

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 18th day of January, 2011.

ORIGINAL APPLICATION NO. 147/2006

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. Smt. Om Lata Sharma wife of Shri Om Prakash Sharma
2. Shri Pramod Sharma son of Shri Om Prakash Sharma
3. Shri Ravi Sharma son of Shri Om Prakash Sharma

.....Applicants

(By Advocate: None)

VERSUS

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. Assistant Divisional and Telecom Engineer (Telecom) West Central Railway, Kota Division, Kota.

.....Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The OA was originally filed by Shri Om Prakash Sharma against the impugned order of punishment dated 31.01.2006 (Annexure A/1) and charge sheet dated 08.11.2005 (Annexure A/2) whereby the applicant was imposed punishment by reverting him from the higher pay scale of Rs.2650-4000 to the pay scale of Rs.2550-3200 at the pay of Rs.2550/- for 5 years without future effect.

2. When the matter was listed on 24.04.2006, this Tribunal while issuing the notices, passed the following order:-

"Heard: This MA has been moved by the applicant praying for substituting Para 6 of the OA. In view of the averments made in the MA, this MA is allowed and

the applicant is permitted to substitute Para 6 of the OA. Alongwith this MA, the applicant has also annexed the amended copy of the OA, Let the same be taken on record. MA stands disposed of accordingly.

Heard the learned counsel for the applicant. The learned counsel for the applicant has argued that since the appellate authority is relative of the complainant, as such, the applicant has not exhausted the statutory remedy available under the relevant rules. In view of the pleadings made by the applicant in Para 6 of the OA, let the notices be issued to the respondents returnable within two weeks. Service of notices on the respondents will be effected by the applicant humdust/ speed post within three days and submit proof thereof in the Registry within seven days. The respondents are directed to file their reply to the interim prayer within ten days.

Heard the learned counsel for the applicant on interim prayer. The learned counsel argued that the applicant had filed a complaint against the Junior Engineer and the disciplinary authority is pressing hard to withdraw that complaint and as such the impugned order has been passed. The learned counsel further argued that though the impugned order was passed on 31.1.2006 but the same has not been given effect to till date.

In view of the averments made by the learned counsel for the applicant, the respondents are directed not to give effect to the impugned order dated 31.1.2006 in case it has not already been given effect to, till the next date."

It may be relevant to mention that during the pendency of this OA, original applicant, Shri Omprakash Sharma, died on 06.07.2008 and subsequently his Legal representative were brought on record.

3. The respondents have filed their reply. In the reply, the respondents have categorically stated that the averments made by the applicant to the effect that Appellate Authority is the relative of the complainant, Shri P.K. Saxena, in any manner is totally false. Neither the daughter of his maternal uncle was married to Shri Saxena nor the daughter of Shri Saxena is residing with him. Thus according to the respondents, the present OA filed without exhausting statutory remedy is not maintainable. The respondents have also filed Additional

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Affidavit whereby it has been stated the pay of the applicant was reduced to Rs.2550/- for the month of March paid in April 2006. Thus the averment made by the applicant on the basis of which notices were issued on 24.04.2006 and stay was granted is factually incorrect.

4. When the matter was listed for hearing on 08.12.2008, this Tribunal had passed the following order:-

"Heard learned counsel for the parties.

Learned counsel for the respondents has raised preliminary objection regarding maintainability of the OA on the ground that the applicant has not availed statutory remedy, which was available to him under the relevant rules. From the order sheet dated 24.04.2006, it is clear that this Tribunal was aware about the fact of non availing of the statutory remedy by the applicant. Notice was specifically issued on the basis of the plea raised by the applicant in Para No. 6 of the OA. However, vide order dated 05.02.2008, this Tribunal has admitted the case and the matter was listed for final hearing and opportunity was granted to the applicant to file rejoinder.

Learned counsel for the applicant submits that since this OA has been admitted as such this Tribunal cannot entertain the objection on non maintainability of the OA on the ground of non availing of statutory remedy. Learned counsel for the applicant further submits that he wants to cite case law on the subject.

5. Thereafter the matter was adjourned from time to time on the request of the learned counsel for the applicant. On 20.10.2010, this Tribunal had specifically observed that no adjournment shall be granted being 2006 case and the matter was adjourned on the request of the learned counsel for the applicant for the purpose of hearing on 18.11.2010. To the similar effect, observation was made on 15.12.2010 and the matter was adjourned to 18.01.2011. None is

present on behalf of the applicant even today. Thus we have heard learned counsel for the respondents.

6. We are of the view that the present OA is not maintainable in view of the law laid down by the Apex Court in the case of **S.S. Rathore vs. State of M.P.**, AIR 1990 SC 10, where it was held that cause of action shall be taken to arise not from the date of original adverse order but from the date when the order of higher authority whereby statutory remedy by way of appeal or revision is available is passed. In the instant case, original applicant has not availed any statutory remedy by filing appeal before the Appellate Authority. Rather he had filed the OA directly on flimsy ground that the Appellate Authority is the relative of the complainant as such he does not expect any justice from such authority. Thus we are of the view that the present OA is premature and it will be open for the legal heirs of the original applicant to file statutory appeal before the Appellate authority and in any case such appeal is filed within a period of one month from today, Appellate Authority shall entertain the same and dispose of the same on merit by passing a reasoned & speaking order and such appeal shall be disposed of within three months from the date of receipt of the Appeal.

7. At this stage, we wish to observe that admission of a lis only shows that matter needs to be examined in depth. Admission of a lis does not preclude the party from raising legal objections at the time of hearing of case. At this stage we wish to refer to the decision of the of the Apex Court in the **State of U.P. & another vs. U.P. Rajya Khand Vikas Nigam S.S. & Others**, JT 2008 (6) 489 whereby, the

Apex Court rejected the contention raised by the learned counsel for the respondents based upon the judgment of **Suresh Chandra Tewari vs. District Supply Officer**, AIR 1992 331, and held that that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. At this stage it will be useful to quote Para No. 36 of the judgment, which thus reads as under:-

"36. With respect to the learned Judge, it is neither the legal position nor such a proposition has been laid down in Suresh Chandra Tewari that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. It is no doubt correct that in the 'head note' of All India Reporter (AIR), it is stated that "petition cannot be rejected on the ground of availability of alternative remedy of filing appeal". But it has not been so held in the actual decision of the Court."

It is also useful to quote Para 38 of the judgment, which thus reads as under:-

"38. Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by a writ Court. It has been so held even this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this court cannot order dismissal of a writ petition which ought not to have been entertained by the High court under Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High court has entertained a writ petition albeit wrongly and granted the relief to the petitioner."

8. Thus as can be seen from Para No. 38 of the judgment, Apex Court has categorically held that it cannot be laid down as a proposition of law that once a petition is admitted, it could never be

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dismissed on the ground of alternative remedy. As already stated above, Constitution Bench of the Apex Court in the case of **S.S. Rathore vs. State of M.P.**, AIR 1990 SC 10, has held that the cause of action shall be taken to arise not from the date of original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of a six months, period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen.

8. Thus in view of what has been stated above, the present OA is premature and the same cannot be entertained at this stage and the same shall stand disposed of in the light of the direction given in Para No. 6 (supra).

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)
MEMBER (J)

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