

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA Nos. 206/2006.

Jaipur, this the 22nd day of September, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Banwari
S/o Shri Dhanna
R/o Village Kalyawas via Kanwat
Tehsil Shri Madhopur.

... Applicant .

By Advocate : Shri N. S. Yadav.

Vs.

1. Union of India through
General Manager, North Western Railway,
Jaipur.
2. The Sr. Divisional Engineer (East),
North Western Railway,
Jaipur.
3. Shri A. K. Narula,
Assistant Divisional Engineer (RPC)
Jaipur.
4. Shri R. K. Bhardwaj,
PWI, North Western Railway,
Ateli & Enquiry Officer.

Respondents.

: O R D E R (ORAL) :

The applicant has filed this OA against the order of punishment imposed by the Disciplinary Authority. Admittedly the applicant has not exhausted the remedy by way of statutory appeal. The grievance of the applicant is that since the inquiry was conducted in gross violation of rule and procedure and inquiry report is ex parte and no opportunity was given to the applicant.

It is further stated that the preliminary statement was taken on 7.4.2006 when it was decided to proceed further only after supplying the additional documents and the documents were not supplied to him but he was allowed to see only on 6.5.2006 and the Inquiry Officer has completed inquiry on the very same day, which is in gross violation of rule. As such, he has approached this Tribunal.

2. We have considered the submissions made by the Learned Counsel for the applicant. We are of the view that this OA can not be entertained at this stage in view of the law laid down by the Constitution Bench consisting of seven Judges of Apex court in the case of S.S. Rathore vs. State of M.P., AIR 1990 SC 10, whereby the Apex Court has categorically held that the cause of action will not arise when the order imposing punishment has been passed by the Disciplinary Authority. Cause of action will arise only when the statutory appeal provided in the relevant rules are exhausted. Learned counsel for the applicant states that that there is gross violation of principal of natural justice and it is a case of exceptional accepting nature. We are not inclined to accept this contention of the Learned Counsel for the applicant. It is open for him to raise all these pleas before the Appellate Authority who is statutorily bound to consider all such allegations in appeal.

3. Learned Counsel for the applicant has drawn our attention to the decision rendered by the Gujarat High Court in the case of Union of India vs. Hasmukhbhai P. Rajendra, 2004 (5) SLR 625. Suffice it to say that at this stage in this case the Hon'ble High Court has not taken into consideration the decision rendered by the Constitution Bench in the case of S.S. Rathore (supra). As such, according to us, this cannot be said to be a good law. Accordingly, we are of the view that the application is premature which cannot be entertained at this stage as exhaustence of statutory remedy is a condition precedent for maintainability of the OA. The OA is accordingly dismissed at admission stage.


(V. P. SHUKLA)
ADMINISTRATIVE MEMBER


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./