OA file
386/99

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Order : 19.09.2001

1. OA No. 289/1999.

Bimal Kumar Jain S/o Sh. Ajit Prashad Jain, aged 50 years, Booking Clerk, Northern Railway, presently posted at Bhiwani r/o Gali No.1, Rampura Basti, Lalgarh, Bikaner-334 004.

APPLICANT..

VERSUS

1. Union of India through General Manager, Northern Railway, HQ Office Baroda House, New Delhi.

2. Additional Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.

3. Senior Divisional Commercial Manager, Northern Railway, Bikaner Division, Bikaner.

RESPONDENTS..

2. OA No. 386/1999.

Bimal Kumar Jain, s/o Shri Ajit Prashad Jain, aged 50 years, Booking Clerk, Northern Railway, presently posted at Bhiwani r/o Gali No.1, Rampura Basti, Bikaner-334 004.

APPLICANT..

VERSUS

1. Union of India through General Manager, Northern Railway HQ Office, Baroda House, New Delhi.

2. Additional Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.

3. Senior Divisional Commercial Railway Manager, Northern Railway, Bikaner Division, Bikaner.

RESPONDENTS..

3. OA No. 24/2000.

Bemal Kumar Jain s/o Sh. Ajit Prashad Jain, aged about 50 years, Booking Clerk, Northern Railway, presently posted at Bhiwani, Resident of Gali No.1, Rampura Baste, Lalgarh, Bikaner-334 004.

APPLICANT..

VERSUS

1. Union of India through, The General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.

2. The Additional Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.

3. The Senior Divisional Commercial Manager, Northern Railway, Bikaner Division, Bikaner.

RESPONDENTS..

4. OA No. 270/2000.

Bimal Kumar Jain S/o Shri Ajit Pd. Jain, aged 51 years, Head Booking Clerk, Northern Railway, Bikaner, R/o Gali No.1, House No. 404, Rampura Basti, Lalgarh, Bikaner-334 004.

APPLICANT..

VERSUS

1. Union of India through General Manager, Northern Railway, HQ Office, Baroda House, New Delhi.

2. Additional Divl. Railway Manager, Northern Railway, Bikaner Division, Bikaner.

3. Senior Divl. Commercial Manager, Northern Railway, Bikaner Division, Bikaner.

RESPONDENTS..

Mr. Y. K. Sharma, counsel for the Applicant in all OAs.

Mr. Kamal Dave, counsel for the Respondents in OA No. 289/1999.

Mr. Manoj Bhandari, Counsel for the respondents in OA Nos. 386/99, 24/2000 and 270/2000.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

I/11

ORDER

(per Hon'ble Mr. Gopal Singh)

In all these applications, the common point of law has been raised and, therefore, all these applications are being disposed of by this common order. In all these applications, the applicant has challenged the orders of the Disciplinary Authority as well as the Appellate Authority on various grounds namely procedural irregularities, not giving any opportunity to the applicant to defend his case and non speaking orders of the Disciplinary Authority and the Appellate Authority. The Learned Counsel for the applicant has strenuously argued that the orders of the Disciplinary Autority as also that of the Appellate Authority are non speaking orders and further that the orders of the Appellate Authority have not at all discussed the points raised by the applicant in his appeals. He has also submitted that as per the law laid down by Hon'ble the Supreme Court, the Appellate Authority must give an hearing to the delinquent official before passing the appellate order. Since, in these cases the Appellate Authority has not given any hearing to the applicant, it has, therefore, been contended that there is clear cut violation of the law laid down on the subject. In these circumstances, the applicant has prayed for quashing and set aside the orders of the Disciplinary Authority and that of the Appellate Authority, placed at Annexure A-1 and A-2 respectively in all these 4 applications(OA No. 289/99, OA No. 386/99, OA No. 24/2000 and OA No. 270/2000).

2. In the counter, the respondents have contended that the application is not maintainable as the applicant has not availed of the statutory remedy of revision. It has also been pointed out that it is not necessary to give hearing to the delinquent official by the Appellate Authority in terms of SC judgment in 1994 Supp(2) SCC 463 (State Bank of Patiala Vs. Mahindra Kumar Singhal). It has further been asserted that the Appellate Authority after due consideration of the appeals has reduced the penalty imposed upon the applicant and therefore, the Appellate Authority has applied his mind to the case. In such circumstances, affording an hearing to the delinquent official will be of no avail. In these circumstances, it has been stated by the respondents that the application is devoid of any merit and is liable to be dismissed. Both the parties have also filed written arguments.

3. We have heard the learned counsel for the parties and perused the records of the case carefully.

4. It has been pointed out by the respondents that the applicant is having efficacious, statutory alternative remedy of revision under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 and the applicant has not availed that remedy and therefore he cannot be given any relief in the present applicantions without exhausting the statutory remedy available to him. Learned counsel for the respondents have also cited a number of judgments in support of his contentions. These judgments are being discussed in subsequent paragraphs.

(i) 1999 (1) SCC 209 Sheela Devi Vs Jaspal Singh :-

It is a case under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) act,1972, where there is a specific provision of remedy of revision under Section 18 of the said Act. In that case Hon'ble the High Court wrongly exercised its writ jurisdiction on question of fact when alternative statutory remedy of revision was available. In the circumstances, Hon'ble the Supreme Court set aside the impugned order of Hon'ble the High Court and liberty was given to the respondents to avail of the alternative remedy of revision.

In this context learned counsel for the applicant has brought to our notice provision of rule 24(2) of the Railway Servants (D&A) Rules, 1968, it lays down as under:-

"24. Special Provisions for non-gazetted staff.

["(2) A Group 'C' Railway servant who has been dismissed, removed or compulsorily retired from service may, after his appeal to the appropriate appellate authority has been disposed of, and within 45 days thereafter, apply to the General Manager for a revision of the penalty imposed on him. In this application, he may, if he so chooses, request the General mManager to refer the case to the Railway Rates Tribunal for advice before he disposes of the revision petition. On receipt of such a request the General Manager shall refer the case to the Chairman, Railway Rates Tribunal for advice sending him all the relevant papers.

On receipt of the revision application by the

General Manager, or on receipt of advice from the Railway Rate Tribunal, as the case may be, the general Manager shall dispose of the application in accordance with the procedure laid down in Rule 25 and pass such orders as he may think fit:

Provided that the procedure mentioned in this sub-rule will not apply in cases where the General manager or the Railway Board are the Appellate Authority:-

Provided further that where a revision application has been disposed of by the General Manager under this sub-rule, no further revision shall lie under Rule 25."

It is clear from the above that as per the rules remedy of revision under Rule 25 is available to a Grade C employee when a punishment of dismissal, removal or compulsory retirement is imposed. In the instant case, the applicant has been imposed punishments of reduction in the stage of pay scale and withholding of increments and as such it was not obligatory upon him to avail xxxxx the department remedy of revision. Rule 20 of the Administrative Tribunals Act 1985 provides as under :-

"20. Application not to be admitted unless other remedies exhaustd :- (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 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."

In the instant case, the appeal has been rejected and the applicant has not filed any other representation, therefore, in our view this application is maintainable in the Tribunal.

(ii) In (1995) 29 Administrative Tribunals Cases 261 Balkishan Soral Vs. Union of India & Others:-, It was held that revision was one of the departmental remedies available to the applicant and limitation has therefore to be determined with reference to rejection of the revision petition and not from the date on which the appeal was rejected. It is pointed out here that the controversy raised before the Tribunal was whether the limitation would start from the date of rejection of appeal or the date of rejection of revision petition. The Tribunal had examined Rule 25 of the Railway Servants (D & A) Rules, 1968 at length for the purpose of determining whether the limitation would start from the date the revision petition was rejected. Thus, it was for the limited purpose for determining limitation

that the remedy of revision was considered to be one of the departmental remedies available.

(iii) AIR 1999 Supreme Court 1786, State of Himachal Pradesh, Appellant V. Raja Mahendra Pal and others, Respondents :- In this case, an erstwhile Raja assignee of forest claimed royalty for felling trees and forest produce, also claiming extension fee, interest, interest on interest, payment for out shaped illicit blazes, and damages. Hon'ble the High Court had allowed the writ petition filed by the Raja on the ground that the Raja Mahendra Pal was found to have been deprived of the right to life as envisaged by Article 21 of the Constitution of India. Reversing the judgment of Hon'ble the High Court, Hon'ble the Supreme court observed as under :-

"6. The learned counsel appearing for the appellant has vehemently argued that the writ petition filed was not maintainable as the High Court was not justified in entertaining the same and consequently granting the relief to the respondent No.1. The rights of respondent No.1, if any, are stated to be based upon a contract for which he was obliged to avail of the alternative efficacious remedy of filing a suit either for the recovery of the money or for rendition of accounts. It is contended that the discretionary powers vested in the High Court under Article 226 of the Constition could not have been exercised in the facts and circumstances of the case. Though, we find substance in the submission of the learned counsel for the appellant, yet we are not inclined to allow the appeal and dismiss the writ petition of respondent No. 1 only on this ground. It is true that the powers conferred upon the High Court under Article 226 of the Constitution are discretionary in nature which can be invoked for the enforcement of any fundamental right or legal right but not for mere contractual rights arising out of an agreement particularly in view of the existence of efficacious alternative remedy. The Constitutional Court should insist upon the party to avail of the same instead of invoking the extraordinary writ jurisdiction of the Court. This does not however debar the Court from granting the

appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of alternative efficacious remedy. The existence of the special circumstances are required to be noticed before issuance of the direction of the High Court while invoking the jurisdiction under the said Article. In the instant case, the High Court did not notice any special circumstance which could be held to have persuaded it to deviate from the settled proposition of law regarding the exercise of the writ jurisdiction under Article 226 of the Constitution. For exercise of the writ jurisdiction, the High Court pressed into service the alleged fundamental right to livelihood of the respondent which was found to have been violated by not making him the payment of the amounts claimed in the writ petition. It is true that Article 21 of the Constitution is of utmost importance, violation of which, as and when found, directly or directly, or even remotely, has to be looked with disfavour. The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under Article 21 of the Constitution cannot be so widely construed whch may result in defeating the purpose sought to be achieved by the aforesaid Article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sorts of claim relating to the legal or contractual rights of the parties completely ignoring the person approaching the Court and the alleged violation of the said right. The High Court appears to have adopted a very generous, general and casual approach in applying the right to livelihood to the facts and circumstances of the case apparently for the purpose of clothing itself with the power and jurisdiction under Article 226 of the Constitution. We are sure that if the High Court had considered the argument in the right perspective and in the light of various pronouncements of this Court, it would not have ventured to assume jurisdiction for the purposes of conferring the State larges of public money, upon an unscrupulous litigant who preferred his claim on his proclaimed assumption of being as important as the Government of the State and equal thereto. Despite holding that the High Court had wrongly assumed the jurisdiction in the facts of the case, as earlier noticed, we are not inclined to dismiss the writ petition of the respondent No.1 on this ground at this stage because that is likely to result in miscarriage of justice on account of the lapse of time which may now result in the foreclosure of all other remedies which could be availed of by the respondent in the ordinary course. The alternative remedies available to the respondent admittedly not being efficacious at this stage has persuaded us to decide the claim of the respondent on merits."

It is clear from the above judgment that Hon'ble the High Court had wrongly assumed jurisdiction in the case

where the respondents should have availed of the remedy of filing a suit for the recovery of the money or for rendition of account. Thus, an alternative remedy was available and it was wrong on the part of Hon'ble the High Court to have assumed jurisdiction in the case invoking Article 226 of the Constitution of India. The facts of this case are entirely distinguishable than the facts of the case in hand and therefore, the contention of the respondents does not find any support from this case.

(iv) 1995(2) WLC 1 Gopilal Teli V. The Stateof Rajasthan & Others :- In this case also the question whether a writ petition for violation of provisions of Article 5A of the Industrial Disputes Act, 1947, or violation of principles of natural justice should be directly entertained as a matter of course ignoring the statutory remedy provided by that Act, was answered in the negative and it was held that recourse to statutory remedies in the Industrial Disputes Act was necessary. This case also is entirely different than the facts of the case in hand.

(V) AIR 1992 RAJASTHAN 129, Kailash Chand Agarwal, Petitioner V. The State of Rajasthan and others, Raspondents :- It is a case where the petitioner Lesee claimed under Rules 29 of Mineral Concession Rules, 1960 that surrender of lease should have been accepted with immediate effect. It was held that the petitioner having not availed of the remedy of revision before Central Government cannot be permitted to invoke extra

ordinary remedy under Article 226 of the Constitutiono of India. The facts of this are also distinguishable from the facts of the case in hand. We are,therefore, of the view that the applications are maintainable in this Tribunal though the applicant has not availed of the remedy of revision which we consider as not an effective remedy.

5. Respondents have further observed that there is no provision for personal hearing under the Railway Servants (Discipline & Appeal) Rules, 1968. It has been pointed out by the respondents that there is no prejudice caused to the applicant and therefore non grant of personal hearing shall not vitiate the order of the Appellate Authority. Learned counsel for the respondents has cited many judgments in support of their contentions. These judgmentare being discussed in subsequent Paragraphas:-

(i) 1991(2) JT S.C. 562 Ex. Capt. K. Balusubramanian v. The State of Tamil Nadu & Anr. .

(ii) AIR 1993 SC 550, State of Karnataka v. H. Ganesh Kamath. etc. etc. respondents.

(iii) 1992(5) JT SC 408 M.G. Pandke & Ors. v. Municipal Council Hinganghat District Wardha & Ors.

In all these cases, it has been held that the Government instructions cannot supersede the statutory rules. That is not the case , in this case and as such these judgments do not apply to the facts of the cases in hand -

(iv) 1994 (Supp) (2) SCC 463- State Bank of Patiala Vs. Mahendra Kumar Singhal.

In this case it has been held that in absence of any Rule to the contrary, affording of personal hearing by the Appellate Authority is not necessary

6. In this connection learned counsel for the applicant has cited the case of Ram Chandra Vs. Union of India & Ors. AIR 1986 SC 1173 in support of his contention that the Appellate Authority should have given personal hearing to the applicant and the absence of the same would amount to violation of principles of natural justice. We consider it appropriate to extract below the relevant portion of the above mentioned judgment.

" It is not necessary for our purposes to go into the vexed question whether a post decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram Patel's case(AIR) 1985 SC 1416 unequivocally lays down that the only stage at which a Government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e., an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty Second Amendment as interpreted by the majority in Tulsiram Patel's case

> that the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by Tribunals such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and give a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing sould be given."

In the light of the law laid down above we are of the view that the Appellate Authority should have afforded the opportunity of hearing to the applicant before passing the final appellate order. It is also seen that the appellate order is a non speaking order thus, the appellate orders can be set aside on this ground alone.

7. It is also pointed out by the respondents that the Tribunal will not appreciate the evidence and interfere with the orders of the Appellate Authority and if the applicant was having any grievance he should have availed of the statutory alternative remedy of revision. Learned counsel for the respondents has also cited a number of judgments in support of his contention that the Tribunal cannot reappreciate the evidence. We are inclined to agree with the learned counsel for the respondents that we cannot interfere in such matters unless it is case of no evidence or conclusion drawn are shocking and preverse and there are procedural lapses. We are in effect not reappreciating the evidence available on record. We have only dealt with the legal aspects of the cases and have come to the conclusion that the remedy of revision is not an effective remedy available to the applicant and further that the Appellate Authority should have afforded hearing to the

applicant before passing the final appellate order. In the circumstances, we find merit in these applications and the same deserves to be partly allowed. Accordingly we pass the order as under :-

> "All the Original Applications(OA No. 289/99, 386/99, 24/2000 and OA No. 270/2000) are partly allowed. The Appellate orders placed at Annexure A-2 of the respective case file are quashed and set aside. The case is remanded back to the Appellate Authority with a direction to pass the fresh speaking order on the appeals of the applicant after giving personal hearing to him within 3 months from the date of receipt of a copy of this order. No costs."

Sd/-
(GOPAL SINGH)
ADM.MEMBER

Sd/-
(B.S. RAIKOTE)
VICE CHAIRMAN

प्रमाणित सही प्रतिलिपि
3/8/2001
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

P./C.