointed out that the respondents have failed to answer this very substantial question. While Shri Vyas was not able to provide any assistance in the matter, it is undisputed fact that under the Service rules meant for the Central Government employees, as specified in Rule 23 of the C.C.S. (CCA) Rules, every Government employee has a right to prefer an appeal against all or any orders specified therein. Rule 23 (iv) (a) covers almost all the subject relating to the conditions of service against which a Government employee can prefer an

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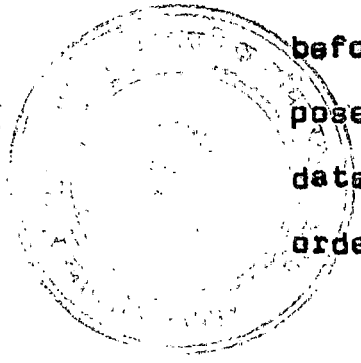
appeal. The Railways must be having similar provisions in their own Conduct and Disciplinary Rules and it is not unknown that officials belonging to the Railways have been representing against the orders which have affected their conditions of service, including their transfer. I have reasons to believe that the Railway Rules have the provisions for looking into such matters covered in the DA and to decide the representations if and when made. Since the applicant has not made any representation after the receipt of transfer order, he still has an opportunity of making an appeal / representation to the proper authority and if he is dissatisfied with that order, he can come before the Tribunal for adjudication in the matter as per Section 19 and 20 of the Administrative Tribunals Act, 1985. Therefore, I accept the contention of the learned counsel for the respondents that the application at this stage is premature and barred by law.



3. Shri Kamal Dave's point regarding non-admissibility of reply filed by the Accounts Officer, respondent No. 3, on behalf of the respondents No. 1 and 2 is also accepted. The Government instructions are very clear about the level at which complaints/ written statements will be filed on behalf of the Government side. This provision is also stipulated in Order XXVII Rule 1 of the Code of Civil Procedure, 1908.

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4. In view of the above, the OA at this stage is premature and is, therefore, dismissed without any costs. However, the applicant will be at liberty to file a representation / appeal before the appropriate authority who shall dispose it of within a period of two months from the date of the receipt of the same. The interim order granted earlier is hereby vacated.



*N.K. Verma*  
( N.K. VERMA )  
MEMBER (A)

CVR.

