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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1947/2002

New Delhi, this the 16th day of September, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri S.K. Naik, Member(A)

Rajinder Sharma
House No. 1999/C-1, Railway Colony
Basant Road, Paharganj
New Delhi .. Applicant

(Shri B.S. Mainee, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi
3. Divisional Signal & Telecom. Engineer(Tele)
Northern Railway
DRM Office, New Delhi .. Respondents

(Shri Rajender Khatter, Advocate)

ORDER

Shri S.K. Naik

By virtue of this OA, applicant Shri Rajinder Kumar Sharma, who was working as Head Telephone Operator in the Northern Railway, seeks setting aside of the order of removal from service passed by the disciplinary authority vide order dated 14.11.2000, which had further been upheld by the competent appellate authority vide order dated 16.10.2001.

2. The facts of the case are that the applicant Shri Rajinder Kumar Sharma was found in an intoxicated state on 1.12.1999 and was taken into custody by the Railway Protection Force and produced before the Railway Magistrate, who after medical examination of the

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applicant, admitted him to bail on execution of surety bond for Rs.200/- and in default remanded to judicial custody for 15 days. Since the applicant was not in a position to arrange for the bail he was again produced before the Magistrate on 15th December, 1999 and was tried summarily. The Magistrate thereafter imposed a fine of Rs.200/- and ordered simple imprisonment of 15 days in case of default under Section 145/180 of the Indian Railways Act.

3. The disciplinary authority, taking cognisance of the conviction of the applicant under section 145/180 of the Indian Railways Act, thereafter issued a show cause notice under Rule 14(1) of the Railway servants (Discipline & Appeal) Rules, 1968, stating therein that his conduct, resulting in the conviction, is such as has rendered his further retention in service undesirable. On consideration of the reply to the show cause notice submitted by the applicant, the disciplinary authority came to the conclusion that the applicant was not a fit person to be retained in service any longer and imposed upon him the penalty of removal from service. The applicant thereafter filed an appeal under Rule 18 of the aforesaid Rules, which was rejected by the appellate authority.

4. The learned counsel for the applicant Shri B.S.Mainee has laid great stress on the defects and lacuna in the orders of the disciplinary as well as the appellate authorities and has raised various issues such as the order being non-speaking, cryptic, without application of

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mind, importation of extraneous conduct and being violative of principles of natural justice. He has repeatedly emphasised the point that imposition of penalty of simple imprisonment in fact is not a penalty and, therefore, the order passed is untenable under the law.

5. While the arguments of the counsel for the applicant were on, the counsel for the respondents has intervened to raise preliminary objections before proceeding to hear the application on merit. In this process he has brought to our notice that the applicant had earlier filed OA 111/2002 wherein he had prayed for the same reliefs, which was dismissed as withdrawn by order dated 14.1.2002, wherein no liberty was granted to the applicant to reagitate the matter. He has, therefore, contended that the applicant is debarred from raising the same issues and the principles of res judicata is fully applicable in this case. In support of his argument, he has cited the judgement of the Hon'ble Supreme Court in the matter of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, Gwalior AIR 1987 SCC 88**, in which it was held as under:

"In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition"

The counsel further contended that at the time of withdrawing the earlier OA, the applicant neither sought any permission from the court nor was granted opportunity to agitate the matter afresh. On this ground alone, therefore, the application is liable to be dismissed.

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6. Advancing his second limb of argument, the counsel has contended that the application suffers from another serious irregularity inasmuch as the application has been filed without exhausting the available departmental remedy. Drawing attention of the Tribunal to the provisions under Rule 20(5) of the aforesaid Rules, he has argued that it contains a specific provision of revision against the order of the appellate authority which cannot be wished away. The applicant could not have knocked the doors of the Tribunal without first challenging the appellate order before the revisional authority. In support of this argument, he has referred to the decision of the coordinate Bench of this Tribunal in OA 2643/2002 decided on 10.9.2003. The counsel has therefore vehemently argued that the application deserves to be dismissed on this ground also.

7. We have considered the averments made by the counsel for both the parties. Shri Maine has tried to controvert the preliminary objections raised by the counsel for the respondents by stating that OA 111/2002 was withdrawn by the applicant at the admission stage itself as he had a ray of hope that the department will render a favourable decision out of court. The Tribunal dismissed the application without discussing the issues involved and it cannot therefore be treated to be a final decision. We are are unable to accept this contention, which appears to be only an after-thought.

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8. In view of the ruling of the apex court cited by the learned counsel for the respondents, the principle of resjudicata would be applicable in this case. On the question of exhausting the available departmental remedy again, following the ratio arrived at by the coordinate Bench of this Tribunal referred to above, we hold that an application before the Tribunal is not maintainable unless the process of revision is gone through.

9. Under these circumstances, without going into the merits of the case we hold that it would be appropriate for the applicant to file a revision petition before the competent revisional authority, in which he may take up all the points raised in this OA for consideration. The said authority, no doubt, will consider the same on merits and pass a speaking order in the matter.

10. The OA is accordingly dismissed as not maintainable. No order as to costs.

S.K. Naik

(S.K. Naik)
Member(A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

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