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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR**

ORIGINAL APPLICATION NO.165 /2003

Date of decision: 18.02.2005

...
Madan Lal Sharma **Applicant**

Mr. M.K. Shrimali **Advocate for the Applicant**

V E R S U S

**Union of India &
Others.** **Respondents.**

Mr. N K Khandelwal **Advocate for Respondents.**

CORAM:

Hon'ble M. J.K. Kaushik : **Judicial Member.**

Hon'ble Mr. G.R. Patwardhan : **Administrative Member.**



1. Whether Reporters of local papers may be allowed to see the judgement? *no*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

DRP
(G.R. Patwardhan)

Administrative Member

J K Kaushik
(J K Kaushik)

Judicial Member.

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 165/2003

Date of Decision: 18.02.2005

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

HON'BLE MR. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER.

Madan Lal Sharma S/o Shri Mamraj Sharma Retired Booking Supervisor, North West Railway, Raisingh Nagar resident Near Masjid, Raisingh Nagar, District Sri Ganganagar (Rajasthan)

...Applicant

(Mr. M.K. Shrimali, Counsel for applicant.)

V E R S U S

1. Union of India through General Manager North West Railway Headquarter (old Loco Area) Jaipur (Rajasthan).
2. Additional Divisional Railway manager, North West Railway Divisional Office, Bikaner (Raj.).
3. Senior Divisional Personnel Officer, North west Railway Divisional Office, Bikaner (Raj.).
4. Divisional Commerical Manager, North West Railway, Divisional Office, Bikaner (Raj.).

...Respondents.

(Mr. N.K. Khandelwal, Counsel for respondent No 1 to 4.)

: O R D E R :

Per: Mr. J.K. Kaushik, Judicial Member

Shri Madan Lal Sharma has inter alia assailed the order dated 02.06.2003 (Sic 7.6.2003) passed by the Appellate Authority rejecting the appeal as time barred vide Annexure A/1, amongst other reliefs.

2. The factual background which are considered relevant for resolving the controversy involved in this case are that the applicant was issued with a charge Memo dated 15.02.2001 alleging a set of charges against him and violating Rule 3(1) (i) (ii) & (iii) of Railway Service (Conduct) Rules, 1966. A fullfledged inquiry was conducted and the charges were held to be proved

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by the Enquiry Authority. Considering the inquiry report, the Disciplinary Authority imposed the penalty vide order dated 04.09.2002 at Annexure A/3 wherein the following punishment has been imposed :-

"I, therefore, held you guilty of the charge(s) viz as shown levelled against you vide -of even number dated 15-2-2001 and have decided to impose upon you the penalty of reduction to one lower post/grade service. You are, therefore, reduced to the lower post/grade/service of BS in the scale of Rs. 5500-9000 for after a period of one year or till retirement which is earlier from the date of order with postponing future increments."

3. Subsequently another order came to be issued on 23.09.2002 at Annexure A/2 by the same Disciplinary Authority wherein the punishment was modified in the following terms:-

" In continuation on to subject NIP issued to you. Please read the period of punishment of reduction to a lower time scale of BS grade Rs. 5500-9000/- till retirement with cumulative effect, instead of one year or till retirement with cumulative effect. Rest contents of subject NIP holds good."

4. The applicant preferred an appeal on 01.11.2002 which came to be received by the respondents on 08.11.2002. The Appellate Authority has rejected the appeal of the applicant vide impugned order dated 02.06.2003 on the ground of being time barred. The Original Application has been filed on numerous grounds mentioned in Para 5 and its sub paras which we find not necessary to enumerate them here in view of the order we propose to pass in this Original Application. Respondents have contested the case and controverted the facts and grounds raised in the Original Application.

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

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6. Both the learned counsel for the parties have reiterated the facts and grounds raised in their respective pleadings. The learned counsel for the applicant has invited our attention to Annexure A/1 i.e. Appellate Authority's order which came to be passed on 02.06.2003. He has contended that the appeal was filed within the time but the same has been rejected as time barred. On the contrary, the learned counsel for the respondents has strived hard to persuade us that the appeal was not filed in time and the Competent Authority has rightly rejected the same. He has also submitted that the very appellate authority's order makes a mention that the applicant could file a Revision Petition in the matter. However, no Revision Petition has been preferred in the matter despite that he had an effective alternative remedy. He has also submitted that the Original Application is also hit by Section 20 of the Administrative Tribunal Act, 1985 inasmuch as a statutory remedy is available but he has not availed the same. In this view of the matter, the Original Application deserves to be dismissed.

7. We have considered the rival submissions put forth on behalf of both the parties. Before examining the matter about the propriety of the Appellate Authority's order, we would dispose of the peripheral issue regarding availing of the alternative remedy; that is the preliminary objection regarding the maintainability of the very Original Application. We find that the Appellate Authority has rejected the appeal on the ground that it was time barred but factually it is not true as is being narrated in the succeeding paras. Thus the very order which has been passed by the Appellate Authority is illegal and non-est in



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the eye of law. Once the very initial order is illegal, the Higher Authority cannot legalize the same by passing a legal order. We are fortified this view from the decision of the Supreme Court in case of ***B.Mishra V. Orissa High Court*** AIR 1976 SC Page 1899, wherein their Lordships of Supreme Court have held as under:-

"If the order of the intial authority is void an order of the appellate authority cannot make it valid. The confirmation by the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void. If the reduction in rank of Additional Dist. Judge is without jurisdiction then he is deemed to continue as an Addl. District Judge. The High Court cannot dismiss him. AIR 1975 SC 613 and AIR 1974 SC 2192, Followed: ILR (1974) Cut 731, Reversed."

8. Examining the aforesaid preliminary objection from yet another angle. Firstly, there is no complete bar of entertaining an application by this Bench of the Tribunal and the word 'ordinarily' has been used. The Section 20 of the Administrative Tribunal Act, 1985 specifically provides that a person shall be deemed to avail all the remedies available to him under the relevant service rules as to the redressal to his grievances. The contents of Section 20 of the A T Act, 1985 are reproduce 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 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

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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."

While there can be no dispute that the remedy of not only of the revision but of the review also have been provided by the statutes itself. However, as far as enteraining of the application before this Bench of the Tribunal is concerned, there is a specific provision as indicated above that when the final order has been passed on the appeal then one is deemed to have availed all the remedies. Thus, in view of the fact that in the instant case, the final order on the appeal has been passed despite one may be having statutory alternative remedy under the Service rule, there is no embargo of entertaining the application by the Tribunal, rather when appeal is rejected one can straightway invoke the jurisdiction of the Tribunal and the case can not be thrown on the ground of non-availing of the alternative remedy. In this view of the matter, the preliminary objection raised on behalf of the respondents cannot be sustained. In other word, one may have alternative remedy under service/statutory rules, still one can approach the Tribunal as per Section 20 of the Administrative Tribunals Act, 1985 and it is not incumbent on him to avail all such remedies. The language of Section 20 of the A T Act, 1985 is plain and simple and clearly lays down such proposition in unequivocal terms.

9. Now adverting to the issues relating to the propriety of the very appellate order, undisputedly the applicant has preferred an appeal dt. 1.11.2002 which came to be received by the respondents on 08.11.2002. The Disciplinary Authority has issued an amendment order to penalty order on 23.09.2002

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which came to be received by the applicant on 26.09.2002. In this way the appeal was preferred within the prescribed period of 45 days from the date of receipt of the orders of penalty/amendment of penalty. In this view of the matter, it is factually untrue that the appeal was not filed in-time. In other words, the appeal was very much filed in-time and if that be so the Appellate Authority's order cannot be sustained in the eye of law. We have not examined the other grounds raised in the Original Application since the Appellate Authority is required to examine the same as per rules in vogue.

10. In the result, the Original Application has substance and is hereby allowed in part. The impugned order dated 02.06.2003 (Annexure A/1) is hereby quashed. The case is remanded to the Appellate Authority who shall decide the appeal afresh on merits, keeping in view the relevant provisions i.e., Rule 22 (2) of Railway Servant (Discipline & Appeal) Rules 1968. This order shall be complied with within a period of three months from the date of communication of this order. No costs.



PR

(G.R. Patwardhan)
Admn. Member


(J.K. Kaushik)
Judicial Member

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Copy of order
Sent Post by

Speed Post Regd AD

vide n 32

at 3.3.05

Part II and III destroyed
in my presence on 28.1.45
under the supervision of
section officer (1) as per
order dated 18.12.44

Section officer (Record)