

**Central Administrative Tribunal Lucknow Bench Lucknow.**

**O.A. No. 454/2007**

This, the 16<sup>th</sup> day of November, 2007

**Hon'ble Mr. Justice Khem Karan, Vice Chairman**  
**Hon'ble Sri R.R. Bhandari, Member (A)**

Balraj Krishna Bhalla aged about 58 years son of Sri Gyan Chand, resident of Type V, Wireless Complex, Mahanagar Police Station and Post Mahanagar, Lucknow.

Applicant

By Advocate: Sudeep Seth

**Versus**

1. Union of India, through Secretary, Home, North Block, New Delhi.
2. State of U.P., through Principal Secretary (Home) Civil Secretariat, Lucknow.
3. Director General Police, U.P., Lucknow.
4. Shri Shailja Kant Mishra ,Additional Director General of Police, ISBF/ STF, U.P., Lucknow.
5. Shri Javed Akhtar, Dy. Inspector General of Police, U.P., Lucknow.

Respondents

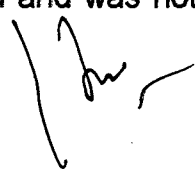
By Advocate: Sri Anil Tiwari assistant by Sri Upendra Nath Mishra for State of U.P.  
Sri S.P.Singh for Union of India.

**ORDER**

**By Hon'ble Mr. Justice Khem Karan, Vice Chairman**

Applicant, a member of Indian Police Service, is challenging suspension order dated 30.9.2007 (A-1) issued by the Govt. of U.P.

2. His case, in brief, is that during the year 2005-2006, while he was posted as Additional Director General Police (Railways) and was holding Additional charge of Additional Director General of Police (Telecom), Govt. initiated recruitment process for filling in vacant post of Radio Maintenance Officer, Assistant Operator and for that purpose also constituted Selection Committee/Boards. He alleges that he was neither Chairman nor Member of any such Selection Committee or Board and was not in any way concerned



with the recruitment to the said posts. He goes on to say that on receipt of certain complaints regarding irregularities or illegalities said to have been committed, in making the recruitment to the said posts, Govt. constituted a committee comprising of Sri Shailja Kant Mishra and three other Dy. Inspector General of Police, namely, Sri Javed Akhtar, Sri Vijay Kumar and Sri Avinash Chandra. According to him, this enquiry was presided over by respondent No. 4, who was junior to the applicant by 3 years and during the course of enquiry, he (applicant) was also interrogated and he clearly stated ( see A-5) that he had no concern with the recruitment in question. He alleges that as the respondents No. 4 and 5 were biased against him as, so under the influence of the State Govt., sent enquiry report making some allegations against him as well, and on the basis of it, he was placed under suspension, vide order dated 30.9.2007 and FIR was also lodged against him and others under Section 419/420/467/468/469/471/120 B/34 IPC and Under Section 7/12/13 Prevention of Corruption Act (A-7,A-8 and A-9). He has said in para 4.16 of the O.A. that respondents No. 4 and 5 were themselves associated with the recruitment, so they could not have been impartial in making the enquiry into the alleged irregularities or illegalities. Reference to Office Memorandum dated 7.10.2007 (A-10) has also been made so as to say that the Govt. was still holding an enquiry into the matter and so suspension dated 30.9.2007 was totally unjustified. It appears that applicant filed one writ petition No.1270 (SB) of 2007 before the Lucknow Bench of Allahabad High Court for quashing suspension order dated 30.9.2007. The Hon'ble High Court disposed of this writ petition, vide its order dated 12.10.2007 (A-11), asking the applicant to go to the Tribunal and directing the Tribunal to entertain the matter without relegating him to avail of the alternative remedy under Rule 16 of All India (Disciplinary and Appeal ) Rules 1969. It would be relevant to reproduce the operative portion of the order dated 12.10.2007. It reads as under:-

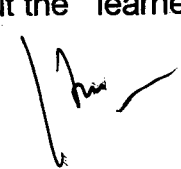


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"We are totally in agreement with the law declared by this Court in the case of R.K.Singh Vs. Union of India and others. In view of the law declared by Hon'ble the Supreme Court and this Court in the case of R.K.Singh Vs. Union of India and others, we are not entertaining the writ petition. In case, an Original Application is moved by the petitioner within ten days from today before the Central Administrative Tribunal, Lucknow, the same shall be entertained by the Central Administrative Tribunal without relegating the petitioner to avail of alternative remedy under Rule 16 of All India Service (Discipline and Appeal) Rules, 1969. In case, an application for interim relief is moved by the petitioner before the Central Administrative Tribunal, Lucknow, the same shall be considered and disposed of by the Tribunal within two weeks from the presentation of the original application.

With the above observation, the writ petition is finally disposed of."

3. Armed with the above order dated 12.10.2007 of the Hon'ble High Court, applicant presented this O.A. on 23.10.2007, during Autumn vacation. The matter came up before the bench sitting single on 23.10.2007. The Bench directed that it be listed on 30.10.2007, for admission/ orders but asked Sri Upendra Nath Mishra, appearing for respondents No. 2 and 3 to seek instructions in respect of averment to the effect that the applicant was neither the Member nor Chairman of the Recruitment Board concerned. Order sheet reveals that on 2.11.2007, the Hon'ble Member sitting single heard the parties counsel on admission. It appears from perusal of the order dated 2.11.2007 that the respondents had raised a preliminary objection to the effect that since the O.A. was not been filed within 10 days as given by the Hon'ble High Court in order dated 12.10.2007, so was not entertainable without exhausting the remedy of appeal under the rules of 1969. Learned Member was not impressed by this argument. He however, passed no specific order as to whether petition was fit for admission or not. He was informed by the respondents counsel that they had already approached the Hon'ble Apex Court, so the learned member directed them to inform on the next date whether Hon'ble Apex Court has passed any order. When the matter was taken up on 5.11.2007, the bench was informed about Apex Court's order dated 2.11.2007 but the learned counsel for the

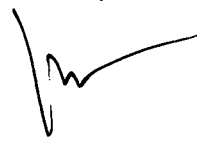


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respondents wanted time to get clarification in respect of that order of the Apex Court. Matter was directed to be listed on 14.11.2007 for admission. So in this way, the matter came up before us on 14.11.2007 for admission/orders. Respondents have filed preliminary objection against maintainability of this O.A. and have also filed short reply from the side of opposite party No.2. Not only this, they also filed one Application No. 2589 of 2007 for dismissing the O.A. as not maintainable. Applicant filed reply to the preliminary objection. The main preliminary objection of the respondents is that since the applicant has not availed of statutory remedy of appeal against the order of suspension, so O.A. cannot be admitted under section 19 of the Act of 1985 in view of Sub Section (1) of Section 20 of the said Act.

4. We have heard Sri Sudeep Seth appearing for the applicant and Sri Anil Tiwari assisted by Sri Upendra Nath Mishra for State of U.P. and Sri S.P. Singh for Union of India, on admission of this O.A. and on the request for interim relief.

5. Although, there can be <sup>no</sup>~~no~~ debate on the point that preliminary objection as to the maintainability of the O.A. have to be taken up first even then Sri Anil Tiwari has cited several judicial pronouncement including Municipal Corporation of Allahabad Vs. Harsh Tandon, 2007 (6) SCC 419, Union of India Vs. Ranbeer Singh Rathore, 2006 (11) SCC 696, NHAI Vs. Ganga Enterprises 2003 (7) SCC 410, Arun Agarwal Vs. Nagreeka Exports (P) Ltd., 2002 (10) SCC 101, Manubhai J. Patel and another Vs. Bank of India 2000 (10) SCC 253 and T.K. Lathika Vs. Seth Karsandas Jamna Das 1999 (6) SCC 632, so as to say that before other points are considered or before the matter is considered on merits, preliminary objection as against maintainability of the O.A. should be considered and decided first. Sri Anil Tiwari has argued that the Hon'ble Apex Court has also passed order dated 2.11.2007, giving liberty to the respondents here to take stands as are available to them in the context of the maintainability of the petition. He has shown us the copy of that order dated 2.11.2007 passed in Special Leave to



Appeal (Civil) No. 20945/2007 State of U.P. and others Vs. Balraj Krishna Bhalla. According to him, in considering the question of maintainability of the O.A., this Tribunal is not to be influenced by High Court's order dated 12.10.2007. Shri Sudeep Seth says that since the order dated 12.10.2007 of Hon'ble High Court has not been expressly quashed, so it cannot be said that views expressed therein cannot be taken into consideration by this Tribunal in deciding the plea against the maintainability of this O.A. or in deciding the question of admission or in deciding the grant or refusal of interim relief.

6. According to Sri Anil Tiwari, Sub Section (1) of Section 20 of the Act of 1985 has been couched in such a way that OAs have not to be entertained in cases, where remedy under disciplinary Rules has been skipped without good and cogent reasons. He has referred to para 15 of 7 judges constitution bench decision in S.S. Rathore Vs. State of Mahdya Pradesh reported in (1989) 4 Supreme Court Cases 582. It reads as under:-

"In several States the Conduct Rules for government servants require the administrative remedies to be exhausted before the disciplinary orders can be challenged in court. Section 20 (1) of the Administrative Tribunals Act, 1985 provides:-

"20 (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."

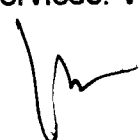
7. Reliance has also been placed on a Division Bench decision of Jabalpur Bench of this Tribunal in the case of V.N. Sharma Vs. Union of India, reported in (1987) Administrative Tribunal cases page 28, where it has been held that when adequate and departmental remedy is available under the disciplinary rules, even the High Court and Supreme Court normally direct petitioner to avail of such departmental remedies first.

8. According to Sri Anil Tiwari, applicant has not been able to allege or prove those extra ordinary or exceptional circumstances which justify filing of the O.A. without availing of the remedy of appeal under Rules of 1969.



9. Relying on a few judicial pronouncements such as Rashtriya Chaturth Shreni Railway Mazdoor Vs. Union of India 1997(11) Supreme Court Cases 1, Hinalco Industries Ltd. Vs. Union of India 1994( 2) Supreme Court Cases 594, Whirlpool Corporation Vs Registrar Trade Mark 1998 (8) Supreme Court Cases 1, ABL International Ltd. Vs. Export Credit 2004(3) Supreme Court Cases 553, Union of India and others Vs. Arawali Minerals 2000(9) Supreme Court Cases 558, Industrial Investment Bank of India Vs. Marshall's Power and Telecom 2007(1) Supreme Court Cases 106 and R.K. Singh Vs. Union of India [ 2000 (18) LCD 31, Sri Sudeep Seth has submitted that alternative remedy of appeal under the Rules of 1969 is not absolute bar against entertaining the O.A. under Section 19 and it rests in the discretion of this Tribunal to entertain or not to entertain such petition. He says that while exercising the discretion, this Tribunal is to be guided by the same norms as are applicable in the cases of Writ Petitions under Article 226 of the Constitution of India. Learned Counsel says that in exceptional and extraordinary cases, the Tribunal can entertain the O.A. even if the applicant has not exhausted the departmental remedy. According to him, applicant is being subjected to suspension and departmental proceedings without application of any mid and so it is an exceptional case where this Tribunal should not relegate the applicant to departmental remedies.

10. We have considered the above submissions on the point of maintainability of this O.A. We think in none of the cases cited by Sri Sudeep Seth, it has been said that Tribunal should entertain each and every such petitions where applicant has come without exhausting the departmental remedy. In Rashtriya Chaturth Shreni Railway Mazdoor Vs. Union of India (Supra), the Hon'ble Apex Court said that since interest of labourers was involved, so Tribunal should not have relegated the applicants to departmental remedy. That was a case of regularization of the services of employees. Perhaps there was no specific rules providing a remedy to the employees to avail of, for regularization of services. We do don't think this



case help Sri Sudeep Seth in saying that the present O.A. is of exceptional nature. That case turned on its own peculiar facts and circumstances. In Hindalco Industries 's case (Supra) , the Hon'ble Court observed that discretion is to be exercised with circumspections consistent with justice , equally and good conscience , keeping always the given facts and circumstances of the case. That was not a case in the context of bar of Section 20 of the Act of 1985. Whillpool Corporation's case (Supra) was a case in regard to the exercise of discretion under Article 226 , The Apex Court ruled that in cases where petitioner was seeking enforcement of any of fundamental rights or complaining of breaching Principles of Natural Justice or where the order or proceedings are wholly without jurisdiction, High Court can entertain a writ petition under Article 226, even if the petitioner has not availed of alternative remedy. ABL International's case (Supra) was also a case under Article 226 where the Apex Court ruled out that in suitable cases High Court could entertain a petition even if disputed question of fact were involved. Union of India Vs. Arawali Minerals's case (Supra) was also one in the context of discretionary power of the High Court under Article 226. Industrial Investment Bank of India's case (Supra) was not in the context of Section 20 of the Act of 1985. That was a case where a <sup>injunction</sup> ~~injunctions~~ was granted by the lower authority under order 39 of the Code of Civil Procedure. R.K.Singh's case (Supra) was in the context of Section 20 of the Act of 1985 but what ruled ~~out~~ was that the Tribunal could entertain a petition in exceptional circumstances even if applicant has not exhausted departmental remedies. This case turned on its own facts. Sri Sudeep Seth has also cited one more case , namely State of U.P. Vs. V. Sarma Rao and others (2007) 2 SCC 159, where the Apex Court considered the meaning of expression ordinarily appearing in sub Section (4) of Section 195 of the Code of Criminal Procedure. Quoting Kailash Chandra Vs. Union of India AIR 1961 SC 1346, the Apex Court said that word "ordinarily" should be construed normally.

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11. What can be said on the basis of the judicial pronouncements that have been cited by the parties counsel on the point under discussion is that Sub Section (1) of Section 20 of the Act of 1985 does not create an absolute bar against entertaining OAs, without exhausting departmental remedy and in exceptional or in extraordinary cases, the Tribunal can entertain OA, even without exhausting of departmental remedies. Each case has to be examined in the light of its own facts and circumstances.

12. While bar of alternative remedy against the petition under Article 226 is a self imposed bar and so High Court has enormous power to entertain a writ petition even if the petitioners has not availed of statutory remedy. In cases, under the Act of 1985, bar is in the shape of Sub Section (1) of Section 20. By now, it stands well settled that OAs are not normally admitted, if applicant has not exhausted departmental remedies. Although it is not possible to give an exhaustive list of such extra ordinary or exceptional circumstances but instances may be quoted. One of such instance may be where vires or legality of the statutory rules or executive instructions may be under challenge, and it may be a futile to relegate the applicant to the statutory remedy. Another instance may be where there are serious allegations against the authority, who is to hear the appeal or revision under the relevant rules. There may also be instance when orders of which the applicant is aggrieved, is ex-facie without jurisdiction or illegal. The case in hand does not appear to be one of such cases.

13. The argument of Sri Seth, that since appellate authority possesses no power to stay the operations of suspension orders, so sub Section (1) of Section 20, should not come in the way of maintaining O.A., does not appeal to us, in view of what has been said by the Apex Court in para 11 and 12 of Sec. Minor Irrigation V. Sangtoo Ram (2002) 5 SCC page 521

14. Citing State of Orissa Vs. Bimal Kumar Mohanty (1994) 4 SCC 126, Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And another (1999) 3 SCC 679, Ram Dular Tripathi Vs. State of U.P. [ 1998 (16) LCD 137], Union of



India and others Vs. J. Ahmad AIR 1979 SC 1022, Const. C.P. 117 Yad Ali and others Vs. S.P. Chauli [ 2001 (19) LCD 618], A.P. Southern Power Distribution Co. Ltd. Vs. P. Samtasiva Rao 2002 ESC page 293, Sunil Kumar Tyagi Vs. U.P. Khadi and Village Industry 1999 (2) AWC, 1663, Lal Bahadur Singh Vs. Engineer in Chief (Mech) Lucknow 2000 (1) AWC page 7 and State of U.P. and another Vs. Vishwanth Parsed 1995 Supple. (2) SCC 145, Sri Sudeep Seth has argued that since suspension in question has been resorted to without application of mind and on suspicion only and without there being any grave allegation, so this Tribunal should treat the case of the applicant as exceptional or extraordinary one, so as to entertain the petition without relegating him to the remedy under the Rules of 1969. Although, these cases are on the point as to when suspension can be resorted to and when the court or Tribunal should interfere with the same. We are of the view that we can not enter into the correctness or otherwise of the allegations made against the applicant at this stage and then to decide whether the applicant should or should not be relegated to departmental remedy. It is difficult to pre-judge the correctness or otherwise of the allegations against the applicant. That has to be done by the departmental authorities. (See Transport Commissioner, Madras Vs. A. Radha Krishana Moorthy (1995) 1 Supreme Court Cases 332 and Secretary to Govt., Prohibition and Excise Department Vs. L. Sri Nivasan 1996 (3) Supreme Court Cases 156) While the applicant says that he was not concerned with the recruitment process in question, but in application dated 19.8.2006 (A-1 to Misc. Application No. 259 of 2006), applicant stated that he was supervising the entire process of recruitment. Whether he was doing so or not, is a question to be looked into by the departmental authorities. We refrain from expressing our opinion on the point.

15. The applicant has not been able to satisfy us as to why he did not avail of remedy of appeal under the rules of 1969. He seems to have skipped that remedy on the strength of High Court's order dated

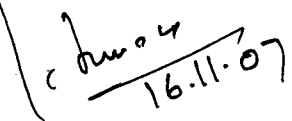


11.10.2007, which has been considerably denuded of its strength by order dated 2.11.2007 of the Apex Court. After that order of Apex Court, the case of the applicant has become weak for entertaining the O.A. without exhausting the remedy of appeal under Rules of 1969.

16. In the result, the O.A. is not admitted and disposed of with liberty to the applicant to prefer an appeal under the Rules of 1969 against the suspension in question, within a period of 15 days from today and in case, such an appeal is filed, the authority concerned shall entertain and decide it on merits as expeditiously as possible, say within a period of 2 months from the date, appeal is so filed. No order as to costs.



Member (A)

  
16.11.07  
Vice Chairman

HLS/-