IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.432/95 Dt. of order: 9-10-1995.

Narain Chand : Applicant

Vs.

Union of India & Anr. : Respondents

Mr.S.K.Jain : Counsel for applicant

CORAM:

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

Hon'ble Mr.Ratan Prakash, Member(Judl)

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985 (for short the Act), Shri Narain Chand has prayed that order dated 8.9.1995 (Annx.A1) reverting the applicant from the post of Junior Clerk to the Group-D post held by him originally may be quashed, the applicant may be declared to be regularly promoted to the post of Junior Clerk since 28.12.1981, he may also be given promotion to the higher post of Junior Clerk with consequential benefits and that in the alternative the respondents may be directed to regularise the services of the applicant on the post of Junior Clerk from 1981 and give him the benefit of promotion on the higher posts on the above basis with all consequential benefits.

2. The case of the applicant is that while he was working as a Senior Khallasi at Bandikui in Jaipur Division of the Western Railway, he was promoted to Group-C post of Junior Clerk by respondent No.2, the Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur, vide order dated 28.12.1981 (Annx.A2). Before the said promotion took place, the respondents had held a selection for the said post in 1980, comprising of a written test and interview. The applicant cleared the written test (Annx.A3). Thereafter, he was called for interview which was held in October 1980. It was thereafter that the order dated 28.12.1981, promoting the

applicant to the post of Junior Clerk on ad hoc basis was passed (Annx.A2). He was also granted annual increments in the promotion post, but suddenly order dated 8.9.'95 (Annx.A1) reverting him to the lower Group-D post was passed. Further, according to the applicant, his name did not figure in the seniority list of Junior Clerks issued vide letter dated 31.3.1995. He made a representation dated 14.7.'95 in this regard, but there was no response, and instead the impugned order dated 8.9.'95 (Annx.A1) was passed reverting the applicant. The reversion order is illegal. Though the result of the selection held in 1980 had not declared yet the applicant's promotion vide order dated 28.12.1981, though on ad hoc basis, clearly showed that the applicant had cleared the entire selection including the interview and then only was given promotion. Now the applicant cannot be reverted to the lower post after 14 years of service on the higher post, on the ground that the name of the applicant does not figure in the new selection. According to Rule 109 of the Indian Railway Establishment Manual, no interview is required to be held for promotion to such posts which should be made from amongst Group-D Railway servants on the basis of seniority cum suitability after holding such written or practical test as may be considered necessary. Since the applicant had passed the written test, no interview was required to be held thereafter and therefore, his promotion was a regular one. Accordingly, he could not be subsequently reverted without holding a departmental enquiry. Even if an interview was necessary, the name of the applicant was required to be included in the panel for promotion on ad hoc basis for 6 months and thereafter if his work was found satisfactory, his name would be included in the panel for promoting him on a regular basis. Circulars of the Railway Board dated 31.8.1974 and 20.8.1983 have been

referred in support of this averment. The best amongst the failed SC/ST candidates are to be granted promotion on the basis of seniority cum suitability upto a period of 6 months and their cases are to be reviewed after 6 months by the competent authority for inclusion or otherwise in the final panel as per the instructions cited by the applicant. Since the applicant is an SC candidate, he was entitled to the benefit of these instructions. The applicant was promoted on ad hoc basis on 28.12.1981 and thereafter his case must have been reviewed in accordance with the above instructions and having been found fit he must have been promoted on a regular basis after inclusion of his name in the panel. That is how he continued to work for 14 years on the promoted post and was not called for an interview or written test for selection. Since he was not reverted after 6 months from the date of ad hoc promotion, he shall be deemed to have been included in the final panel and hence regularly appointed. In the year 1984, an upgrada-tion scheme was introduced and the applicant was also entitled to be promoted according to the said scheme and therefore, he could not be reverted in 1995. He has also made reference to a Full Bench judgment of the Tribunal in Suresh Chand Gautam's case decided on 9.7.1991, according to which a person is entitled to the prescriptive right of promotion for 18 months as given in the circular dated 9.6.1965. He has also referred to another decision, in the case of S.K.Mohanty reported in 1980(49) CLT 382, according to which a person who has continuously officiated for 18 months even on the selection post, cannot be reverted to the lower post without departmental enquiry. SLP No.7493/80 against the said order was dismissed by the Hon'ble Supreme Court on 24.8.1991. The applicant is also entitled to be regularised in view of the judgment of the Hon'ble Supreme Cout in J.K.Public Service Commission's case reported at 1994(1) SLJ 218.

3. When the learned counsel for the applicant began oral arguments in this case, it was pointed out to him from the Bench that under Rule 18(v)(b) of the Railway Servants (Discipline & Appeal) Rules, 1968, an appeal was provided even against an order reverting a Railway servant while officiating in a higher service, grade or post to a lower service, grade or post, otherwise than as a penalty. Therefore, it was pointed out to him that the applicant must exhaust the alternate remedy available to the applicant before approaching the Tribunal by filing an O.A. as provided in Sec.20 of the Act. The learned counsel for the applicant stated that Sec.20 of the Act provides that the Tribunal shall not 'ordinarilly' admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules for redressal of his grievances. He added that the very use of the expression 'ordinarilly' showed that there was no absolute bar to the Tribunal admitting an O.A and taking it up for adjudication where the remedies available in the service rules had not been exhausted. He further stated that the provision to which attention have been drawn by the Bench was incorporated in the Railway Servants (Discipline & Appeal) Rules, which delt with matters relating to penalty, appeals against penalty orders, etc. and therefore, this provision in fact was not an alternate remedy available to the applicant. He also referred to a number of judgments, one of which is of the Hon'ble Supreme Court and others of various Benches of the Tribunal as well as a judgment of the Full Bench (Hyderabad) of the Tribunal to suggest that exhaustion of other remedies provided under the service rule is not an absolute requirement before approaching the Tribunal. He stated that in this particular case the order passed by the respondents reverting the applicant was wholly illegal, and ex facie not maintainable and therefore the

applicant had a right to approach the Tribunal without first exhausting the remedies available under the service rules, even assuming that such remedy is in fact available under the provision cited by the Bench.

4. The judgments relied upon by the learned counsel for the applicant are as follows:

i) Dr.(Smt) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P) & Ors. (1987) 4 SCC 525, in which the Hon'ble Supreme Court held, according to the learned counsel for the applicant, that an alternative remedy was not an absolute bar to admission of a writ petition by the High Court.

ii) Mubashir Hussain Vs. The Deputy Collector (P&V) & Anr. 1993(2) SLJ (CAT) 524 according to which in cases in which the principles of natural justice have been violated, an applicant can approach the Tribunal without filing an appeal against the impugned order according to the rules. Thus, according to him there was no absolute bar to approaching the Tribunal without exhausting the remedies provided under the Service Rules.

iii) B.Parmeshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru & Anr., 1990(2) SLJ (CAT) 525 Full Bench (Hyderabad), wherein the meaning of the expression 'ordinarilly' had been explained by the Full Bench of the Tribunal.

iv) A.N.Ramakrishnan Nair Vs. Divisional Engineer Telgraphs Kottayam & Anr, 1987 (3) SLJ (CAT) 589, in which the Tribunal held that where an applicant challenged his order of suspension on the ground of total absence of jurisdiction on the part of the authority passing the order, it could not be contended that Sec.20 stood in the way of awarding relief to the applicant.

v) P.P.Suri Vs. Union of India, 1987(3) SLR 725, wherein

the challenge was to the order of compulsory (premature) retirement of the applicant. A preliminary objection was raised by the respondents as to why the applicant had not exhausted the departmental remedies of appeal and review available to him before moving to the Tribunal. The Tribunal held that there was no statutory bar against moving the Tribunal under Sub-section (i) of Sec.20 of the Act and also because the application had already been admitted.

vi) B.Appa Rao Vs. Additional Collector of Customs, Visakapattanam (1993) 23 ATC 89, wherein the services of the applicant had been terminated under Rule 5(1) of the C.C.S (Temporary Service) Rules, 1965 on the ground that the applicant had secured employment by fraudulent means. The Tribunal held that the action of the respondents was ex facie illegal and against an ex facie illegal order no representation lay. Therefore, the preliminary objection of the respondents that the applicant had not represented against the termination order was dismissed by the Tribunal.

vii) Alfred D'Souza Vs. Collector of Customs & Anr. (1993) 23 ATC 910, in which the Tribunal dismissed the preliminary objection of the respondents regarding the applicant's not having filed appeal against the penalty order before approaching the Tribunal on the ground that the apprehension of the applicant in the circumstances of the case that filing of an appeal would be an empty formality could not be said to be unfounded.

5. We have gone through the material on record and have heard the learned counsel for the applicant and have carefully perused the judgments cited before us.

6. We accept the proposition that there is no absolute bar to the Tribunal admitting an application for adjudication without the applicant's having first exhausted the remedies

available under the relevant Service Rules, because the language used in Sec.20(1) is: "A Tribunal shall not ordinarilly admit an application unless it is satisfied that the applicant had availed of all the remedies ...." But the applicant must satisfy the Tribunal that extraordinary circumstances exist which justify the applicant's approaching the Tribunal before exhausting the remedy available under the Service Rules. We cannot however accept the contention of the learned counsel for the applicant that merely because, the remedy available to the applicant, of filing an appeal against an order of reversion otherwise than as a measure of penalty, is incorporated in the Railway Servants (Discipline & Appeal) Rules, this remedy is only in respect of orders passed as a measure of penalty. This provision reads as under:

"18. Orders against which appeal lies.

Subject to the provisions of Rule 17, a Railway servant may prefer an appeal against all or any of the following orders, namely-

xx xx xx xx

(v) an order-

xx xx xx xx

(b) reverting him while officiating in a higher service, grade or post to a lower service, grade or post, otherwise than as a penalty;

It is thus clear that a Railway servant is entitled to prefer an appeal against an order reverting him while officiating on a higher post, etc. to a lower post etc, otherwise than as a measure of penalty. Merely, because this provision is incorporated in the Railway Servants (Discipline & Appeal) Rules it does not mean that this provision provides for appeal against penalty orders only, when the language of the provision is

crystal clear.

7. Before we consider the judgments cited by the learned counsel for the applicant, we may very briefly state the factual position. Reversion of the applicant to the Group-D post was ordered by order dated 8.9.'95 (Annx.A1) in which it is stated that the applicant was appointed on ad hoc basis as Junior Clerk scale Rs.825-1200 (RP) by order dated 28.12.'81, that this is a selection post filledup by selection from amongst Group-D employees and since selected candidates are available any ad hoc arrangement is being brought to end by appointing candidates on the select panel. Promotion order Annx.A2 dated 28.12.'81 by which the applicant was initially promoted states insofar as it is relevant to the applicant, that the applicant, Group-D employee is promoted to the post of Junior Clerk scale 225-308 (R) on ad hoc basis on work-chaged vacancy for a period of six months. Order Annx.A1 dated 8.9.'95 has been assailed by the applicant and has also prayed for interim relief in the form of stay of operation of order Annx.A1 which he states, he has not even yet received.

8. We may now consider the judgments cited by the learned counsel for the applicant. In Dr.(Smt) Kuntesh Gupta's case, the appellant was working as the Principal of Hindu Kanya Mahavidyalaya. The Authorised Controller of the Mahavidyalay had passed an order dismissing the appellant from service in exercise of the powers of the Managing Committee vested in him. The Vice Chancellor of the University disapproved the order of dismissal and directed that the appellant should be allowed to function as the Principal of the College forthwith. However, subsequently the Vice Chancellor passed another order reviewing the earlier order, and approved the order of the Authorised Controller, dismissing the appellant from service. The Hon'ble Supreme Court held that it is well established

that a quasi judicial authority cannot review its own order unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The order of the Vice Chancellor was therefore, considered by the Hon'ble Supreme Court to be a nullity. The Hon'ble Supreme Court further held that an alternative remedy is not an absolute bar to the maintainability of a petition and when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. It is not the case here that the authority passing the order of reversion in the case of the applicant has no jurisdiction to pass the order of reversion or that it is a nullity in the eye of law. It is an arguable matter whether the reversion order passed in the case of the applicant is maintainable or not. Therefore, the ratio of this judgment would not be applicable in the present case.

9. Before refering to the other judgments of various Benches of the Tribunal cited by the learned counsel for the applicant, it would be useful to refer to the judgment of Full Bench (Hyderabad) of the Tribunal in B.Parmeshwara Rao's case. In this case, the applicant was dismissed from service. He submitted an appeal to the appellate authority but a month later he filed the application before the Tribunal on the ground that he was not bound to wait any longer and could straightaway come to the Tribunal seeking relief. The contention of the respondents was that in view of the provisions of Sec.20(1), the applicant was precluded from approaching the Tribunal without exhausting the remedy provided under law and that he had to wait for a period of 6 months for the disposal of the appeal and further that he could invoke the jurisdiction of the Tribunal under Sec.19 of the Act, after the expiry

of 6 months from the date of filing of the appeal. The Full Bench was called upon to resolve the conflicting decisions on this point rendered by the Chandigarh and the Guwahati Benches of the Tribunal. The Full Bench of the Tribunal quoted extensively from the judgment of the Hon'ble Supreme Court in S.S.Pathore Vs. State of Madhya Pradesh, AIR 1990 SC 10, wherein their Lordships considered the provisions of Sec.20 (1) of the Act and observed that the purport of Sec.20 of the Act is to give effect the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. The Full Bench after considering this judgment, and other judgments referred to by it in the order dated 12.4.1990 held as under:

"25. For the reasons indicated above, we are unable to hold that the view taken by the Chandigarh Bench is correct. It is true that there is no bar in Sec.21 of the Act for filing an application. The provision of limitation in Sec.21 of the Act prescribes the period during which the application can be filed. It has a period of commencement as well as a period of conclusion. The period of commencement begins on the passing of an appellate order under the service rules or on the expiry of six months from the date of the filing of the appeal etc. under the service rules in case no order has been passed by the Appellate Authority. There is no expression 'advisability' in Sec.20 or in Sec.21 of the Act. In view of the clear pronouncement by their Lordships in the case of S.S.Pathore (supra), we are of the opinion that the view taken by the Chandigarh Bench that an application under Sec.19 of the Act can be filed even without exhausting the remedy of appeal/representation under service rules is not correct. The view taken by the Chandigarh Bench in the case of Sital Singh

(13)

(supra) is and we say so with great respect, incorrect and must be overruled. We order accordingly.

26. Although the Guwahati Bench declined to entertain the application under Sec.19 of the Act, it was of the view that in a suitable case it could entertain. We have already expressed our view above and explained that the use of the word 'ordinarily' connotes a discretionary power in the Tribunal but as indicated earlier, that power has to be exercised in rare and exceptional cases and not usually or casually."

10. Now we may consider the other judgments of various Benches of the Tribunal cited by the learned counsel. It may be noted that the judgments in cases of Mubashir Husain, B. Appa Rao and Alfred D'Souza, were delivered on 23.4.93, 7.8.92 and 16.6.92 respectively. Thus, these three judgments are of later dates than the Full Bench (Hyderabad) judgments of the Tribunal in B.Parmeshwara Rao, which was delivered on 12.4.90. In none of these judgments of the Tribunal is there any reference to the Full Bench (Hyderabad) judgment of the Tribunal. Even otherwise, these have been rendered on their own peculiar facts which are totally different from those of the applicant before us. Therefore, these judgments will have no applicabi-lity to the present case. In Mubashir Husain's case, the Tribunal held that where principles of natural justice are violated in passing an order, the person concerned can straightaway approach the Tribunal without exhausting the alternative remedy of appeal. In the present case the applicant's promotion was described in the order Annx.A2 dated 28.12.'81 as ad hoc for a period of 6 months. No principles of

natural justice were, prima facie violated in reverting the applicant who had been promoted on an ad hoc basis. In Appa Rao's case, an order under Rule 5(1) of the CCS(Temporary Service) Rules was passed but it was in fact a penal order. In these circumstances, the Tribunal held that the said order to be ex facie illegal against which no representation lay. In any case, the reference in this judgment is to representation and not to statutory appeal.

11. In so far as the applicant is concerned, there is a statutory remedy available to the applicant for filing appeal against the order of reversion even otherwise than as a measure of penalty. In Alfred D'Souza's case, the penalty imposed on the applicant was in view of the opinion expressed by the Central Vigilance Commission and in these circumstances it was held by the Tribunal that filing of appeal against the order of penalty would be an empty formality. In A.N.Ramakrishnan Nair's case, the Tribunal did not insist on exhaustion of alternative remedy because in its view the suspension order was passed when there was total absence of jurisdiction on the part of the order passing authority and also because the application had already been admitted. In P.P.Suri's case, the Tribunal merely held that there is no statutory bar against moving the Tribunal under Sec. 20(1) without exhausting the alternative remedy and also since the application had already been admitted, the Tribunal proceeded to adjudicate on the matter. In this judgment of the Tribunal the issue whether there could be circumstances in which an application could not be admitted without the applicant having exhausted the alternative remedy does not appear to have been delt with. In any case, in view of the Full Bench (Hyderabad) judgment of the Tribunal in B.Parmeshwara Rao's case, the decision of the Tribunal in para 6 of P.P.Suri's case cannot be considered to be good law.

12. The learned counsel for the applicant also argued that the alternative remedy available should both be statutory and efficacious. There is no doubt that remedy available to the applicant is statutory. We have no doubt in our mind that the remedy available is also efficacious. The appeal is provided to an authority higher than the authority passing the impugned order. When the law-makers in their wisdom have provided for an appeal against an order of reversion passed even otherwise than as a penalty, such appeal must be preferred unless extra-ordinary circumstances are showed to exist which justify dispensing with this requirement. Even if the applicant has an arguable case against his reversion, we do not see any extra-ordinary and exceptional circumstances in this case which justify dispensing with the requirement of filing appeal to the appellate authority against order of reversion. Merely because one of the possibilities is that the appeal may be rejected, it cannot justify the inference that the remedy is not efficacious.

13. On a consideration of all the circumstances of the case and the legal position as discussed above, we hold that this application is not maintainable because the applicant has not filed appeal against the order of reversion as provided under the rules reproduced above. The application is, therefore, dismissed, at the admission stage.

(Ratan Prakash) 9.10.95
Member(Judl).

(O.P.Sharma)
Member(Adm.).