

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

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O.A. No. 424/05

Lucknow THIS THE 19th day of May, 2006

Hon. Mr. Justice Khem Karan, Vice Chairman.

Hon. Mr. N.D. Dayal, Administrative Member

Ajai Jauhari, aged about 51 years, son of late Shri V.S. Jauhari R/o 20/138 Indiranagar, Lucknow, posted as Inspector in the office of the Assistant Commissioner, Central Excise Division, Sitapur.

Applicant

By Advocate Shri R.C. Saxena.

Vs.

1. Union of India, through the Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, North Block New Delhi.
2. The Commissioner, Central Excise Commissionerate, 38 M.G. Marg, Allahabad.
3. Assistant Commissioner/Deputy Commissioner, Central Excise, Raebareli.
4. The Additional Commissioner, Central Excise, Lucknow.
5. The Commissioner, Central Excise Commissionerate, Sarvodaya Nagar, Kanpur.

Respondents.

By Advocate Shri S.K. Tewari.

Order

By Hon. Mr. Justice Khem Karan, Vice Chairman.

1. After formal disciplinary proceedings, the applicant has been visited with penalty of compulsory retirement, vide order dated 29.3.05 (Annexure A-1). He has filed this O.A. under section 19 of the Administrative Tribunals Act, 1985, assailing the said order of compulsory retirement on a number of grounds. Reply and rejoinder have also been placed on record. Shri R.C. Saxena has also filed written submission and has also addressed the Tribunal orally. The learned counsel for the other side has also been heard.

2. It transpires from perusal of order dated 5.9.05 that while asking the respondents to file reply within 4 weeks, the Tribunal also provided that till then status quo as on date shall be maintained, if the impugned order has not been given effect to. That order is continuing.

3. Shri S.K. Tewari, the learned counsel appearing for respondents has raised a preliminary objection based on the provisions of section 20(1) of the Administrative Tribunals Act, 1985. He says that under the relevant disciplinary rules, there is a

provision of appeal against such orders of punishment and since the applicant has not availed of that remedy, so this O.A. deserves to be dismissed on this ground. He has also brought to our notice order dated 7.9.05 passed in O.A. 425/05 Yasho Verma vs. Union of India and others, whereby this Tribunal disposed of the O.A. asking the applicant to prefer appeal within a period mentioned therein and directing the appellate authority to decide the appeal by a reasoned and speaking order within a period of two months. He says that Yasho Verma was also subjected to disciplinary proceedings alongwith the present applicant Ajai Johari. According to him, there is no justification for not passing similar orders in this O.A. Shri Saxena has argued that alternative remedy of appeal is not absolute bar to the entertainment of O.A. under section 19 and now when both the sides have filed their pleadings, this OA. Should not be thrown away on the ground of alternative remedy.

4. We have considered the respective arguments on this preliminary point and we are of the view that the propriety demands that similar orders should be passed in this case as well, as were passed in the case of Yasho Verma. Otherwise also, the applicant will have one more chance to have his say in the appeal and it is just possible that he may succeed there in appeal and may not be required to come to this Tribunal under section 19.

5. The intention behind sub section(1) of section 20 of the Act of 1985 is that normally, the Tribunal should not be bothered if statutory remedy against the order in question is there. This O.A. ought to have been disposed of in the very beginning on the same lines as mentioned in order dated 7.9.05 in O.A. No. 425/05, but unfortunately, the same could not be done earlier and the matter lingered on for a few months.

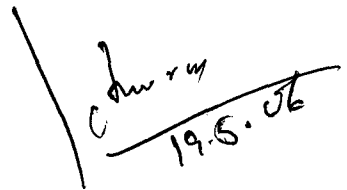
6. We are of the considered view that the applicant should be asked to go in appeal first and if he remains unsuccessful in appeal, he may come to the Tribunal under section 19. There appears to be no good reason not to relegate the applicant to that remedy. Filing of the pleadings by itself will not justify entertaining of O.A. without the applicant exhausting the statutory remedy.



7. So, this O.A. is finally disposed of with the provision that in case the applicant files statutory appeal against the said punishment within a period of 15 days from today, the appellate authority would decide the same by a reasoned and speaking order within a period of two months from the date such appeal is filed and communicate the result thereof to the applicant shortly thereafter. The applicant shall have liberty to approach the appropriate forum if his grievance still persists. In case the impugned order dated 29.3.05 has not been given effect to, the same shall not be given effect to till the disposal of appeal. No order as to costs.



(N.D. DAYAL)
Member(A)



(KHEM KARAN)
Vice Chairman

s.a