

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

Original Application No. 1025 of 2012

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Smt Shyamali Chowdhury

.....Applicant

-Vs-

Union of India & ors.

.....Respondents

For the petitioner : Mr S. K. Dutta , Counsel

For the respondents : Mr T. K. Chattopadhyay, Counsel

Date of Hearing : 28.04.2016

Date of Order : 06.05.2016

ORDER

JUSTICE V. C. GUPTA, JM:

This O.A has been filed under Section 19 of the Administrative Tribunals Act, 1985 by one Smt Shyamali Chowdhury, who has been dismissed from service from the post Assistant Nursing Sister of Employees State Insurance Corporation (for short ESIC) vide order dated 26.10.2012 after full fledged enquiry. The following reliefs has been sought by the applicant :

- “(a) An order or direction do issue directing the respondent authorities not to take any step or further step on the basis of the purported memorandum/dismissal letter dated 26.10.2012, and/or to keep the matter in abeyance till the disposal of this application filed before the learned Tribunal.
- (b) An order do issue directing the respondent authorities to cancel, rescind withdraw the purported memorandum/letter of dismissal dated 26.10.2012 as annexed along with this application being Annexure A-21.
- (c) An order do issue upon the respondent authorities calling upon them for production of all the record before this Tribunal so as to do conscionable justice to the applicant.”

2. As per averment made in the application the order of dismissal has been challenged on several grounds. The respondents contested the claim of the applicant on the preliminary

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ground that the applicant has not exhausted the departmental remedies of appeal and revision and straight away came to challenge the order in this Tribunal. Hence the application is not maintainable in view of Section 20 of the Administrative Tribunals Act 1985. As this question goes to very root of jurisdiction to entertain the claim, therefore it would be necessary to look into this aspect.

3. Learned counsel for the applicant would submit that as the matter has been filed in 2012 hence this question cannot be now entertained after exchange of the pleadings on this technical ground. On the contrary the learned counsel for the respondents would submit that this application is not admitted and before admission the pleadings are complete and as the matter has been disposed of on the basis of pleadings before passing any order, hence this question is still survives. He however submits that Section 20 is an impediment in exercising jurisdiction by this Tribunal with regard to admission of the case. Hence this plea ought to have been disposed of.

4. To decide this controversy few facts are necessary to be taken into consideration that the services of the applicant are admittedly governed by a set of rules which are known as Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations 1959 (hereinafter referred to as regulation). This regulation reveals that all the employees of the ESIC are governed by this regulation. Regulation 11 deals with penalties which includes minor and major penalties including dismissal from service which shall ordinarily be disqualification for future employment under the Corporation. Regulation 12 deals with the disciplinary authorities. Regulation 17 is the provision of appeal. Regulation 18 deals with the orders against which the appeal lies. Regulation 19 deals with appellate authorities. Regulation 20 deals with revision. Regulation 22-A deals with review. Regulations 17, 18, 19, 22 and 22-A along with 5th Schedule are being re-produced herein below for ready reference :

"17. APPEALS :- Notwithstanding anything contained in these Regulations, no appeal shall lie against -

- (i) any order made by the Chairman of the Standing Committee;
- (ii) any order of an interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceeding, other than an order of suspension;

- (iii) any order passed by an inquiring authority in the course of an inquiry under paragraphs 3(1) to 3(22) of the Third Schedule to these Regulations.

18. ORDERS AGAINST WHICH APPEAL LIES :

Subject to the provisions of regulation 17, an employee may prefer an appeal against all or any of the following orders, namely :-

- (i) an order of suspension made or deemed to have been made under regulation 10;
- (ii) an order imposing any of the penalties specified in regulation 11 whether made by the disciplinary authority or by an appellate or reviewing authority;
- (iii) an order enhancing any penalty, imposed under regulation 11;
- (iv) an order which –
 - (a) denies or varies to his disadvantage, his pay, allowances, pension or other conditions of service as regulated by regulations or by agreement; or
 - (b) interprets to his disadvantage the provisions of any such regulation or agreement;
- (v) an order –
 - (a) stopping him at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar;
 - (b) reverting him while officiating in a higher grade or post to a lower grade or post,
 - (c) reducing or withholding the pension or denying the maximum pension admissible to him under the regulations;
 - (d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
 - (e) determining his pay and allowances –
 - (i) for the period of suspension, or
 - (ii) for the period from the date of his dismissal, removal or compulsory retirement from service or from the date of his reduction to a lower grade, post, time-scale or stage in a time scale of pay, to the date of his reinstatement or restoration to his grade or post, or
 - (f) determining whether or not the period from the date of his suspension or from the date of dismissal, removal, compulsory retirement or reduction to a lower grade, post, time-scale of pay or stage in a time scale of pay to the date of his reinstatement or restoration to his grade or post shall be treated as a period spent on duty for any purpose.

EXPLANATION – In this regulation –

- (i) The expression 'employee' includes a person who has ceased to be in the service of the Corporation;
- (ii) The expression 'pension' includes additional pension, gratuity and any other retirement benefit.

19 APPELLATE AUTHORITIES

(1) An employee of the Corporation, including a person who has ceased to be in the service of the Corporation, may prefer an appeal against all or any of the orders specified in regulation 18 to the authority specified in the Fifth Schedule to this Regulation in the manner as prescribed in Sub-regulations (2) to (5) of this regulation.

(2) Where any order is passed originally imposing any of the penalties specified in regulation 11 or where an order is passed on first appeal from such original order, imposing any of the penalties specified in clauses (i) to (iv) of regulation 11 by an appointing authority subordinate to the Director General or to any other authority specified in this behalf by the Director General, the appeal against such order shall lie to the authority specified in the Fifth Schedule or the other authority so specified, as the case may be,

(3) Notwithstanding anything contained in sub-regulation (2), where an order is passed originally imposing any of the penalties specified in clauses (i) to (iv) of regulation 11 by an authority, subordinate to the appointing authority, the appeal against such order shall, in the first instances, lie to the appointing authority and thereafter, if the penalty has been enhanced by such authority that being the Director General) under paragraph 3(2) (c) of the Fourth Schedule or regulation 22, to the authority specified in Fifth Schedule or any other authority specified for the purpose by the Director General.

(4) An employee may appeal to the Chairman of the Standing Committee against any order passed originally, imposing any of the penalties specified in regulation 11 by the Director General or against any order passed on first appeal from such original order, by the Director General.

(5) Notwithstanding anything contained in sub-regulation (1) to (4) –

(i) an appeal against an order in a common proceeding held under paragraph 5 of the Third Schedule shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately sub-ordinate;

(ii) Where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.

*22. REVISION –

(1) Notwithstanding anything contained in these regulations, in the case of an order made under these regulations, the Chairman of the Standing Committee or the Director General may within six months of the date of the order proposed to be revised, call for the records of any inquiry and revise any order made under these regulations 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) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the employee concerned has been given a reasonable opportunity or making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of regulation 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under para 3 of the Third Schedule has not already been held in the case, no such penalty shall be imposed except after an inquiry in the manner laid down in Third Schedule, subject to provisions of para 6 of the Third Schedule.

- (2) No proceeding for revision shall be commenced until after, -
 - (i) the expiry of the period of limitation for an appeal; or
 - (ii) the disposal of the appeal, where any such appeal has been preferred.
- (3) An application for revision shall be dealt with in the same manner as if it were an appeal under these regulations.

***22-A REVIEW** – The Chairman of the Standing Committee may at any time, either on his own motion or otherwise, review any order passed under these regulations, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice.

Providing that no order imposing or enhancing any penalty shall be made by the Chairman, Standing Committee unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in regulation 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an inquiry under paragraph 3 of the Third Schedule has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in paragraph, 3 of the Third Schedule, subject to the provisions of paragraph 6 of the Third Schedule."

5. The scheme of Regulation made it abundantly clear that after passing the order of dismissal in this case appeal lies. After appeal there is a provision of revision and review by the highest authority, i.e. the Chairman of the Standing Committee. Admittedly, in this case no such departmental remedies has been exhausted before approaching this Tribunal.

6. On the strength of this regulations, it has been submitted on behalf of the respondents that application is liable to be dismissed as premature one and as such it is not legally

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maintainable in view of Section 20 of the Administrative Tribunals Act 1985. Section 20 of the Administrative Tribunals Act is re-produced herein below for ready reference :

"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."

It has been contended on behalf of the respondents that in this case the Director General approved the action against the applicant. Hence there was no valid reason for filing an appeal before that authority who has approved the action against the applicant.

7. From the perusal of the scheme mentioned under regulations there are two appellate authorities in the present case, one Director General and another Chairman, Standing Committee of ESIC. There are not only this remedy, review and revision is also available. The reasons asserted by the applicant's counsel for not filing appeal in our considered view is not sustainable for the reasons that this Tribunal is not acting under Article 226 or 227 of the Constitution of India but is acting within the statutory provisions contained in Administrative Tribunals Act and as such discharged statutory function and limitation contained in this statute. This Tribunal has not possessed with extra ordinary power with the High Court under Article 226, wherein the alternative remedy is not an absolute bar for exercising the jurisdiction under

Article 226 by the High Court in this case, but no such power can exercise by this Tribunal. Therefore, we are of the firm view that in absence of any proof that other remedies are exhausted the application cannot be entertained. Therefore, we are of the view that this application is dismissed as not maintainable due to limitation contained under Section 20 of the Administrative Tribunals Act. However, the applicant would be at liberty to seek appropriate remedy available to him under the relevant regulations and the dismissal of this O.A will not be an impediment in seeking the departmental remedies to the applicant. As we have decided the matter on the ground of jurisdiction to entertain this application by this Tribunal, therefore we refrain ourselves from making any comment on the merit of this case.

8. With these observations, the O.A is dismissed. There shall be no order as to costs.

(Jaya Das Gupta)
Administrative Member

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(Justice V.C.Gupta)
Judicial Member

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