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CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.No.060/00738/2014

Decided on: 28.08.2014

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

Kripa Shankar Saroj, IAS son of Late Sh. Banshu Ram, aged 51 years,
Director Mahatma Gandhi State Institute of Administration, Sector 26,
Chandigarh, resident of House No. 921, Sector 39-A, Chandigarh.

Applicant



By. Mr. Rohit Sharma, Advocate.

Versus

1. Union of India through the Secretary, Government of India,
Ministry of Personnel, Department of Personnel and Training, North
Block, New Delhi.
2. The State of Punjab through the Chief Secretary to Government of
Punjab, Punjab Civil Secretariat, Chandigarh.

By: None.

Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19
of the Administrative Tribunals Act, 1985 for the following reliefs:-

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“(a) Quash the charge-sheet dated 21.05.2008 (Annexure A-1) vide which false and frivolous charges were levelled against the applicant and in fact the same would show that the same are basically based upon figment of irrigation (sic) imagination only and the applicant has been made a escape goat.

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“(b) Quash the inquiry report 11.12.2009 (Annexure A-2) in which the uncalled for allegations which primarily related to the other officers have proved against the applicant which is illegal more so when the allegations in the charge sheet and finding in inquiry report both are different in nature and character and are based on figment of imagination, conjectures and surmises only.

“(c) Quash the order dated 3.09.2013 (Annexure A-3) vide which the disciplinary authority without discussing even a single point raised by applicant in his defence in right perspective has imposed penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years, without cumulative effect and not adversely affecting his pension has been imposed upon him.

“(d) Issue direction to the respondents to decide appeal dated 15.10.2013 (Annexure A/10) and extend all the consequential benefits as a result of quashing of aforesaid orders with arrears of pay and allowances with @ 18% per annum from the date the amount became due to the actual date of payment.”

2. In support of his claim, learned counsel for the applicant submitted that the applicant had submitted the appeal on 15.10.2013.

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(Annexure A-10) and more than 10 months have expired but no decision thereon has been taken till date nor any communication has been sent to him in that regard. Thus, the Original Application can be entertained by this Tribunal.

3. We may notice here that if an effective departmental remedy is available to an aggrieved person, he or she should avail of the same instead of rushing to this Court. As per Section 20 of the Administrative Tribunals Act, 1985, there is a bar on entertaining an Original Application if a statutory right of appeal is not exhausted by the applicant. Hon'ble Supreme Court of India in the case of S.S Rathore v. State of M.P., AIR 1990 SC 10 (rendered by Seven Judges Bench), has made it clear that availing of remedies available under the Service Rules is the condition precedent to maintenance of Original Applications under the Administrative Tribunals Act. No doubt, Full Bench of this Tribunal in the case of B. Parameshwara Rao v. The Divisional Engineer Telecommunications Eluru 1990(2) SLJ 525 (Hyd.) (CAT), after careful consideration has held that a discretion is available to the Tribunal to entertain such petitions in exceptional and extraordinary situations but ruled that Section 20 requires exhaustion of alternative remedies available before approaching the Tribunal. Full Bench, no doubt, stated that in exceptional and extraordinary cases such an application may be entertained without exhaustion of the remedies but that would be in cases

where no remedy is provided at all and Full Bench held that "A person aggrieved can file an application under Section 19 of the Act when the cause of action arises namely when the impugned order is passed provided the rules do not make provision for filing of an appeal/revision/representation.". The legislature has specifically used expression 'Ordinarily'. No doubt, the Tribunal has power to entertain an Application even though the period of six months after the filing of the appeal has not expired but such power is to be exercised rarely and in exceptional cases. The Full Bench has also discussed the meaning of the term "ordinarily" and while referring to various decisions held that the word "ordinarily" means usually and normally and not exceptionally as contrasted with extraordinarily. The Apex Court stated that the term "ordinarily" means in the large majority of the cases but not invariably. It also quoted the observations of the Madras Bench while considering the provisions of Section 20 of the A.T. Act and had referred to the remedy of appeal under Rule 16 of A.I.S. (D and A) Rules, 1969 not being exhausted. The Full Bench noticed the observations as follows: "No doubt, the expression 'ordinarily' occurring in that Section will indicate that the Tribunal has some sort of discretion in the matter. But such a discretion cannot be exercised in all the cases and that has to be exercised in extraordinary situations." In para 26 the Full Bench has observed in clear terms as under ---

"We have already expressed our view above and explained that the use of the word "ordinarily" connotes a discretionary power in the Tribunal but as indicated earlier, that power has to be exercised in rare and exceptional cases and not usually or casually."

4. In this case a remedy of appeal is provided for and the competent authority is yet to take a decision thereon. Challenge to the charge-sheet, inquiry report and penalty order notwithstanding, the applicant has also made a specific prayer in para 8 (d) to direct the respondents to decide his appeal dated 15.10.2013 (Annexure A/10) and extend all the consequential benefits. We do not find any extra ordinary circumstances in this case to entertain the Original Application on merit.

5. Faced with the above factual scenario, learned counsel for the applicant prays that the applicant will be satisfied if the Original Application is disposed of with a direction to the appellate authority to consider and taken a view on his appeal, Annexure3 A-10, within a stipulated time framed.

6. For the order which we propose to pass there is no need to issue any notice to the respondents and call for their reply as we are simply asking them to take a view on the pending appeal aforesaid, within a fixed time frame and no prejudice would be caused to them more so when a applicant is ordinarily expected to avail of departmental remedy provided under section 20 of the Administrative Tribunals Act, 1985 and if an appeal is filed in that behalf, the authorities are expected to take a view

thereon expeditiously but in this case no decision has been taken despite lapse of about 10 months.

7. In view of the above and without commenting upon anything on merits of the case, we dispose of this Original Application with a direction to the Appellate Authority to take a view on the appeal, Annexure P-10, by passing a speaking and reasoned order in accordance with law and rules within a period of two months from the date of receipt of certified copy of this order, under intimation to the applicant.

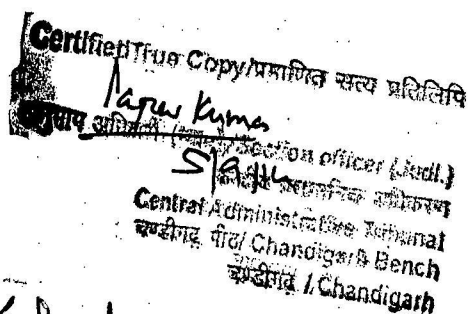
8. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY/KUMAR VARMA)
MEMBER (A)

Place: Chandigarh
Dated: 28.08.2014

HC*



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