

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 201 OF 2018

Shri Sambhaji Babu Pradhan .. Petitioner
Vs.
Union of India and ors. .. Respondents

Mr.Amol D.Joshi, for the Petitioner.
Mrs.Neeta V. Masurkar a/w Mr.Rui Rodrigues, for Respondents.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 17th JANUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. By this Petition filed under Articles 226 & 227 of the Constitution of India, the petitioner challenges an order dated 28/06/2017 passed by the Central Administrative Tribunal (for short Tribunal), Mumbai Bench, Mumbai in OA No. 221/2012.

2. The petitioner was imposed with punishment of removal from service by order dated 14/10/2009 passed by the Disciplinary Authority pursuant to the disciplinary proceedings

initiated against him. Against the order dated 14/10/2009, the petitioner filed the Departmental Appeal. The Appellate Authority by its order dated 23/03/2010 was pleased to modify the punishment of removal from the service to that of compulsory retirement. The petitioner preferred Revision Application against order dated 23/03/2010 to the Revisional Authority. The Revisional Authority vide order dated 02/01/2012 enhanced penalty passed by the Appellant Authority to that of removal from the service. The petitioner filed OA No. 221/2012 before the Tribunal challenging the order passed by the Revisional Authority.

3. OA came to be heard by the Tribunal. The Tribunal upon considering Rule 23 of Central Civil Services (Classification, Control and Appeal) Rules (for short 'the said Rules') was of the opinion that the petitioner failed to exhaust the statutory remedy available to him under sub-Rule (iii) of Rule 23 of filing Appeal as the order passed by the Revisional Authority was an order enhancing any penalty imposed under

Rule 11. The Tribunal directed the petitioner to file a statutory Appeal as provided under Rule 23 of the said Rules to the appropriate authority within a period of 30 days from the date of receipt of copy of the order passed by the Tribunal.

4. The petitioner filed Appeal to the Secretary (Post) Director General of Postal Services, New Delhi against the order dated 02/01/2012 passed by the Revisional Authority in compliance with the order passed by the Tribunal.

5. Learned Counsel for the petitioner pointed out that he has received communication dated 29/09/2017 that the Appeal against revisionary order will lie to the President of India, Rashtrapati Bhavan, New Delhi in the shape of Review Petition under Rule 29-A of CCS (CCA) Rules, 1965. The petitioner was therefore advised to submit Review Petition addressing to the President of India.

6. In view of communication dated 29/09/2017, it is

clear that there is no remedy of Appeal under Rule 23 against an order enhancing any penalty imposed under Rule 11. The respondents have therefore not entertained the Appeal but have directed the petitioner to file review to the President of India if he so wishes.

6. We find that the respondents had raised preliminary objection regarding maintainability of OA on the ground that the petitioner had failed to exhaust the departmental remedy of Appeal against the impugned order passed by the Revisional Authority. The Tribunal was pleased to uphold this preliminary objection and relegated the petitioner to the statutory remedy of filing an Appeal.

7. In the light of the order impugned in this Petition, it is obvious that the Appeal filed by the petitioner is not entertained as there is no remedy of filing an Appeal against the order passed in Revision.

8. The Tribunal had relegated the petitioner to the remedy of Appeal against the order passed by Revisional Authority and thereby disposed of OA. Admittedly, no such remedy of statutory Appeal is available to the petitioner. In this light of the matter, OA needs to be heard on merits. We are therefore inclined to set aside the order passed by the Tribunal. Hence, the following order.

ORDER

- i) The impugned order dated 28/06/2017 passed by the Tribunal in OA No. 221/2012 is quashed and set aside.
- ii) The Tribunal is directed to hear and decide OA No. 221/2012 on merits.
- iii) The Tribunal is requested to hear and decide the OA as expeditiously as possible and preferably within a period of 6 months from today.
- iv) All the contentions on merits are kept open.

9. Writ Petition is disposed of in the above terms with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)