

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 66/2010

Date of Order: 16-8-2010

CORAM:

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

Mukesh Tilwani son of Shri Pesu Mal, aged 45 years, Postal Assistant, Head Post Office, Madan Ganj, Kishan Ganj, Dist. Ajmer R/01 JH 26, Varsali Nagar, Ajmer.

.... Applicant

Mr. Vijay Mehta, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Communication (Dept. of Post) Sanchar Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Udaipur.
3. Senior Superintendent of Post Offices, Ajmer.

.... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

(Per Mr. V.K. Kapoor, Administrative Member)

Shri Mukesh Tilwani has filed present O.A. against order of respondent-2 dt. 15.3.2010 (ann A-1). The applicant has prayed to quash the impugned order dt. 15.3.2010 (ann A-1) and reinstate him with full back wages. The applicant has sought interim reliefs that are as follows:-

"In view of the above submission it is prayed that the operation of the impugned order may kindly be stayed and the respondents may kindly be restrained from implementing the impugned order. In case the respondents claim that they have implemented the impugned order, it is prayed that the respondents may kindly be directed to reinstate the applicant forthwith. In case interim order is not granted the OA is likely to become infructuous. The applicant shall suffer irreparable loss and injury. He has a very strong *prima facie* case."

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2 (a). The brief facts of the case are that the applicant is working as Postal Assistant under respondents. While he was posted at Ajmer as marketing executive, a charge-sheet was served upon him by respondent-3 vide memo dt. 06.12.2007, it was alleged that applicant has sold postal stamps to Shri Syed Kamaluddin Qadri Chishty worth Rs. 2,68,900/- and took over three cheques on his name irregularly, out of which Rs. 50000/- were invested in FD on the name of his father & mother. It is alleged that the applicant has violated the provisions contained in rule 4 (1) of Postal FHB Vol.-I and rule 3(1)(i) & 3(1)(ii) of CCS (Conduct) Rules, 1964. A charge-sheet was issued to him, inquiry officer submitted enquiry report on 29.5.2009. The respondent-2 sent enquiry report to the applicant on 25.01.2009; only charge-1 is proved; other 02 charges were not proved in the enquiry report. The disciplinary authority (respondent-2) imposed a penalty of compulsory retirement from service on applicant vide order dt. 15.3.2010 (ann A-1). The applicant has prayed that respondents be restrained from implementing the impugned order; quash this order and reinstate him on his service forthwith.

2 (b). The penalty of compulsory retirement from service is imposed on applicant by the disciplinary authority, while disagreeing with findings of enquiry report without any notice or opportunity of hearing being given to him, thus, impugned order dt. 15.3.2010 (ann A-1) is ab initio void and no appeal is required to be filed against such order. In such exceptional cases where substantial point is involved, Tribunal may entertain O.A.

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without filing appeal as right to natural justice is violated at the first stage. Besides, the prescribed procedure as laid down in CCS (Conduct) Rules 1964 is not followed, the compliance of rule 20 of A.T. Act, 1985 is not mandatory, Tribunal may entertain O.A. without filing of appeal in exceptional circumstances.

3. The respondents in reply have narrated that applicant while working at Ajmer from 01.01.2006 to 11.02.2007 has committed serious irregularities of selling postage stamps to one Shri Syed Kamaluddin Qadri Chishty amounting to Rs. 2,68,900/-, taken three cheques on his name. The enquiry was conducted against him under rule 14 of CCS (CCA) Rules, 1965; enquiry report was submitted by Inquiry Officer on 29.5.2009 holding 01 charge out of 03, proved against applicant. The respondent-2 as disciplinary authority, after going through enquiry report and applicant's representation, awarded punishment of compulsory retirement from service vide order dt. 15.3.2010. The applicant without availing alternative remedy of appeal; approached the Tribunal directly. In order dt. 15.3.2010 passed by competent authority after following due process of law, no irregularity or lacuna was committed. This being a judicial review of process, Tribunal should not to re-appreciate evidence like appellate authority.

4 (a). Learned counsel for applicant in arguments on interim relief has stated that the charges against applicant are not fully proved & the enquiry report is clear on this point. The disciplinary authority while disagreeing with the report of enquiry officer inflicted penalty of his compulsory retirement from service, no opportunity of hearing was given to him and rules of

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natural justice were utterly violated. Under these circumstances, it is not binding for applicant to go in appeal; he has come direct to Tribunal to seek relief in treating this case as of exceptional circumstances. The applicant has cited decisions of apex court in S.B.I. & Ors. vs. Arvind K. Shukla - 2001 LAB. I.C. 2387, D.B. Gohil vs. UOI & Ors. JT 2009 (15) 361, besides CAT, Madras in S. Pandian and Ors. vs. UOI & Anr. - (1991) 16 ATC 184.

4 (b). Learned counsel for respondents in arguments on interim relief has stated that power to take action and proceed against applicant as per prescribed norms is vested in the disciplinary authority. Section 20 of A.T. Act, 1985 is firm on the fact that applications not to be admitted unless other remedies are exhausted, but applicant has not preferred appeal against order dt. 15.3.2010 (ann. A-1). The applicant has taken part in the enquiry proceedings, the disciplinary authority has given copy of the enquiry report to him. The respondent-2 took an action of applicant's compulsory retirement from service as per prescribed rules after going through merits of the case. The instant remedy for applicant was to move to the appellate authority, he did not avail this legal facility and came straight to Tribunal. If proper and suitable opportunity is not afforded to him, he could have asked for relief from the departmental appellate forum. No such exceptional circumstances exists in the present case, he cannot come straight to Tribunal for interim relief. The applicant cannot be allowed to bypass the prescribed rules or remedy provided in the statute on the name of exceptional circumstances.

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5. The facts of the case are narrated above at length; the applicant was posted as marketing executive o/o Divisional Office, Ajmer, during period from 01.01.2006 to 11.02.2007 he sold postage stamps worth Rs. 2,68,900/- to Shri Syed Kamaluddin Qadri Chishty, kept this amount with him. He deposited some of the amounts received by cheques on the name of father and mother in fixed deposit. The stamps were found to be forged. A departmental enquiry under rule 14 of CCS (CCA) Rules, 1965 was ordered against the applicant, 03 charges were framed. Shri R.K. Arya, Superintendent Post Offices, RMS, Ajmer was deputed as Inquiry Officer. The respondent-2, Sr. Superintendent of Post Offices, Udaipur Division, was appointed as disciplinary authority. In enquiry report, charge-1 is partly proved against him, charge-2, 3 are not proved. The disciplinary authority after hearing him imposed the penalty of compulsory retirement from service vide order dt. 15.3.2010 (ann. A-1).

6. The provisions of appeal against the order passed by respondent-2 are there in the CCS (CCA) Rules 1965. It is alleged by respondents that if applicant was aggrieved by order annexure A-1 passed by respondent-2, he could have moved to competent appellate authority of department. The applicant has not utilized this remedy before appellate authority, moved direct to this Tribunal and filed this O.A. on 22.3.2010. The applicant's contentions is that findings of enquiry report were not agreed to by disciplinary authority without any notice and opportunity of hearing, the impugned order is ab initio void, thus no appeal is required to be filed against this patently illegal order. In this

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O.A., in para 6 "Details of the remedies exhausted" it is submitted that right to natural justice is said to be denied to the applicant. His contention is that he be given opportunity of hearing. The applicant has made a specific submission that if natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal. The applicant by way of bypassing Section 20 of A.T. has come straight to the Tribunal.

7. Here Section 20 of the Administrative Tribunals Act, 1985 is important that reads as follows:

"20. Applications 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.

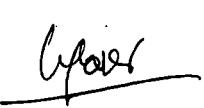
(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit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

Section 20 of A.T. Act clearly specifies that applicant has to avail all the remedies available to him under the relevant service rules for redressal of his grievances. Section 20 (2)(a) clearly refers to appeal clause by an aggrieved person in connection

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with grievances. The remedy is available to applicant by way of filing an appeal before the competent appellate authority of respondent-department. The applicant's contention is that the rules of natural justice are violated and no opportunity of hearing is given to him by the disciplinary authority, he is free to bypass Section 20 of A.T. Act and come direct to Tribunal. The disciplinary authority gave a notice to the applicant vide letter / communication dt. 25.01.2010 (ann A-2) with enquiry report dt. 29.5.2009 to submit representation within 15 days. An order dt. 15.3.2010 (ann A-1) is passed by respondent-2. Prima facie, it is not a violation of principle of natural justice as opportunity of hearing is afforded to applicant. Section 20 of A.T. Act cannot be overlooked wherein there is an express provision of appeal in the department for redressal of his grievances. An interim relief need not be given to applicant to bypass Section 20 of A.T. Act, 1985.

8. The applicant has placed reliance on S.B.I. & Ors. vs. Arvind K. Shukla - 2001 LAB. I.C. 2387 - wherein it is mentioned that disciplinary authority disagreed with conclusions and findings arrived at by enquiry officer - required to record its tentative reasons for disagreement. The apex court has further observed that non-furnishing of reasons to delinquent officer is fatal and vitiates ultimate order of dismissal. It is worthwhile to state that if order of disciplinary authority is unreasoned and non-speaking and is violative of natural justice, there is remedy available to applicant to file an appeal before competent authority. In D.B. Gohil vs. UOI & Ors. - JT 2009 (15) 361 - also held that only in exceptional circumstances, for reasons to be recorded, Tribunal



can entertain applications filed without exhausting the remedy of appeal clause. The apex court while interpreting Sec. 20 (1) of A. T. Act, stresses need for exhaustion of remedy of appeal.

9. Here, it cannot be inferred that departmental remedies were exhausted and impugned order was void ab initio. Even if there was legal or technical flaw in the order of disciplinary authority, the applicant could have sought remedy by way of filing appeal before departmental appellate authority. As regards violation of natural justice, the rules and provisions provided in the statute cannot be thrown to winds and compliance of rules and prescribed norms is mandatory. There are no exceptional circumstances narrated by applicant that makes it urgent to overlook Section 20 of A.T. Act. The apex court in Punjab National Bank & Ors. vs. Sh. Kunj Behari Misra – FLR 1998 (80) 341 – has clarified that when disciplinary authority disagrees with findings of inquiring authority – an opportunity of hearing should be granted to the employee – though recording of the reason for such disagreement is not necessary. This is agreed principle that when an employee of the department is aggrieved with the order of disciplinary authority and principle of natural justice are not complied with, he should seek remedy before the appellate forum. The same analogy is highlighted in Kirtan Singh vs. State of Rajasthan – 2005 (9) 3508 (Raj.) –, Dalip Singh vs. State of Rajasthan & Ors. – 2006 (2) RDD 849 (Raj.) - and D.L. Chauhan vs. State of Rajasthan & Ors. – 1997 (3) WLC (Raj.) 277 - the disciplinary authority disagreeing with findings but giving no reasons and imposing penalty – appeal against that



order also giving no reasons for dismissal of appeal – order of penalty besides appellate order quashed. Apparently, the order has to be a reasoned one and proper opportunity of hearing is to be given to the aggrieved party.

10. The CAT, Madras in S. Pandian and Ors. vs. UOI & Anr. – (1991) 16 ATC 184 – has thrown light on S. 20(1) of A.T. Act:-

"Administrative Tribunals Act, 1985 – Section 20(1) – Departmental remedies – Exhaustion of – Impugned order is void ab initio – Even so, held, Section 20(1) does not operate as a bar against filing of application in the Tribunal."

The applicant has further cited the order of CAT, Jodhpur Bench in Devi Lal vs. UOI & Ors. (OA 72/1994), decided on 11.02.2000 and Man Singh vs. UOI & Ors. (OA 304/99) decided on 22.02.2002 to substantiate his claims. But in the said cases, the applicant, an aggrieved party preferred an appeal before the competent departmental authority for relief. In Vijay Narain Singh vs. Supdt. of Police, Bijnore (U.P.) and Ors. – 1994 Supp. (2) SCC 56 – the apex court has held that it was the duty of the Government to justify its action either by proper pleadings or by producing records – termination declared invalid on account of failure to do so by the State Government. The apex court and other judicial forums have made this abundantly clear that an aggrieved party should be given an opportunity of hearing and order of the disciplinary authority has to be reasoned one. But this is not an exceptional case nor radically different circumstances exist to ignore or bypass the mandatory provisions of Section 20 of A.T. Act. There is no irreparable loss to the applicant nor legal urgency exists so as to get an interim

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relief from Tribunal in the instant case. The applicant has remedy to move before departmental appellate authority for redressal of his grievances, the remedies are not exhausted. Accordingly, interim relief on this point cannot be given to the applicant in an exceptional manner.

11. In view of deliberations made above, no case is made out to bypass Section 20 of the Administrative Tribunals Act, 1985. Thus, claim of applicant to come before this Tribunal directly against the order passed by disciplinary authority (respondent-2) stands vindicated. Accordingly, applicant's prayer for granting him interim relief, i.e. the operation of the impugned order may kindly be stayed and the respondents may kindly be restrained from implementing the impugned order, is hereby rejected.


[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member

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