

without jurisdiction and void ab-initio; and
consequently set aside the same as also the
impugned memos dt. 13-7-82 and 31-12-82.
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82/
The Application coming on for orders, upon
perusing the application and upon hearing the arguments
of Mr. H.S. Guruswami Rao, Advocate for the
Applicants and of Mr. M.P. Chandra Mauli, Spl. Counsel
on behalf of the respondents. Govt. of A.P.

IT IS ORDERED THAT

The Tribunal delivered the following
Judgement:—

(separate sheet attached).

BE AND HERE BY ARE STAYED, pending further orders on
this application.


DEPUTY REGISTRAR. 11/31

- 810/1/1/1
- TO.
- 1) The Chief Secretary, General Administration Department, Government of A.P., Secretariat, Hyd-22.
 - 2) Sri N.T. Rama Rao, Chief Minister Govt. of Andhra Pradesh, Secretariat, Hyd-22.
 - 3) The Director of Anti Corruption Bureau, Andhra Pradesh, Hyderabad.
 - 4) one copy to Mr. H.S. Guruswami Rao, Advocate H. No. 1, Maya, 3-5-703, Narayanguda, Hyderabad-500029.
 - 5) one copy to Mr. M.P. Chandra Mauli, Spl. Counsel Govt. of A.P.
 - 6) one spare copy

~~IN THE HIGH COURT OF JUD~~

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

Tuesday the tenth DAY OF March
ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN

: PRESENT :

THE HON'BLE MR. B. N. JAYA SIMHA: VICE-CHAIRMAN
AND

THE HON'BLE MR. D. SURYA RAO: MEMBER.

ORIGINAL APPLICATION NO. 192/87

BETWEEN:-

P.V. Panithoran

.....APPLICANTS.

AND

- 1) Government of Andhra Pradesh, rep. by the
Chief Secretary, General Administration Department
Secretariat, Hyderabad - 500022.
- 2) Sri N.T. Rama Rao, Chief Minister,
Government of Andhra Pradesh,
Secretariat, Hyderabad - 500002.
- 3) The Director of Anti Corruption Bureau,
Andhra Pradesh, Hyderabad.

.....RESPONDENTS.

Application under Section 19 of the Administrative
Tribunals Act, 1985, praying that in the circumstances stated
therein the Tribunal will be pleased to issue an order of
direction directing the respondents to consider the claims
of the applicant for: (a) promotion to the higher post with
effect from the date at which his immediate junior
was so promoted with all consequential benefits
including payment of salary to him for the
period of his suspension by holding that the registration
issued as the FIR bearing C.No. 7/ACB-CR/II/84
under Section 5(2) read with Section 5(1)(a) of the
Prevention of Corruption Act, against the applicant,
are illegal, arbitrary, mala fide, unconstitutional;

ORIGINAL APPLICATION (379) OF 1987

(JUDGMENT of the Bench delivered by
the Hon'ble Member Sri D Surya Rao)

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The Applicant, who is a senior Member of the Indian Police Service, has filed this application claiming four different reliefs viz.,

i. Relief of promotion to the Post of Director-General and Inspector-General of Police in the State of Andhra Pradesh from the date on which his junior was so promoted, with all consequential benefits.

ii. Relief of payment of salary for the period during which he was placed under suspension, previously, pending a departmental enquiry.

iii. For setting aside FIR bearing C.No.7/ACB-CR/II-84 dated 8-3-1984 under Section 5(2) read with Section 5(1)(a) of the Prevention of Corruption Act.

iv. For setting aside the disciplinary proceedings issued pursuant to Memos dated 13-7-1982 and 31-12-1982, which are pending.

2. We have heard the learned Counsel for the applicant and the learned Standing Counsel for the State Government. The learned Standing Counsel for the State Government has raised two preliminary objections viz., (i) the applicant has a right of appeal to the Central Government in regard to his claim for promotion, and since he has not availed of the alternate remedy, the application is barred under

Section 20 of the Administrative Tribunals Act 1985; and (ii) the applicant has to file separate applications in regard to each of the distinct reliefs sought for by him, and that filing of one application seeking plural remedies is barred under Rule 10 of the Central Administrative Tribunal (Procedure) Rules 1987.

3. The objection of the learned Standing Counsel for the State Government that the application is barred under Rule 10 of the Central Administrative Tribunal (Procedure) Rules is correct. Apart from claiming promotion, the applicant has claimed three other reliefs viz., salary during suspension period pending an enquiry which is not related to his application, quashing of an FIR in regard to offences punishable under the Prevention of Corruption Act and also quashing of disciplinary enquiries pursuant to certain Memos dated 13-7-1982 and 31-12-1982. None of these reliefs are consequential to the relief of promotion sought for. The only contention of the learned Counsel for the applicant is that the investigation pursuant to the FIR and disciplinary proceedings are being kept pending only to deny him the relief. It is always open to the applicant to ask for promotion de hors the pendency of other proceedings like the FIR and the disciplinary proceedings, and it is not necessary to quash the said proceedings. When this was pointed out to the learned Counsel for the applicant, he while maintaining that he is entitled to inclusion of reliefs (ii) to (iv) wished us to record that in the event of this Tribunal

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restricting him to the first relief viz., right to promotion, stated that the FIR and the disciplinary proceedings are liable to be ignored in so far as they stand in his way for grant of the relief of promotion. While recording these objections and contentions of the learned Counsel for the applicant, we hold that the reliefs (ii) to (iv) referred to paragraph (1), are not consequential to the main relief of promotion and as such their inclusion is not in accordance with Rule 10 of the Procedure Rules. The applicant is liable to file independent applications for each of these reliefs. This discussion in regard to claim for plural reliefs is however academic in view of our further direction that the applicant should exhaust the alternate remedy of appeal available to him under Rule 10 of the All India Services (Discipline and Appeal) Rules.

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4. On ~~the~~ point of alternate remedies available, the following provisions in the All India Services (Discipline and Appeal) Rules 1969, are relevant :-

"Rule 16. Orders against which appeal lies.--

Subject to the provisions of Rule 15 and the explanations to Rule 6, a member of the Service may prefer an appeal to the Central Government against all or any of the following orders, namely :-

- (i) xx xx xx
- (ii) xx xx xx
- (iii) an order of a State Government which --
 - (a)
 - (b)
 - (c) has the effect of superseding him in promotion to a selection post;

(iv) an order of the State Government --

- (a)
- (b)
- (c)
- (d)

(e) determining his pay and allowances --

(i) for the period of suspension.

xx xx xxx xxxx xxxxx"

Rule 19(2) of the said Rules says as follows :-

"19. Consideration of appeal.

(1)

(2) In an appeal against any other order specified in Rule 16 the Central Government shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

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It is seen that for two of the reliefs he asked for -- Promotion to the post of Director-General and Inspector-General of Police, and payment of salary for the suspension period -- appeals lie to the Central Government. In the application, the applicant has stated that there are no remedies available to him excepting submitting a memorial to the President. When these provisions were brought to the notice of the learned Counsel for the applicant, he submitted that the Tribunal has discretion to entertain the application even if alternate remedies are not exhausted and that this discretion should be exercised in favour of the applicant for the following reasons :-

- i. An appeal to Government of India is not an efficacious remedy as Government of India has taken a view that pendency of disciplinary proceedings is a bar to promotion and that a

similar plea, in the instant case, has been taken by the Chief Secretary to the State Government.

- ii. The applicant has only a short tenure to retire.
- iii. Plea of mala fide has been raised by him which would normally be adjudicated by a Court of law.
- iv. Appeal is likely to be delayed, and there will not be a quick or effective remedy available to him.

The learned Counsel for the applicant also cited various decisions viz.,

- (1) AIR 1968 S.C. 13, (2) AIR 1971 S.C. 370,
(3) AIR 1971 S.C. 372, and (4) 1954 S.C.R. 1122

in support of his plea that an alternate remedy is not a bar for admitting the application. It is nobody's contention that non-exhaustion of alternate remedy is an absolute bar to entertaining an application. The normal rule followed by High Courts and Supreme Court is that the parties should first avail of any departmental or other prescribed remedy open to them before invoking the Writ Jurisdiction unless the alternate remedy as available is not an efficacious remedy at all. In regard to two of the reliefs sought for, as explained above, specific provisions exist for appeal to the Central Government. Further, the Central Government is the disciplinary authority competent to impose any of the penalties and it is open to the applicant to represent to the Central Government all the points urged by him in this application in regard to delays in completing

the enquiries into charges against him and his non-promotion on these grounds. We are unable to share the apprehension of the applicant that the Central Government would automatically reject his appeal on the ground of pendency of departmental proceedings against him. Such presumption is not borne out by facts and the Central Government has the statutory responsibility of disposing of his appeal taking all facts and circumstances into account and the various contentions raised in the appeal-petition, including allegations of mala fide. With regard to the short tenure left for the applicant, it has to be pointed out that alone cannot be a valid ground. However, by directing the Central Government to dispose of his appeal expeditiously having regard to this plea, this point would be met. In these circumstances, we are of the view that the applicant has not made out any case to show that the alternate remedy available to him is not efficacious.

5. We would, therefore, hold that, since the applicant has not exhausted the alternative remedy of an appeal to Government of India, there are no sufficient grounds for admitting the application.

6. However, we direct that, if the applicant prefers an appeal to Government of India, the State Government should forward the same within 15 days of its receipt, and that Government of India shall dispose it of within ^{eight} ~~three~~ weeks from the date of its receipt by Government of India. These directions should remove the apprehensions of the applicant in regard to delay in disposal of his appeal by Government of India.

7.

We, therefore, see no reason to admit
this application, at this stage, as it is
premature. The application is dismissed *accordingly*.

B N Jayasimha

(B N JAYASIMHA)
Vice-Chairman

D. Surya Rao

(D SURYA RAO)
Member

10¹⁸ MARCH 1987

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