

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. NO. 558/2006

This, the 24<sup>th</sup> day of November 2006.

Hon'ble Mr. Justice Khem Karan, Vice Chairman.  
Hon'ble Mr. P. K. Chatterjee, Member (A)

Mukesh Behari Srivastava, aged about 45 years, son of Late Shri Prem Bheari Lal, Presently posted as Commercial Superintendent Grade-I, Aishbagh Station, N.E. Railway, Lucknow and resident of 48- Dhaudpur, Gorakhpur, U.P.

Applicant.

By Advocate Shri Pankaj Nath.

Versus

1. Union of India through Secretary to Government, in the Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. The Railway Board through its Chairman, Rail Bhawan, New Delhi.
3. The Senior Divisional Commercial Manager, N.E. Railway, Lucknow.

Respondents.

By Advocate Shri S. Lavania.

Order(Oral)

By Hon'ble Mr Justice Khem Karan Vice Chairman.

Heard Shri Pankaj Nath on this O.A. which is being filed against the reversion order dated 29.9.2006/27.10.2006 (Annexure-1) which was allegedly served on the applicant on 14.11.2006. It is not disputed that under the relevant disciplinary rules of 1968, there lies an appeal to the higher authority against said order of reversion. Shri Pankaj Nath does not say that the remedy of departmental appeal has been availed of. What he submits is that because, the impugned order is ex – facia bad in law for the reasons disclosed in O.A. so that departmental remedy should not come in the way of the applicant in maintaining this O.A. under Section 19 of the AT ACT 1985. The learned counsel has submitted that in the case in hand, the authority concerned issued two charge sheets one after the other and initiated two proceedings against the applicant. The learned counsel <sup>says</sup> submits that while the first one is still pending, and the

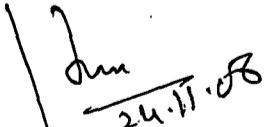
second one has been concluded and the punishment order passed. It has also been said that the charge of un authorized absence flows from shifting of the applicant from commercial operational branch to operational branch to which he objected. Shri Pankaj Nath says that in the circumstances, the O.A. should be admitted as Section 20 of the Act of 1985, does not exclude entertaining of such O.As. He has referred to ~~of~~ the word "ordinarily", appearing in Sub Section 20 (1) of the ACT of 1985.

2. We are of the view that in the circumstances, it appears to be just and proper that the applicant should first exhaust the departmental remedy of appeal and if he remains aggrieved even after exhausting the remedies available under the relevant rules, he may come to the Tribunal. In so far as, the request that the interest of the applicant should be protected by staying the operation of the order impugned in this O.A., is concerned we think that he may make such request to the appellate authority and if the request is so made, the authority will consider the same in accordance with law and the rules as expeditiously as possible. It is also expected that the appellate authority ~~were~~ dispose of the appeal on merits, within a period of two months, from the date such appeal is filed.

3. So this O.A. is not admitted on the grounds of alternative remedy but with the observations/directions made above. No costs.

  
(P.K. Chatterjee)

Member(A)

  
(Khem Karan)

Vice Chairman.