

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**


APPLICATION NO.: 406/2007

Applicant(s) Pradeep Kumar Jain

Respondent(s) U. O. D & ors.

Advocate for Applicant(s)

Advocate for Respondent(s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>20-11-2007</u></p> <p>Mr. C.B. Sharma - Counsel for the applicant.</p> <p>Heard the learned Counsel for the applicant. For the reasons dictated separate the OA is disposed of.</p> <p style="text-align: right;"> (M.L. CHAUDHARY) Member (J)</p> <p>R/</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 20th day of November, 2007

ORIGINAL APPLICATION No.406/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER

Pradeep Kumar Jain
s/o Shri V.K.Jain,
aged about 36 years,
r/o Near 555, Jain Sadan,
Chhawani, Kota and
presently working as
Accountant, New Grain Mandi,
Head Post Office, Kota.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through Secretary to the Govt. of India,
Ministry of Communication and Information
Technology, Dak Bhawan,
New Delhi.
2. Post Master General,
Rajasthan Southern Region,
Ajmer.
3. Senior Superintendent of Post Offices,
Kota Postal Division,
Kota.
4. Director of Accounts (Postal),
Jaipur.
5. Assistant Superintendent of Post Offices
(West), Kota Sub Division,
Kota.

.. Respondents

(By Advocate:)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for quashing the impugned order dated 31.10.2007 whereby a penalty of recovery of Rs. 38,029/- (1/3 rd of 50% of Rs. 2,28,172/-) in 34 monthly installments at the rate of Rs. 1100/-p.m. and rest at the rate of Rs. 629/- from the pay of the applicant to be started from the month of November, 2007 was imposed upon the applicant.

2. There is statutory remedy of appeal available against this order. In view of the law laid down by the Hon'ble Apex Court in the case of S.S.Rathore vs. State of M.P., 1990 SCC (L&S) 50, the cause of action shall be taken to arise not from the date of the 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 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. Thus, according to the law laid down by the Hon'ble Apex Court, exhausting of remedy as available to the employee concerned is condition precedent to maintain the claim under Administrative Tribunal Act, 1985. I

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am of the view that the present OA is not maintainable as being premature. The contention raised by the learned counsel for the applicant that since the action has been initiated by respondent No.3 at the behest of the directions issued by the higher authority and, as such, filing of appeal will be futile exercise cannot be accepted at this stage. Needless to add that initiation of disciplinary proceedings at the instance of higher authority will not, ipso facto, lead to inference that the charge stands fully proved and it is for the disciplinary authority to pass appropriate order after issuance of the chargesheet and considering the defence of the employee and to proceed in accordance with law. In any case, it is permissible for the applicant to raise all such contention(s) before the appellate authority, who will pass reasoned and speaking order in conformity with the requirement of Rule 27(2) of the CCS (CCA) Rules including the contention of the applicant that he cannot be held responsible for the lapse especially when the pension was released to the widow of the casual labour only at the behest and directions of the higher authority who was competent to pass such orders in accordance with law and the applicant has only processed the matter and also that it is a case of selective imposition of penalty, without taking any action on other persons who were really guilty of passing the orders on the basis of

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which pensionary benefit was granted to the widow of casual labour.

3. Keeping in view the facts and circumstances of the case and what has been stated above, I am of the view that cause of action in favour of the applicant has not arisen as yet and accordingly, the applicant may avail the statutory remedy by filing appeal, which appeal shall be entertained by the appellate authority who is directed to decide the said appeal in terms of the observations made above within a period of 3 months from the date of submission of the appeal by the applicant.

4. With these observations, the OA is disposed of at admission stage.



(M.L. CHAUHAN)

Judl. Member

R/