

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

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

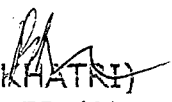
29.09.2009

OA No. 430/2009

Mr. P.N. Jatti, Counsel for applicant.

Heard learned counsel for the applicant.

For the reasons dictated separately, the OA is disposed of.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 29th September, 2009

ORIGINAL APPLICATION NO. 430/2009

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Radhey Shyam son of Shri Gopal Lal by caste Paswan, aged about 59 years, resident of House No. 37, Viveka Nand Colony, Kherli Phatak, Kota.

.....APPLICANT

(By Advocate: Mr. P.N. Jatti)

VERSUS

1. Union of India through the Chairman, Central Board of Excise and Customs, North Block, New Delhi.
2. The Commissioner of Narcotics, 19th Mall Moras, Gwalior, M.P.
3. S. Faheem Ahmed, Deputy Narcotics, Commissioner Narcotics, House Neemuch, M.P.
4. A.S. Yadav, District Opium Office of Neemuch-1, Division (Camp Jawad)

.....RESPONDENTS

(By Advocate: -----)

ORDER (ORAL)


The applicant has filed this OA against the order passed by the Disciplinary Authority dated 11.09.2009 (Annexure A/1) whereby the applicant has been dismissed from service. From the material placed on record, it is evident that the applicant has filed an appeal dated 18.09.2009 (Annexure A/10) before the Appellate Authority but the same has not been disposed of so far.

2. We have heard the learned counsel for the applicant. We are of the view that the present OA is premature and cannot be entertained

at this stage in view of the law laid down by the Constitution Bench in the case **S.S. Rathore vs. State of Madhya Pradesh**, AIR 1990 SC 10, whereby the Apex Court has held that exhaustion of the remedy available under disciplinary rules is a condition precedent to maintain claim under Administrative Tribunal's Act 1985. It was further held that cause of action will arise not from the order passed by the disciplinary authority but from the order passed by the higher authority i.e. Appellate Authority where statutory remedy is available. Admittedly the statutory remedy by way of appeal is available to the applicant. Thus in view of the law laid down by the Apex Court in the case of S.S. Rathore (supra) this OA cannot be entertained at this stage. Accordingly, the applicant is directed to approach this Tribunal only after exhaustion of statutory remedy, as available under the statutory rules and order in that regard is passed by the higher authority. It is further directed that Appellate Authority will decide the appeal expeditiously and within the outer limit, as prescribed by the Apex Court in the case of S.S. Rathore (Supra).

3. With these observations, the OA is disposed of at admission stage with no order as to costs. Needless to add that while deciding the appeal, the Appellate Authority shall take into consideration the conditions as stipulated under Rule 27 (2) of the CCS (CCA) Rules, 1965.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ