

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No.447/2005

This the 12th day of September, 2005

HON'BLE SHRI SHANKER RJAU, MEMBER (J)
HON'BLE SHRI S.P. ARYA MEMBER (A)

J.P. Soni, aged about 49 years, s/o Sri Mevalal Seth, R/o 448/241/1, Bhuiya Devi Lain, Nagari Thakur Ganj, Lucknow.-3

Applicant

By Advocate: Sri Arvind Kumar

Versus

1. Union of India through Director, Postal Service (Headquarters), Office of C.M., P.M.G., U.P. Circle, Hazrtganj, Lucknow.
2. Chief Post Master General, Postal Service (Headquarters), U.P., Lucknow.
3. Senior Superintendent of Post Office, Lucknow Division, Lucknow.

...Respondents

By Advocate: Shri Deepak Shukla for Sri Prashant Kumar

ORDER (ORAL)

By Hon'ble Shri Shunker Raju, Member (J)

Learned counsel for applicant relying upon the decision of the Apex Court in **Whirl Pool Corporation Vs. Registrar of Trade Marks Mumbai and others 1998 (8) SCC 1** contended that in the matte of jurisdiction under Article 226, if there is a challenge to the jurisdiction and violation of Principles of Natural Justice as well as Articles 14 and 16 of the Constitution of India, being a fundamental right, alternative remedy cannot be exhausted. Whereas Section 20 of the AT Act, 1985 provides that before filing application before the Tribunal, unless all available remedies are exhausted, O.A. cannot be entertained.

2. In the above conspectus it is stated that on direction of this Court, the appellate authority while disposing of the appeal, remitted back the matter to the disciplinary authority for passing a speaking order on disagreement. As the same having been done and the show cause notice issued to the applicant,

applicant when responded to it ,led to imposition of punishment of dismissal upon applicant by the disciplinary authority against which an appeal was preferred by applicant, he has approached this Tribunal before conclusion of that appeal. As no orders have been passed by the respondents.

3. Learned counsel of applicant would contend that apart from non examination of complainant and various other legal infirmities which amply prove that the proceedings have been held in utter disobedience of the principles of natural justice, fundamental right of the applicant has been violated.

4. Be that as it may, once an appeal has been preferred against the order, applicant cannot take resort to the decision of the Apex Court in the Whirlpool Corporation (Supra) as an exception to the alternate remedy in the matter of writ jurisdiction. We are constrained to say that under Article 226 of the Constitution of India, as interpreted by the constitution Bench of the Apex Court in **L.Chandra Kumar Vs. Union of India and Others 1997 SCC (L&S) 577**, the Tribunal has been observed to be Court of first instance with scrutiny by the High Court on our orders passed. No concurrent jurisdiction under Article 226 of the Constitution has been accorded to the Tribunal. As such the decision cited is distinguishable.

5. Be that as it may, having filed an appeal, we dispose of this O.A. with the direction to the respondents to dispose of pending appeal of the applicant by passing a reasoned and speaking order dealing with all the contentions of the applicant within a period of four weeks from the date of receipt of copy of this order. If the applicant is still aggrieved, it shall be open to him to approach this Court in accordance with law.

(S.P. Arya)
Member (A)

S. Raju
(Shanker Raju)
(Member(I))