

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 177/2008

THIS THE 30/5 DAY OF MAY, 2008

HON'BLE SHIR M. KANTHAIAH, MEMBER (J)
HON'BLE SHRI SHAILENDRA PANDEY, MEMBER (A)

Benkatesh Bahadur Singh aged about 58 years son of late Shri Mahavir Singh, resident of 2/8, Vishal Khand, Gomti Nagar, Lucknow.

Applicant

By Advocate: Sri Sudeep Seth

Versus

1. Union of India, through Secretary, Department of Personnel and Training, Ministry of Public Grievance and Pension, North Block, New Delhi.
2. State of U.P., through Principal Secretary, Appointment, Department of Personnel, Civil Secretariat, Lucknow.

Respondents

By Advocate: Sri S.P. Singh for Respondent No.1
Sri A.K. Chaturvedi for Respondent No.2

ORDER

BY HON'BLE SHRI SHAILENDRA PANDEY, MEMBER (A)

This O.A. has been filed against the order dated 13.5.2007 by which the applicant, a member of the Indian Administrative Services and erstwhile Vice Chairman of the Lucknow Development Authority (LDA), was placed under suspension under Rule 3 of the All India Service (Discipline and Appeal) Rules, 1969 (hereinafter referred to as Rules) for negligence etc. in maintenance of Baba Saheb Dr. Bhimrao Ambedkar Udyam Smarak (in short Smarak). Subsequently a charge sheet dated 21.6.2007 was issued to the applicant initiating disciplinary action under rule 8 of the Rules. A supplementary charge sheet was also issued to the applicant.

2. The period of suspension was extended by 90 days each time vide orders dated 8.8.2007, 7.11.2007, 30.1.2008 and 2.5.2008 on the basis of ~~after~~ recommendations of the Review Committee constituted under Rule 3 (8) of the Rules for reviewing the period of suspension of the applicant. The applicant has sought quashing of the impugned order/ extension orders on the following grounds:-

a) That under Rule 8(a) (d) of the Rules, 1969, the order of suspension cannot be continued beyond 180 days, while the applicant has been continuing under suspension for over a year now. The applicant counsel also submits that the Review Committee had extended the period of suspension without application of mind.

b) That it was the duty of the U.P. Rajkiya Nirman Nigam and not of the LDA to maintain the said Smarak and thus no liability for maintaining the Smarak devolves on the applicant. Further, it is stated that the order of suspension is not sustainable as Smarak is being renovated/reconstructed after virtually stripping the entire premises of the stones embedded on it and having demolished the structure, there is no reason why the officer should be kept under suspension.

c) That on the similar charges, one Sri D.R. Yadav, Chief Engineer of the LDA had also been placed under suspension on 30.5.2007 (charge sheet issued on 20.11.2007) and had filed Writ Petition No. 142 (S/B) of 2007 before the Hon'ble High Court of Allahabad Lucknow Bench, Lucknow, and the Hon'ble High Court, Lucknow Bench has stayed the order of suspension.

Applicant counsel also contends that although there is a statutory remedy of appeal under Rule 16 of the All India Services (Discipline and Appeal) Rules, 1969 before the Central Govt. against the order of suspension, this has lost its significance and efficacy due to the reason that the order of suspension has been continued for a period of over a year. Further, he contends that, seeing the circumstances of the case, filing of an appeal would be an "empty formality" or 'futile attempt'. It is also submitted that under Section 20(1) of the Administrative Tribunal Act, 1985, it is provided that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all remedies available to him under the relevant service Rules as to redressal of grievance, and hence, it is not a hard and fast rule that the Tribunal can not admit in any circumstances an application unless the alternate remedy available is availed of by the applicant. In fact, it is contend

that in exceptional circumstances, the application can be entertained by the Tribunal. The applicant counsel has also referred to the following judgments in support of his contentions.

1) **Dhampur Sugar Mills Ltd. Vs. State of U.P. and others (2007) 8, Supreme Court Cases, 338**

2) **R.K. Singh Vs. UOI and others, 2000(18) LCD 31.**

3. On the other hand, the respondents counsel has vehemently opposed the above contentions of the applicant and have stated that the O.A. is not maintainable in terms of the provisions of Section 20(1) of the Administrative Tribunals Act, 1985.

4. He has also pointed out that it is wrong to say that the suspension can not be extended beyond 180 days because U/s 3(8) (a) of the Rules, 1969, there is a clear provision that the suspension can be extended for 180 days at a time. He further points out that in terms of the Rules, 1969, the relevant Review Committee is chaired by the Chief Secretary with the other two members being the senior most Addl. Chief Secretary/ Chairman, Board of Revenue/ Financial Commissioner and Secretary, Department of Personnel of the State and this itself is sufficient to rebut the contention of the applicant that the review committee had not extended the period of suspension without application of mind. As regards applicant's counsel contention that Sri D.R. Yadav, who had already been suspended on the similar charges, had obtained an interim stay of his suspension by the Hon'ble High Court, he states that there are significant differences in the U.P. Govt. (Disciplinary and Appeal) Rules 1999 and in the All India Service (Disciplinary and Appeal) Rules, 1969. In Part V of the All India Service Rules, 1969, there is a clear provision of an appeal to the Central Govt. which is an authority independent of the State Govt. and such a remedy is not available in the State Rules and thus the two cases cannot be treated as being on the same footing. It is also mentioned that it is wrong on the part of the applicant to have any apprehension that the Central Govt. will not look into his appeal in an objective and fair manner. As regards the various judicial pronouncements on

the subject, namely **Dhampur Sugar Mills Ltd. Vs. State of U.P. and others** (2007) 8, Supreme Court Cases, 338 and **R.K. Singh Vs. UOI and others**, 2000(18) LCD 31, the respondents counsel contends that the facts and circumstances of each case were different and on that basis it would not be appropriate to assume that the applicant can approach this Tribunal for relief without first exhausting the alternative remedy available, He counsel also contends that the very title of the Section 20(1) which reads "Applications not to be admitted unless other remedies exhausted" clearly shows that the intention of the framers of the Act was that the O.A. cannot, repeat cannot, be admitted unless it is satisfied that the applicant had first availed of all the remedies available to him under the relevant service rules as to redressal of grievances. As regards the grounds taken by the applicant that the Lucknow Development Authority was not responsible for maintenance of that Smarak, which has since been demolished, he mentions that the demolition was a subsequent event and that in any case all these points should be raised in the appeal prescribed under the All India Service Rules.

5. We have considered the rival contentions of both the parties and propose to confine ourselves to the question whether the present O.A. can be admitted In view of the provisions contained in Sub Section 1 of Section 20 of the AT Act, 1985 which reads as under:-

"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 rule as to redressal of grievance."

6. There is no dispute that the All India Service (Disciplinary and Appeal) Rules, 1969 do provide the remedy of appeal to the Central Govt. The applicant has not been able to satisfy us that there were sufficient reasons for him not to avail of this remedy or why the remedy of appeal would not have proved to be efficacious. The applicant counsel has mentioned in his O.A. that the remedy has lost its significance and efficacy due to the reason that the order of suspension has been continued for a long period of time. However, he does not explain why the applicant did not choose to make an

appeal to the Central Govt. in the matter earlier. He could have an apprehension as mentioned by him during arguments in the case, that he may not get a fair hearing from the officers of the U.P. Govt. in view of the allegedly routine extension of suspension made in his case. However, this does not warrant his having the same apprehension in respect of an appeal to the Govt. of India where the matter would be looked at and reviewed by a totally different set of officers and by an authority independent of the State Govt. In fact, it is for this very reason that such an appeal has been provided for in the case of officers of the All India Services.

7. We now come to the issue of the implication of the word, "ordinarily" in Section 20(1) of the AT Act, 1985. The contention of the applicant counsel is that this word has been used to enable the Tribunal to admit cases where the alternative remedy has not been availed of in exceptional circumstances. There have been a number of judgments of the Hon'ble Apex Court and the Hon'ble High Courts which deal with the issue and the some of the judgments have also been mentioned during the arguments in this case. In the case of **Kailash Chandra Vs. Union of India AIR 1961 SC, 1346 , Teeta Garh Paper Mills Ltd. And another Vs. State of Orissa and other AIR 1983 SC, page 603**, the Hon'ble Apex court has held that since the applicant has not availed of statutory remedy of appeal under rules of 1969, OA is not maintainable in view of the provisions contained under Sub Section 20(1) of the AT Act, 1985. In the case of **R.K.Singh Vs. Union of India and others reported in 2000 (18) LCD 31**, Hon'ble Apex Court has held that:

" We need not to enter into the question at this juncture as to whether the provisions of Section 20 of the Administrative Tribunals Act, 1985 in any way is destructive to powers of judicial review which is the basic structure of the Constitution. Because we are of the view that the power of the Tribunal not to entertain original application is circumscribed to the word 'ordinarily', Meaning thereby that normally as this court acts under Article 226 of the Constitution, petition without exhausting the alternative remedy are not entertained, but in exceptional circumstances, which we have pointed out in the forgoing paragraphs, the High Court as well as the Central Administrative Tribunal can entertain a petition even without availing of the alternative remedy."

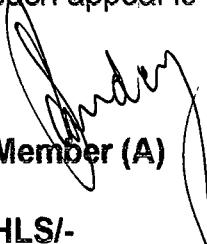
Thus it would be seen that whereas there is scope for admitting the case under Section 21 even if the alternative remedy has not been availed of, this must be done only in exceptional circumstances.

8. In the instant case, it has to be decided whether the circumstances of the case are such that they can be classified as 'extra ordinary' or 'exceptional' in which case alone the alternative remedy available does not need to be exhausted before admitting the O.A. We think the answer would be that it is not so. In the instant case, , the applicant has not challenged the vires of any statutory rules or executive instructions to enable categorization of case as an exceptional one meriting admission without first exhausting alternative remedy. The applicant has not levelled any allegation or malafides against the Central Govt. to which the appeal lies against the order of suspension/ continuance thereof. And, also, as discussed earlier, the remedy of appeal in this case can be considered an efficacious one as the appeal lies from an orders passed by officials in the State Govt. to a set of totally different and independent officials in the Central Govt. We are, therefore, of the view that since an alternative remedy is available to the applicant under the All India Service (Discipline and Appeal) Rules, 1969 against his order of suspension / extension of the same and since no extra ordinary or exceptional grounds have been shown to satisfy us that there were sufficient grounds for the applicant not to avail of the alternative remedy or the same is not an effective remedy, the present O.A. cannot be entertained in view of the provisions of Sub Section 1 of Section 20 of the AT Act, 1985.

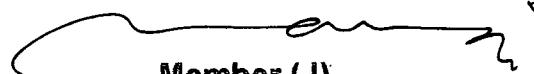
9. In view of the above, the OA. is not admitted for hearing and is disposed of with liberty to the applicant to file an appeal under All India Service (Disciplinary and Appeal) Rules, 1969 against the impugned order of suspension/ extension thereof. Such an appeal may be preferred within a period of one month from the date, a certified copy of this order is received and in the event of filing of such appeal, the competent authority, shall entertain and dispose of the same



on merits in accordance with law within a period of 3 months from the date,
such appeal is filed. No order as to costs.


Member (A)

HLS/-


Member (J)