

(2017) 12 AHC CK 0024
In the Allahabad High Court
Case No : 36895 of 2017

Satya Deo Rai

APPELLANT

Vs

Union Of India And Another

RESPONDENT

Date of Decision : 12-12-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 226, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Amendment of the Schedule - Power of High Courts to Issue certain writs - Dissolution of a District or a Regional Council
Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rule 14, Rule 10, Rule 10(6), Rule 23 -
Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Section 8(1), Section 8(1) - Establishment of Appellate Tribunal
Central Administrative Tribunal Act, 1985, Section 19, Section 14

Citation : (2017) 12 AHC CK 0024

Hon'ble Judges : Ran Vijai Singh, Ifaqt Ali Khan

Bench : Division Bench

Advocate : Chandan Sharma, Alok Rai, Umesh Narain Sharma, A.K.Mehrotra, K.K.Srivastav, Sabhajeet Singh

Final Decision : Dismissed

Judgement

1. We have heard Sri Umesh Narain Sharma, learned senior counsel assisted by Sri Chandan Sharma, learned counsel for the petitioner and Sri Sarabjit Singh, learned counsel for respondent no. 1 and Sri V.K. Srivastava, learned counsel for respondent no. 2.

2. The present writ petition has been filed by the petitioner with a prayer to quash the impugned suspension order dated 28.11.2016 (Annexure-1 to the writ

petition) passed by the Debt Recovery Appellate Tribunal, Allahabad (Respondent no. 2) as well as impugned orders dated 17.2.2017 and 14.7.2017 (Annexure-2 and 3 to the writ petition) extending the suspension of the petitioner. Further prayer has been made to quash the entire disciplinary proceedings initiated against him by respondent no. 2 vide its order dated 26.9.2016 and also prayed that respondents be directed to permit the petitioner to join and function peacefully as Section Officer in the office of respondent no. 2.

3. The brief facts of the case are that the Central Government provide the officers and employees to the Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for smooth functioning of the Debts Recovery Appellate Tribunal (DRAT).

4. Before joining the Debts Recovery Appellate Tribunal, Allahabad (hereinafter referred to as the Tribunal only), the petitioner was working in Syndicate Bank as a Clerk. Subsequently, the petitioner joined in Tribunal on 3.7.2001 as Assistant on deputation basis and then he became Section Officer in Tribunal w.e.f. 18.6.2002 and got himself absorbed as Section Officer with effect from 1.9.2005.

5. On 30.8.2016, one Sri Raju Kumar, Farras-cum-Sweeper working in the Tribunal had made a complaint against the petitioner to the Registrar (Incharge) of the Tribunal with the allegations that he has already made a complaint on 26.8.2016 to the Chairperson that on 23.8.2016 when in the office, he was going to dispatch some official confidential letters then the petitioner took those letters from him and opened and readover them. On 29.8.2016, the petitioner was on leave but he came in the office at about 5:00 pm and near office stairs, he started abusing Raju Kumar (complainant) and spoke caste based remarks and warned him for dire consequences because he had not received his phone calls.

6. On the basis of this complaint, the Registrar of the Tribunal issued a show cause notice to the petitioner on 2.9.2016 requiring him to submit his explanation as to why disciplinary proceedings may not be initiated against him.

7. The petitioner submitted his detailed reply to the show cause notice on 9.9.2016 denying all the allegations levelled against him. On not being satisfied by the reply of the petitioner, the Chairperson of the Tribunal vide his order dated 26.9.2016 issued a charge sheet to the petitioner and initiated disciplinary proceedings against him under Rule 14 of CCS (CCA) Rules, 1965 under the direction of Central Government. On 6.10.2016 the petitioner submitted his reply to the charge sheet. After that charge was framed against the petitioner, on 26.11.2016. Raju Kumar moved another application stating that the petitioner had called him in his section office on 23.11.2016 and threatened him not to give statement against him and if he will give statement against him then he will have to face dire consequences. On this application of Raju Kumar, suspension order of the petitioner was passed on 28.11.2016 by Sri V.K. Mathur, Chairman of the Tribunal. Against this order, the petitioner filed an appeal before the Appellate Authority which is still pending. The appellate authority has not taken any

decision upon the said appeal of the petitioner. In the meantime, the Registrar of the Tribunal has sent the complaint of Sri Raju Kumar to the police station, George Town, Allahabad for necessary action. Thereafter Sri Raju Kumar, the complainant, withdrew his complaint against the petitioner stating on affidavit before the police authority that under the influence of Chairperson, he made complaint against the petitioner, as the Chairperson had already personal grudge with the petitioner. The police inquired the matter and found the complaint of Raj Kumar false.

8. A review committee was constituted regarding suspension of the petitioner and on its report, vide order dated 17.2.2017, the Chairperson of the Tribunal has extended the suspension of the petitioner for further period of 150 days and again vide its order dated 14.7.2017 on the report of Review Committee, further period of the suspension of the petitioner was extended for 90 days by the Chairperson with effect from 17.7.2017.

9. Sri Sharma, learned senior counsel for the petitioner submitted that disciplinary proceedings as well as impugned suspension order dated 28.11.2016 and suspension extension orders dated 17.2.2017 and 14.7.2017 are illegal and unjustified as well as violation of fundamental right of the petitioner guaranteed under Article 14, 16 and 21 of the Constitution of India. False complaint was made through Sri Raju Kumar, Farras-cum-Sweeper in order to harass the petitioner though after sometime Sri Raju Kumar withdrew his complaint with the statement that he had made a false and concocted complaint against the petitioner under the influence of the Chairperson and requested for closure of all the proceedings against the petitioner. The police authority of police station, George Town, Allahabad after inquiry had also made a report exonerating the petitioner from the allegations levelled against him. Even then disciplinary proceeding was not closed against the petitioner by the Chairperson with a view to harass the petitioner. He further submitted that Rule 10 of the CCS CCA Rules, 1965 establish that a suspension would come to an end after expiry of 90 days and the same can only be extended on the decision of Review Committee consisting of the Disciplinary Authority, Appellate Authority and the officer of the Secretary/Joint Secretary level to the concerned Ministry. He also submitted that the impugned orders dated 17.2.2017 and 14.7.2016 extending the suspension of the petitioner has been passed without consideration by the Statutory Review Committee because, the Review Committee has not been properly constituted as it is evident from the reply given to the petitioner under RTI Act. Hence the aforesaid impugned orders are perverse and illegal and the petitioner is entitled to be permitted to join and work on the post of Section Officer of the Tribunal.

10. The respondent also submitted that the DRAT, Allahabad is an Appellate Tribunal constituted by means of Notification by the Government of India under section 8(1) of Recovery of Debts Due to Banks and Financial Institution (RDDBFI) Act, 1993. It functions under the administrative control of the Government of India, Department of Financial Services, Ministry of Finance, New

Delhi and all the employees of the DRAT are Central Government employees and are governed by the Rules, Regulations, Practices and Procedures applicable to the Central Government employees. His further submission is that the Central Government directed respondent no. 2 (The Chairperson of the Tribunal) vide its letter dated 20.09.2016 to take suitable action against the petitioner Sri Satya Deo Rai. Therefore, under CCS (CCA) Rules, 1965 Chairperson of the Tribunal who is also a disciplinary authority under Rule, is empowered to initiate disciplinary proceedings and to take disciplinary action. In regard to extension of suspension, it was stated by the learned counsel for the respondent that suspension can be extended as per Rule 10(6) of the CCS (CCA) Rules on the recommendations of the Review Committee. He refuted the submission of the learned counsel for the petitioner that Central Administrative Tribunal has no jurisdiction in his case because the DRAT has not been included in Section 14 of the Administrative Tribunal Act learned counsel for respondent submitted that the petitioner being appointed to Civil Service and Civil Post under the Union Government of India, is covered under section 14(1) (b) (ii) of the said Act.

11. Refuting the submission of the learned counsel for petitioner at the very outset learned counsel for respondent submitted that two alternatives remedy are available to the petitioner. Firstly being a central government employee the proper forum, for the petitioner to agitate his grievance, if any, is the Central Administrative Tribunal under Section 19 of Administrative Tribunal Act, 1985 and not the high court and the secondly there is a statutory provision of appeal against orders of the Disciplinary Authority available to an employee of the Union of India under Rule 23 of CCS (CCA) Rules, 1965. This remedy has already been availed by the petitioner by means of filing three appeals before the Appellate Authority C/o Secretary, Ministry of Finance, New Delhi, against the disciplinary proceeding and his suspension order as well as the extension of suspension order. The Central Government has sought comments in this regard to the said appeal from the disciplinary authority. Presently, three appeals of the petitioner under Rule 23 of the CCS (CCA) Rules, 1965 pertaining to disciplinary matter are already pending.

12. Therefore this writ petition deserves to be dismissed on the ground that two alternative remedies are available to the petitioner.

13. So far the question of alternative remedy available to the petitioner to redress his grievance before Central Administrative Tribunal under section 19 of the Administrative Tribunal Act, 1985 is concerned there are different version between the parties but there is no difference of opinion between the parties on the point that the petitioner has an alternative remedy to file appeal under Rule 23 of CCS (CCA) Rules, 1965 before the Appellate Authority, C/o Secretary, Government of India, Ministry of Finance, New Delhi against the order of Disciplinary Authority regarding departmental proceeding and suspension order passed against him and as per his own version the petitioner has already filed three appeals against disciplinary proceedings and suspension order passed

against him. However, leaving this question open that the petitioner has alternative remedy under section 19 of the Administrative Tribunal Act, 1985 to move before the CAT or not. Considering the law laid down by the Apex Court in *Jai Singh Vs. Union of India* AIR 1977 SC 898 that one person cannot pursue two parallel remedies in respect of the same matter at the same time. This writ petition deserves to be dismissed only on this ground that the petitioner has already filed three appeals against disciplinary proceedings and suspension order passed against him before the Appellate Authority, C/o Secretary, Government of India, Ministry of Finance, New Delhi

14. Otherwise also the Apex Court in numerous cases has observed that where alternative remedy is available the court must move on very slow pace in entertaining the writ petition under Article 226 of the Constitution of India. In *Rashid Ahmed Vs. Municipal Board Kairana*, AIR 1950 SC 163, the Apex Court held that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another *Rashid Case* namely *K.S. Rashid and Son Vs. Income Tax Investigation Commission*, AIR 1954 SC 207, where the Supreme Court reiterated the proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to entertain a petition under Article 226 of the Constitution of India. This proposition was again considered by a Constitution Bench of the Apex Court in *A.V. Venkateswaran, Collector of Customs Vs. Ramchand Sobhraj Wadhvani*, AIR 1961 SC, 1506 and another Constitution Bench decision in *Calcutta Discount Co, Ltd Vs. ITO, Companies Distt*, AIR 1961 SC 372. In *Union of India Vs. T.R. Verma*, AIR 1957 SC 882, the Hon''ble Supreme Court held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution, unless there are good grounds to do, otherwise.

In *C.A. Ibrahim Vs. ITO*, AIR 1961 SC 609, *H.B. Gandhi Vs. M/s Gopinath & Sons*, 1992 (Supp) 2 SCC 312 and in *Karnataka Chemical Industries Vs. Union of India*, 1999 (113) E.L.T. 17(SC) : 2000 (10) SCC 13, the Hon''ble Supreme Court held that where there is a hierarchy of appeals provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

Hon''ble Apex Court in *UP State Spinning Co. Ltd. Vs. R.S. Pandey and another* (2005) 8 SCC 264 has observed that normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

In *Nivedita Sharma Vs. Cellular Operators Association of India and others*, (2011) 14 Supreme Court Cases 337}, the Hon''ble Apex Court held that ?An

alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge. The Court has recognized some exceptions to the rule of alternative remedy. However, the High Court will not entertain a petition under Article 336 of the Constitution of an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal or grievance still holds the field.

The Apex Court, after considering a catena of cases, in Shauntiabai Derkar and Another Vs. Maroti Dewaji Wadaskar, (2014) 1 Supreme Court Cases 602} at para Nos. 15 to 18, held as follows.

Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repeated, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal Case {Thansingh Nathmal Vs. Supt. Of Taxes, AIR 1964 SC 1419}, Titaghur Paper Mills Case {Titaghur Paper Mills Co. Ltd Vs. State of Orissa, (1983) 2 SCC 433} and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

In Veerappa Pillai Vs. Raman & Raman Ltd, 1952 SCR 583}, CCE Vs. Dunlop India Ltd, (1985) 1 SCC 260, Ramendra Kishore Biswas Vs. State of Tripura, (1999) 1 SCC 472, Shivgonda Anna Patil Vs. State of Maharashtra, (1999) 3 SCC 5}, C.A. Abraham Vs. ITO, (1961) 2 SCR 765}, Titaghur Paper Mills Co. Ltd. Vs. State of Orissa, (1983) 2 SCC 433}, H.B. Gandhi Vs. Gopi Nath & Sons {1992 Supp (2) SCC 312}, Whirlpool Corpn Vs. Registrar of Trade Marks, (1998) 8 SCC 272, Sheela Ltd. Vs. State of Bihar, (1998) 8 SCC 272}, Sheela Devi Vs. Jaspal Singh, (1999) 1 SCC 209} and Punjab National Bank Vs. O.C. Krishnan, (2001) 6 SCC 569}, this Court held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before restoring to writ jurisdiction.

15. In view of the above facts and circumstances of the case, we are of the opinion that the writ petition deserves to be dismissed. Hence the Writ-A No. 36895 of 2017, Satya Deo Rai Vs. Union of India and another is dismissed. However, the Appellate Authority, C/o Secretary, Government of India, Ministry of Finance, New Delhi is directed to decide all the appeals of the petitioner

regarding order dated 26.9.2016 and the suspension order passed thereafter by respondent no. 2 against the petitioner within a period of six months from the date of production of certified copy of this order before the above-named Appellate Authority.