

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

OP (CAT).No. 108 of 2015 (Z)

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AGAINST THE ORDER IN OA 867/2012 DT. 26.5.2014  
& ORDER DT. 16.1.2015 IN REVIEW APPLICATION NO. 180/00014/2014 of  
CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

**PETITIONER:**

K.A.USHA, AGED 53 YEARS  
W/O. DASAN  
HAWILDAR (FORMERLY SEPOY) OF CENTRAL EXCISE  
ALUVA RANGE, ALUVA, ERNAKULAM DISTRICT.

BY ADVS.SRI.O.V.RADHAKRISHNAN (SR.)  
SRI.C.S.GOPALAKRISHNAN NAIR  
SMT.CHANDINI G.NAIR

**RESPONDENTS:**

1. CHIEF COMMISSIONER OF CENTRAL EXCISE & CUSTOMS  
CENTRAL REVENUE BUILDINGS, IS PRESS ROAD  
COCHIN - 682 018.
2. COMMISSIONER OF CENTRAL EXCISE & CUSTOMS CENTRAL REVENUE  
BUILDINGS, I S PRESS ROAD, COCHIN - 682 018.
3. JOINT COMMISSIONER OF CENTRAL EXCISE & CUSTOMS  
CENTRAL REVEUE BUILDINGS, I S PRESS ROAD  
COCHIN - 682 018.
4. UNION OF INDIA  
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE  
NORTH BLOCK, NEW DELHI - 110 001.
5. CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH REPRESENTED BY ITS REGISTRAR,  
INDIRA NAGAR, COCHIN - 682 017.

R1-R4 BY ADV. SRI.P.K.RAMKUMAR, CGC  
R5 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 01-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 108 of 2015 (Z)

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APPENDIX

PETITIONER'S EXHIBITS

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P1 - PHOTOCOPY OF ORIGINAL APPLICATION NO. 867/2012.

P2- PHOTOCOPY OF THE REPLY STATEMENT.

P3 - PHOTOCOPY OF THE REJOINDER STATEMENT.

P4 - PHOTOCOPY OF THE AFFIDAVIT ALONG WITH THE MEDICAL  
CERTIFICATE.

P5 - TRUE COPY OF THE ORDER ON 26.5.14.

P6 - PHOTOCOPY OF THE REVIEW APPLICATION.

P7 - TRUE COPY OF THE COMMON ORDER DT. 16.1.15.

RESPONDENT(S)' EXHIBITS

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NIL

avk

//True copy//

PA TO JUDGE

(C R)

**P.R. RAMACHANDRA MENON  
&  
BABU MATHEW P. JOSEPH, JJ.**

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**O.P. (CAT)No. 108 of 2015**

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**Dated this the 1<sup>st</sup> day of July, 2015**

**JUDGMENT**

**P.R. Ramachandra Menon,J.**

Whether a revision petition by way of memorial to be preferred before the President of India as envisaged under Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules (for brevity, the CCS(CCA) Rules) is mandatory so as to enable the aggrieved person/employee to move the Central Administrative Tribunal by virtue of the hurdles stated as placed as per Section 20(1) of the Administrative Tribunal's Act (for brevity 'the Act') is the

moot point involved.

2. The petitioner herein, while working as a Sepoy in the Calicut Airport at Karippur in the Department of Central Excise & Customs, was proceeded against by way of disciplinary proceedings with regard to some delinquency noted in connection with the service. It was alleged that during the period from 5.11.2004 to 2.11.2005, while working as a Sepoy in the Calicut Airport, the petitioner failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant; in as much as she received share of the bribe collected from the passengers arrived from abroad at the Airport by the Customs Officials and that she violated Rule 3(1)(i) of the Central Civil Services (Conduct) Rules. The petitioner was served with the Memorandum of Charges and after completing the

enquiry, a report was submitted. In the meanwhile, the incriminating circumstances also gave rise to investigation by the CBI, Cochin, in respect of the alleged offence involved in the proceedings against several persons including the petitioner herein. It is stated that the CBI, submitted the final report dated 17.7.2007, before the Special Judge-II for CBI Cases at Ernakulam, wherein the petitioner was never arrayed as an accused. It is also pointed out that the case bearing No. C.C. 7 of 2007 filed in this regard is still pending consideration against the 36 accused named therein.

3. The petitioner was however proceeded against by way of disciplinary proceedings. On the basis of the finding of guilt in the enquiry, Annexure A9 order was passed on 26.4.2011, whereby penalty of reduction of pay by two

stages from Rs.7330/- + GP Rs.1800/- to Rs.6800/- + GP Rs.1800/- in the time scale of pay of Rs.5200/- -20200/- + GP Rs.1800/- for a period of two years with effect from 1<sup>st</sup> May, 2011 under Rule 11(v) of the CCS(CCA)Rules was imposed. Being aggrieved by the said order, the petitioner preferred statutory appeal before the first respondent. After considering the matter, interference was declined and the appeal was dismissed as per Annexure A-11 order dated 14.02.2012, which made the petitioner to approach the Central Administrative Tribunal, Ernakulam by filing O.A. No. 867 of 2012 challenging the proceedings on many grounds, legal as well as factual.

4. It is stated that the case was adjourned on several occasions, based on the submissions raised from the part of the respondents. The proceedings reveal that the matter

stood adjourned to 3.2.2014, on which day the case was further adjourned to 3.3.2014. On that day, the standing counsel for the respondents prayed for time and the case was posted on 20.3.2014 and thereafter, it was further adjourned to 21.5.2014 on the basis of the request made by the respondents. Later, the case was again adjourned to 26.5.2014. But, in the meanwhile, the concerned counsel appearing for the applicant met with an accident on 20.5.2014 and suffered fracture to L-I Vertebra and was advised bed rest for six weeks from 21.5.2014. In the said circumstances, an application was submitted for adjournment of the case, also producing a copy of the Medical Certificate as borne by Ext.P4. The factual position was brought to the notice of the Tribunal on 26.5.2015. However, the request for adjournment was rejected and the

O.A. was disposed of, relegating the petitioner to pursue the remedy stated as available under Rule 29 of the CCS(CCA) Rules by filing a memorial. This, in turn, is under challenge in this original petition.

5. Heard Mr.O.V.Radhakrishnan, the learned Senior Counsel appearing on behalf of the petitioner and Mr. P.K.Ramkumar, the learned Central Government Counsel appearing on behalf of the respondents. There is no disputed question of facts as to the sequence of events, but for the question of law raised by the petitioner.

6. The learned Senior Counsel points out that the verdict passed by the Central Administrative Tribunal directing the petitioner to exhaust the remedy under Rule 29 of the CCS(CCA)Rules and declining interference in the O.A; that too nearly two years after filing and admitting this

matter, is not correct or sustainable. It is contended that, once the matter is admitted and kept pending for quite long, and when the pleadings are complete in all respects, it is not fair/proper to have the matter closed with reference to the alleged existence of alternate remedy. Reliance is sought to be placed on the decisions rendered and reported in ***State of Orissa & Anr. v. Mamata Mohanty [2011(3) SCC 436]***; ***S. Nagaraj & Ors. v. State of Karnataka & Anr. [(1993 Supp.(4)SCC 595]***; ***State of West Bengal & Ors. v. Kamal Sengupta & Anr. [(2008) 8 SCC 612]***; ***A.N. Saxena & Anr. v. Chief Commissioner (Admn) [(1988) 6 ATC 320]***; ***Kanak (Amt) & Anr. v. U.P. Avas Evam Vikas Parishad & Ors. [(2003) 7 SCC 693]***; ***S. Pandian & Ors. v. Union of India & Anr. [(1991) 16 ATC 184]***; ***Braj Kishore Singh v. Government of Bihar***

**& ors. [(1990) 12 ATC 501]; U.P.State Spinning Co.Ltd. v. R.S.Pandey & Anr. [(2005) 8 SCC 264] and Thakur Prasad Pandey v. Union of India & Ors. [(1988) 8 ATC 911].**

7. Learned counsel further submits that the petitioner, being aggrieved by Annexure-A9 order had already pursued the statutory remedy by way of appeal, which culminated in Annexure-A9 order passed by the competent authority. No further statutory remedy, as required to be pursued, so as to invoke the jurisdiction of the Tribunal with reference to Section 20 of the Act is stated as available. Filing of a Memorial to the President or the Governor of a State or any other functionary shall not be deemed to be one of the remedies available, unless the applicant has elected to such Memorial (as stipulated under

Sub-section (3) of Section 20 of the Act). It is also stated that the petitioner has not elected to prefer any such memorial and as such, interference ought not have been declined by the Tribunal by passing Ext.P5 order on 26.5.2014. Even though the mistake was sought to be corrected by filing a Review Application (bearing No.180/00014/2014) in O.A. No. 867 of 2012, the same did not turn to be fruitful, as evident from Ext.P7 order dated 16.1.2015. It is in the said circumstances, that interference of this Court is sought for, contending that the proceedings have been finalised by the highest authority of the Department and that no remedy by way of revision is available to the petitioner under any circumstances.

8. Learned Standing Counsel appearing for the respondents submits that the Original Application has to be

preferred in the particular form as prescribed and that there is a particular column to mention whether all the statutory remedies have been exhausted. It was on the basis of the answer given in the positive, that the matter was entertained by the Tribunal. However, it was later noted that the remedy under Rule 29 of the CCS(CCA)Rules was not exhausted and it was accordingly that, the Tribunal directed the petitioner to pursue the said remedy as well and as such, there is nothing wrong on the part of the Tribunal in having passed the order under challenge. It is also added that the scope of review is very much limited, and that there is 'no error apparent on the face of the records', by virtue of which Ext.P7 order passed by the Tribunal is well within the four walls of law.

9. To understand the scope of the contention, it will

be worthwhile to have a look at the relevant provisions, particularly Section 20 of the Act, which is extracted below:

*"20. Applications 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 subs-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."*

10. The terminology used under Section 20(1) of the Act stipulates that the 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. This by itself means that exemption could be drawn under particular circumstances, if the Tribunal is satisfied as to the necessity in this regard, so as to entertain the matter. Even otherwise, the Scheme of the Statute is discernible from Sub-section (2) of Section 20; wherein it has been clearly provided under Sub-clause(a), that if a final order has been passed by the Government/Competent Authority rejecting any appeal or representation preferred by the aggrieved party, it shall be deemed for the purpose of Sub-section (1) that the parties have availed of all the remedies available to him under the relevant service Rules for redressal of the grievance. The position becomes more clear from sub-

Section (3) of Section 20 of the Act, which says with reference to Sub-Sections (1) & (2) that any remedy available to an employee 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 a memorial. In view of the undisputed fact that the petitioner herein had not elected to prefer any memorial, the existence of any such course/remedy as envisaged under Rule 29 of the CCS (CCA) Rules cannot bar the way of the petitioner in pursuing the remedy before the Tribunal. She having already exhausted the remedy by way of appeal, by virtue of mandate under Sub-section 2(a) of Section 20 of the Act, the verdict passed by the Tribunal by way of Exts.P5 and P7

are liable to be interdicted.

11. As mentioned herein before, the petitioner has also a contention that the Tribunal had exercised the discretion as to 'satisfaction' with reference to Sub-section (1) of Section 20 of the Act and the O.A. was ordered to be admitted way back in the year 2012. The respondents have entered appearance and the pleadings are completed. The matter was listed for hearing. It was thereafter, that the petitioner was relegated to move the concerned authority with reference to Rule 29 of the CCS (CCA) Rules. In **Smt. Kanak and another v. U.P.Avas Evam Vikas Parishad and others (AIR 2003 SC 3894)**, with reference to the proceedings under the Land Acquisition Act and considering the sequence of events, the Apex Court observed in paragraph 29, that it would not be proper to

relegate the parties to avail the statutory remedy so as to have redressal of the grievance after pendency of the matter for quite long.

12. In view of the subsequent verdict passed by the Supreme Court in the decision reported in **U.P. State Spinning Co.Ltd. v. R.S. Pandey [(2005) 8 SCC 264]**, there is no absolute bar in passing a verdict declining to exercise the discretionary jurisdiction vested with the Court under Article 226 of the Constitution and relegating the matter to pursue the statutory remedy first even after admitting the matter. This Court finds that the petitioner may not be justified in saying that once the O.A. is admitted, it is always obligatory for the Tribunal to have the matter decided on merits. Each case has to be considered and decided depending upon the facts and circumstances

involved in the case. But, the question involved in this case is something different, which is more with reference to the prescription of law by virtue of Section 20(2) and (3) of the Act and see whether the petitioner has discharged the burden cast thereunder, so as to have the right to move the Tribunal by filing the O.A.

13. There is no dispute to the fact that the original order was passed by the disciplinary authority which was subjected to challenge by the petitioner, by filing an appeal, leading to Annexure A11 order. Having satisfied the said requirement by virtue of the mandate under Section 20(2) (a) of the Act, it has to be deemed that the petitioner has exhausted all the statutory remedies in so far as the prescription under Sub-section (1) of Section 20 of the Act is concerned. This being so, the existence of a further

chance or remedy with reference to Rule 29 of the CCS (CCA) Rules by way of revision or memorial to be presented by the petitioner could not have been cited as an instance to have non-suited the petitioner. This is more so, in view of the version of the petitioner that no such remedy even otherwise does exist and that the petitioner has not elected to have the said course. The position stands answered by the statute itself, in favour of the petitioner, by virtue of Sub-Section (3) of Section 20 of the Act, that it shall not be a bar. This Court finds that the petitioner is justified in challenging Annexures A9 and A11 orders passed by the Disciplinary authority and the Appellate authority respectively before the Tribunal. In the said circumstances, Exts.P5 and P7 orders passed by the Central Administrative Tribunal, Ernakulam Bench are set aside. The case is

remitted to the Tribunal for fresh consideration on merit.  
The proceedings are required to be finalised in accordance  
with law, as expeditiously as possible.

The Original Petition stands allowed. No cost.

**Sd/-**  
**P.R. RAMACHANDRA MENON**  
**JUDGE**

**Sd/-**  
**BABU MATHEW P. JOSEPH**  
**JUDGE**

//TRUE COPY//

PA TO JUDGE

**avk**

