IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.153/2000.

this the 19th day of April 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

N.Jayanna,
Aarti Apartment,
Flat No.302,
Third Floor,
Near Holy Family School,
Ulhasnagar - 421 004. ...Applicant.
(By Advocate Mr.D.V.Gangal)

Vs.

1. The Union of India
through the Secretary,
Ministry of Telecommunication,
Sanchar Bhavan,
New Delhi.

2. The Chief General Manager,
Maharashtra Telecom Circle,
Government of India,
Department of Telecom Services,
GPO,
Mumbai - 400 001.

3. The General Manager,
Kalyan Telecom District,
Kalyan.

4. Shri Nithyanatham,
General Manager,
Kalyan Telecom District,
Kalyan. ...Respondents.
(By Advocate Mr.V.S.Masurkar)

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. We have heard Mr.D.V.Gangal, the learned counsel for the applicant and Mr.V.S.Masurkar, the

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learned counsel for respondents regarding admission and interim relief.

2. The applicant, is working as a Sub-Divisional Engineer in the Telecom Department at Ulhasnagar. In respect of certain alleged mis-conduct on 23/24-7-1999 a minor penalty charge sheet dt. 26.10.1999 was issued against the applicant. The applicant gave a reply to the charge sheet. Then, the Disciplinary Authority after considering the allegations in the charge sheet and the reply of the applicant held that the charge against the applicant is proved and imposed a penalty of reduction in pay to a lower stage for a period of three years, by his order dt. 6.3.2000.

Being aggrieved by the order of the disciplinary authority, the applicant sent an appeal to the appellate authority viz. the Chief General Manager, Maharashtra Telecom Circle, Mumbai on 9.3.2000. Then, on the very next date viz. on 10.3.2000, he has come up with the present application.

3. The applicant has taken number of grounds challenging the order of the disciplinary authority. According to him there was no mis-conduct on the part of the applicant and he had not gone to the spot on 23/24-7-1999 and the allegations against him are flase, that no regular enquiry was held inspite of demand by him, that there is violation of principles of natural justice in not furnishing documents sought for by him etc., that regular enquiry was also mandatory under Rule 16(1)A of the CCS (CCA) Rules.

4. The respondents have filed reply to the application stating that since it is a minor penalty charge sheet there is no necessity for a regular enquiry and the applican's request for

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regular enquiry has been rejected. That on the basis of the available materials, the General Manager, who is the Disciplinary Authority has passed the impugned order. That the applicant having filed an appeal just one day earlier to the filing of the OA has no right to approach this Tribunal without waiting for the decision of the Appellate Authority or at least till expiry of six months as provided under section 20 of the Administrative Tribunals Act, 1985. It is therefore, stated that the application is pre-mature and liable to be dismissed in limine. Then, on merits the impugned order has been supported.

5. The learned counsel for the applicant contended that the applicant has made out extraordinary or exceptional grounds and therefore, the OA should be admitted inspite of obligation on the applicant to exhaust statutory remedy provided under section 20 of the Administrative Tribunals Act, 1985. He also argued that since the impugned order is in violation of law and in violation of principles of natural justice, applicant should not be forced to exhaust the statutory remedy of appeal before approaching this Tribunal. This has been seriously controverted by the learned counsel for the respondents.

6. The short point for consideration is whether the application deserves to be admitted when applicant having availed statutory remedy of appeal has rushed to the Tribunal just one day after filing the appeal?

7. This Tribunal has no inherent or independent jurisdiction or plenary powers or unlimited jurisdiction except the one that flows from the provisions of the Administrative Tribunals Act, 1985. This Tribunal is a creature of the Administrative Tribunals Act, 1985 and has to act within the four corners of

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that Act. We are stressing this point because for High Courts and Supreme Court, the jurisdiction is conferred under Article 226 of the Constitution or Article 32 of the Constitution and other provisions in the Constitution. There the powers of the High Court and Supreme Court are unlimited, vide and uncontrolled. There are no limitations on the powers of the High Court in exercising jurisdiction under section 226 of the Constitution of India. However, as a self-restraint or self-discipline or self-regulation, the High Court itself has imposed some restriction on its exercise of power like a writ petition should not be entertained if it suffers from delay and laches, a writ petition should not be entertained if a party approaches the High Court and does not come with clean hands or that the party has not exhausted the statutory remedy etc. These self-restraints are not statutory, but they are self-imposed by the High Court itself. Therefore, in a given case the High Court can still say that it will exercise jurisdiction notwithstanding the fact that the Writ Petition is filed after a long time or that the party has approached the High Court without exhausting statutory remedy etc. In such a case, the High Court will not be violating any law or statutory provision, but will be acting under its ordinary jurisdiction which has un-controlled and unlimited powers under Article 226 of the Constitution. But such a thing will not apply to a creature of a statute which has to act within the four corners of the statute under which it is constituted.

8. If it is a simple case of alternative remedy and by way of practise or procedure, we are telling the applicant that he must first exhaust the statutory remedy, then the matter is

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different, but here the statute which created the Tribunal itself provides as to how and in what manner this Tribunal should exercise jurisdiction.

One such provision is Section 20 of the Administrative Tribunals Act, 1985 which reads as under :

> "20. Application 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 rules as to redressal of grievances."
> (underlining is ours)

From the above provisions we find that ordinarily Tribunal should not admit an application unless all remedies available under the service rules are exhausted. It is true that there is no blanket prohibition or blanket bar, but the rule is that "ordinarily" we should not admit the application. That means, generally or as a matter of course we should not admit any application unless statutory remedies are exhausted. It may be in a given case which is extraordinary or exceptional, the Tribunal may admit an application even though statutory appeal is not filed.

Applicant's counsel himself placed reliance on a Judgment of a Full Bench of this Tribunal reported in the case of B.Parameshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru and Anr. {Full Bench Judgments of CAT (1989-1991) Vol.II page 250}, where the Full Bench has clearly ruled that Tribunal should not ordinarily entertain an application before the expiry of six months period after filing of the appeal. The Full Bench has clearly held that no application should be ordinarily or generally admitted by the Tribunal unless the applicant has exhausted the statutory remedy. It further stated

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that, in other words, normally and usually such application must be rejected or declined as pre-mature. Then, the Full Bench observed that in exceptional or extraordinary cases, it may be entertained and admitted even though statutory remedy is not availed. In para 26 of the reported judgment, the Full Bench has ruled that the power of exception has to be exercised in rare and exceptional cases and not usually or casually.

In our view, the Full Bench does not support the stand of the applicant. The law laid down by the full bench is binding on us. The full bench has said that the normal rule is one has to exhaust statutory remedy and if there is delay in the disposal of the statutory appeal he can wait for six months and he can approach the Tribunal. It is only in rarest or exceptional cases, the Tribunal can depart from that rule and admit application even though statutory remedy is not availed. Therefore, this decision does not help the applicant in any way.

We may also mention the Judgment of the Supreme Court which is relied on by the learned counsel for the respondents viz. S.A.Khan Vs. State of Haryana and Others {(1993) 24 ATC 138}. That was a case where the officer had approached the Supreme Court directly under Article 32 challenging the order of suspension on the ground of arbitrary exercise of power and the order being mala fide. He had given number of instances to show that for the last 10 years there was bad blood between him and the Chief Minister of Haryana. After narrating the facts and the previous litigation in as many as about 10 pages, running into 30 paragraphs, the Supreme Court observed that it was not a case for interference by Court directly. The following observations of Supreme Court at para 29 of the reported judgment

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are very material and pertinent, which read as follows :

> "Above all, we are inclined to dismiss this writ petition since it is only a suspension order and there is a **statutory remedy** available to the petitioner."

Nobody can dispute the wide powers of Supreme Court to pass any order in any case. There are no barriers to the exercise of powers by the Supreme Court. Even in such a case, the Supreme Court was not inclined to interfere since the officer has a statutory remedy available in law.

The same is the position in the present case also, since the applicant has a statutory remedy available to him by filing an appeal to the appellate authority and in fact applicant has availed of that opportunity by filing an appeal and still he has rushed to this Tribunal in the present application without at least waiting for six months as mentioned in section 20 of the Administrative Tribunals ACt.

The learned counsel for the applicant then placed reliance on earlier Division Bench judgment of the Principal Bench of this Tribunal in the case of A.C.Bose Vs. Union of India and Ors. (A.T.R. 1986 (2) C.A.T. 642). The facts of the case are not mentioned in the reported Judgment. The Tribunal has simply observed that since there is no provision for stay under the service rules, OA can be admitted and stay can be granted and then the Appellate Authority may be directed to dispose of the appeal. This decision cannot be good law in view of the subsequent full bench decision which we have mentioned above which says that only in rare and exceptional cases, the Tribunal can admit the application otherwise it will have to be rejected as pre-mature. In view of the law declared by the Full Bench,

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the earlier bench decision is no longer a good law.

9. The learned counsel for the applicant has invited our attention to M/s.Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar (AIR 1969 SC 556), where the Apex Court has observed that rule of exhaustion of statutory remedy is a self-imposed limitation and not a rule of law. The Supreme Court was considering about disposal of a writ petition when statutory remedy of appeal was not exhausted. In that connection, it is pointed out that High Courts have adopted a self-imposed restriction of not entertaining a writ petition without exhausting statutory remedies and it is not a rule of law. In Para 3 of the above reported judgment, the Supreme Court has stated that it is "not a rule of law", but a self-imposed limitation by the Court. This observation applies to a writ petition since there is no provision in the Constitution of India that one cannot approach the High Court under Article 226 without exhausting statutory remedy. There is no such statutory appeal or rule in respect of filing writ petitions in High Courts.

But, as far as we are concerned, there is a statutory bar in the form of section 20 of the Administrative Tribunals Act which clearly says that the normal rule is one has to exhaust statutory remedies and the Tribunal shall not admit an application unless it is done. Therefore, as far as we are concerned, there is a statutory bar, but as far as High Courts are concerned, there is no statutory bar, but it has a self-imposed restriction.

Further, in para 3 of the reported Judgment, even in case of self-imposed restriction, the Supreme Court says that in exceptional cases the High Court can grant relief notwithstanding

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the fact that statutory remedies have not been exhausted. That is also a law laid down by a Full Bench stating that only in rare and exceptional cases the Tribunal can depart from the normal rule and admit an application.

Then, reliance was placed on a Division Bench Judgment of the Bombay High Court in Yeshwant Gajanan Josh and Ors. Vs. The Hindustan Petroleum Corpn. Ltd. (AIR 1988 Bombay 408), where it is stated that if the impugned order is in violation of principles of natural justice writ petition can be entertained, even though statutory remedy is not exhausted.

We have already pointed out that there is no statutory bar for High Court to entertain a writ petition without exhausting statutory remedy, but only a self-imposed restriction. But, as far as we are concerned, there is a statutory bar under section 20 of the Act unless of course, it is an exceptional case where we can depart from the normal rule.

10. The learned counsel for the applicants, then made submissions about the merits of the case and relied on some authorities in support of his contention of violation of principles of natural justice, rejection of applicant's request for holding regular enquiry and on some other points.

Though we have heard lengthy arguments by the learned counsel for the applicants, we do not find that any exceptional or extraordinary case is made out for us to depart from the normal rule. We have heard hundreds of cases in this Tribunal where allegation is about violation of principles of natural justice. It is not a direct case of violation of principles of natural justice where an order is passed without hearing a person. For example, a charge sheet is issued and without

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serving it on the delinquent an order is passed by the Disciplinary Authority. In such a case, the order will be ab-initio void, since the notice is not served on the delinquent official, such is not the case here. As far as minor penalty charge sheets are concerned there is no provision for regular enquiry. The only requirement is that statement of imputation must be informed to the officer and he is given an opportunity to file a reply and on the basis of that reply the Disciplinary Authority has to pass an order, this has been done in this case. Applicant had an opportunity to submit his representation and he has done it and the Disciplinary Authority has considered it. Therefore, there is no violation of principles of natural justice in that way. What is contended is that the applicant wanted some documents and they are not given and therefore it amounts to violation of principles of natural justice. On this point, there are recent judgments of the Apex Court where it is pointed out that first the party has to establish that documents sought for are not supplied, then it will be further shown that the documents are relevant for the case, then it should be further shown that as a result of not supplying the documents serious prejudice is caused to the applicant. Therefore, these are questions of fact which are to be decided by an Appellate Authority and therefore it is not a case where at the threshold we can decide and hold that the order is bad because of violation of principles of natural justice.

11. We have already noticed that the applicant has filed an appeal and on the very next day he has rushed to this Tribunal. Applicant cannot have two remedies simultaneously one before the Appellate Authority and one before this Tribunal. At best, the

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applicant's grievance may be that the Appellate Authority may take his own sweet time to decide the appeal. If such is the apprehension, we can safeguard the interest of the applicant by giving direction to the Appellate Authority to dispose of the appeal within a particular time.

12. Another argument is that regular enquiry was mandatory and applicant requested for the same. According to rules, regular enquiry is not a must and it is in the discretion of the Disciplinary Authority. In this case, the request of the applicant has been rejected by the Disciplinary Authority by usuing the word "on due considerations" whether he has rightly exercised the discretion or not is a matter which has to be examined by the Appellate Authority and subsequently by this Tribunal while exercising the judicial review.

13. We are not impressed with the argument that this is a case where regular enquiry is mandatory under Rule 16(1)A of the CCS (CCA) Rules. The applicant is not on the verge of retirement. He has got number of years of service. The penalty of reduction of pay will affect the pensionary benefit if an officer is at the fag end of service with two or three years service. For the purposes of pension, it is only the last ten months pay that is relevant.

But, applicant's contention is that he is willing to take voluntary retirement after completion of twenty years and in such case his pension may be affected by the impugned order and therefore, regular enquiry is necessary. The said rule is not meant to cover unusual cases or hypothetical cases. We have put repeated question to the applicant's counsel whether the applicant has given notice of voluntary retirement before the issuance of charge sheets or even

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now, but the answer was in the negative. His intention of applying for retirement is not a criterion. Any how, as things stand, we are not satisfied about the validity of this submission prima facie.

14. We do not want to express our opinion on some of the contentions urged by the learned counsel for the applicant on merits of the case, lest it may prejudice either the administration or the applicant in the disposal of the appeal. Therefore, we are advisedly not referring to the arguments on merits and about our views on those points, since we have reached the conclusion that the applicant should exhaust the statutory remedy available and then come to this Tribunal by way of judicial review.

15. We have already indicated that the Appellate Authority can be directed to dispose of the matter in a particular time limit, so that one of the grounds for not approaching before the Appellate Authority always will be that there would be undue delay in disposal of the appeal. Some of the minor points urged by the learned counsel for the applicant do not merit scrutiny, since we are disposing of the application at the admission stage. All these contentions which are taken in the OA can be pressed before the Appellate Authority and subsequently if necessary by approaching this Tribunal after the order of the appellate authority.

16. In the result, the application is rejected at the admission stage. The appellate authority viz. Chief General Manager shall give a personal hearing to the applicant about his appeal and then dispose of the appeal by a speaking order within three months from the date of receipt of copy of this order. The

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appellate authority should not be influenced by any of the observations made by us during the course of this order touching the merits of the case and he is free to dispose of the appeal to the best of his judgment. All contentions on merits taken in the OA and pressed before us are left open. Needless to say that if any adverse order is passed by the Appellate Authority applicant is at liberty to challenge the same according to law. In the circumstances of the case, there will be no order as to costs.

(D.S.BAWEJA)
MEMBER(A)

19/4/2006
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.