

Central Administrative Tribunal
Principal Bench: New Delhi

O.A.No.2438/95

New Delhi this the 19th day of January, 1996.

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Hon'ble Mr.A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr.R.K.Ahooja, Member (A)

R.S. Harit,
S/o Sh.Deva Singh,
C/o Shri Balbir Singh,
27/28, Gali No.10,
Viswash Nagar, Shahdara,
DELHI-110 032.

....Applicant

(By Advocate: Shri Anis Suhrawardy)

versus

1. Union of India through its
Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2. Railway Board
through its Chairman,
Rail Bhawan,
New Delhi.

3. General Manager,
Northern Railway,
Baroda House,
New Delhi.

....Respondents

O R D E R (Oral)

Hon'ble Mr.A.V.Haridasan, Vice Chairman (J)

Pursuant to a disciplinary proceeding, the applicant who was an Assistant Engineer in the Indian Railways, was removed from service by order dated 11.6.85, and by another proceeding, a penalty of reduction in rank was imposed on him by order dated 5.3.85. The applicant challenged the validity, propriety and correctness of these orders in the original applications Nos. 919 & 923 of 1986. These applications were heard together by the Tribunal and by order dated 14.11.1991, the penalties imposed on the applicant were set aside. The Tribunal while considering these applications did not go into the various other contentions of the parties.

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than the question whether the imposition of penalties was vitiating for non-observation of principles of natural justice in as much as the copies of the enquiry reports were not supplied to the applicant before the disciplinary authority decided to impose the penalties. Basing on the ruling of the Hon'ble Supreme Court in Mohd. Ramzan's case, the Tribunal found that the two orders were vitiating as the applicant was denied a reasonable opportunity to defend and the principles of natural justice were ignored as copies of the enquiry reports were not given to him and as he was not given an opportunity to make representations against the acceptance of the enquiry reports. Aggrieved by the order of the Tribunal in these two original applications, the Union of India approached the Hon'ble Supreme Court in an SLP No.7407-99 of 1993. The Hon'ble Supreme Court held that the Tribunal was wrong in setting aside the orders of penalties solely on the ground that the copies of the enquiry reports were not given to the applicant, because in the case of Managing Director, ECIL Vs. B.Karunakar, 1993 (4) SCC 727, the Supreme Court had already held that the principle laid down in Mohd. Ramzan's case was only prospective in operation and that the enquiries in the case on had having been held prior to the date of judgement of Mohd. Ramzan's case, the Tribunal could not have set aside the orders of penalties on the ground as cited. In that view of the matter, the Hon'ble Supreme Court set aside the orders of the Tribunal and also dismissed the OAs filed by the applicant. Under these circumstances, alleging that the Tribunal had not adjudicated the correctness of the orders of penalties, namely, removal from service and reduction in rank, on merits and had only considered the validity of the orders in the light of the principle enunciated in Mohd. Ramzan's case, the various legal contentions which the applicant had in fact

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raised in his earlier applications and which he is entitled to have adjudicated, having not been adjudicated upon, the applicant has filed this application praying that the impugned orders of penalties may be set aside. The applicant has alleged that the enquiry was not held properly; that the findings are perverse and has raised several other grounds.

2. When the matter came up for hearing on admission, we noticed that the issues involved in this case, namely, legality, propriety, and correctness of the orders of removal from service and of reduction in rank were the subject matter of the two earlier applications filed by the applicant and that these two applications have been finally dismissed by the Hon'ble Supreme Court in its order dated 23.1.95 in SLP 7407-08 of 1993. Once an application challenging an order has been finally dismissed by the Supreme Court, another application on the very same cause of action is not maintainable according to the general principles of res judicata.

3. The learned counsel for the applicant strongly argued that, ^{as} the merits of the cases, other than the denial of reasonable opportunity was not adjudicated and decided the ~~same~~ principle of resjudication are not attracted and therefore the application deserves admission and adjudication. It is true that in the two earlier applications the Tribunal did not go ^{whether} into the contention other than that the orders ~~violated~~ were violated for non-supply of copies of enquiry report and denial of opportunity to the applicant for making his representation. ^{But all} Since these contentions were there in these applications and as the Hon'ble Supreme Court has dismissed them, we find that ~~the~~ application has ^{on} the same cause of action on ~~which~~ the earlier applications were filed and is barred by the principles of res judicata. It should be noted that the Supreme Court did not remand the case for adjudication on those issues. nor were the issues left open for ^{cause} and others.

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In the result, the application is rejected under
Section 19 (3) of the Administrative Tribunal's Act, 1985.

R.K. Ahoja
(R.K. Ahoja)
Member (A)

A. V. Haridasan
(A.V. Haridasan)
Vice Chairman (J)