

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE TWELFTH DAY OF JANUARY, 1987

Present: Hon'ble Shri Ch. Ramakrishna Rao Member (J)

Hon'ble Shri P. Srinivasan Member (A)

APPLICATION NO. 1497/86(T)

C.R. Madhavamurthy,
42, behind Canara Bank,
Hebbal, Bangalore - 24. ... Applicant
(Shri L. Govindaraj ... Advocate)

vs.

1. Union of India by its
Secretary, Ministry of
Finance, New Delhi.
2. Collector of Central Excise,
Bangalore.
3. Deputy Collector of Central
Excise (P&E), Office of the
Collector of Central Excise,
P.B.No. 5400, Queens Road,
Bangalore. ... Respondents
(Shri M.S. Padmarajaiah ... Advocate)

This application has come up before the court today.

Hon'ble Shri Ch. Ramakrishna Rao, Member (J) made the following:

O R D E R

This application was initially filed as a writ petition in the High Court of Karnataka and subsequently transferred to this Tribunal. The applicant who was working as an Inspector of Central Excise & Customs in the Yelahanka Range of Cantonment Division, Bangalore was reverted to the lower post of Upper Division Clerk by an order dated 30-7-1985 (Annexure C) passed by the Deputy Collector (Central Excise), Bangalore (R3). This was done as a sequel to the departmental enquiry held against the applicant under Rule 14 of the Central Civil Services (Classifi-



cation, Control & Appeal) Rules 1965('Rules'). The Enquiry Officer in his report exonerated the applicant of the charges framed against him but the disciplinary authority in his order, disagreeing with the Inquiry Officer, imposed the penalty of ~~reduction in rank on him~~. Aggrieved by this order the applicant has filed this application.

2. Shri L.Govindaraj, learned counsel for the applicant has invited our attention to several deficiencies in the order passed by the disciplinary authority and in the procedure followed during the inquiry. Before the counsel could elaborate the points, Shri M.S.Padmarajaiah, C.G.S.C. has raised a preliminary objection that the applicant has not exhausted the appellate remedy provided in the Rules and has straight way invoked the jurisdiction of the High Court and the Tribunal. Shri Padmarajaiah invited our attention to Section 20 of the Administrative Tribunals Act 1985('ACT') in this connection, which reads thus:

" 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."

3. It is clear from the language of this Section extracted above, that it is only in exceptional cases that the Tribunal should entertain applications where the appellate remedy has not been exhausted by the applicant but as a rule the Tribunal should desist from entertaining such applications. We do not find anything in the present case which warrants a departure from the general rule laid down in the above statutory provision. Shri Govindraj has not been in a position to satisfy us as to why the alternative remedy was not availed of by

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his client before filing the writ petition in the High Court. On the facts of the case, we, therefore, uphold the objection raised by Shri .M.S.Padmarajaiah.


4. In the circumstances, we direct the applicant to file an appeal against the impugned order within 30 days from today. We further direct that the appellate authority(respondent No.2) shall dispose of the appeal within three months from the date of the presentation of such appeal by a speaking order after giving an opportunity to the applicant to be heard in person. The applicant will be at liberty to move the tribunal in the matter if he is not satisfied with the order of the appellate authority.

5. Before concluding, we would like to refer to the following observations in a recent ruling of the Supreme Court, viz.Ramachandra v Union of India AIR 1986 SC 1173 for a proper disposal of the appeal which the applicant may be filing:

"We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective "consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given."

This case arose under the provisions of the Railway Servants' (Disciplinary & Appeal) Rules 1968. The corresponding provisions in the CCS(CC&A) Rules, 1965 are in pari materia.


6. In view of the ruling of the Supreme Court referred to above, we consider it all the more necessary that the applicant should be directed to avail of the alternative of appeal



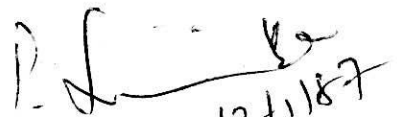
Ans provided in the Rules, before jurisdiction of the Tribunal is invoked. We may also add that in ^acase where the disciplinary authority does not concur with the Inquiry Officer's findings on the charges as in the present case, it is necessary that the views of the appellate authority are obtained and this would be possible only if the applicant moves the appellate authority.

7. The question of limitation may arise if at this stage the applicant moves the appellate authority. We note that the order of the disciplinary authority is dated 30.7.85 and it is said to have been served on the applicant on 1.8.85. Thereafter the applicant has filed the writ/present application on 5.8.1985 i.e., within 5 days and period of pendency of the W.P/ application will, therefore, to be excluded in calculating the period of 45 days for filing the appeal.

8. In the result the application is dismissed subject to the directions given above. No order as to costs.


MEMBER(J)

AN.


MEMBER(A) 12/1/87