

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 1902/94

with

O.A. No. 2076/94

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New Delhi this the 14th day of September, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

C.A 1902/94

Shri I.C. Mittal,
S/O late Shri Data Ram,
R/O 52, Todar Mal Lane,
New Delhi and employed as
Executive Engineer in the
Ministry of Surface Transport
(Road Wing), Parliament Street,
New Delhi.

.. Applicant

(By Advocate Shri D.R. Gupta)

Versus

1. Union of India through
Secretary,
Ministry of Surface Transport,
Transport Bhawan, Parliament Street,
New Delhi.
2. Director General (Road Development)
and Additional Secretary,
Govt. of India, Ministry of Surface
Transport, Transport Bhawan,
Parliament Street, New Delhi.

.. Respondents

(By Advocate Shri S.M. Arif)

O.A. 2076/94

Sh. I.C. Mittal
S/O Late Sh. Data Ram,
R/O 52, Todar Mal Road, New Delhi
and employed Executive Engineer
in the M/O Surface Transport
(Roads Wing), Parliament Street,
New Delhi.

.. Applicant

(By Advocate Shri D.R. Gupta)

Versus

1. Union of India through Secretary,
Ministry of Surface Transport,
Transport Bhawan, Parliament Street,
New Delhi.

2. Deputy Secretary to the Govt. of
India, Ministry of Surface
Transport, Parliament Street,
New Delhi

3. Under Secretary to the Govt. of
India, Ministry of Surface Transport,
Parliament Street, New Delhi.

.. Respondents

(By Advocate Shri S.M. Arif)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

Both the learned counsel submit that as the issues involved in the aforesaid two applications are between the same parties and are connected, they may be heard together. Accordingly these two OAs, namely, OA 1902/94 and OA 2076/94 have been heard together and are being disposed of by a common order.

2. Shri D.R. Gupta, learned counsel for the applicant in OA 1902/94 has prayed that the penalty order of withholding increment for three years without commulative effect imposed on the applicant dated 16.12.1993 (Annexure A-1) should be quashed and set aside. This order has been passed by the respondents after holding a departmental enquiry under Rule 14 of the CCS (CCA) Rules, 1965. Learned counsel had referred to the findings of the Inquiry Officer dated 1.9.1992 that the charge levelled against the applicant was proved. The article of charge against the applicant was that he had not complied with the order of transfer issued by the respondents dated 8.6.1990 and in spite of various memos issued to him from time to time he continued to send applications for grant of leave on medical grounds. It is stated that the applicant was relieved from his duties as Executive Engineer at New Delhi to resume his place of joining at Guwahati by order dated 14.6.1990. Finally, it is stated that the applicant joined at Guwahati after one year, one month and sixteen days vide letter dated 30.7.1991. Learned counsel for the applicant has drawn our attention to the observations of the Inquiry Officer in Paragraphs 3 and 4 of his report.

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His contention is that Inquiry Officer had himself stated that the administration was unable to produce the Peon book record to show that either the transfer order dated 8.6.1990 or the relieving order dated 14.6.1990 was ever served on the applicant. His contention, therefore, is that the findings of the Inquiry Officer which have been accepted by the competent authority who imposed the penalty of withholding of three years increments without cumulative effect are based on no evidence as the observations of the Inquiry Officer would show that they were unable to produce any record to show that they had served these relevant orders on the applicant. Learned counsel had also taken another ground for challenging the validity of the penalty order, namely, that the advice of the UPSC had not been given to the applicant, prior to the order ^{being} ~~was~~ served on him which was in violation of the principles of natural justice. He has also relied on a number of judgements which have been quoted in the rejoinder as well as the judgement of the Hon'ble Supreme Court in Raj Bahadur Sharma Vs. UOI & Ors (1998(9) SCC 4583.

3. The respondents in their reply have controverted the above facts. Shri S.M.Arif, learned counsel for the respondents has submitted that these OAs are not maintainable on the ground that the applicant has deliberately suppressed the relevant facts and, in fact, has tried to mislead the Court by submitting that the Inquiry Officer has based his conclusion on wrong presumptions. He has also very vehemently submitted that it is not open to the applicant to question the receipt of either the transfer order or the relieving order as these questions and issues have been finally settled by the Tribunal in OA 577/91 which was decided on 25.7.1991. Learned counsel has also submitted that it was only after the decision of the Tribunal in OA 577/91 that the applicant had joined his place of posting at Guwahati in pursuance of the impugned transfer order dated 8.6.1990. He has also submitted that the impugned transfer order in that case which is

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also basis of the penalty order in the present applications did not pertain to him only but twelve other officers who all have complied with the orders, except the applicant. Learned counsel has submitted ^{the} official file containing the transfer order dated 8.6.1990 for our perusal. He has also mentioned that the applicant ^{the fact} ought to have mentioned/regarding the filing of the earlier OA (OA 577/1991) in para 7 of the application which he has failed to do and it is only after the respondents referred to this fact, that the applicant has mentioned that he had filed an OA earlier in the rejoinder filed by him on 6.2.1995. To this, Shri Gupta, learned counsel for the applicant submits that reference to OA 577/1991 was not mentioned in the two OAs because the applicant thought that this was not relevant for this purpose.

4. Learned counsel for the respondents has submitted that the Tribunal in its order dated 25.7.1991 in OA 577/91 had categorically stated as follows:-

" The applicant is posted as Executive Engineer in the Ministry of Surface Transport (Roads Wing) at New Delhi. Though the fact has been suppressed in the OA., yet the applicant at the Bar, on enquiry from the Bench, admitted that he is posted in Delhi from 1975. After the orders were passed on 8.6.90, the applicant served a notice upon the Secretary, Ministry of Surface Transport, Parliament Street, New Delhi through his counsel on 20.6.90 (Annex.E.). This notice served by his advocate belies the stand of the applicant that he was not served with the transfer order and he had no knowledge of the existence of the transfer order because he was on sick leave."

He has also drawn our attention to the following paragraphs in the reply filed by the respondents:

" Even the UPSC in their advice on the matter have observed that it is inconceivable that the charged officer would have received none of the communications which were sent to them through registered post. Further the Commission, have also taken note of the

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representation against Shri Mittal's transfer made by his wife on 20.6.1990 addressed to MOST(SFT) and that she also approached the Minister Shri L.K.Advani, M.P.(Lok Sabha) on 9.7.90 and that the charged officer himself filed a petition in CAT against the transfer order which was dismissed on 25.7.91."

Learned counsel has contended that from the above, it is, therefore, clear that the applicant was not only aware of the transfer order but it was also served on him. He has also submitted that it was also noted by the Tribunal in its order dated 25.7.1991 that the applicant had ^{not} come with clean hands and therefore, ~~the~~ cost of Rs.300/- was imposed upon the applicant. In the circumstances, learned counsel has submitted that the contention of the applicant's counsel on the same point that the impugned transfer order has not been served on the applicant cannot be taken at this stage.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. From the order of the Tribunal in OA 577/1991 dated 25.7.1991 reproduced in paragraph 4 above, it is clear that the transfer order dated 8.6.90 had been served on the applicant who had later served notice on the Secretary, Ministry of Surface Transport, Parliament Street, New Delhi through his counsel on 20.6.90 which has been noted in that order. It is further pertinent to note that the Tribunal had observed that "this notice served by his advocate belies the stand of the applicant that he was not served with the transfer order and he had no knowledge of the existence of the transfer order because he was on sick leave. (Emphasis added)

7.. We as a coordinate Bench are bound ~~to abide~~ by the findings of the Tribunal on these facts in OA 577/1991. Therefore, the contention advanced by Shri D.R. Gupta, learned counsel for

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the applicant that the impugned order dated 8.6.1990 and the relieving order dated 14.7.1990 were never served on the applicant cannot be accepted and is ^{accordingly} ~~therefore~~, rejected.

8. In the facts and circumstances of the case, we are also unable to agree with the contentions of the learned counsel for the applicant that the declaration made by the applicant in paragraph 7 of the OA 1902/1994 is correct. The applicant being a Class I Officer of the Govt. should have correctly mentioned in the OAs that he had filed an earlier OA 577/1991 in this Tribunal which had been disposed of by order dated 25.7.1991, which is also based on the impugned transfer order followed by the relieving order dated 14.6.1990. In the facts and circumstances of the case, we are, therefore, unable to agree with the contentions of the learned counsel for the applicant that earlier OA filed by the applicant has no relevance or significance whatsoever in the present set of facts. We are constrained to note that the observations already given by the Tribunal in the earlier order dated 25.7.1991 are further supported by these facts. We, therefore, reiterate what has been stated in the order dated 25.7.1991 that the applicant has not approached the Tribunal again with clean hands and on this ground alone these OAs are liable to be dismissed.

9. In view of what has been stated above, OA 1902/1994 and OA 2076/1994 being devoid of any merit are dismissed. In the circumstances of the case, we also impose cost of Rs.500/- (Rupees Five hundred only) upon the applicant in each of the OAs in favour of the Respondents which should be paid forthwith.

10. Let a copy of this order be placed in OA 2076/1994.

(S.P. Biswas)
Member(A)

(Smt. Lakshmi Swaminathan)
Member(J)

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Attested
As per
CO. CTV