

(B)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET


ORDERS OF THE TRIBUNAL


13.3.2008

OA 82/2008

Mr. Shiv Kumar, counsel for applicant.

Heard learned counsel for the applicant.
The OA stands disposed of, at admission stage
itself, by a separate order.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 13th day of March, 2008

ORIGINAL APPLICATION NO.82/2008

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISITRATIVE MEMBER

Anil Kumar Jain
S/o Shri Bhanwar Lal Jain,
R/o Singhal Departmental Stores,
Church Road,
In front of CISF Gate,
Deoli, District Tonk.

... Applicant

(By Advocate : Shri Shiv Kumar)

Versus

1. Union of India through
Secretary to the Govt.,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Chief Engineer,
Central Public Works Department,
North Zone,
East Block,
R.K.Puram,
New Delhi.
3. Superintending Engineer (E),
Central Public Works Department,
Jaipur Central Electrical Circle,
Nirman Bhawan, Sector-10,
Vidyadhar Nagar,
Jaipur.

... Respondents

(By Advocate : - - -)

ORDER (ORAL)

PER HON'BLE MR.M.L.CHAUHAN

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The applicant has filed this OA thereby praying for the following relief :

"That the impugned order dated 10.1.2008 (Ann.A/1) dismissal from service and impugned show cause notice dated 14.12.2007 (Ann.A/3) may please be declared illegal, arbitrary and the same may please be quashed with all consequential benefits. Further the respondents may please be directed to produce the relevant record in the interest of justice."

2. Facts of the case are that the applicant was convicted by the Trial Court. Pursuant to the said conviction, the disciplinary authority imposed the penalty of dismissal from service upon the applicant. It is this order, which is under challenge before this Tribunal. The applicant has not exhausted the statutory remedy by way of filing an appeal.

3. Learned counsel for the applicant submitted that since the disciplinary authority has passed the order of punishment at the instance of the appellate authority, as such, it was in these circumstances that the remedy by way of appeal was not exhausted.

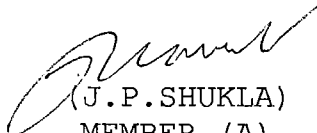
4. We have given due consideration to the submission made by the learned counsel for the applicant. We are of the view that the present OA cannot be entertained at this stage in view of the law laid down by the Apex Court in the case of **S.S.Rathore v. State of Madhya Pradesh**, AIR 1990 SC 10, whereby the Apex Court has categorically held that the OA cannot be entertained on the basis of original adverse order passed unless the statutory remedy by way of appeal is not exhausted at the first instance. Thus, in view of law laid down by the Apex Court, the present OA is not maintainable being premature.

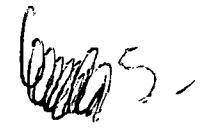
5. The applicant is directed to file an appeal before the appellate authority. It is, however, made clear that in case the Chief Engineer who, according to the applicant, is the appellate authority and has

already applied his mind or has given instructions to the disciplinary authority to ~~the~~ decide the matter in the manner he did, it will be permissible for the appropriate authority to nominate an ad hoc appellate authority so that the appeal of the applicant can be considered and decided in accordance with rules/law, as the right to file appeal cannot be defeated.

6. Accordingly, the present OA is disposed of with a direction to the applicant to file an appeal, within a period of thirty days from today, before the appropriate authority and the appropriate authority shall entertain the said appeal in the light of the observations made hereinabove and without raising the period of limitation and decide the same within a period of two months from the date of receipt thereof.

7. With these observations, the OA stands disposed of at admission stage itself. No order as to costs.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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