
(2020) 11 CAT CK 0113
In the Central Administrative Tribunal
Case No : Original Application No. 54 Of 2016

Abhay Ram

APPELLANT

Vs

Vice Chairman, DDA & Others

RESPONDENT

Date of Decision : 26-11-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 19(3), 19(4)
Constitution Of India, 1950 — Article 226

Citation : (2020) 11 CAT CK 0113

Hon'ble Judges : Pradeep Kumar, Member (A); R.N. Singh, Member (J)

Bench : Division Bench

Advocate : G.L. Verma, Arun Birbal

Final Decision : Dismissed

Judgement

R.N. Singh, Member (J)

1. The present Application has been filed under Section 19 of the Administrative Tribunals Act 1985 by the applicant, praying therein for the following

relief(s) :-

â??a) To pass orders setting aside the impugned Charge Sheet dated 05-09-2013, IO report dated 03-06-2014, Disagreement Note dated 04-08-2014 and Penalty Order dated 07-11-2014 and orders dated 27-01-2014.

b) To pass orders directing the Respondent to open the seal cover and promote the Applicant to the post of Deputy Chief Accounts Officer w.e.f. 30-4-2013 when he become due for promotion with all arrears.

c) To pass any other order or orders may deem fit in the circumstances of the case.â??

2. Pursuant to the notice from the Tribunal, the respondents have filed their

counter reply and the applicant has filed rejoinder.

3. The applicant has also filed written submissions and the respondents have filed an additional affidavit Dt 28.11.2020.

4. We have heard the learned counsel for the parties at length.

5. Beside other grounds, the learned counsel for applicant has challenged the impugned orders on the ground that the disciplinary order has not been

passed by the competent authority and the same is void ab initio in view of the law laid down by the Honâ??ble Apex Court in Union of India and

Ors. Vs. B.V. Gopinath (Civil Appeal No. 7761/2013).

Shri G.L. Verma, learned counsel for applicant further argues that the impugned charge memo was issued by the respondents on 27.9.2013 for an

alleged incident of 12.11.1998, i.e. after lapse of more than a decade and in view of inordinate delay in issuance of the impugned charge memo, the

same deserves to be quashed.

6. Per contra, learned counsel for respondents submits that the OA is not maintainable in view of the fact that the applicant has not availed the

statutory remedies available to him in as much as the applicant has not filed any appeal before the Appellate Authority. Learned counsel for

respondents also disputes the contentions raised on behalf of the applicant with regard to the competency of the authority who has issued the charge

memo and passed the disciplinary order. He submits that the charge memo, disagreement note as well as the disciplinary order, all have been

approved and issued by the competent authority.

7. This is the second round of litigation before this Tribunal. In the first round of litigation, the applicant has approached this Tribunal by way of OA

No.817/2014, challenging the issuance of charge memo, and the same was dismissed as withdrawn vide order dated 03.12.2015. The said order reads

as under :-

â??Learned counsel appearing for the applicant submits that since the order of penalty has been passed against the applicant after initiation of the

present proceeding, the applicant may be allowed to withdraw the O.A. with liberty to challenge the said order of penalty and charge-sheet before the

appropriate forum.

2. Prayer not being opposed is allowed.

3. The OA is dismissed as not pressed with liberty as prayed for.

4. In view of the order passed today in the OA, no further order is required to be passed in MA No.3524/2014. MA stands disposed of.â??

8. It is not in dispute that against the impugned penalty order, there is a provision for appeal under the relevant regulations of the respondents and the applicant has not preferred any appeal before the Appellate Authority before approaching this Tribunal by way of the present OA.

However, the learned counsel for applicant submits that the applicant has already retired on 30.4.2015 and he suffers from various ailments. He

further adds that once this Tribunal has issued notice on the present OA and the pleadings are complete, the applicant is not required to approach the

Appellate Authority for redressal of his grievances in the matter. He places reliance upon the provisions of Sections 19(3) and 19(4) of Administrative

Tribunals Act, 1985 to contend that once the Tribunal has issued the notice on the present OA, it is not required in the facts and circumstances for the

applicant to approach the Appellate Authority. Sections 19(3) and 19(4) of the AT Act, 1985, read as under :-

â??19.(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the

application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the

application after recording its reasons.]

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of

grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed

by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.â??

9. We have heard the learned counsel for the parties.

10. It is not in dispute that the statutory appeal has not been preferred by the applicant to ventilate his grievances and thus the applicant is having

alternate remedies for redressal of his grievances that arise in the present OA. The provisions of Section 19 (4) noted above, do not provide that in

spite of their being alternate remedies available to an employee under the relevant rules, the employee concerned is not required to avail that remedy

only for the reason that without availing the said remedies, he has approached this Tribunal and the Tribunal has issued notice and the matter remained pending for adjudication before this Tribunal for some time.

The law on the point of alternate remedies, as has been laid down by the Honâ??ble Apex Court in the State of UP and Another Vs. Labh Chand

reported in 1993 (2) SCC 495, stipulates that â??When a Statutory Forum or Tribunal is specially created by a statute for redressal of specified

grievances of persons on certain matters, the High Court should not normally permit such persons to ventilate their specified grievances before it by

entertaining petitions under Article 226 of the Constitutionâ??.

There is no dispute that the appellate provision has been provided under the relevant Service Rules of the respondents and the applicant has himself

withdrawn the previous OA i.e. OA No.817/2014 to challenge the said order of penalty or charge sheet before the appropriate forum.

11. Moreover, the applicant was being represented through Shri G.L. Verma, learned counsel, in the said OA and is being represented by him in the

present OA as well. â??Appropriate forumâ?? as recorded in the order dated 03.12.2015 of this Tribunal, to our mind never means this Tribunal.

12. In view of the aforesaid, we dismiss the present OA, with liberty to the applicant to raise his grievances before the appropriate Appellate

Authority, by way of an appeal, if so advised, within 30 days.

In case the applicant prefers such an appeal before the Appellate Authority of the respondents within the time recorded herein, the respondents shall

consider the said appeal on merits and dispose of the same by passing an appropriate reasoned and speaking order, as expeditiously as possible, and in

any case within two months of receipt of such an appeal, under advice to the applicant.

It is also directed that if such an appeal is submitted within the time so allowed above, the delays as may have occurred vis-a-vis the time period

allowed in relevant rules for submission of Appeal, shall not be invoked for deciding the said appeal. The appellate authority shall decide the appeal on

merit only.

We further note that we have not commented on the merits of the claim of the applicant, while passing orders on the present OA.

The applicant shall have liberty to approach the Tribunal if some grievance still

subsists. There shall be no orders as to costs.