

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1559/2011

New Delhi this the 27th day of July, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

Manbir Singh,
AC Techician-1,
Under SSE (Elect.)
Northern Railway,
Railway Station,
Delhi Sarai Rohilla

Residential Address :

Manbir Singh
T-5H, Railway Colony
Northern Railway
Patel Nagar,
New Delhi.Applicant

(Argued by: Mr. G. D. Bhandari)

Versus

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
DRM Office,
New Delhi. Respondents

(By Advocate: Mr. Kripa Shankar Prasad)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The sum and substance of the facts and material, exposed from the record and relevant for deciding the

maintainability of the instant Original Application (OA), without availing the statutory remedy of revision is that, applicant, Manbir Singh S/o Late Shri Vijay Singh, was stated to have committed misconduct, during the course of his employment. As a consequence thereof, he was served with the following Articles of Charges:-

“Article – 1

Shri Manbir Singh passed false remarks “coach arrived ex DDN to DEE without any complaint. All Electric Equipment working order. No complaint” in his AC Coach Service Book quite before reaching the train as its destination.

Article – 2

He also did not co-operate vigilance team during vigilance check and tried to avoid taking responsibility of his irregularities.

Article – 3

By his irresponsible act, he put the administration in a state of fear.

By his above act Shri Manbir Singh, ACF-I, DEE failed to maintain absolute irregularity and devotion to duty and acted in a manner unbecoming of a railway servant thereby contravening provisions of Rule No. 3 (I), (ii) & (iii) of Railway Services Conduct Rules, 1960”.

2. Although the applicant has denied the charges, but a regular Departmental Enquiry (DE) was initiated against him under Rule 18 of Railway Servants (Discipline & Appeal) Rules, 1968 [hereinafter to be referred as “Railway Rules”] and an Enquiry Officer (EO) was appointed. The EO recorded the evidence, completed the enquiry and concluded that all the charges framed against the applicant stand duly proved, vide enquiry report dated 16.02.2009 (Annexure A-15).

3. Agreeing with the findings of the EO, a penalty of reduction to lower stage in same time scale, vide impugned order dated 12.03.2009 (Annexure A-1) by the Disciplinary

Authority (DA) was imposed on the applicant. Thereafter, the applicant filed an appeal, which was dismissed on 01.04.2011 (Annexure A-1a) by the Appellate Authority (AA) as well.

4. Surprisingly enough, instead of availing the alternative remedy of revision, as contemplated under Rule 25 of the Railway Rules, the applicant has straightaway jumped to file the instant OA, challenging the impugned orders, being illegal, arbitrary and without jurisdiction, directly invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 [hereinafter to be referred as "Act"].

5. The contesting respondents have filed their reply, inter alia, pleading the following preliminary objections:-

"A. In this O.A, the applicant is trying to improve his earlier version of defence preferred in earlier O.A. Since these acts are afterthought and made in order to support a non-existent (sic) cause of action, the same are emphatically denied. Said improvements are pointed out at relevant places in the Counter.

B. That remedy to the Applicant after disposal of appeal was in the form of a revision petition against appellate authority orders to ADRM/OP. Hence, this O.A is not maintainable because it is improper to approach Hon'ble Court without availing departmental channel to redress his grievances. In this case applicant has still a channel of revision appeal, and the same has been already advised to him vide communication letter of appellate authority, which has already been got received to the applicant."

6. However, on merits, virtually acknowledging the factual matrix and reiterating the validity of impugned orders, the respondents have stoutly denied all other allegations contained in the main OA, and prayed for its dismissal.

7. During the course of hearing, learned counsel for respondents has raised a preliminary objection and contended with some amount of vehemence, that since the applicant has not availed the alternative statutory remedy of revision under

Rule 25 of the Railway Rules, so the present OA is not at all maintainable, in view of the mandatory bar contained in Rule 20 of the Act.

8. On the contrary, learned counsel for applicant has urged that applicant was not obliged to file the revision petition and, the OA is maintainable.

9. After hearing the learned counsel for the parties on the question of maintainability of the OA and having gone through the record with their valuable help, we are of the firm view that the instant OA, without availing the statutory remedy of revision, is not maintainable.

10. What cannot possibly be disputed here is that, Section 20 of the Act postulates that a Tribunal **shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the statutory remedies available to him under the relevant service rules** as to redressal of his grievances. The mandate and import of this section is mandatory in nature and the Tribunal can only entertain the OA, after the applicant has already exhausted/availed of the remedies available to him under the relevant rules, so as to redressal of his grievances and not otherwise.

11. It is not a matter of dispute that Rule 25 of Railway Rules provides the statutory remedy of revision to the applicant and empowers the Revisional Authority to confirm, modify or set aside the order; or confirm, reduce, enhance or set aside the

penalty imposed by the order, or impose any penalty where no penalty has been imposed; or 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; and pass such orders as it may deem fit.

12. Meaning thereby, Rule 25 provides a mandatory right of revision and Revisional Authority has the vast power to pass indicated orders.

13. Therefore, the applicant was legally required to avail the statutory right of revision under Rule 25 of the Railway Rules and in the absence of the same, the present OA cannot directly be entertained, in view of the bar envisaged under Section 20 of the Act. In case, such OA is directly entertained by-passing the mandatory bar of Section 20 of the Act, then there would be no end to it. It will become a precedent and every person would start directly filing the OA, without availing the alternative statutory remedies, which would amount to by-passing the mandatory provisions of Section 20 of the Act. It is not legally permissible.

14. Be that as it may, no extraordinary ground, much less cogent, has been made out by the applicant, so as to directly entertain the OA in view of the law laid down by the Hon'ble Apex Court in cases of ***The Govt. of A.P. and Others Vs. P. Chandra Mouli and Another (2009) 13 SCC 272*** and

Constitution Bench judgment in **S.S. Rathore Vs. State of Madhya Pradesh (1989) 4 SCC 582** wherein, it was ruled that “The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallised on the line laid down under Section 20 of the Administrative Tribunals Act”.

15. Sequelly, the Hon’ble High Court of Gujarat at Ahmedabad in case **Union of India Vs. Hasmukhbhai P. Rajada Special Civil Application Nos. 15585 and 16201 of 2003** decided on 07.02.2004, has observed as under:-

“We have considered Section 20 of the Administrative Tribunal Act. A bare reading of Section shows that it provides bar to entertain O.A. unless departmental remedies have been exhausted by the delinquent employee. However, the word “ordinarily” in sub section [1] of Section 20 does not provide for an absolute bar but it leaves discretion on the Tribunal to entertain O.A., even where the delinquent employee has failed to file an appeal or exhausts the remedies available to him under the relevant Service Rules. It goes without saying that this discretion has to be exercised judicially and cannot be exercised arbitrarily. Even such discretion cannot be exercised in all cases but it has to be exercised in extra ordinary situation. It requires to be appreciated that the tribunal has considered the decision of full bench in case of **B.PARMESHWARA RAO v. THE DIVISIONAL ENGINEER TELECOMMUNICATIONS, ELURA AND ANOTHER** reported in 1990 [2] [CAT] SLJ pg.525, wherein it is observed that :

“The emphasis on the word “ordinarily” means that if there be any extraordinary situation or unusual event or circumstance, the Tribunal may exempt the above procedure being complied with and entertain the application. Such instances are likely to be rare and unusual. That is why the expression “ordinarily” has been used.”

Reliance in this regard, can also be placed to the judgments of the Hon’ble High Courts of Allahabad and Rajasthan in cases **R.K. Singh Vs. U.O.I. & Others 1999 (4) AWC 3605** and **U.O.I. and Others Vs. CAT and Others in Civil Writ Petition**

No.2794/2000 decided on 26.09.2000 and judgment in case of ***Brij Pal Vs. U.O.I and Others*** in **OA No.4131/2013** decided on 27.04.2016 by this Tribunal.

16. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of subsequent hearing in the matter, the OA is hereby dismissed, being premature.

Needless to mention, in case the applicant remains aggrieved by the order of Revisional Authority, in that eventuality, he would be at liberty to file fresh OA challenging the impugned orders, on all the grounds taken in this O.A and in accordance with law.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh