

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,
LUCKNOW**

Original Application No.440/2010

This the 20th Day of May 2011

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Hon'ble Mr. S.P. Singh, Member (A)

Raj Kumar Chopra aged about 46 years, Son of Late Ram Prakash Chopra, presently posted as PGT, Jawahar Navodaya Vidyalaya, Bokaro, Jharkhand.

...Applicant.

By Advocate: Sri Y.S. Lohit.

Versus.

1. Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi through its Commissioner.
2. Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, III Floor, Sector-2, Vikas Nagar, Lucknow.

... Respondents.

By Advocate: Sri Anurag Srivastava.

Connected with

Original Application No.76/2011

Raj Kumar Chopra aged about 47 years, Son of Late Ram Prakash Chopra, posted as PGT, Jawahar Navodaya Vidyalaya, Ballia of Navodaya Vidyalaya Samiti, Lucknow Region, Lucknow.

...Applicant.

By Advocate: Sri Y.S. Lohit.

Versus.

1. Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi through its Commissioner.
2. Joint Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi.

3. Deputy Commissioner, Navodaya Vidyalaya Samiti ,
Lucknow Region, Lekhraj Panna, III Floor, Sector-2 , Vikas
Nagar, Lucknow.

.... Respondents.

By Advocate: Sri Anurag Srivastava.

Connected with

Original Application No.81/2011

Raj Kumar Chopra aged about 47 years, Son of Late Ram
Prakash Chopra, posted as PGT, Jawahar Navodaya Vidyalaya,
Ballia of Navodaya Vidyalaya Samiti, Lucknow Region, Lucknow.

...Applicant.

By Advocate: Sri Y.S. Lohit.

Versus.

1. Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New
Delhi through its Commissioner.
2. Deputy Commissioner, Navodaya Vidyalaya Samiti,
Lucknow Region, Lekhraj Panna, III Floor, Sector-2, Vikas Nagar,
Lucknow.
3. Principal, Jawahar Navodaya Vidyalaya Sinhawar, Ballia.

.... Respondents.

By Advocate: Sri Anurag Srivastava.

Connected with

Original Application No.354/2006

Raj Kumar Chopra aged about 42 years, Son of Late Ram
Prakash Chopra, presently posted as PGT, Jawahar Navodaya
Vidyalaya, Bokaro, Jharkhand.

...Applicant.

By Advocate: Sri Y.S. Lohit.

Versus.

1. Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi through its Commissioner.
2. Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, III Floor, Sector-2, Vikas Nagar, Lucknow.
3. Principal, Jawahar Navodaya Vidyalaya Balla, Rae Bareli.

... Respondents.

By Advocate: Sri Anurag Srivastava.

Connected with

Original Application No.133/2011

Raj Kumar Chopra aged about 46 years, Son of Late Ram Prakash Chopra, presently posted as PGT, Jawahar Navodaya Vidyalaya, Bokaro, Jharkhand.

...Applicant.

By Advocate: Sri Y.S. Lohit.

Versus.

1. Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi through its Commissioner.
2. Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, III Floor, Sector-2, Vikas Nagar, Lucknow.

.... Respondents.

By Advocate: Sri Anurag Srivastava.

Connected with

Original Application No.134/2011

Raj Kumar Chopra aged about 46 years, Son of Late Ram Prakash Chopra, presently posted as PGT, Jawahar Navodaya Vidyalaya, Bokaro, Jharkhand.

...Applicant.

By Advocate: Sri Y.S. Lohit.

Versus.

1. Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi through its Commissioner.
2. Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, III Floor, Sector-2, Vikas Nagar, Lucknow.

.... Respondents.

By Advocate: Sri Anurag Srivastava.

ORDER (Reserved)

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

All the six OAs i.e. O.A.No.440/2010, O.A.No.76/2011, O.A.No.81/2011, O.A.No.354/2006, O.A.No.133/2011 and O.A.No.134/2011 have been clubbed together vide order dated 05.04.2011. These OAs have been filed by the same applicant in which Navodaya Vidyalaya Samiti is the common respondent. Besides, the Deputy Commissioner/Joint Commissioner/Principal of Jawahar Navodaya Singhawar, Ballia have also been arrayed as respondents in separate O.As.

2. We have heard the learned counsel for both the sides at length on the preliminary objection in respect of maintainability.

3. In O.A.No.440/2010, a preliminary objection is that this O.A. is pre-mature. In this case the applicant has sought promotion to the post of Vice Principal from the date his juniors have been promoted vide order dated July, 2010 passed by officiating Deputy Commissioner, Lucknow Region. No written preliminary objection has been filed to this effect. Only an oral submission has been made against maintainability on the ground

of it is being pre-mature. It is worthwhile to mention that vide order dated 19.02.2010 passed in an earlier O.A.No.396/2008, the Respondent No.1 was directed to dispose of the representation of the applicant against an adverse entry in respect of improvement of work. In furtherance of this judgment a representation was moved by the applicant on 19.04.2010. But, it was not decided. Instead, the Respondent No.1 got extended three months time which too has expired on 19.10.2010. Not only this, the Respondent No.1 has allegedly promoted several persons, w.e.f. July, 2010 who are junior to the applicant. Hence this O.A. has been filed. In this background, this OA was admitted on 15.11.2010. Therefore, the preliminary objection regarding maintainability has no relevance at this stage.

3. In O.A.No.76/2011 quashing of Joint Commissioner's Memo dated 18.01.2011 has been sought to be quashed with a direction to the respondents to expunge the adverse entry which is subject matter of the impugned order. As said above, earlier an O.A.No.396/2008 was filed by this applicant at Central Administrative Tribunal, Lucknow itself which has been finally decided with a direction to the applicant to file representation before the competent authority (i.e. next higher to the Deputy Commissioner) with a further direction to the said authority to decide the same within three months of the receipt of it by passing a reasoned and speaking order. In furtherance thereof, the Joint Commissioner (Admn.) has passed aforesaid order dated 18.01.2011 rejecting the representation which has been

impugned in this OA. In this background the oral objection regarding territorial jurisdiction appears to have no relevance at present. Moreover this issue appears to be mixed of facts and law and therefore, it would be proper to decide it after pleadings are complete.

4. In O.A.No.81/2011 order dated 15.11.2010 of Deputy Commissioner of Navodaya Vidyalaya Samiti, Lucknow Region, Lucknow has been sought to be quashed alongwith an Office Order dated 9/15.02.2011 issued by Principal, Jawahar Navodaya Vidyalaya, Ballia. In respect of this OA a preliminary objection has been raised that it has become infructuous because the impugned orders have already been acted upon. Concededly, a committee has been constituted for the purposes of evaluation of applicant's academic/teaching competency which has already completed its job and has also submitted its report dated 22.02.2011, where after a suspension order dated 15.03.2011 has also been passed which has been impugned in another O.A.No.134/2011. From the side of the applicant nothing substantial could be said on factual matrix. The learned counsel for applicant however submitted that under Rule-12 of Central Administrative Tribunal (Procedure) Rules, 1987, the respondents were supposed to file their counter affidavit within one month from the service of notice upon them and the respondents have not filed any detailed counter affidavit till date even after lapse of more than 2 months. But firstly, much time has not exceeded the stipulated time limit for filing of detailed counter affidavit. Secondly, this rule does not provide any

consequence for not filing detailed counter affidavit within the stipulated period e.g. striking of defence etc. A valid and substantial preliminary objection has been raised in this O.A. and there is no justification in wasting precious time of this Tribunal in proceeding further with this OA which has already become infructuous because of impugned orders having already been acted upon. Moreover procedure laid down are hand made of justice and the same cannot be stumbling block from doing justice as was held in the case of M/s Orai Oil Chemicals Pvt. Ltd & Another Vs. State of U.P. & Others reported in 1996 (14) SCD-1067 upon which reliance has been placed by the learned counsel for the respondents. Finally therefore this O.A. is dismissed having become infructuous.

5. In O.A.No.354/2006 the impugned order dated 6/15.06.2006 has been sought to be quashed with a request to issue direction to the respondents for payment of salary and other allowances from November, 1998 up to 02.02.2000 and from 18.08.20000 to 24.08.2004. In this O.A. pleadings are complete and it is ripe for final hearing therefore, there is no stage for raising oral objection regarding its maintainability.

6. In O.A.No.133/2011, the order dated 01.03.2011 has been sought to be quashed. The perusal of this order shows that the applicant while posted at Ballia was informed about taking of action against him under CCS (CCA) Rules, 1965 vide O.M. dated 05.10.2009 and statement of imputation of misconduct and misbehavior was also mentioned in the aforesaid O.M. which was reproduced in the order dated 01.03.2011. According to this, the

applicant failed to maintain devotion of duty due to which in Class XII the subject (accountancy) average in the CBSE Board Examination, 2009 was found to be below the target fixed by the Navodaya Vidyalaya Samiti. The pass percentage was 92.86. The target was 70% and the subject average achieved was only 59.68% and hence there was decline of 10%. It is further mentioned in this OA that during the year 2008-09 instructions were issued for preparation of action plan to achieve the academic excellence further emphasizing that Samiti has set the target of 100% pass percentage, 90% Ist Division and 70% subject average but inspite of repeated instructions the applicant failed to achieve the target as per fixed term. The applicant was given opportunity of making such representation as he may wish. He made a representation which was duly considered in the light of the record of the case and other material put forth and finally the Deputy Commissioner arrived at the conclusion and ends of justice could be met if the charged officer is given a minor penalty of 'Censure'. In this case a written preliminary objection has been filed saying that it may be dismissed on the ground of alternative remedy. It is said and rightly so that a statutory appeal was available under Rule 23 (ii) of the CCS (CCA) Rules, 1965 which has not been availed off. From the side of the applicant noting substantial could be said. The only submission was that the appeal was not filed due to loss of faith in the appellate authority. But merely by stating this, a statutory alternative remedy cannot be brushed aside and in view of the specific provision in Section-20 of Administrative Tribunal Act

unless opportunity of all the remedies are exhausted, application cannot be ordinarily admitted. In view of the facts and circumstances of the case, we do not find any extra ordinary circumstances for admission of this OA. In relevant para-6 of the O.A. the applicant has given the details of remedies exhausted which are as under:-

"The applicant declares that as merely to mitigate the effect of OA No. 440 of 2010 in relation to promotion was admitted on 15.11.2010, afresh sequence of harassment started viz., rejecting representation on adverse entry proposed by order dt. 8.8.09 affirmed by memorandum dt. 14.10.08; then subjecting to alleged inspection for academic/ teaching competency vide order dt. 9/15.2.2011; punishment of censure vide order dt. 1.3.2011 served on 11.3.2011 a.n. on said charge sheet dt. 5.10.09 which do not constitute even misconduct; and within a short span, suspending with immediate effect vide order dt.15.3.2011 under pretext as if any disciplinary proceeding is contemplated, the preferring of representation would be a futile exercise, the being constrained, the applicant is preferring the instant OA."

7. The aforesaid sequence of event mentioned by the applicant such as rejecting of the representation on adverse entry, affirmation of the same by the Memorandum then subjecting the applicant for inspection of academic/ teaching competency vide another order and punishment of censure on the basis of charge sheet dated 5.10.2009 and also suspension w.e.f. 15.03.2011 in contemplation of another disciplinary proceeding cannot be construed at this stage to be harassment unless it is so found by the Tribunal or any Court of law. Therefore, the assumption of the applicant that preferring of statutory representation would be a futile exercise, cannot be said to be justified. Therefore, we do not find any extra ordinary circumstances for admission of the OA which has been filed without exhausting statutory remedies. The OA is hit by Section 20 of Administrative Tribunal Act, 1985. Finally,

therefore, preliminary objection is allowed and the OA is dismissed.

8. In O.A.No.134/2011 the suspension order dated 15.03.2011 has been impugned which appears to be in respect of disciplinary proceedings other than the disciplinary proceedings of aforesaid O.A.No.133/2011. From the side of the respondents a written preliminary objection has been filed in this case also saying that in view of Rule-23 (i) of CCS (CCA) Rules, 1965 the applicant ought to have availed alternative remedy of filing statutory appeal against the order of suspension which he has not done. In this regard also no satisfactory explanation could be offered on behalf of applicant except an oral argument that the applicant had no faith in his higher authorities. In this OA also in the relevant para-6 details of remedies exhausted are mentioned as under:-

"The applicant declares that as merely to mitigate the effect of OA No. 440 of 2010 in relation to promotion was admitted on 15.11.2010, afresh sequence of harassment started viz., rejecting representation on adverse entry proposed by order dt.8.8.09 affirmed by memorandum dt.14.10.08; then subjecting to alleged inspection for academic/ teaching competency vide order dt.9/15.2.2011; punishment of censure vide order dt.1.3.2011 served on 11.03.2011 a.n. on said charge sheet dt.5.10.09 which do not constitute even misconduct; and within a short span, suspending with immediate effect vide order dt.15.3.2011 under pretext as if any disciplinary proceeding is contemplated, the preferring of representation would be a futile exercise, the being constrained, the applicant is preferring the instant OA."

9. From the perusal of the aforesaid para, it appears to be a replica of a similar para-6 of O.A.No.133/2011 which we have discussed hereinbefore. Therefore, on the same analogy in this case also, the explanation, regarding not availing of statutory remedy is not acceptable.

10. From the side of the applicant reliance has also been placed on the case of **D.B. Gohil V. Union of India & Others (2010) 12 SCC 301**. In para 5 of this case in reference to Section-20 of Administrative Tribunal Act, 1985 it has been laid down that use of words "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" makes it evident that in exceptional circumstances for reasons to be recorded the Tribunal can entertain applications filed without exhausting the remedy by way of appeal. But as already observed by us in respect of aforesaid O.A.No.133/2011, we regret in not finding any exceptional circumstances for not availing the statutory remedy. Therefore, we do not find any reasons to record for entertaining this OA without exhausting the remedies.

11. In view of the above this OA is also hit by Section-20 of Administrative Tribunal Act, 1985 which provides that 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. Finally, therefore, preliminary objection is allowed and this OA is also dismissed. No order as to costs

(S.P. Singh)
Member (A)

(Justice Alok Kumar Singh)
Member (J)

(i) Date of Order 20-5-2011
(ii) Date of 24-5-2011
(iii) Date of Receipt 24-5-2011