CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 5 of 2016
M.A. 272 of 2019
CPC. 84 of 2019

Reserved on : 9.9.2019
Date of order: 20.9.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Jantara Pant,
Child Development Project Officer (now Mukhya Sevika),
Wife of Shri Akshay Pant,
Resident of South Point,
Shadipur Post Office,
Port Blair – 744 106.

... Applicant

- V E R S U S -

1. Union of India,
Service through the Secretary,
To the Government of India,
Ministry of Human Resource Development,
Department of Women & Child Development,
New Delhi – 110 001.

2. The Lieutenant Governor,
(Disciplinary Authority),
Andaman & Nicobar Islands,
Raj Niwas,
Port Blair – 744 101.

3. Shri Anand Prakash,
Chief Secretary & CVO,
Andaman & Nicobar Administration,
Port Blair – 744 101.

4. Shri Ajay Saxena,
Government of India,
Ministry of Environment & Forest,
Paryavaran Bhawan,
CGO Complex,
Lodhi Road,
New Delhi – 110 001.

5. The Secretary,
Ministry of Home Affairs,

North Block,
New Delhi – 110 001.

6. The Joint Secretary (UTS),
Ministry of Home Affairs,
North Block,
New Delhi – 110 001.

... Respondents

For the Applicant : Mr. B.R. Das, Counsel

For the Respondents : Mr. R. Halder, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) An order quashing and setting aside the entire proceeding and to allow the applicant all consequential service benefits;

(b) Issuance of any other order or orders and/or direction as this Hon'ble Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings, documents on record as well as various citations referred to by the Ld. Counsel in support of their respective claims. Written notes of arguments have been filed by both parties.

3.1. The submissions of the applicant, as articulated through her Ld. Counsel, in brief, are as follows:-

(i) The applicant has sought relief for quashing of chargesheet dated 20.2.2009 alleging that she has acquired assets disproportionate to her known sources of income to the tune of Rs. 40,31,387/- during the period 6.9.1984 to 10.2.2009, and, that, a CBI case bearing No. 4.4.2005 has also been filed against the applicant under Section 13(2) of Prevention of Corruption Act, 1988, which remains pending before the Court of the Special Judge, CBI Court at Port Blair at the stage of examination of witnesses.

(ii) The charge memorandum issued by the disciplinary authority, however, allege that the applicant had acted in a manner unbecoming of a government servant contravening Rule 18(2) of CCS (Conduct) Rules, 1964. The rules stipulated that except with the previous knowledge of the authority, no government servant should acquire or dispose of any immovable property.

The disciplinary authority, after having obtained the enquiry report in which the applicant had denied the allegations, imposed a major penalty vide order dated 22/23-7-2014 which states as follows:-

> "Smti. Jantra Pant, CDPO is reduced to the minimum of the time-scale of pay/grade/post of "Mukhya Sevika" with immediate effect for a period of five years, which shall be a bar to the promotion of the govt. servant (Smt. Jantra Pant) during the above said five years period to the time scale of pay/grade/post of CDPO from which she was reduced and on promotion on expiry of the said five years period,
>
> (i) Her pay shall be restored and will be allowed first increment on such restoration from the date immediately succeeding the date of restoration of pay from current stage and thereafter she will earn her increment every year and
>
> (ii) She shall not regain her original seniority in the higher scale of pay/grade/post or service of CDPO."

(iii) The applicant thereafter preferred an appeal dated 5.9.2014 before the appellate authority and a supplementary appeal dated 2.3.2015, alleging serious procedural lapses on the part of the disciplinary authority. The appeals remain pending for consideration at the level of the appellate authority.

The applicant has advanced, primarily, the following grounds in support of her claim:-

(a) That, the disciplinary authority issued the chargesheet without application of his mind as to the commission of the offence, that he was primarily influenced by the CBI case filed against the applicant, and, being bereft of any documents or statement of witnesses, the authority failed to conclude independently on the allegations against the

applicant. In support, the Ld. Counsel for the applicant would refer to the ratio in ***Union of India v. B.N. Jha, 2003 SCC (L&S) 488,*** which rules that the disciplinary authority should apply his independent mind to the materials on record.

(b) That, there is no provision of CCS (Conduct) Rules, 1964 that provides for departmental chargesheet for acquisition of disproportionate assets.

(c) The DA and IO failed to supply list of witnesses of and copies of documents to the applicant, which amounts to denial of reasonable opportunity, thereby violating the principles of natural justice.

(d) The chargesheet issued on 10.2.2009 for alleged commission of offence since 1984 deserves to stand quashed on ground of delay as laid down by the Hon'ble Apex Court in the following judicial pronouncements:-

- ***State of MP v. Bani Singh 1991 SCC (L&S) 638***
- ***M.V. Bijlani v. Union of India & ors. 2006 SCC (L&S) 919***
- ***Ananta R. Kulkarni v. Y.P. Education Society 2013 (2) SCC (L&S) 593***
- ***P.V. Mahadevan v. M.D., T.N. Housing Board (2005) 6 SCC 636.***

(e) That, the applicant had represented on 27.8.2012 to the disciplinary authority alleging bias and violation of principles of natural justice.

3.3. In her appeal preferred before the appellate authority, the applicant has advanced the following grounds:-

(i) The disciplinary authority failed to consult the CVC as mandated vide CVC circular dated 28.9.2000.

(ii) The disciplinary authority failed to consult the UPSC under Article 320(3)(c) before imposing punishment.

(iii) The proceedings suffer from infirmity in the absence of general examination of the applicant / appellant under provisions of Rule 14(18) of CCS (CCA) Rules, 1965.

(iv) That, the disciplinary authority, having misconstrued the orders of the appellate authority, directed a denovo proceeding by appointing a new enquiry officer.

(v) The newly appointed enquiry officer held enquiry on revised charges incorporating additional allegation of misconduct under Rule 13(2)(ii) in the memorandum of charges.

(a) The applicant would therefore pray that appeal dated 5.9.2014 read with that reminder dated 2.3.2015 be treated as allowed, that, all further proceedings initiated on behalf or under disciplinary authority be treated as a nullity, and the departmental proceedings commenced by the departmental chargesheet dated 10.2.2009 being the same as that pending before the Special CBI Judge since 2005 should stand quashed in following the decision arrived at in ***O.A. No. 351/148/2015 dated 10.4.2017 (Bimal Sinha v. Union of India & ors.)***.

4. The respondents have controverted the claim of the applicant. The primary arguments of the respondents are as follows:-

(i) That, the applicant had participated fully in the enquiry without raising any question of setting aside the proceedings before any competent court of law and/or any Tribunal and it is only after declaration of the penalty that the applicant had approached the Tribunal in O.A. No. 5 of 2016, which is presently under adjudication.

(ii) Three departmental proceedings and two criminal proceedings for different causes were initiated against the applicant.

(iii) Two of the departmental proceedings have concluded. In the first case, vide order No. 462 dated 7.2.2011, a penalty of withholding of increment for a period of three years was imposed upon the applicant. In the second case, a penalty of withholding of one increment for two years was imposed upon the applicant vide order No. 2183 dated 13.6.2011. The applicant has preferred an appeal against the penalty imposed on 7.2.2011. In the second proceedings, the Ministry of Home Affairs, vide Order dated 19.6.2015, had modified the penalty Order of the Disciplinary Authority by withholding of one increment for one year without cumulative effect.

(iv) An FIR was Registered before Police Station Aberdeen for loss of an important File relating to "Recruitment Rules for the post of Welfare Officer (Handicapped) from the custody of the applicant. Further, CBI has filed a charge sheet against the applicant under Prevention of Corruption Act, 1988, as amended from time to time.

(v) The third disciplinary proceedings which had continued in a major penalty order dated 22/23.07.2014 against the applicant/charged officer as follows:-

"Smti. Jantra Pant, CDPO is reduced to the minimum of the time-scale of pay/grade/post of "Mukhya Sevika" with immediate effect for a period of five years, which shall be a bar to the promotion of the govt. servant (Smt. Jantra Pant) during the above said five years period to the time scale of pay/grade/post of CDPO from which she was reduced and on promotion on expiry of the said five years period,

(i) Her pay shall be restored and will be allowed first increment on such restoration from the date immediately succeeding the date of restoration of pay from current stage and thereafter she will earn her increment every year and

(ii) She shall not regain her original seniority in the higher scale of pay/grade/post or service of CDPO."

Thereafter, on her having preferred an appeal, the appellate authority remitted the case to the disciplinary authority with the advice to complete the disciplinary proceedings in terms of Rule 14(18) of CCS (CCA) Rules, 1965. The disciplinary authority, in compliance with such advice, concluded the proceedings after having appointed a new enquiry officer, upon the transfer of the earlier IO and the third disciplinary proceedings has attained finality vide Order no. 555 dated 20th / 22nd February, 2019. The following penalty was imposed on the applicant:

> "Smti. Jantara Pant, CDPO is imposed with the major penalty of reduction to the minimum of the time-scale of pay/grade post of 'Mukhya Sevika' in pay Level 5 (Scale of Pay Rs. 29,200 – 93,300) with immediate effect which shall be a bar to her promotion to the time scale of pay/grade/post of CDPO from which she was reduced. In other words, she will not regain her pay/grade/post of CDPO during the rest of her career. She is also barred from earning further increments....."

(vi) That, the applicant has already filed her statutory appeal before the appellate authority on 19.3.2019 and, knowing fully well that such statutory appeal remains pending, the applicant has approached the Tribunal by filing the present O.A.s and related M.A.s.

(vii) In response to the issue as to whether UPSC is required to be consulted before issuing the penalty order at any stage the respondent have referred to the Constitutional Bench judgment in ***State of Uttar Pradesh v. M.L. Srivastava 1975 AIR 912*** that ruled that the provisions of Article 323 (C) are not mandatory and non-compliance of these provisions does not confer a cause of action to the respondents in a court of law. The respondents would highlight that the same ratio was relied upon by the Hon'ble Apex Court in ***Union of India v. T.V. Patel (2007) 4 SCC 785.***

(viii) The respondents have relied on the ratio of the Hon'ble Apex Court in ***Prahlad Raut v. All India Institute of Medical Sciences Civil Appeal No. 6640 of 2019 @ SLP (C) No. 30046 of 2017,*** in ***State of HP & ors. v. Gujarat Ambuja Cement Ltd. & anr. (2005) 6 SCC 499*** as well as upon a catena of judgments in,

- ✓ ***G. Veerappa Pilla v. Raman & Raman Ltd. AIR (1952) SC 192;***
- ✓ ***Assistant Collector of Central Excise v. Dunlop India Ltd., AIR (1985) SC 330;***
- ✓ ***Ramendra Kishore Biswas v. State of Tripura, AIR (1999) SC 294;***
- ✓ ***Shivgonda Anna Patil & ors. v. State of Maharashtra & ors. AIR (1999) SC 2281;***
- ✓ ***C.A. Abraham v. ITO Kottayam & ors. AIR (1961) SC 609;***
- ✓ ***Titaghur Paper Mills Col. Ltd. v. State of Orissa & anr. AIR (1983) SC 603;***
- ✓ ***H.B. Gandhi v. M/s. Gopinath and Sons, (1992) Suppl. 2 SCC 312;***
- ✓ ***Whirlpool Corporation v. Registrar of Trade Marks and ors. AIR (1999) SC 22;***
- ✓ ***Tin Plate Co of India Ltd. v. State of Bihar & ors. AIR (1999) SC 74;***
- ✓ ***Sheela Devi v. Jaspal Singh, (1999) 1 SCC 209;***
- ✓ ***Punjab National Bank v. O.C. Krishnan & ors. (2001) 6 SCC 569***

wherein it was held that where the hierarchy of appeal is provided by the statute, the party must exhaust the statutory remedies before resorting to Writ Jurisdiction.

The respondents would, particularly, refer to the decision in ***Prahlad Raut (supra)*** wherein it was held as follows:-

> ".... Even assuming that the appeal was never decided, the cause of action for filing an application before the Tribunal would have arisen on expiry of six months from the date of filing the appeal, in view of Section 20(2)(b) of the Administrative Tribunals Act, 1985 set out herein below:-
> "20. Application not to be admitted unless other remedies exhausted."

(ix) The respondents have also defended the decision of the appellate authority in remitting the matter without any modification of the order of the disciplinary authority with specific directions to conclude the proceedings after complying with Rule 14(18) of CCS (CCA) Rules, 1965 and to take an appropriate decision on merit thereafter as being compliant to the provisions of Rule 27(2)(c)(ii) of CCS (CCA) Rules, 1965.

5. The issue before us at this stage is to decide whether the Tribunal should take cognizance to adjudicate the instant O.A. on merit when a statutory appeal remains pending before the appellate authority.

6.1. The Tribunal has been created, *inter alia*, for judicial review of administrative action/orders. Unless the administrative "order" is available, or, time elapsed is sufficient leading to reasonable presumption of a negative decision by administration, the cause of action does not arise and Tribunal shall not try a case without a cause of action. Exhaustion of alternative remedy also ensures a cause of action brining forth a *prima facie* case before the Tribunal.

Therefore, one of the threshold checks that the courts apply before it undertakes judicial review is whether the litigant has availed of the alternative remedy provided in the statute. It is the general principle of

law that judicial review is available only when the petitioner remains dissatisfied even after availing of the alternative remedy statutorily provided *[**Union of India Vs. Tulsiram Patel, AIR 1985 SC 1416**]*, also relied upon by the respondents.

6.2. In ***U.P. State Bridge Corpn. Ltd. Vs. U.P. Rajya Setu Nirman S.Karmachari Sangh, (2004) 4 SCC 268***, it was held that, except where a strong case has been made out for making a departure, the High Court should not deviate from the general view and refuse to interfere under Art. 226 of the Constitution *[**Rudul Shah Vs. State of Bihar, AIR 1983 SC 1107**]*. The decision was relied upon in ***U.P. State Spinning Co. Ltd. Vs. R.S.Pandey, (2005) 8 SCC 264***, where the Hon'ble Apex Court observed as under:

> *"But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute....."*

The same view was reiterated in ***Uttaranchal Forest Development Corpn. Vs. Jabar Singh, (2007) 2 SCC 112***, where the Hon'ble Court held:

> *"In the instant case, the workmen have not made out any exceptional circumstances to knock the door of the High Court straightaway without availing the effective alternative remedy available under the Industrial Disputes Act. But the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the statute the High Court should not deviate from the general view and interfere under Article 226 of the Constitution except when a very strong case is made out for making a departure."*

6.3. There are contingencies where the bar is not applicable. It has consistently been held that at least in three contingencies alternative remedy does not operate as a bar; they are (i) where there has been a violation of fundamental rights, (ii) where principles of natural justice have been violated rendering the proceedings wanting in jurisdiction and (iii) where the vires of an Act is challenged. ***[Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1].***

Although it is true that the power to admit an application for adjudication, where alternative remedy has not been exhausted, is discretionary and the Tribunal may exercise this power to save a litigant from palpable injustice, the principle that was stated by the Supreme Court in ***M.P. State Agro Industries Development Corpn. Ltd. Vs Jahan Khan, (2008) 1 SCC (L&S) 9*** is as under:

> *"There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of natural justice; or (iii) where the order or proceedings are wholly without jurisdiction or the vires of the Act is challenged. In these circumstances, an alternative remedy does not operate as a bar."*

6.4. The hon'ble Apex Court, in ***Bengal Immunity Co. Vs. State of Bihar, AIR 1955 SC 661***, reiterated that the principle of refusal of writ jurisdiction for availability of alternative remedy has no universal application. If the provision is a part of an Act which is *ultra vires* the power of the legislature which enacted it, the provision becomes useless. The Court observed:

power of the legislature which enacted it, the provision becomes useless. The Court observed:

> *"Another plea advanced by the respondent State is that the appellant company is not entitled to take proceedings praying for the issue of prerogative writs under Article 226 as it has adequate alternative remedy under the impugned Act by way of appeal or revision. The answer to this plea is short and simple.*
>
> *The remedy under the Act cannot be said to be adequate and is, indeed, nugatory or useless if the Act which provides for such remedy is itself 'ultra vires' and void and the principle relied upon can, therefore, have no application where a party comes to Court with an allegation that his right has been or is being threatened to be infringed by a law which is ultra vires the powers of the legislature which enacted it and as such void and prays for appropriate relief under Article 226."*

Again, the principle would not apply where the prejudice is caused to the petitioner by a party under an assumed authority, which was actually non-existent. The matter comes under Art. 226 and the writ Court has a duty to grant relief. [***Debashree Das Vs. State of West Bengal, 2011(1) CHN 10 (DB)***].

7. Having considered the materials on record and the judicial ratio referred to by both parties, we find that although not disclosed by the applicant in the O.A., the applicant has, in continuation to her appeal dated 5.9.2014 and application dated 2.3.2015, preferred a statutory appeal dated 19.3.2019 against orders no.55 dated 20/22nd February, 2019.

In her appeal dated 19.3.2019, (annexed as Annexure R to the written notes of arguments of the respondents in O.A. No. 5/2016), the applicant/appellant, has referred to:

(a) Vigilance clearance in her favour placed before DPC of 1992;

(b) Likely impact of the results of the disciplinary proceedings on the pending case filed by CBI;

(c) Procedural injustice.

Accordingly, following the ratio of ***Prahlad Raut (supra)*** as well as other judicial pronouncements, that have earlier decided on the self same ratio, we would refrain from entering into adjudication on merit at this stage but would rather dispose of the O.A. with a direction on the respondent No. 5, namely, the, Secretary to the Government of India, Ministry of Home Affairs, New Delhi, or any other competent respondent authority, to obtain the orders of the appellate authority as stipulated under Rule 27 of CCS (CCA) Rules, 1965 and as laid down in ***O.M. No. 39/42/70-Estt.(A) dated the 15th May, 1971***, within a period of 16 weeks from the date of receipt of a copy of this order, whichever is earlier.

Needless to say, the designated appellate authority should apply his mind on each of the issues raised by the applicant/appellant in her appeals and to dispose of the same with a reasoned and speaking order, after having deliberated upon each of the issues raised by the applicant/appellant therein. The appellate orders should be conveyed to the applicant forthwith thereafter.

The respondents have brought on record that the applicant has joined her duties in the lower post of Mukhya Sevika at Port Blair on 27.3.2019, without prejudice to her rights and subject to the result of the O.A. pending before the Tribunal as well as her pending appeal before the appellate authority. The applicant should be allowed to continue in the said post till disposal of the appeal.

7. With these directions, the O.A. is disposed of.

8. M.A. No. 272 of 2019 praying for recall of disciplinary authority's order dated 20/22.2.2019, along with CPC. 84 of 2019, alleging violation of orders dated 8.4.2019, also stands disposed of accordingly.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP