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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR

OA No. 863/92 : Date of order 03.03.94
553/87

Yash Pal Deora : Applicant
V/s

Union of India & : Respondents
another

Mr. J.K. Kaushik : Counsel for the applicant
None : For the respondents

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Hon'ble Mr. Gopal Krishna, Member (J)

Hon'ble Mr. O.P. Sharma, Member (A)

AS PER HON'BLE MR. O.P. SHARMA, MEMBER (A)

Shri Yash Pal Deora has filed this application u/s 19 of the Central Administrative Tribunals Act, 1985 praying that the order dated 3.6.87 by which increment of the applicant was withheld for a period of two years, the order dated 11.8.87 by which applicant was informed that order of penalty has been correctly passed by the Disciplinary Authority within the period allowed by the Central Administrative Tribunal and the order dated 14.9.87 by which applicant's representation that the DRM could not initiate disciplinary action against him was rejected be quashed with all consequential benefits.

2. The applicant had earlier filed an OA, which was registered as OA No. 306/86, against imposition of penalty withhold of increment for a period of 2 years by order dated 25.8.82. This penalty was further enhanced to that of reduction to the lower grade vide order dated 14.3.86 Annexure A-11. The said OA was disposed of by the Jodhpur Bench of the Tribunal by order dated 12.3.87 by which the orders of the Disciplinary Authority and the Appellate Authority with regard to the penalty imposed as aforesaid were set aside and the Disciplinary Authority was directed to pass a reasoned order within a period of 3 months from the date of receipt of a copy of Tribunal's order. It was further stated in the said order of the Tribunal that in case the applicant feels aggrieved from the order that has been made by the Disciplinary Authority and he prefers an appeal against it, the Appellate Authority shall pass a fresh order in accordance with law after giving an opportunity of hearing to the applicant.

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3. A fresh order dated 3.6.87 was passed by the Disciplinary Authority imposing the penalty of withholding of increment for a period of two years without future effect. Reasons have been given in support of the penalty imposed. The applicant, however, preferred an appeal to the Appellate Authority against the order of the Disciplinary Authority. The earlier order imposing penalty had been passed by Divisional Railway Manager, Kota Division and the fresh order imposing penalty has also been passed by the same authority. The charge sheet dated 30.7.80 Annexure A-1 on the basis of which disciplinary proceedings were initiated was issued by Senior Divisional Commercial Superintendent, Western Railway, Kota. After receipt of fresh penalty order dated 3.6.87 Annexure A-13, the applicant made a representation dated 23.6.87 Annexure A-14 to Divisional Railway Manager, Kota Division wherein he stated amongst others that there was no justification for passing the penalty order because there was no evidence in support of it. The said representation was disposed of by the DRM by order dated 11.3.87 Annexure A-16, whereby the applicant was informed that the order imposing of penalty was correctly passed by the Disciplinary Authority within the period allotted by the Tribunal. Meanwhile, however, the applicant had made another representation dated 9.8.87 Annexure-A-15 wherein he had stated that since his Disciplinary Authority was the Divisional Commercial Superintendent and the DRM is the Appellate Authority, the order imposing the penalty passed by the DRM may be recalled. This representation was disposed of by the DRM vide order dated 14.9.87 Annexure A-17 whereby the applicant was informed that his contention that DRM cannot initiate disciplinary action against him is not correct. Thereafter, the applicant presented the present OA in November, 1987.

4. The respondents in their reply have stated that the applicant has approached this Tribunal without filing an appeal against the penalty order. Therefore, the application is liable to be dismissed on the ground that the applicant has not exhausted the remedy available to him under the rules.

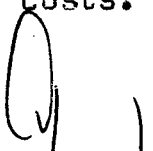
5. None is present on behalf of the respondents. We have heard the learned counsel for the applicant and have perused the records.


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6. The learned counsel for the applicant stated that the applicant had made representations to the authorities regarding the correctness of the penalty order of the competence of the DRM to pass the order of penalty as disciplinary authority. Once his representations regarding the correctness of the penalty order and the jurisdiction of the DRM to pass the penalty order were rejected, the applicant filed this application before the Tribunal. In these circumstances applicant could not file an appeal to the Appellate Authority against the order imposing the penalty.

7. In the circumstances of the present case, we consider it appropriate that the applicant must first exhaust the remedy of appeal available to him under the rules. For this purpose the applicant may prefer an appeal to the Appellate Authority, namely, General Manager, Western Railway, within a period of 45 days from the date of receipt of a copy of this order. If such an appeal is received by the Appellate authority within the aforesaid period, he shall dispose it of within a period of 3 months from the date of receipt thereof, with a reasoned order.

8. The DA is disposed of accordingly with no order as to costs.


(D.P. Sharma)
Member (A)


(Gopal Krishna)
Member (J)