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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. OA 350/629/2017

Present: Hon'ble Mr.A.K.Patnaik, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

SUSANTA CHAKRABARTI
S/o Sakti Pada Chakrabarti,
Working as PA under Ghoshpara SO
R/o Vill. & P.O. - Ghoshpara (West)
Dist.- Howrah, Pin - 711227,
West Bengal.

...APPLICANT

VERSUS

1. Union of India, through
Secretary,
Ministry of Communication,
Dept. of Post,
Dak Bhawan,
New Delhi - 1.
2. The Director of Postal Services,
South Bengal Region,
Yogayog Bhawan,
C.R.Avenue,
Kolkata - 700012.
3. The Chief Post Master General.
Yogayog Bhawan,
C.R.Avenue,
Kolkata - 700012.
4. The Sr. Superintendent of Post Offices,
Howrah Division,
Kadamtala,
Howrah - 711101.

...RESPONDENTS

For the applicant : Mr.A.Chakraborty, counsel

For the respondents: Mr.K.Prasad, counsel

Heard on : 4.5.2017

Order on : 18.5.2017

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O R D E R (ORAL)

Ms.Jaya Das Gupta, A.M.

The applicant in this case has approached CAT under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- a) Charge sheet dated 28.1.2015 issued by DA cannot be sustained in the eye of law and same may be quashed;
- b) Memo No. F4/B-2/3/2012/Disc-IX dated 21.6.2016 issued by SSPO, Howrah Division is bad in law and same may be quashed;
- c) Memo No.PMG(SB)57(VIG)A-17/8/2016 dated 22.3.2017 issued by respondent NO.2 cannot be sustained in the eye of law and same may be quashed;
- d) An order do issue directing the respondents to refund the amount already deducted from the salary of the account of the applicant.

2. It is the case of the applicant that he was posted as Postal Assistant, Santragachi, Ghoshpara SO when a charge sheet pertaining to his tenure as Postal Assistant, Howrah HO earlier, was issued to him which is set out below :

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE SENIOR SUPERINTENDENT OF POST OFFICES, HOWRAH
DIVISION, HOWRAH - 711101.

Memo No. F4/B-2/3/2012/Disc-IX

Dated at Howrah-711101
The 28.1.2015

Shri Susanta Chakrabarti, PA, Howra H.O under Howrah Division is hereby informed that it is proposed to take action against him under Rule 16 of CCS (CCA) Rules, 1965. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above, is enclosed.

2 Shri Susanta Chakrabarti is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3 If Shri Susanta Chakrabarti fails to submit his representation within 10 days of the receipt of this memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri Susanta Chakrabarti ex parte.

4. The receipt of this memorandum should be acknowledged by Shri Susanta Chakrabarti.

(R.Hembram)
Sr. Superintendent of Post offices,
Howrah Division, Howrah - 711101.

Regd./AD
To
Shri Susanta Chakrabarti
PA, Howrah HO
Howrah - 711101.

Statement of the imputations of misconduct or misbehaviour framed against
Shri Susanta Chakrabarti, PA Howrah HO under Howrah Division.

The said Shri Susanta Chakrabarti while functioning as PA, Howrah HO during the period from 18.7.06 to 27.1.2015, posted SB withdrawal voucher (SB-7) for Rs20,000/- (Rs. Twenty thousand) only dated 15.3.2011 in respect of

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Howrah RS SO AB A/c No. 93500324 standing opened in the name of Tapas Pahari, at Howrah HO ledger on 5.4.11. It he said withdrawal voucher (SB-7) dated 15.3.2011 for Rs.20,000/- (Rs. Twenty thousand) only in respect of Howrah RS SO AB A/c No. 93500324, signature of Sub Postmaster, Howrah RS SO was wanting in the payment order portion in token of having authorized the payment and balance of the account after withdrawal was also not noted on the said application for withdrawal (SB-7) but said Shri Susanta Chakrabarti failed to detect that irregularities.

Said Shri Susanta Chakrabarti neither raised any objection in respect of above mentioned irregularities nor he informed the said irregularities to the Sr. Postmaster, Howrah HO and Sr. Supdt. Of POs, Howrah Division, Howrah-1 for taking necessary action. The aforesaid withdrawal was though reflected in the Howrah HO ledger but not reflected in the relevant pass book and the concerned depositor denied that withdrawal. The concerned SPM, Howrah RS SO fraudulently withdrew Rs.20,000/- (Rs. Twenty thousand) only from Howrah RS SO SB A/c No. 935—324 on 15.3.2011.

The said Shri Susanta Chakrabarti while functioning as PA, Howrah HO during the period from 18.7.06 to 27.1.15, posted SB withdrawal voucher (SB-7) for Rs.80,000/- (Rs. Eighty thousand) only dated 8.3.2011 in respect of Howrah RS SO AB A/c No. 93500222 standing opened in the name of Surath Kumar Adak and Madhusudan Konar at Howrah HO ledged on 2.4.11. On examination of the said withdrawal voucher (SB-7) dated 8.3.2011 for Rs.80,000/- (Rs.Eighty thousand) only in respect of Howrah RS SO SB A/c No. 93500222 it was found that signature of Sub Postmaster, Howrah RS SO was wanting in the payment order portion in token of having authorized the payment and date stamp impression of Howrah RS SO was also wanting on that withdrawal voucher (SB-7) but said Shri Susanta Chakrabarti failed to detect that irregularities.

Said Shri Susanta Chakrabarti neither raised any objection in respect of above mentioned irregularities nor he informed the said irregularities to the Sr. Postmaster, Howrah HO and Sr. Supdt. Of Pos, Howrah Division, Howrah-1, for taking necessary action. The aforesaid withdrawal was though reflected in the Howrah HO ledger but not reflected int he relevant pass book.

The Sr. Postmaster, Howrah HO has intimated vide his letter No. PM/Misc/HRS/Fd/Corr dated 8.8.14 that withdrawal voucher (SB-7) dated 15.3.11 for Rs.20,000/- in respect of Howrah RS SO SB A/c No. 93500324 as well as withdrawal voucher (SB-7) dated 8.3.11 for Rs.80,000/- in respect of Howrah RS SO SB A/c No. 93500222 were posted at Howrah HO ledger on 5.4.11 and 2.4.11 respectively by said Shri Susanta Chakrabarti.

Said Shri Susanta Chakrabarti did not check the abovementioned withdrawal vouchers properly as required under Rule 38 of Post Office Savings Bank Manual Volume-I. Had he checked the aforesaid withdrawal vouchers (SB-7) properly and raised objection in respect of above mentioned irregularities and informed the said irregularities to the Sr. Postmaster, Howrah HO & Sr. Supdt. Of POs, Howrah Division, Howrah-1, necessary enquiries would have been initiated much earlier and fraud would have been detected much earlier and misappropriation of Government money to the tune of Rs.41,51,375.00 (Rs. Forty one lakh fifty ne thousand three hundred seventy five) only (so far detected) committed by Sri Bijoy Krishna Naskar, Ex-SPM, Howrah RS SO could be averted.

Thus said Shri Susanta Chakrabarti acted in contravention of Rule 38 of Post Office Savings Bank Manual Volume-I and also violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

(R.Hembram)
Sr. Superintendent of Post offices,
Howrah Division,
Howrah - 711101".

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3. The disciplinary case was processed and a penalty order was issued. The penalty order dated 21.6.16 runs as under :

"I, Shri R. Hembram, Sr. Supdtr. Of POs, Howrah Divsion, Howrah - 711101, in exercise of power as conferred upon me under Rule 12 of CCS (CCA) Rules, 1965 do hereby punish Shri Susanta Chakrabarti, the then PA, Howrah HO and now PA, Ghoshpara PO with recovery of Rs.6,72,000/- (Rs. six lakh seventy two thousand) only from his pay in 96 (ninety six) equal instalment @ Rs.7000/- (Rs. seven thousand) only per month commencing from June' 2016.

(R.Hembram)
Sr. Supdt. Of POs
Howrah Division
Howrah - 711101."

The applicant then made an appeal on 5.8.2016.

4. It appears from the record that the applicant had approached CAT in OA 447/17 and a direction was given to the respondents by the Hon'ble Judicial Member sitting singly on 13.4.2017 to consider and decide the appeal of the applicant made in this disciplinary case. However, strangely it appears from the record that the Appellate Authority had already issued order on 22.3.2017 i.e. before the order was made by Hon'ble Judicial Member sitting singly. The exhaustive order of the Appellate Authority dated 22.3.2017 is set out below :

"DEPT. OF POSTS, INDIA
O/o THE POSTMASTER GENERAL
SOUTH BENGAL REGION
YOGAYOG BHAWAN, KOLKAA - 700012.

NO. PMG(SB) SF(Vig0/A-17/08/2016 Dated at Kolkata, the 22.3.2017

This is regarding disposal of the appeal dated 5.8.2016 preferred by Sri Susanta Chakrabarti, the then PA of Howrah HO and now PA, Ghoshpara SO against the punishment of 'recovery of Rs.6,72,000/- (Rs. Six lakh seventy two thousand) only from his pay in 96 (ninety six) equal instalments @ Rs.7000/- (Rs. Seven thousand) only per month commencing from the month of June 2016' awarded by the SSPOs, Howrah Division vide memo No. F4/B-2/3/2012/Disc-IX dtd. 216.2016.

2. Sri Susanta Chakrabarti, the appellant, was proceeded against under Rule 16 of CCS (CCA) Rules, 1965 vide SSPOs, Howrah Dvn memo No.F4/B-2/3/2012/Disc-IX dtd. 28.1.15 with the following imputation of misconduct.

(i) That Sri Susanta Chakrabarti, the appellant, while working as PA, Howrah HO during the period from 18.7.06 to 27.1.2015, posted SB withdrawal voucher (SB-7) for Rs.20,000/- dated 15.3.2011 in respect of Howrah RS PO SB A/c No. 93500324 stands opened in the name of Tapas Pahari, in the ledger copy of Howrah HO on 5.4.11. In token of having authorized the payment, signature of the SPM, Howrah RS PO in the order portion specified in the application for withdrawal (SB-7) was wanting. Balance after withdrawal was also not recorded in the space provided in the application for withdrawal (SB-7). Shri Chakrabarti failed to detect these irregularities.

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On 2.4.11, the appellant Sri Chakrabarti posted SB withdrawal voucher (SB-7) for Rs.80,000/- dated 8.3.2011 in respect of Howrah RS PO SB A/c No. 93500222 stands opened in the joint name of Sri Surath Kumar Adak and Madhusudan Konar in the ledger copy of Howrah HO. In token of having authorized the payment, signature of the SPM, Howrah RS PO in the order portion specified in the application for withdrawal (SB-7) and impression of date stamp of the PO were wanting. Shri Chakrabarti failed to detect these irregularities.

Shri Chakrabarti neither raised any objection in respect of the irregularities nor he informed the matter to the Sr. Postmaster, Howrah HO and SSPOs, Howrah Division for taking necessary action. The transactions of withdrawal have been reflected in the concerned ledgers at Howrah HO but not recorded in the concerned pass books.

Shri Chakrabarti did not carry out proper check on both the abovementioned withdrawal vouchers as required under Rule 38 of PO SB Manual Volume-I. Had he checked the withdrawal vouchers properly, raised objections and informed to the Sr. Postmaster, Howrah HO & SSPOs, Howrah Division preventive measure would have been taken or necessary enquiry would have been initiated earlier and misappropriation of Government money to the tune of Rs.41,51,375.00 (detected so far) committed by Sri Bijoy Krishna Naskar, Ex-SPM, Howrah RS SO could be averted.

It is therefore imputed that said Shri Susanta Chakrabarti acted in contravention of Rule 38 of Post Office Savings Bank Manual Volume-I and also violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

(ii) On conclusion of the proceedings, after following the laid down procedure, Sri Chakrabarti was awarded the punishment of 'recovery of Rs.6,72,000/- (Rs. Six lakh seventy two thousand) only from his pay in 96 (ninety six) equal instalments @ Rs.7000/- (Rs. Seven thousand) only per month commencing from the month of June 2016' awarded by the SSPOs, Howrah Division vide memo No. F4/B-2/3/2012/Disc-IX dtd. 216.2016.

Being aggrieved, the Sri Chakrabarti has preferred the instant appeal dtd. 5.8.2016.

3. In his appeal the appellant has put forward the following arguments against the punishment order -

(i) That the claim of the disc. authority for application of mind without prejudice to conclude the case is totally unacceptable for the reasons that the disc authority framed the charges and decided the case based on the fact alleged irregularities could not be detected by the appellant as he failed to raise objection. But the disc authority failed to produce the objection register which is an inspection item. Thus it stands that the disc authority decided the case on the basis of a record which could not be produced. The appellant was implicated for his failure to carry out proper checking of two withdrawal vouchers (SB-7) in two different dates involving amount of Rs.20,000/- and Rs.80,000/- (total Rs. One lakh) but the disc authority ordered recovery of Rs.6,72,000/-, without any logic but preconceived. There is Dte's instruction to take the recourse of PAD Act 1850 to recover loss sustained by the dept. in fraud and loss cases but no such steps appear to have been taken. It is also argued by the appellant that if it is the understanding of the disc authority that this appellant failed to detect the alleged irregularity on a particular date he will be responsible for future loss sustained, then a question will surely come as to why the persons carried out the annual inspection and verified balances of a particular number of pass books will not be held responsible.

(ii) That the appellant Sri Chakrabarti cannot agree with the contention of the disc authority on providing reasonable opportunity for preparation of defense statement. Authority took the stand that no objection could be raised by the appellant detecting the irregularities

without producing the objection register. Rather it was admitted by the authority that the custodian failed to produce the objection register. Disc authority in his findings observed that the appellant was duly allowed to have access to the extent possible which may be adjudged with reference to rule 77 of P&T manual Vol-III. Preservation period of the record is not over; as such the observation of the disc authority cannot be taken as valid and justified. It was also observed by the disc authority that records could not be produced have any relevancy on it. Such circumstance forced the appellant to come to the opinion that the disc authority is desperate to impose recovery of a hefty amount by making anybody a subsidiary offender by hook or crook. From the order book of the Sr. Postmaster, it was established that the appellant worked in SOSB only from 4.4.2011 forenoon as he was on direction to Uday Narayan Pur SO and wherefrom he got relieved on 2.4.11 afternoon. Thus the charge of failure to detect irregularity in withdrawal of Rs.80000 from SB account no 93500222, posted on 2.4.11 cannot be established. In order to establish another withdrawal of Rs.20000 from the account no 93500324, disc authority declared irrelevancy of the objection register. As per Ministry of Home Affairs OM no. F.30/5/61-AVD dtd. 25.8.1961, the question of relevancy should be looked at from the point of view of the defense and if there is any possible line of defense to which the document may in some way be relevant, request for access should not be rejected. As such the reasonable opportunity was denied.

(iii) That the charge in the matter of failure in recording/raising objection, without producing the concerned objection register; is fictitious and cannot be tenable.

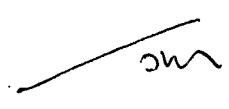
(iv) That the disc authority categorically made allegation for non observation of prescribed checking as per rule 38 of POSB manual vol-I against the withdrawal vouchers (SB-7) for SB account no 93500222 on 2.4.11 in the statement of imputation. But when the presence of the appellant on 2.4.11 at Howrah HO is challenged on the basis of documentary evidence, disc authority admitted the fact and mentioned in his observation that the charged official was on deputation at some other office on 2.4.11. the observation surely removes all the alleged responsibility arose to the withdrawal voucher against SB account no. 93500222. Illegal sharing of user ID and Password to anonymous person is a fresh allegation at this stage which definitely is not supported by rules. Fresh allegation cannot be added during the stage of final observation by the disc authority. The appellant is well aware regarding the confidentiality of user ID and Password. Appellant also questioned if at all illegal sharing took place then why it was not figured in the statement of imputation and administration with all mechanism failed to maintain overall supervision as required under rule 214 of Postal manual vol-V. The appellant demands to have an inquiry in the matter as this appellant is confident that user ID and Password had never been shared.

(v) That the disc authority is not in a position to point out the person with whom the user ID and Password allegedly shared. Only to stand by the charge sheet, disc authority brought these thought and made the appellant a scapegoat to recover a huge amount of money by making him a subsidiary offender and in order to save the prime offender.

(vi) That the penalty imposed upon the appellant is contravention of rule 106 of P&T manual vol-III which provides that the penalty of recovery can be imposed only when it is established that the Govt servant is responsible for a particular act of negligence which caused the loss. Disc authority failed to establish the alleged failure on the part of the appellant. Order dtd 3.6.2016 issued in OA no. 350/00347/2014 by Hon'ble Tribunal, Calcutta Bench has also been referred.

4.I have examined the appeal with reference to all the relevant papers, documents, records with the following observations point wise:

(i) Instruction has been issued by the Postal Directorate vide letter No.4-66/TN-16/2009-Inv dtd 19.3.2015 for optimal recovery of loss



of public money involved in fraud case from the offenders involved. The appellant Sri Susanta Chakrabarti, in the instant case, is one of the subsidiary offenders. He worked as PA, SO SB branch of Howrah HO. Rs.20000/- and Rs.80000/- have fraudulently been withdrawn from Howrah RS SO SB account no. 93500324 & 93500222 on 15.3.2011 & 8.3.2011 respectively. The appellant posted the amount of withdrawals in the respective ledgers without carrying out proper checking of the withdrawal vouchers and failed to detect the irregularities. Total loss, detected so far comes to Rs.41,51,375/-. Had the appellant check the withdrawal voucher properly and report the irregularity timely, further loss of Rs.23,08,700/- could be averted. Excluding the primary offender, seven more subsidiary offenders including the appellant have been identified and amount of recovery awarded accordingly. Therefore responsibility on the part of the appellant cannot be denied and the amount of recovery as imposed as penalty is just.

- (ii) The argument put forward by the appellant regarding denial of reasonable opportunity is not at all convincing. Disc authority has allowed Sri Chakraborty to have access to the relevant documents. All requisitioned documents have no relevancy. Sri Susanta Chakrabarti, the appellant posted SB withdrawal voucher (SB-7) for Rs.20000/- dtd 15.3.2011 in SB account no. 93500324 stands opened in the name of Sri Tapas Pahari, in the ledger copy of Howrah HO on 5.4.2011. The irregularity as noted above has not been detected and brought to the notice of authority concerned. As a result, further loss of Rs.23,08,700 has taken place which could have been averted.
- (iii) The argument of the appellant is not acceptable. While working as Ledger PA at the SO SB branch of Howrah HO, he posted the withdrawal voucher having no signature of the SPM on the portion of payment order specified in SB-7. Neither he raised objection and informed the irregularity to the authority concerned nor did he maintain the objection register to record such irregularity. For such non maintenance, the objection register is not available. Had he maintain and record the irregularity timely, suitable action would have been started to arrest further loss.
- (iv) The appellant argued that he was on deputation at some other office viz Udaynarayanpur SO where from he got relieved on 2.4.2011 afternoon. It is also true that withdrawal of Rs.80000 from SB account no 93500222 was posted on 2.4.2011 in the user ID and password of the appellant. So, the secrecy and confidentiality of user ID and password was not maintained by the appellant and irregularly given to some other person. But the posting of withdrawal voucher amounting Rs.20000 from SB account no 93500324 on 5.4.11 by the appellant is beyond doubt. So he cannot deny the responsibility of the occurrence of further loss and as such his arguments are not tenable.
- (v) Argument is not acceptable. Posting of withdrawal voucher on 2.4.11 in the user ID and password of the appellant proves that the same has been irregularly shared with some other person unauthorisedly. Hence question of making the appellant a scapegoat does not arise. Recovery from the primary offender has also been ordered and the appellant was identified as one of the subsidiary offenders for his negligence by not reporting the irregularity committed by the primary offender. The quantum of penalty of recovery amounting to Rs.6,72,000/- imposed on the appellant is commensurate with the proportionate share of his contributory negligence.
- (vi) The argument of the appellant is not tenable as the charges brought against him were established and his contributory negligence on the loss of govt money is beyond doubt. The penalty

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imposed is also commensurate with his contributory negligence. Total amount of recovery imposed to either offenders including the primary offender is Rs.47,63,480/- (including normal interest and penal interest) and yet to be recovered is Rs.407680/-.

5. In view of the discussions made above, I am of the considered view that the charges brought against the appellant have been established beyond doubt and also the punishment awarded to him is commensurate with the negligence of duty on the part of the appellant. According the following order is passed:

ORDER

I, R.Umrao, Director of Postal Services, South Bengal Region, in exercise of the power vested in me under Rule 24 of CCS (CCA) Rules, 1965, hereby confirm the punishment of 'recovery of Rs.6,72,000/- (Rs. Six lakh seventy two thousand) only from his pay in 96 (ninety six) equal instalments @ Rs.7000/- (Rs. Seven thousand) only per month commencing from the month of June 2016' awarded by the SSPOs, Howrah Division vide memo No. F4/B-2/3/2012/Disc-IX dtd. 216.2016 upon the appellant - Sri Susanta Chakraborti, and his appeal dated 5.8.2016 is hereby rejected.

(Rajeev Umrao)
Director Postal Services,
South Bengal Region,
Kolkata - 700012."

Against such order of the Appellate Authority the applicant has approached CAT on 24.4.2017 in the present case seeking the above reliefs without approached ~~the~~ the Revision Authority provided in the statute.

5. The statute concerned in this case is CCS(CCA) Rules and we see that after the appeal there is definite provision under Rule 29 of the CCS (CCA) Rules regarding revision.

6. While deciding on the issue of revision a Larger Bench i.e. a Third Member of CAT, Calcutta Bench, namely Hon'ble Justice V.C.Gupta, Judicial Member had given final orders in **OA 1093/2016 (Amitava Sarkar -vs- UOI & Ors.)**, relevant extract of which are set out below :

"13. Learned counsel further relied upon the judgment rendered by a Constitutional Bench of 7 Hon'ble Judges in case of S.S.Rathore -vs- State of Madhya Pradesh, (1989) 4 SCC 582, wherein it was held that availing all the remedies including the revision was mandatory in nature in the light of Section 20 of the A.T.Act. He relied upon para 15, 16, 19 and 20 of the judgment which is extracted herein below :

15. In several States the Conduct Rules for Government servants require the administrative remedies to be exhausted before the disciplinary orders can be challenged in court. Section 20(1) of the Administrative Tribunals Act, 1985 provides:

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"20(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."

16. The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of s. 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 s. 20 of the Administrative Tribunals Act.

19. The question for consideration is whether it should be disposal of one appeal or 'the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of sub-ss. (2) and (3) of s. 20 of the Administrative Tribunals Act. There, it has been laid down:

"20(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 grievances; 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 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."

20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

15. I am of the view that ordinarily where statutory remedy of revision is available but not availed, the application under Section 19 may not be entertained as contained in section 20 of A.T.Act. It would also be correct to say that in case of absence of availability of statutory remedy the petition under Section 19 may be entertained. The Hon'ble High Court of Calcutta in the case of Prasanta Bhattacharjee (supra) while interpreting the provision of Section 20 of the A.T.Act has held that where a drastic reduction of pension and salary of Group D employee has been made without observing the principles of natural justice and

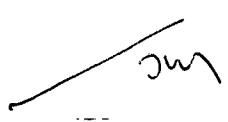
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without giving any prior intimation certainly be a case where the Tribunal can exercise its extraordinary power and admit the application and the application should not be dismissed only on the ground that employee has not approached the authorities with representation. So far as the case of Whirlpool Corporation (supra) is concerned it deals with the power which may be exercised by the Hon'ble High Court while invoking the jurisdiction under Article 226. The perusal of the judgment further reveals that power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provision of the Constitution. It was further ruled that the power of the Hon'ble High Court is not only to issue the different nature of nature of writ to enforce any fundamental right contained in Chapter 3 of the Constitution of India but also for any other purpose and High Court having regard to the fact and circumstances of the case has a discretion to entertain or not to entertain a Writ Petition. While exercising jurisdiction the High Court have imposed upon themselves certain restrictions, one of which is that if the effective and efficacious remedies available to the writ petitioner the High Court would not ordinarily/normally exercise its jurisdiction. It is a self imposed restriction but as held by the Apex Court in *catena* of judgments alternative remedy not to operate as an absolute bar and in at least 3 contingencies the self imposed restriction can be lifted where there has been a violation of principles of natural justice.

- (i) where there has been a violation of the principle of natural justice
- (ii) where the order or proceedings are wholly without jurisdiction or
- (iii) where the vires of the act is challenged or fundamental rights have been violated

In *Calcutta Discount Co. -vs- ITO Companies Distt*, AIR 1961 SC 372 it was observed that where any authority acting without jurisdiction or is likely to subject a person to lengthy proceeding and unnecessary harassment, the High Court will issue appropriate orders or direct to prevent such consequences. After considering these judgments referred herein above, the Hon'ble Apex Court in *Whirlpool Corporation* case (supra) in para 20 has ruled that so far as the rule of law as to jurisdiction of High Court in entertaining a writ petition under Article 226 of Constitution is concerned, the High Courts instead of availability of alternative statutory remedy in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or it purported to absolve jurisdiction without any legal foundation. Thus the judgments cited on behalf of the parties make it abundantly clear that the power under Section 20 is discretionary in nature but subject to restrictions contained in the Section 20 of A.T. Act itself.

16. It is well settled principle of law that where a statutory authority is required to do something in a particular manner, the same must be done in that manner only. The Tribunal or statutory authority acted under statute is creatures of the statute and they must act within the four corners of the statute. The above mentioned rule of law has been discussed by the Hon'ble Supreme Court in *Babu Vargese and others -vs- Bar Council of Kerala, State of U.P. -vs- Sinhana Singh*, AIR 1964 SC 358. The aforesaid judgments were again considered in *Bhabanagar University -vs- Patilana Sugar Mills Pvt. Ltd.*, (2003) 2 SCC 111. Tribunals have been created by enacting a statute conferring certain powers which are to be exercised by it. Therefore, the power conferred on the Tribunal cannot be much wider than those are available to the High Courts. Therefore, the self imposed restriction by High Court while exercising the jurisdiction under Article 226 can be taken as a guiding principle to exercise the jurisdiction conferred on the Tribunal under



Section 20. The word 'ordinarily' used in sub section 1 gives discretion to some extent to admit a petition subject to statutory provisions contained in sub-section 1 read with sub -section 2 and 3 of Section 20. While considering the question of bar contained in section 20 of A.T.Act Hon'ble the Calcutta High Court in Prasanta Bhattacharjee case (supra), held that in the light of that particular facts of the case the satisfaction of the Tribunal cannot applied as bar.

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 available 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.

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. Bt 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."

7. Here in this case the applicant exhausted the remedy of appeal which was rejected. The order of appeal was further subject to challenge in revision under Rule 29 of the CCS (CA) Rules which the applicant has not availed of nor any specific pleadings have been made as to why he has not availed the other remedies and directly approached the CAT under the present OA.

8. Hence it is directed that the applicant shall approach the Revisionary Authority as per statute within a month of getting a copy of this order and the Revisional Authority under the statute shall condone the delay if any and dispose of the Revision Petition strictly as per the statute within a period of two months keeping in mind that the applicant is not the main offender but one of subsidiary offenders.

SW

9. The OA is disposed of accordingly with the above instructions.

(JAYA DAS GUPTA)
MEMBER (A)

(A.K.PATNAIK)
MEMBER (J)

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