

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXXXXXXXXXX~~  
NEW BOMBAY BENCH

O.A. No. 91/89

198

~~XXXXXX~~DATE OF DECISION 10-2-1989

Mohmed Rafi Mohmed Hanif \_\_\_\_\_ Petitioner

Shri H.J.Acharya \_\_\_\_\_ Advocate for the Petitioner(s)

Versus

Union of India &amp; Ors. \_\_\_\_\_ Respondent

Shri N.K.Srinivasan \_\_\_\_\_ Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member (J)

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*




(3)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.91/89

Mohmed Rafi Mohmed Hanif,  
Building No.198/13, Jayprakash Road,  
Western Railway Staff Qtrs.,  
Khar(East),  
Bombay.

..Applicant

vs.

1. Union of India  
through  
The General Manager,  
Western Railway,  
Churchgate,  
Bombay-400 020.
2. Asstt.Labour Commissioner(Central)II,  
Wakefield House,  
Sprott Road,  
Ballard Estate,  
Bombay - 400 038.
3. Shri K.N.Ramkrishnan,  
Sr.Personnel Officer Workshop,  
Chief Work's Manager's Office,  
Western Railway Carriage Workshop,  
N.M.Joshi Marg,  
Lower Parel,  
Bombay - 400 013.
4. Dy.Chief Mechanical Officer(M&P),  
Chief Work Manager's Office,  
Western Railway Carriage Workshop,  
N.M.Joshi Marg,  
Lower Parel,  
Bombay - 400 013.
5. The Divisional Secretary,  
Paschim Railway Karmachari Parishad,  
32/A,Chapra Bldg.,1st Floor,  
R.K.Vaidya Marg,  
Near Plaza Cinema,Dadar(West),  
Bombay-400 028.

..Respondents

Coram: Hon'ble Member(J)Shri M.B.Mujumdar  
Hon'ble Member(A)Shri P.S.Chaudhuri

Appearances:

1. Shri H.J.Acharya,  
Advocate for the  
Applicant.
2. Shri N.K.Srinivasan,  
Advocate for  
Respondents No.1,3 & 4.

ORAL JUDGMENT  
(Per M.B.Mujumdar)

Date: 10.2.1989

The applicant was appointed as a substitute Bunglow Peon at Churchgate on 22.4.1988. He was attached to one Shri R.P.Madan, Chief Motive Power Engineer. Consequent upon the transfer of Mr.Madan, the applicant was also

..2/-

(W)

transferred as substitute Bunglow Peon to Chief Works Manager, Parel by an order dtd. 1.8.1988. On 22.9.1988 the applicant was directed to work as substitute Hamal at Parel Workshop. An order to that effect was passed on 23.9.1988. For some misconduct on 10.10.1988 and for unauthorisedly remaining absent on 11.10.1988 a charge-sheet dtd. 12.10.1988 was served on him. One Shri C.K.Sharma, Shop Superintendent was appointed as Inquiry Officer. The applicant had also appointed a Defence Assistant. The Inquiry Officer held that the charge against the applicant was proved. Accepting that finding the Disciplinary Authority i.e. the Senior Personnel Officer by his order dtd. 12.1.1989 awarded the penalty of removal from service to the applicant. Without perfering an appeal the applicant has filed this application on 25.1.1989 challenging the said order of removal from service.

2. We have heard Shri H.J.Acharya, advocate for the applicant and Shri N.K.Srinivasan, advocate for respondents No.1,3 and 4 on the point of admission.

3. After hearing the advocates and considering the facts we are of the view that as the applicant has approached this Tribunal without exhausting the departmental remedies available to him this application should not be admitted.

4. Section 20(1) of the Administrative Tribunals Act, 1985 has specifically laid down that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under relevant service rules as to redressal of grievance.

5. It was not disputed before us that an appeal is provided for by the rules against the impugned order



dt.12.1.1989. According to Shri Acharya, the applicant is entitled to file the present application without preferring an appeal as the impugned order is bad in law and according to law it is non-existent. Shri Acharya pointed out that the Paschim Railway Karmachari Parishad has raised a dispute before the Conciliation Officer on 24.10.1988 under Section 22(1) of the Industrial Disputes Act. Shri Srinivasan admitted that the conciliation proceedings were started. But according to him as the Paschim Railway Karmachari Parishad is not a recognised Union the railway authorities stopped attending the proceedings after attending on some three occasions. Shri Acharya pointed out that the Conciliation Officer had directed the railway authorities not to proceed with the departmental inquiry and he has also not submitted a failure report. It is on account of these reasons, according to Shri Acharya, that the order of the Disciplinary Authority is bad in law. Without entering into the correctness and legality of the submissions of Shri Acharya we have no doubt that the Appellate Authority can also decide this point.

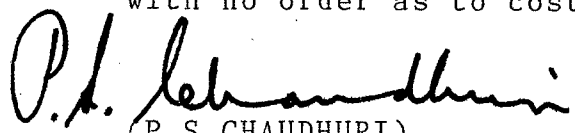
6. Shri Acharya then submitted that if an order is passed by the authorities when conciliation proceedings are going on the workmen are given a right to approach the High Court under Article 226 of the Constitution of India and as the powers of the High Court under that Article are now vested with this Tribunal, the applicant can very well approach this Tribunal. There cannot be any doubt about this proposition. But Section 20(1) of the Administrative Tribunals Act has made a very salutary provision, viz. that an aggrieved Govt. employee cannot ordinarily approach this Tribunal without exhausting the departmental remedies available to him. As the applicant has approached this Tribunal without preferring

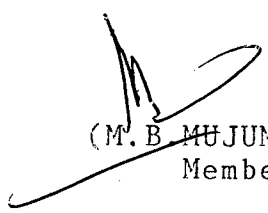
6

an appeal we do not think that we should admit it. There is no exceptional circumstance in this case which would entitle us to admit this application though the applicant has not exhausted the departmental remedy available to him.

7. Lastly Shri Acharya drew our attention to prayer(3) in the application. That prayer is for directing Union of India and Conciliation Officer i.e. Labour Commissioner to take appropriate action against Respondent No.3 i.e. Senior Personnel Officer, Workshop, for violating the provision of <sup>the</sup> Industrial Disputes Act. We do not think that we can give such a direction either to the Union of India or to the Conciliation Officer.

8. We, therefore, reject the application summarily under Section 19(3) of the Administrative Tribunals Act, 1985 with no order as to costs.

  
(P.S. CHAUDHURI)  
Member(A)

  
(M. B. MUJUMDAR)  
Member(J)