CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 2499/94

New Delhi this the 20th day of March, 1995.

Shri N.V. Krishnan, Vice Chairman (A).

Dr. A. Vedavalli, Member(J).

S.P. Sharma,
S/o Shri R.D. Sharma,
R/o 110, Munirka Enclave,
New Delhi. ...Petitioner.

By Advocate Shri J.K. Bali.

Versus

Union of India through
The Secretary to the Ministry
of Railways, Rail Bhawan,
New Delhi. ...Respondents.

ORDER

Shri N.V. Krishnan.

The applicant, who retired as Additional General Manager in the Railways, has filed this application for quashing the memo dated 21.1.1991, Annexure A1, by which the Ministry of Railways (Railway Board) has informed him about the proposal to hold an inquiry against him under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The statements of article of charges were enclosed with that memo. He is also aggrieved by the order dated 16.5.1994 (Annexure A2) passed by the Railway Board which informs him that the entire Railway Board have carefully considered the statement of defence submitted by him in reply to the charge memorandum dated 20.9.1991 and have decided that the charges be remitted to inquiry and that further the entire Railway Board have appointed Shri Chandy Andrews, CDI/CVC as Inquiry Officer.

2. The grievance of the applicant is that the memo of charges has been issued by an incompetent authority. The Inquiry Officer has been appointed without first granting the applicant a personal hearing even though

he requested for such personal hearing in the representation made by him on 24.9.1993 (Annexure A-16) to the Railway Board. The official appointed should be higher in rank than the employee against whom a disciplinary proceeding is being held. The Inquiry Officer is in the rank of the Deputy Secretary whereas the applicant retired as an Additional General Manager in the rank of Additional Secretary. Hence, the appointment of the Inquiry Officer should be quashed. In regard to Article No. 1 of the charges, it is stated that substantially the same charge has been framed against Shri R.S. Harit, Ex-Chief Commercial Superintendent, Northern Railway. Hence, there is no justification to pursue Article-I of the charges against the applicant. Likewise, in respect of Article-III and IV, it is stated that subsequently, chargesheets on similar grounds were issued to S/Shri Ramchander, D.R. Arora and C.M. Prasad, Assistant Commercial Officers, but they were exonerated. It is further alleged that the respondents have taken considerably long time to proceed with the inquiry. In the circumstance, the applicant has sought various reliefs which would be referred to shortly.

3. The O.A. was taken up for admission and the learned counsel for the applicant Shri J.K. Bali was heard at great length.

4. The first three prayers made by the applicant are as follows:

(1) to quash and set aside the impugned order at Annexure A1 as illegal, unconstitutional and without jurisdiction, null and void and of no effect whatsoever;

(2) to direct the respondents to treat the pension being paid to the applicant as regular pension instead of provisional pension as if the Memorandum at Annexure A1 never existed.

(3) to further direct the respondents to pay all retirement benefits to the applicant as fell due on his retirement on 30.9.91 viz., gratuity and commutation of pension along with interest at the rate of 18% per annum with effect from 1.10.1991.

It was noticed that, earlier, the applicant had challenged the same Annexure A-1 memo dated 20.9.1991 instituting the departmental inquiry, in O.A. 4/93, in which a decision was rendered on 13.8.1993. The applicant has filed a copy of the O.A. (Annexure A-11) from which it is seen that the three prayers now made are identical to the three prayers made in the O.A. In so far as quashing the memo of charges is concerned, the contention of the applicant that the Railway Board was not competent to initiate the inquiry proceedings, without obtaining the prior approval of the Minister of Railways, was repelled. The Tribunal did not find any substance in the further contentions that as the memo of charges was not issued by the Railway Board, but by one of its Members, it was a void document and that it should be held that the disciplinary proceedings had not yet been started.

5. In the circumstance, in so far as the prayer 1 is concerned, it is clearly barred by res-judicata. A review against this order was filed by the applicant as well as by the respsondents. Both the review applications were considered by the Tribunal on 8-10-1993 and while the review filed by the applicant was dismissed, the review application filed by the respondents seeking modification of the direction

which required Railways to obtain the sanction of the President for continuing the disciplinary proceedings after the retirement of the applicant, was allowed.

6. The learned counsel for the applicant states that according to the Transaction of Business Rules even for initiating a disciplinary inquiry approval of the Minister of Railways is necessary. This very issue has been considered in the earlier judgement. He has not been able to point out to any other provisions of the Transaction of Business Rules which requires initiation to be made only after the approval of the Minister. In the circumstance, we are not only of the view that the issue raised in prayer No. 1 is barred by res-judicata but it is also barred by Rule 17(4) of the Central Administrative Tribunal (Procedure) Rules which provides that where an application for review has been disposed of, no further application for review can be entertained. Hence, prayer (1) is barred by res-judicata.

7. The applicant himself admits that prayers 2 and 3 are consequent to prayer No. 1. Therefore, those prayers cannot also be considered for the same reasons.

8. In the alternative, the applicant has sought various other reliefs which are now considered.

9. The first alternate prayer is that the order appointing the Inquiry Officer, i.e. Annexure A-2 should be quashed. The main ground given is that before passing such an order, respondents should have given the applicant a personal hearing for which he requested, when he made a representation at Annexure A-16, in pursuance of the directions in the earlier judgement of the Tribunal. In this regard, he also relies on a decision of the Ernakulam Bench of this Tribunal in N.A. Abdul Aziz Vs. Union of India, 1991(8) SLR 522.

10. We have carefully considered this matter. The earlier O.A. 4/93 was filed by the applicant on 30.12.1992. The respondents remitted the proceedings for inquiry by an Inquiry Officer on 8.1.1993. The applicant did not get the O.A. amended to challenge the appointment of the Inquiry Officer, even though that appointment was made in similar circumstances, namely, without giving the applicant an opportunity of being heard. Even though there was no prayer in that O.A. relating to the appointment of the Inquiry Officer, the applicant pressed the point that an illegal decision was taken to appoint an Inquiry Officer after considering the applicant's reply to the memo of charges by an individual member of the Board, instead of by the entire Railway Board. This issue was considered in detail in paragraphs 16 to 21 of that judgement and it was held that it shall be presumed that the written statement of defence submitted by the petitioner had not been considered yet and that no decision had been taken upon it. Therefore, the appointment of the Inquiry Officer on 8.1.1993 by an individual member of the Board was void and inoperative. If the applicant had also a case that the appointment of the Inquiry Officer should not be made until the Board gave him a personal hearing, that point also sh-ould have been taken up in those proceedings, which obviously has not been done. Therefore, that prayer also is hit by the principle of constructive res-judicata.

11. We make it clear that in the view we have taken it is not necessary to express any opinion as to whether the decision rendered by the Ernakulam Bench in N.A. Abdul Aziz Vs. Union of India (Supra) that a personal hearing is mandatory, requires reconsideration. A

view may be taken that the applicant waived his right in this regard when he did not challenge the appointment of the Inquiry Officer on this ground in O.A. 4/93 (see Krishan Lal Vs. State of J&K (1994)27 ATC 590 SC).

12. The applicant has also prayed that he should be given a personal hearing, as requested in the statement of defence and in the subsequent letters at Annexures A-16, A-17 and A-18. In O.A. 4/93, it was held that there would be a presumption that the written statement of defence submitted by the petitioner had not been considered and that no decision had been taken upon it and that, therefore, the appointment of the Inquiry Officer on 8.1.1993 by an individual Member of the Board was held to be void and inoperative. The impugned Annexure A-2 order dated 16.5.94 makes it clear that in compliance with that order of the Tribunal, the entire Railway Board carefully considered the statement of defence submitted by the applicant and decided that the charges against him may be remitted to inquiry. The three Annexures A-16, A-17 and A-18 are letters addressed to the Railway Board on 24.9.93, 6.7.94 and 20.8.94 requesting, inter alia, that the Railway Board should consider the defence statement and give him a personal hearing. In pursuance of the directions in the earlier O.A. the Railway Board has also considered the defence statement as is clear from Annexure A-2 order. There is no other provision for any personal hearing after the appointment of the Inquiry Officer and, therefore, this alternate prayer does not lie.

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13. In para 8(4)(c), the applicant has made a more or less a similar prayer to direct the Railway Board to reconsider the defence statement of the applicant as well as consider the averments made in this O.A., particularly paras 4.33, 4.34, 4.37 to 4.41, as also the explanation that he would like to give in a personal hearing. For the same reasons as are given above, no such directions can be given to the Railway Board.

14. In para 8(4)(a)(ii) the applicant has requested, as an alternate prayer, that the Article of Charge No. 1 may be quashed. The main reason given for this is that a similar charge has already been framed against another official, Shri R.S. Harit, Ex-Chief Commercial Superintendent, Northern Railway.

15. We are of the view that, prima facie, we cannot issue such a direction. The Tribunal has a very limited jurisidiction at the threshold when only a memo of charges is issued to an employee and it is challenged (see Union of India Vs. Upendra Singh - 1994(3)SCC 398). Further, merely because the same charge was made against someone else and it was dropped does not necessarily mean that this charge should be dropped in respect of the applicant also. That is a matter to be decided by the disciplinary authority.

16. The applicant has further prayed in para 8(4)(d) that in case the respondents wish to proceed with the inquiry, they should appoint an I.O. senior in rank to the applicant. It is seen from the Annexure A-2 order of the Railway Board that Shri Chandy Andrews, Commissioner of Departmental Inquiries, from the Central Vigilance Commission, has been appointed as an Inquiry Officer. The applicant's grievance is that as he is in the rank of an Additional Secretary, the Inquiry Officer should also be of an approrpriate rank. In

our view, this plea would have force only if an official from the same cadre or department or organisation is appointed as an Inquiry Officer. In that circumstance, subject to certain limitations, ordinarily, the I.O. should be of a higher rank than the delinquent. That logic will not apply in the present case. The I.O. belongs to totally a different organisation, namely, the Central Vigilance Commission, whose duty is to provide the services of Inquiry Officers in disciplinary proceedings either instituted at their instance or on request made in an appropriate case by a disciplinary authority.

17. Lastly, the applicant has prayed in para 8(4)(e) that the Railway Board should be directed to ensure that the inquiry is finalised expeditiously and a decision taken within four months.

18. We notice that after the earlier decision was rendered in O.A. 4/93 the respondents had moved the Supreme Court to grant special leave to appeal against the order of the Tribunal. That SLP was dismissed on 18.3.1994. Thereafter, the respondents complied with the directions of the Tribunal and after the Railway Board considered the statement of defence of the applicant the order dated 16.5.1994 Annexure A-2 was passed appointing the Inquiry Officer. The applicant has now challenged the appointment of that authority in these proceedings. The applicant has neither shown any adequate ground to persuade us to give any direction to Railway Board at present to ensure speedy completion of the disciplinary proceedings nor is there any ground to presume that that respsondents will not dispose of the disciplinary proceedings expeditiously.

19. What remains is a consideration of the authorities cited by the learned counsel.

20. The learned counsel for the applicant made a plea that in view of the submissions made in the O.A., it will be clear that an injustice has been done to the applicant and, therefore, this Tribunal should not hesitate to admit the application for adjudication, notwithstanding the technical objections that have been raised about its maintainability. The learned counsel relies on the judgement of the Supreme Court in S. Nagraj Vs. State of Karnataka, 1994 SCC (L&S) 320. We have seen that judgement. That was a case where the Supreme Court itself felt that the order earlier passed by it, if not modified, would be unjust to other employees. Hence, it held that if the Court finds that the order was passed under mistake and it would not have exercised its jurisdiction but for the erroneous assumption which, in fact, did not exist, and its perpetuation shall result in miscarriage of justice, then it cannot, on any principle, be precluded from rectifying the error.

21. We have considered this plea. We are satisfied that there is no such circumstance in the present case. The applicant is the only party, if at all, who is affected by the earlier order. The applicant filed a review petition before the Tribunal which was also dismissed. In other words, unlike in Nagraj's case (supra), the Tribunal did not find that there was any mistake in the order passed by it.

22. In the same vein, the learned counsel for the applicant has requested that this Tribunal may be pleased to intervene on behalf of the applicant on the considerations mentioned in Union of India Vs. R. Reddappa, 1993(4) SLR 794(SC). Therein, the Apex court observed that if it was satisfied that the parties participating in the strike were unjustly treated, the court was not only competent, but, had an obligation to act in a manner which may be just and fair. No such considerations arise in the present case. A disciplinary proceeding has just been initiated against the applicant. In that regard, the matter was already considered once. There was no comment about the charges. Certain directions have been given to the respondents which they have complied with. There is no ground to hold that the applicant is being treated unjustly.

23. The learned counsel contended that the principle of res-judicata is not a bar in the present case. He relies upon Pandurang Vs. Shantabai, AIR 1989 SC 2240. We have seen that judgement. The facts of that case are totally different and the context in which the Supreme Court held that there was no res-judicata is also totally different. Without going to the complex issues involved in that case, suffice it to note that the Mamlatdar (a revenue authority) declined to exercise jurisdiction on the ground that the Bombay Tenancy and Agriculture Land Act, 1948 did not apply. However, when the issue was taken up successfully to a civil court, the appellate court and to the High Court, a direction was issued by the High Court to the trial court to refer the issues, if any, raised to be determined exclusively by the competent authority, to that authority. In appeal,

the Supreme Court held that this direction of the High Court was proper. The authority to which the trial court referred the issues was the same Mamlatdar who had declined to interfere earlier. It is in this circumstance that the court observed as follows:

> "In the instant case, the Mamlatdar declined to exercise jurisdiction holding that the Act did not apply. If an issue is referred to it by the trial Court under the Act, the question of jurisdiction would not arise and there could be no question of res-judicata as to jurisdiction of the Mamlatdar on reference".

On the contrary, in the present case, some of the prayers made by the applicant have been squarely dealt with in O.A. 4/93 and unambiguously, that constitutes a bar under Sec. 11 of the CPC.

24. The decision in Dr. Dattatraya Mahadev Nadkarni Vs. Municipal Corporation (1992(1) SLR 785 SC) has been relied upon to contend that where the prior approval of a competent authority is necessary to proceed in departmental inquiry the fact that such approval was not taken will vitiate the proceedings. This decision has no relevance because, in the earlier proceedings it has been held that there was no need to take any such approval.

Similar is the decision of the Supreme Court in Delhi Administration Vs. Chanan Shah, 1969 SLR 217. In that case, the departmental inquiry was quashed because the District Magistrate gave sanction to the inquiry without recording the reasons and without applying his mind.

25. In the circumstance, we find that the prayers made by the applicant are either not maintainable or they do not have any substance. Accordingly, this O.A. is dismissed at the admission stage.

26. We, however, make it clear that this will not either preclude the applicant from pursuing these matters with the Railway Board or prevent the Railway Board from passing any appropriate order in accordance with law. We also make it clear that if and when it is noticed by the applicant that the disciplinary proceedings are being delayed inordinately, it will be open to him to seek appropriate relief.

27. With this observation, this O.A. is disposed of. A copy of this order should also be sent to the respondent.

A. Vedavalli 20/3/95

(DR. A. VEDAVALLI)
MEMBER(J)

20/3/95

(N.V. KRISHNAN)
VICE CHAIRMAN(A)

'SRD'