

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 28th Day of August 2018)

Hon'ble Mr. Gokul Chandra Pati. Member (Administrative)
Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

Original Application No.282 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Balveer Bahadur S/o Late Jhumak Lal, R/o 451/513, Chahabai,
District Bareilly.

..... Applicant

By Advocate: Shri K. Ajit/Shri A.D. Singh

Versus

1. Union of India through Secretary, Human Resources & Development, New Delhi.
2. The Commissioner (Amin-1), K.V.S. 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan Region, Salawala Hathibarkala, Dehradun (Uttaranchal).
4. The Principal, Kendriya Vidyalaya No.1, Banbasa Cantt., District Champawat (Uttaranchal).
5. Joint Commissioner (Admin)., Kendriya Vidyalaya Sangathan 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi.

..... Respondents

By Advocate: Shri N.P. Singh

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. The applicant prays for the following reliefs :

- (i) *The Hon'ble court may be pleased to quash the impugned order dated 20.01.2003 (Annexure 1 to the Compilation I of O.A.) passed by respondent No. 5 to the extent the penalty in the form of withholding two*

increments with cumulative effect is imposed on the applicant.

- (ii) The Hon'ble Tribunal may be pleased to direct the respondents to make payment of arrears of salary to the applicant since 25-01-1985 to till date. In the scale of U.D.C. with 18% interest thereon.*
 - (iii) Any other order as may be deemed necessary under the facts and circumstances of the case.*
 - (iv) To award cost to the applicant.*
2. A preliminary objection has been taken by the Learned Counsel for respondents that the applicant has not availed of the alternative remedy available to him to challenge the order dated 20.01.2003 of the Appellate Authority by way of a revision, which is provided in the rule pertaining to the respondent-organization.
3. On the other hand, it has been submitted by applicant that he filed a revision dated 20.02.2003 before the concerned authority but the same has not been disposed as yet and referred to the photocopy of the revision attached to the record showing the receipt of his revision petition by the respondent-organization (Annexure RA 15A of rejoinder affidavit dated 09.03.2011).
4. So, applicant submits that he has filed a revision petition whereas respondents taking the objection that the filing of revision petition against the impugned order is mandatory and since the applicant has not filed the revision petition, the present O.A. is not maintainable.
5. We have heard both the learned counsel and perused the pleading also. Since preliminary objection to the maintainability of the O.A. have been raised, we would first have to deal with the objection.

6. Whether the O.A. is not maintainable or not for not exhausting the alternative remedy, it would be relevant to quote Section 20 of the Central Administrative Tribunal Act, 1985 (hereinafter referred to as the 'Act') which for ready reference reads as under:

"20. Application not to be admitted unless other remedies exhausted (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one

of the remedies which are available unless the applicant had elected to submit such memorial".

7. Perusal of above shows that this provision is in a negative form and makes it clear that ordinarily Tribunal should not admit an application unless it is satisfied that all the remedies available to a person under the service rules have been exhausted.
8. In this context, it would be relevant to refer to K.V. Sangathan Schedule showing the appointing/disciplinary/appellate authority for various post for K.V.S. within Rules CCS (CCA) Rule, Appendix 3, clause 12 indicates the appointing/disciplinary/appellate/revising authority in the case of applicant. Hence, the applicant has challenged the order of Joint Commissioner, Administration, the revision against the aforesaid order would lie to Commissioner, K.V.S., Headquarter.
9. Perusal of the K.V.S. Schedule makes it clear that remedy of filing revision against the punishment has been provided in the statutory rules itself so, as per, Section 20 of the Act, unless applicant had exhausted the remedy of filing revision, this O.A. would not be maintainable as it would be premature.
10. We may observe that in **1986 (1) SLJ 51 Arun Kumar Jain Vs. Union of India**, Principal Bench had taken a view that remedy of revision under the corresponding Rule 29 in CCS (CCA) rules, 1965 should have been exhausted within the prescribed time limit. It was specifically observed therein that:

"We do not consider that there are any circumstances which would justify invoking the jurisdiction vested in us without requiring the petitioner to first exhaust the

remedy of revision available to him under the Service Rules”.

11. Reference may be made to the judgment dated 16.09.2002 of the Principal Bench in **Ram Avtar Gupta Vs. General Manager, Northern Railway**, wherein it was held as under:-

“There can be little controversy with the said provisions in law but the applicant cannot take advantage of the same. There is a basic difference between the powers of the High Court conferred under Article 226 of the Constitution and those of this Tribunal under the Administrative Tribunals Act, 1985. Under Article 226 of the Constitution, the High Court has certain constitutional powers to issue certain writs. There are certain self-imposed restrictions. In appropriate cases, the High Court can pass the necessary orders where alternative remedy is available, but so far as the Administrative Tribunals are concerned, they have to draw power from the provisions of the Administrative Tribunals Act, 1985. The said provision, as already referred to above, puts an embargo by virtue of Section 20 of the Administrative Tribunals Act, 1985 that a Tribunal shall not ordinarily interfere unless the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The present case cannot be termed to be one where an exception could be made. There is no urgency or such an act which would prompt this Tribunal to make a departure from the general provision. Once a right to file the revision petition is available, we find no ground to entertain the applicant. However, it is made clear that in case the applicant prefers a revision petition and since he has been

agitating this matter in the Tribunal, the question of limitation shall not be raised before the revisional authority."

12. We, therefore, hold that the remedy of revision as prescribed under the K.V.S. rules is a mandatory requirement and not an optional remedy and non-exhausting of said remedy would stand in the way in approaching this Tribunal. Since applicant has not exhausted the remedy of revision, we hold this O.A. is premature.
13. However, there still remains the question of whether the revision petition has been filed or not. Applicant averring that it has been so filed and placing on record, a photocopy of the revision petition bearing the receipt stamp of the respondents' office but respondents controverting the stand of applicant by stating that no revision petition has been filed and that copy of revision petition filed by applicant is a forged document and bears a forged receipt stamp.
14. Without going into the question of blame, we are of the considered view that the respondent-organization is a large organization and its Official are men of standing, it may be that the revision petition was filed and as it happens at time that files/documents tend to get misplaced due to the voluminous record of an organisation. This is probably what could have happened in the present case. For the letter dated 07.02.2004 (Annexure- 15 A) addressed to The Assistant Commissioner by S.Sambanna, Principal, K.V. Abohar refers to the revision preferred by the applicant and the letter dated 22.10.2005 addressed to the Assistant Commissioner by Savitri Devi, Principal, K.V., Rampur refers to letter of applicant on the subject of his revision petition and attached to the

rejoinder affidavit of the applicant dated 9.03.2011 would show that the letters refer to the revision petition of the applicant. This, by itself, should have put the respondents on guard to examine whether any revision petition has been filed by the applicant or not.

15. However, we direct the applicant to file a copy of the revision petition bearing his signatures in the office of respondent No.2 within three weeks from the date of receipt of a copy of this order. In case such a copy of revision is filed within the stipulated period, the revisionary authority shall decide the same on merits by passing a reasoned and speaking order within 4 weeks after hearing the applicant. A copy of the order be delivered to the applicant under receipt by the respondents.
16. With the above directions, O.A. stands disposed of. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

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