

(1981) 09 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 297 of 1976

Sri Narayan Chandra Kalita	Vs	APPELLANT
The State of Assam and Others		RESPONDENT

Date of Decision : 16-09-1981

Acts Referred:

Assam Administrative Tribunal Act, 1977 — Section 9(3)
Constitution of India, 1950 — Article 226, 311(2)

Citation : (1981) 1 GLR 152

Hon'ble Judges : S.M. Ali, J

Bench : Single Bench

Advocate : B.C. Das, B.N. Saikia and D. Mananta, for the Appellant; A.K. Chowdhury, Government Advocate, for the Respondent

Judgement

S.M. Ali, J.—The petition was filed by the Petitioner who was an employee under the Sericulture Department of the Govt. of Assam against the order of his dismissal from service mainly on the allegation that the provisions of Article 311(2) of the constitution and the Rules of Assam Services (Discipline and Appeal) Rules, 1964 were violated in the matter of imposing the punishment on him. On behalf of the Respondents it was pointed out that the matter lies within the jurisdiction of the Assam Administrative Tribunal as constituted under the Assam Administrative Tribunal Act, 1977. Learned Counsel for the Respondents referred to Sub-section (3) of Section 9 of the Assam Administrative Tribunal Act, 1977 wherein it is laid down that all suits or other proceedings in respect of any matter over which the Tribunal has jurisdiction and which are pending before any civil court or authority on the date of coming into force of this Act, shall stand transferred to the Tribunal etc. etc. This Act came into force on 3.1.77 and the Civil Rule was instituted in 1976. So under the aforesaid provision of the Assam Administrative Tribunal Act, the matter should be sent to the Tribunal. But learned Counsel for the Petitioner submitted that there is no bar to decide the matter by this Court. The learned Counsel referred to AIR 1969 SC 536 Baburam v. Jila parishad in which it was held that the doctrine of exhaustion of statutory

remedies before coming to High Court under Article 226 has no application in a case where the impugned order has been made in violation of the principles of natural justice. But in that case also it was held 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 and prerogative writ. It was also held that the existence of a special remedy does not affect the jurisdiction of the High Court to issue a writ. Further it was held that the existence of an adequate legal remedy may be taken into consideration in the matter of granting writs and that where such a remedy exists, it will be sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds thereof. In this case it has been mainly alleged that second show cause notice was not issued on the Petitioner before imposing the penalty. This is a procedural matter provided in the Rules of disciplinary action and also under Article 311(2) of the Constitution. Learned Counsel also relied on *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, where it was held that in spite of there having been provision for revision before Commissioner of income tax, the aggrieved party could proceed under Article 226. But in the present case, the Petitioner could come in appeal before the Tribunal inasmuch as there are no exceptional circumstances for which this Court should decide the matter despite alternative forum. So, I think that this matter should be sent down to the Tribunal for decision by way of hearing appeal. Therefore the records will be sent down to the Assam Administrative Tribunal for disposal of the matter. It is a long pending matter since 1976 and it should be disposed of within the shortest possible time. The Tribunal should consider this point. This petition may also be treated as an appeal by the Tribunal. The rule is discharged. The Civil Rule is disposed of as above.