Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD
****

Original Application No. 330/637/2018

Allahabad this the _o5th_day of _July, 2018

Hon'ble Mr. Justice Vishnu Chandra Gupta, Member- J
Hon'ble Mr. Gokul Chandra Pati, Member - A

Nafees Ahmad aged about 54 years Son of Riaz Ahmad, Working as Senior Parcel Clerk, Kanpur Central, Railway Station, Kanpur.

Applicant

By Advocates: Mr. A.K. Srivastava
Mr. M.K. Srivastava

Vs.

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
3. Senior Divisional Personnel Officer, North Central Railway, Allahabad Division, Allahabad.
4. Senior Divisional Commercial Manager, North Central Railway, Allahabad Division, Allahabad.

Respondents

By Advocate: Mr. S.M. Mishra

O R D E R

Justice Vishnu Chandra Gupta, Judicial Member

Heard, Shri A.K. Srivastava, learned counsel for the applicant and Shri S.M. Mishra, learned counsel for the respondents.

2. This O.A. has been filed by the applicant seeking following relief(s): -

"(i) issue a writ, order or direction in nature of certiorari quashing the punishment order dated 04.08.2017 passed by the Disciplinary Authority, punishment order dated 09.01.2018 passed by the Appellate Authority and Provisional Observation dated 27.04.2017 passed by the Disciplinary Authority (Contained as Annexure No. A-1, A-2 and A-3 to Compilation No. I of the Original Application).

(ii) issue a writ, order or direction in nature of mandamus to respondent No. 3 to pay the salary, which is being reduced in the same time scale of pay by two stage for a period of one year on non-

cumulative effect. On reduction pay fixed at Rs.39,200/- P.M. to that of Rs.37,000/- along with the interest of 18% per annum and increment and promotion if it is due.

(iii) issue any other suitable, writ or direction as this Hon'ble Tribunal may deem fit & proper under the facts and circumstances of the case.

(iv) Award the costs of the Original Application in favour of the applicant."

3. In para-6 of the O.A. the applicant has contended that he has already exhausted all the remedies, available to him. After perusal of the pleadings, made in the O.A., it reveals that after punishment, an Appeal was preferred by the applicant, which was dismissed by the Appellate Authority. The applicant is a railway servant and is governed by a set of rules known as Railway Servants (Discipline and Appeal) Rules, 1968. Rule 25 of the aforesaid Rules provides remedies of review/revision, which reads as under: -

"***25. Revision -***
(1) Notwithstanding anything contained in these rules -
(i) the President, or
(ii) the Railway Board, or
(iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or
(iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or
*(v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control (**may** at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission, where such consultation is necessary, and **may**)-*
(a) confirm, modify or set aside the order; or
(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
(d) pass such orders as it may deem fit:
Provided that -
(a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;
(b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of

Rule 6 or the penalty specified in clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(2) No proceeding for revision shall be commenced until after -

(i) the expiry of the period of limitation for appeal; or

(ii) the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No power of revision shall be exercised under this rule -

(i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired:

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by -

(a) an appellate authority other than the President; or

(b) the revising authorities mentioned in item (v) of sub-rule (1) - after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant:

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate Authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

Explanation : For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders

This remedy is available to the applicant after dismissal of his appeal as is provided U/R 25 of the relevant service rule. The relevant service rule does not make the remedy U/R 25 optional for challenging the punishment order affirmed by the Appellate Authority. Section 20 of the Administrative Tribunals Act, 1985 provides that all the remedies, provided under the relevant services rules, to be exhausted by the applicant before filing the O.A. under

Section 19 of the Administrative Tribunals Act, 1985.

4. When the Bench asked learned counsel for the applicant whether the applicant has availed the remedy of Revision or not, learned counsel stated that the Revision is not a statutory remedy and not mandatory to be exhausted before approaching this Tribunal. He also relied upon the Judgment of a Full Bench of this Tribunal reported in ***"(1995) 29 Administrative Tribunals Cases (FB) 257 Bhagwan Din and others v. Union of India and others***" in support of his contentions.

5. We have gone through the aforesaid Judgment and found that it was in respect of Rule 4 of Railway Servants (Hours of employment) Rules, 1961. Perusal of this Judgment reveals that the Tribunal found that Rule 4 is not happily worded and a great deal of confusion has been created by the use of expression "shall be referred to". In the situation, narrated in Judgment, the Tribunal entertained the O.A. without exhausting the remedy of Appeal with an extended caution "we are giving this concession to the applicants alone keeping in view the facts and circumstances of this case". By use of these words, the aforesaid Judgment of the Full Bench loses its precedential value and cannot be used as a precedent in other cases having different set of facts.

6. Another Judgment of the Full Bench of this Tribunal rendered in "***O.A. No. 1093 of 2016 of Calcutta Bench Amitava Sarkar v. Union of India and others***" covers the controversy and dealing with the same provision of Revision provided in Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968. The case, which was placed before the Tribunal at Calcutta Bench also contained almost similar wordings which the applicant has used with regard to exhausting the remedies in para-6 of the O.A. The Judgment of the

Calcutta Bench is squarely applicable to the present case. Paragraph Nos. 17 to 22 of the aforesaid Judgment read as under: -

"*17. After giving anxious consideration of the above said citations I am of the view that in certain contingencies as discussed in Whirlpool case (supra) the Tribunals can also in given circumstances entertain an application under Section 19 of the A.T.Act. without compelling the applicant to avail statutory remedies available under the statutory rules. However a strict jacket formula cannot be made under which category of cases the rider imposed under Section 20 can be lifted. This however will depend upon in the light of facts and circumstances to every case in the light of the contingencies as discussed in Whirlpool case. To lift the embargo contained in Section 20 and to grant immediate relief and protection to the applicant's right, if the Tribunal is of the view that the rights of the applicant ought to have been protected by the Tribunal he by assigning the reasons for that in writing can do so.The Tribunal after considering each and every case has to decide whether the case falls within those contingencies discussed in Whirlpool case, which has been affirmed by the Hon'ble Supreme Court in its another judgment subsequently delivered in Popcorn Entertainment case (supra). At the same time it would be necessary to mention that Section 20 as discussed by Constitution Bench in S.S.Rathore case supra cannot be overlooked even though in S.S.Rathore case the point in controversy was not of the entertainment the application under section 19 of A.T.Act in the light of section 20 of A.T.Act. The controversy in S.S.Rathore case was that what would be the cause of action to determine the limitation to file the application under section 19 of A.T.Act. While delivering the judgment the Hon'ble Supreme Court observed that where there is a statutory remedy to the applicant, shall have to exhaust the same and cannot come straightway before tribunal without exhausting all the statutory remedies.*

18. Therefore, in view of the aforesaid discussion made in the light of different judgment of the Hon'ble Supreme Court and High Court, I am of the view that ordinarily an applicant invoking jurisdiction under Section 19 cannot approach the Tribunal unless he exhausted all the statutory remedies available to him including the statutory appeal and revision/second appeal. But if he wants to approach the Tribunal without exhausting any remedy he must satisfy the Tribunal first before admitting the application that in case the statutory remedy available is taken he will suffer an irreparable injury which cannot be compensated and purpose of filing the applications shall frustrate and that too in the light of law laid down in Whirlpool case supra.

19. Here in this case the applicant exhausted the remedy of appeal wherein the punishment was enhanced to the extent of compulsory retirement. The order of appeal was further subject to challenge in second appeal in view of RS(DA) Rules which the applicant has not availed nor any reason has been assigned in the application as to why he is not availed other remedies and approach directly to the Tribunal. Rather in para 6 he declared that he has availed of all the remedies available to him under the service rule by making representation. Para 6 is extracted herein below :

"The applicant declares that he have availed of all the remedies available to him under the service rule by making reprsentations."

20. In view of the above, I am of the view that applicant cannot be allowed to present the application under section 19 for challenge the order passed by disciplinary authority and appellate authority without exhausting the statutory remedy of second appeal and revision under RS (DA) Rules. Therefore, this application cannot be admitted for hearing. The Bench has not assigned any reason to lift the bar contained in section 20 of A.T. Act nor record any satisfaction to lift the bar in the light of contingencies discussed herein above. The reference is accordingly answered.

21. Consequently the aforesaid discussion made and finding arrived at referred question the application presented by the applicant under section 19 of A.T.Act cannot be admitted for hearing. Hence the same is dismissed as not maintainable.

22. However liberty is granted to the applicant that he may approach this Tribunal after exhausting all statutory remedies available to the applicant under the relevant statutory service rules. In case the applicant desirous to avail the remedy of second appeal/revision under the RS(DA) Rules, the Appellate authority will not refuse to entertain the appeal/revision if the same is filed within 30 days from that date of this order, on the ground of limitation. It is further made clear that I have not expressed any opinion on merit while delivering this judgment but if anything has been discussed on merit anywhere in my judgement or in the judgement of any of the member of this bench, appellate/revisional authority will decide the appeal/revision without being influenced by the same .

There shall be no order as to cost."

7. Hence, in view of the above, we are of the view that this O.A. is not maintainable unless the remedy of revision is exhausted by the applicant.

8. Consequently, O.A. is dismissed, at the admission stage itself, as not maintainable with liberty to the applicant to prefer the Revision before the Revisional Authority within a period of 30 days from the date of this Order and in case any such Revision is filed, same shall be disposed of by the competent Revisional Authority within further period of three months by passing a reasoned and speaking order, under intimation to the applicant.

Member – A **Member – J**

/M.M/