

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.556/2017

This the 05th day of September, 2018

Shri Maganbhai D.Rathwa
S/o. Devjibhai Rathwa
Aged 54 years
P.A. Waghodia under Fatehgunj, Vadodara.
Residing at : 690, Vaikunth-1, Bapod Jakatnaka
Waghodia Road, Vadodara 390 019. Applicant

(By Advocate : Ms. S.S.Chaturvedi)

VERSUS

1. Union of India
Notice to be served through
Chief Post Master General
Khanpur, Ahmedabad 380 001.
2. Postmaster General
Pratap Gunj, Vadodara Region
Vadodara 390 002.
3. Senior Supdt. of Post Office
Vadodara West Division
Vadodara 390002. Respondents

(By Advocate : Ms. Prachi Upadhyay)

ORDER – ORAL

Per : Hon’ble Shri M.C.Verma, Member (J)

The matter on joint request has been taken up for final hearing.

2. At the outset, it is submitted by Ms. Prachi Upadhyay, who appears for respondents that this OA is not maintainable as remedy available to the applicant has not been fully exhausted. She explained that against order of Disciplinary Authority applicant has preferred the appeal and simultaneously has, without waiting for outcome of the appeal, invoked jurisdiction of this Tribunal. She submits that in view of fact that appeal is still pending, this OA is not maintainable and may be dismissed on said score alone.

3. The learned counsel for the applicant admitted that order of Disciplinary Authority was challenged in appeal and that appeal is still pending. She provides the details as to when order was passed by Disciplinary Authority and when it was challenged in departmental appeal. The order

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of Disciplinary Authority is of 08.6.2017 and it was challenged vide departmental appeal on dated 17.7.2017 and instant OA was preferred on 05.12.2017. It is contention of learned counsel for applicant that when appeal was not decided, she preferred the OA and therefore, it cannot be said that applicant has not exhausted all available remedies.

4. Learned counsel also urged that it is undisputed that against the order of Disciplinary Authority appeal has been preferred and that said appeal has yet not been decided finally. So if the Tribunal is of the view that the OA is premature, she may be allowed to withdraw this OA. She also request to give some direction to the respondents to dispose off the appeal within stipulated frame work of time and that department may also be directed not to affect recovery till disposal of the appeal. She informed that when this OA came for hearing at notice stage, this Tribunal gave interim relief to the applicant by staying the recovery and the interim relief was extended from time to time.

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5. The contention of counsel for the respondents is that applicant cannot fix the time for decision of the appeal, there should be a reasonable time and after passing of that reasonable time, the appeal if remains pending then only the applicant had to approach the Tribunal. She also referred Section 20 of the Administrative Tribunals Act, 1985. She urged that as applicant has not exhausted all remedies, the OA may be dismissed.

6. Considered the submissions. Section 20 of the Administrative Tribunals Act, 1985 provides that if a period of six months from the date on which appeal was preferred has expired but no final order on appeal is passed, the person concerned may invoke the jurisdiction of this Tribunal for redressal of grievances. From factual matrix of the case, it is undisputable that applicant has filed the OA without waiting to expire period of six months after filing appeal. It is reiterated that appeal was preferred on 17.07.2017 and OA was preferred on 05.12.2017. In view of the matter, we find that applicant, in haste preferred the OA, he ought to have wait at least for six months for outcome of the appeal and thus instant is

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premature. Instant OA thus is disposed off with direction to the Respondents to consider and dispose off the appeal, dated 17.7.2017 of the applicant, if still it is lying pending with the respondents, within a period of two months from the date of receipt of this order and so long appeal remains pending, recovery shall not be affected.

8. No order as to costs.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)

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