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CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

O.A.. No. 101 of 1996

New Delhi, dated this the 8<sup>th</sup> January, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri B.S.Dhaliwal,  
S/o Shri Bikram Singh,  
R/o P/P-35, Pitampura,  
Maurya Enclave,  
Delhi-110034.

.... APPLICANT

(By Advocate: Shri Rama Krishna)

VS RSUS

1. U.O.I. through  
Defence Secretary,  
Ministry of Defence,  
Dept. of Defence),  
South Block,  
New Delhi.
2. Secretary,  
Dept. of Defence Research & Dev.,  
and Scientific Adviser to Defence  
Minister and Director General of Defence  
Research & Dev. Orgn.,  
B Wing, Sena Bhawan  
New Delhi. .... RESPONDENTS

(By Advocate: Shri P.H.Ramchandani)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant seeks quashing of impugned orders dated 30.7.85 proposing to enhance the penalty and dated 10.10.95 appointing an Enquiry Officer and a direction to respondents to promote him as Scientist 'B' w.e.f. 8.1.90 with all consequential benefits including arrears of pay and allowances, increments and seniority.

2. Applicant who joined service as JSA Gr.II and is presently working as J.S.O. in Defence Science Centre, Ministry of Defence, New Delhi was proceeded against departmentally under Rule 16, CCS (CCA) Rules, 1965 on the charge of submitting a bogus LTC claims from Delhi to Kanyakumari and back for the block years 1978-81 for himself and family in Oct. 1982, vide O.M. dated 23.9.83 (Ann. A-6). The applicant submitted his reply to the chargesheet vide letter dated 26.9.83 (Ann. A-7) in which he stated that he had already deposited the sum of LTC advance of Rs.3420/- on 4.4.83 and regretted the circumstances leading to the charge and prayed that a compassionate view of the matter be taken. On receipt of this reply the Director, Defence Sc. Centre (Disciplinary Authority) concluded that the charge against the applicant stood proved, and imposed the penalty of withholding of one increment without cumulative effect from the date it fell due. Admittedly the applicant accepted this order and quietly suffered the punishment without challenging the same before the higher authorities.

3. Nearly two years after the order was made and nearly one year after the applicant suffered the order, respondents issued impugned O.M. dated 30.7.85 (Ann. A-2)

stating that they had decided to review the penalty imposed on the applicant and they proposed to hold a departmental enquiry against the applicant under Rule 14 CCS (CCA) Rules, 1965. Against that O.M. the applicant filed OA No. 708/87 in which an interim order was passed restraining the respondents with going ahead with the departmental proceedings for the time being.

4. That O.A. was finally disposed of by judgment dated 18.9.93 after hearing both parties. In that judgment it was noted that while the power of review conferred by Rule 29A CCS (CCA) Rules which had limited scope was not attracted, what was actually sought to be exercised by the O.M. dated 30.7.85 was really the power of revision confined by Rule 29 CCS (CCA) Rules, but merely because a wrong provision was invoked, would not vitiate the decision, as long as the concerned authority had the power to render that decision. Hence on this ground, the Tribunal declined to interfere with the impugned O.M. dated 30.7.85. The Tribunal next took up the other ground taken by applicant's counsel namely that it would be manifestly unreasonable and unjust at this stage to impose any serious penalty on the applicant. It noted his submissions that the applicant had fairly admitted his guilt before the authorities at the earliest and had pleaded leniency regarding penalty which had been acceded to and only a minor penalty of withholding of one year's increment without cumulative effect had been imposed on 20.9.93 while the applicant had accepted and

quietly suffered. In conclusion the Tribunal observed

" The situation appears pathetic from the point of view of the petitioner for the reason that he has also since earned further promotion in 1984. These circumstances may undoubtedly have relevance in the matter of taking an ultimate decision. But it cannot be said that the authorities do not have the power of revision. In the circumstances we consider it just and proper to dispose of this petition with the observation that having regard to the facts and circumstances which we have discussed above this is a case in which the revisional authority should view the matter with utmost sympathy and consideration. With this observation this petition is disposed of".

5. During the course of hearing applicant's counsel Shri Ramakrishna asserted that the Tribunal's judgment dated 19.9.92 had not been placed before the revisional authority. In this connection we called for the relevant file No. C-13019/1/Vig/85 and on its perusal we find that the said judgment has not indeed been placed before the revisional authority (the President) as yet. The relevant notings in the file indicate that the respondents propose to place the Tribunal's observations for sympathetic consideration of this case before the competent authority on receipt of the I.O's report at the time of taking a final decision. Shri Ramchandani counsel for the respondents also stressed the fact that the Tribunal in its judgment dated 18.9.92 had itself stated that the circumstances in favour

of the applicant would have relevance in the matter of taking the ultimate decision and hence after the inquiry was concluded, and the I.O's report was received, the Tribunal's observations would properly be placed before the competent authority at the time of final decision was to be taken.

6. We have given the matter our careful consideration. The Tribunal in its judgment dated 18.9.92 has held that the authorities have the power of revision and the impugned order dated 30.7.85 should be understood to have been issued in exercise of the powers conferred under Rule 29 CCS(CCA) Rules, 1965. The challenge to that order dated 30.7.85 having been repelled, and the interim orders staying further proceedings pursuant to those orders having been vacated, the applicant cannot challenge that very same order dated 30.7.85 again through the present OA as the same is barred by constructive res judicata.

7. At the same time we note that in its aforesaid judgment dated 18.9.92 having regard to the facts and circumstances of the case the Tribunal had observed that this was a case which the Revisional Authority should view with the utmost sympathy and consideration. We hold that the contents of this judgment should have been placed before the revisional authority as soon as it was delivered,

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leaving it open to that authority to decide what course of action he wishes to adopt in the light of those observations.

8. However, without doing so, it appears that the respondents have issued the same impugned order dated 10.10.95.

9. Without going into the merits of that impugned order dated 10.10.95 at this stage in view of what has been stated above, we dispose of the OA with a direction to the respondents to place the Tribunal's judgment dated 18.9.92 together with our present order before the Revisional Authority within one month from the date of receipt of a copy of the judgment for appropriate action in accordance with law, <sup>and</sup> keeping in view the contents of the Tribunal's judgment dated 18.9.92. This OA is disposed of accordingly. No costs.

A.Vedavalli

( DR.A. VEDAVALLI )

MEMBER(J)

S.R.Adige

( S.R.ADIGE )

MEMBER(A).

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