

O.A.No.227/99

Date of order: 1/10/99

Ramji Lal Neelam, S/o Shri P.R.Chaudhary, R/o Room
No.1 B-4, Ganpatinagar, Railway Colony, Jaipur.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur.
3. Senior Divisional Mechanical Engineer, Western Rly, Jaipur.

...Respondents.

Mr.P.N.Jati - Counsel for applicant

Mr.T.P.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

Applicant filed this Original Application under Sec.19 of the Administrative Tribunals Act, 1985 with a prayer to quash the orders at Annx.A4 and Annx.A5, by which the applicant was placed under suspension.

2. An interim prayer has also been made to stay the operation of the impugned orders.

3. The case of the applicant in nutshell is that a Challan was filed before the Court of Special Judge, CBI cases, Jaipur who by his order dated 15.12.98, discharged the accused applicant due to want of prosecution sanction. Thereafter, the CBI obtained the prosecution sanction and challaned the applicant on 18.2.99 and the same is pending before the Special Judge CBI Cases, Jaipur. It is stated that respondent No.3 vide his orders dated 26.5.98 and later on by an order dated 14.7.98, placed the applicant under suspension. It is stated that the impugned orders of suspension have not been issued by the competent authority on the basis of post held and pay scale drawn by the applicant and on this ground, the order of suspension is liable to be quashed. It is also stated that the applicant filed various representations but with no result. It is further stated that the criminal case may take long time and more than six months period has already been elapsed in placing the applicant under suspension, hence sought the relief

4. Reply has been filed by the respondents. It is stated in the reply that Challan was filed against the applicant on 18.2.99, after getting prosecution sanction before Special

Judge, CBI cases, Jaipur, which is pending. It is also stated in the reply that the applicant was placed under suspension by the competent authority because a criminal case is pending against him. The order of promotion to the applicant may not be effected. It is also stated that the applicant has not exhausted the statutory remedy of appeal available with him, hence, this O.A is premature and liable to be rejected. Therefore, the applicant has no case for interim relief also.

5. Heard the learned counsel for the parties and also perused the whole record.

6. An employee can be placed under suspension on the ground of disciplinary proceedings contemplated/pending or a case against him in respect of any criminal offence is under investigation, enquiry or trial and decision to place an employee under suspension has to be taken after considering all the aspects of the case in which the employee is involved. It should not be an administrative routine or an automatic order to place an employee under suspension but it should be on the consideration of gravity of the alleged misconduct. In the instant case, serious allegations have been imputed against the applicant and a criminal case investigated by the CBI, Jaipur is pending before Special Judge, CBI case, Jaipur, against the applicant, therefore, we are not inclined to stay the operation of the impugned order of suspension.

7. The learned counsel for the applicant has strongly argued that the order of suspension has not been issued by the competent authority, therefore, the operation of such an order be stayed. He has also argued that the applicant was promoted on Group-B post, therefore, Senior Divisional Mechanical Engineer, Jaipur, cannot be a competent authority to place the applicant under suspension. In support of his contention, he has also referred State of U.P & Anr. Vs. Vishwanath Prasad (Dr), (1995) 29 ATC 674 (SC).

8. On the other hand the learned counsel for respondents submitted that only order of promotion has been issued by the department for promoting the applicant but these orders are not effected so far. Therefore, the contention of the learned counsel for the applicant has no force.

9. It is not disputed that the promotion order of the applicant has not been effected so far and the status of the employee can only be judged by the post - the post on which he is working on that date. Since promotion of the applicant was not effected, therefore, it cannot be said that the applicant was placed under suspension by an authority not competent to pass such orders.

Subodh

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10. The learned counsel for the respondents while arguing the case has vehemently stressed that the applicant has approached this Tribunal without exhausting the statutory remedy available to him. He has also interpreted the provisions of Sec.20(3) of the Administrative Tribunals Act, 1985, and this O.A is not maintainable on this ground alone. ^{Submitted that}

11. We also heard the learned counsel for the applicant who has submitted that before approaching this Tribunal, the applicant filed number of representations.

12. The applicant was placed under suspension by following Rule 4/5(1)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968. These rules also provide for an appeal against the order of suspension like CCS(CCA) Rules, 1965 and also All India Services (Discipline & Appeal) Rules, 1969. But it appears that the applicant did not like to file an appeal as provided under the rules. The applicant has only filed representations.

13. In J.T.Acharyulu Vs. Union of India & Anr. 1999 (1) (CAT) SLR 274, decided on 7.11.97, it was held by the Madras Bench of the Tribunal that representation is not an appeal.

14. Section 20 of the Administrative Tribunals Act, 1985 provides 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.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purpose of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial. "

15. On a perusal of the provisions of Sec.20 of the Administrative Tribunals Act, it is very much clear that without exhausting the statutory remedies available to the applicant,

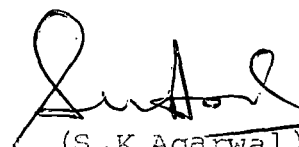
if he approaches to this Tribunal, the O.A filed by such an employee is not maintainable on the ground that he has not exhausted all the remedies available to him. Since the applicant has not exhausted the statutory remedy of appeal available to him, therefore, this O.A is premature and liable to be dismissed on the ground that the applicant has not exhausted the statutory remedy available to him.

16. We are, therefore, of the opinion that the applicant has no case for interim relief and this O.A is liable to be dismissed as the applicant has not exhausted the statutory remedy available to him before approaching this Tribunal.

17. We, therefore, dismiss this O.A. with no order as to costs.



(N.P.Nawani)
Member (A).



(S.K.Agarwal) 1/10/29
Member (J).