

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

OP (CAT).No. 148 of 2015 (Z)

AGAINST THE ORDER IN OA 922/2012 DATED 26.05.2014 AND ORDER IN R.A.
NO.19/2014 DATED 16.01.2015 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH.

PETITIONER:

M.V.VALSALA, AGED 45 YEARS
W/O.SHRI. K. MANOJ, HAWILDAR (FORMERLY SEPOY OF CENTRAL
EXCISE) CENTRAL EXCISE DIVISION, KANNUR

BY ADVS.SRI.C.S.GOPALAKRISHNAN NAIR
SMT.CHANDINI G.NAIR

RESPONDENTS:

1. CHIEF COMMISSIONER OF CENTRAL EXCISE & CUSTOMS
CENTRAL REVENUE BUILDINGS, I S 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 REVENUE 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.

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

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 22-09-2015, ALONG
WITH OPCAT. 150/2015, OPCAT. 151/2015, THE COURT ON 23.09.2015
DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS

EXHIBIT P1- PHOTO COPY OF ORIGINAL APPLICATION NO.922/2012.

ANNEXURE A1 IN EXT.P1: PHOTOCOPY OF THE ABOVE MEMORANDUM NO.C
NO.II/10A/9/2007 VIG.CX/214/07 DT.22.2.2007.

ANNEXURE A7 IN EXT.P1: PHOTOCOPY OF THE INQUIRY REPORT ALONG WITH
THE MEMO C NO.II/10A/9/2007 VIG.CX/561/09 DT.14.8.2009 ISSUED BY THE 3RD
RESPONDENT.

ANNEXURE A9 IN EXHIBIT P1: PHOTOCOPY OF THE DISCIPLINARY ORDER
DATED 26.4.2011.

ANNEXURE A11 IN EXT.P1: TRUE COPY OF THE ORDER IN APPEAL ALONG WITH
THE COVERING LETTER DT.16.3.2012.

ANNEXURE A2 IN EXT.P1: TRUE COPY OF THE ABOVE REPRESENTATION DT.NIL.

ANNEXURE A3 IN EXT.P1: PHOTOCOPY OF THE ORDER CNO.II/39/31/2006 VIG.CX
PART I/562/07 DATED 8.5.2007 ISSUED BY THE 3RD RESPONDENT.

ANNEXURE A4 IN EXT.P1 : PHOTOCOPY OF S5 DOCUMENT IN THE INQUIRY.

ANNEXURE A5 IN EXHIBIT P1: PHOTOCOPY OF THE ARGUMENT NOTE
SUBMITTED BY THE PRESENTING OFFICER TO THE INQUIRY OFFICER.

ANNEXURE A6 IN EXHIBIT P1: TRUE COPY OF THE DEFENCE NOTE.

ANNEXURE A8 IN EXHIBIT P1: TRUE COPY OF THE ABOVE REPRESENTATION
DT.11.09.09.

ANNEXURE A10 IN EXHIBIT P1 : TRUE COPY OF THE APPEAL PETITION FILED
ALONG WITH THE COVERING LETTER DT.21.7.2011.

EXHIBIT P2- PHOTOCOPY OF THE REPLY STATEMENT.

EXHIBIT P3- PHOTO COPY OF THE REJOINDER STATEMENT.

EXHIBIT P4- TRUE COPY OF THE ORDER ON 26.05.2014.

EXHIBIT P5- PHOTOCOPY OF THE REVIEW APPLICATION.

EXHIBIT P6- TRUE COPY OF THE COMMON ORDER DT. 16.01.2015.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT) Nos.148, 150 & 151 of 2015

Dated this the 23rd day of September, 2015

JUDGMENT

Shaji P. Chaly, J.

Above Original Petitions arise from the order of the Central Administrative Tribunal, Ernakulam Bench in O.A. Nos.922/2012, 921/2012 and 879/2012 dated 26.05.2014 and the common order in Review Application Nos.19/2014, 18/2014 and 20/2014 respectively. By the impugned separate orders, learned Administrative Tribunal has dismissed the applications holding that the applicants have not exhausted the statutory remedy available to them under Rule 29 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as "the CCS(CCA) Rules' for short) and thereby permitted the applicants to exhaust the remedy available to them under the said Rules. Aggrieved by the said order, Review Applications were filed by the applicants before the Tribunal and the Tribunal vide a Common Order dated 16.01.2015 has dismissed the Review Applications holding that the issues raised

in the Review Applications were not to be entertained since the same does not disclose any ground for exercising the power of review as provided under Section 22(3)(f) of the Administrative Tribunals Act. It is thus aggrieved by the orders in Original Applications and the Common Order in the Review Applications, these Original Petitions are filed.

2. Heard learned counsel on either side

3. Since the subject matter of the Original Petitions are similar, we are disposing of all the Original Petitions by a common order.

4. Since the learned Tribunal has not considered the applications on merit, we are concerned only with the question whether the Administrative Tribunal is vested with powers to entertain an application without exhausting the remedy, by the applicants under Rule 29 of the CCS(CCA) Rules, as provided under Section 20(1) of the Administrative Tribunals Act.

4. The Original Applications were filed seeking to set aside the disciplinary orders passed imposing a penalty of reduction of pay. A learned Division Bench of this Court in **K.A. Usha v. Chief Commissioner of Central Excise & Customs and others** in O.P.(CAT) No.108 of 2015 dated 01.07.2015 had

occasion to consider the very same question involved in this case and has held in paragraph 10 that 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 and that 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. It was further held that scheme of the statute is discernible from sub-section (2) of Section 20 where 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 party had availed of all the remedies available to him under the relevant service Rules for redressal of the grievance. Further the learned Division Bench adverted to sub-section (3) of Section 20 of the Act and held that any remedy available to an employee by way of submission of a Memorial to the President or to the Governor of the 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.

5. Like the petitioner in the aforesaid judgment in the Original Petitions at hand, petitioners have not preferred any memorial to the President or the Governor and therefore, existence of any such remedy available under Rule 29 of the CCS (CCA) Rules cannot bar the petitioners in pursuing the remedy before the Tribunal. Further more, the Applications were admitted by the Tribunal way back in the year 2012 and therefore, it was not proper on the part of the learned Administrative Tribunal to relegate the parties to exhaust the alternative remedies available to them under the Rules mentioned above after a period of two years.

6. Learned Division Bench in the decision cited supra have taken into account the decisions in **Kanak and another v. U.P.Avas Evam Vikas Parishad and others** reported in AIR 2003 SC 3894 and **U.P. State Spinning Co.Ltd. v. R.S. Pandey** reported in [(2005) 8 SCC 264] and held that the availability of alternative remedy is not an absolute bar in deciding the matter on merits. In that view of the matter, Division Bench has set aside the order of the Tribunal and

remitted the matter back to the Tribunal for consideration of the case on merits.

We are inclined to follow the judgment so rendered by the Division Bench of this Court cited supra and therefore, we set aside the orders passed by the Central Administrative Tribunal, Ernakulam Bench in O.A. Nos.922/2012, 921/2012 and 879/2012 dated 26.05.2014 and also the Common Order in R.A. Nos. 19/2014, 18/2014 and 20/2014 dated 16.01.2015 respectively and direct the Tribunal to consider the aforesaid Original Applications on merits and to dispose of the same at the earliest since the Original Applications are of the year 2012. Original Petitions are accordingly allowed.

Sd/-

**K. SURENDRA MOHAN
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

smv
22.09.2015