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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

NEW DELHI.

O.A. No. 1876/94

New Delhi: this the 5th day of Nov, 1996.

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

HON'BLE DR.A.VEDAVALLI MEMBER(J).

Shri M.R.Dewan IFS (AGMU)

D-315, Nirman Vihar,

Delhi- 110092.

....Applicant

(Applicant in person)

VERSUS

1. The Secretary,
Ministry of Environment & Forest,
CGO Complex, Lodi Road, Prayavaran Bhawan,
New Delhi- 110003.

2. The Joint Cadre Authority, for the
AGMU Cadre, through the Joint Secretary/
UTS Div.,
Ministry of Home Affairs,
New Delhi.

3. Shri B.P.Sinha, IFS (AGMU) ROCF,
Secretary Forest, Port Blair, Chatham
Andaman & Nicobar IslandsRespondents

By Advocate: Shri V.S.R.Krishna.

JUDGMENT

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

In this application, Shri M.R.Dewan IFS

(AGMU) has prayed for:

- i) withdrawal of the impugned order dated 10.2.93 (Annexure-A1) placing him under suspension;
- ii) a direction to place Respondent No.3, the Conservator of Forests (Andaman Circle) and one Shri T.C. Nautyal under suspension;
- iii) a direction to respondents to pay him his full salary for the entire period from 1.12.92;
- iv) To give him a choice posting in Delhi or to issue the relieve order with permission to work with the Govt. of Delhi on deputation along with the Hon. Minister of Delhi Govt.

2. We have heard the applicant who argued his case in person over several dates. We have also heard respondents' counsel Shri VSR Krishna. During the course of one such hearing on 10.7.96 respondents' counsel served upon the applicant in our presence a copy of the Enquiry Report pursuant to the charge sheet dated 17.11.93 in the departmental proceeding drawn up against him, which we have recorded in the order sheet of that date.

3. The respondents have taken the plea amongst other grounds that this application is barred by res-judicata as the question whether the applicant's suspension warranted any judicial intervention or not had already been considered and answered in the negative vide CAT Principal.

37

Bench Judgment dated 2.6.94 in OA No.222/94 Shri M.R. Dewan IFS Vs. UOI & others and hence the present OA is hit by res-judicata.

4. On the other hand the applicant has contended that the said judgment is not hit by Res Judicata as it was PER INCURIAM. The other grounds taken by the applicant are that the suspension order is violative of Rule 3 AIS (Disciplinary & Appeal) Rules and AIS (Jt.Cadre) Rules; it is violative of the GOI's guideline/instructions; and was issued with malafide intent and malice towards the applicant. It is also alleged that vital facts were suppressed by the Respondents. A very large number of judgments have been cited which are listed in the written submissions made by the applicant, which are taken on record.

5. We have given the matter our very careful consideration.

6. We note that in OA No.222/94 the applicant Shri Dewan had sought the same relief namely to quash the impugned suspension order dated 10.2.93. After pleadings were completed, and both parties heard, the OA was dismissed by a detailed and well considered judgment dated 2.6.94 holding it to be without merit. Thereupon the applicant filed an M.A. bearing No.3115/94 praying for 'reconsideration' of judgment dated 2.6.94. This MA was subsequently supported by R.A.No.298/94 containing detailed facts and submissions to be treated as a part of the MA No.3115/94 transversing much the same field as covered in the present OA. The said R.A.No.298/94 and MA No.3115/94 were

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considered by the same Bench which had delivered judgment dated 2.6.94 and the Tribunal dismissed both the RA and the MA by common order dated 23.9.94 holding that they were satisfied that their judgment did not suffer from any error apparent on the face of the record so as to attract the provision of Order 47 Rule 1 CEC, so as to warrant review?

7. Thereafter it appears that on MA No.3782/94 in OA No.1876/94(Not OA No.222/94) in which a number of reliefs were claimed, including quashing of the suspension order dated 10.2.93, the Tribunal passed orders on 30.11.94 after perusing the records staying the suspension orders holding that prima facie the same was not sustainable on the ground that it had not been approved by the Minister in charge, and the charge sheet furnished to the applicant had also not been approved by the Minister I/C. Against that order, the Union of India filed SLP No.4392/95. The Hon'ble Supreme Court by its order dated 19.1.96 on that SLP (renumbered as Civil Appeal No.2228/96) allowed the appeal and set aside the Tribunal's order dated 30.11.94, as well as an application filed by Shri Dewan. Their Lordships held that having regard to the notings and orders contained in the original file, it could not be said that the Minister of State Environment & Forests had not given his approval to the applicant's suspension and the allegations relating to

39

the misconduct on the basis of which disciplinary action was proposed to be taken against Shri Dewan were also set out in the notings in the file that was submitted to the Minister, and under these circumstances their Lordships held that they were unable to uphold the impugned order dated 30.11.94 of the Tribunal staying the operation of the suspension order dated 10.2.93 specially when the earlier petition (OA No.222/94) filed by Shri Dewan challenging the said order had already been dismissed on merits by the Tribunal.

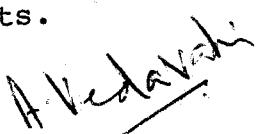
Furthermore their Lordships held that in the background of the Tribunal's judgment dated 2.6.94 in OA No.222/92 it was not open to Shri Dewan to reagitate the question about the competence of the President to pass the suspension order in view of the ^{1. Constitution of the} ~~Joint Cadre~~ Authority.

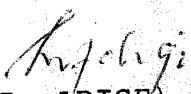
8. Shri Dewan has striven strenuously to persuade us to take the view, that despite the Tribunal's judgment dated 2.6.94 in OA No.222/94, and the Hon'ble Supreme Court's order dated 19.1.96 in Civil Appeal No.2228/96, it is still open to us to adjudicate on the validity of the impugned suspension order dated 10.2.93, and he has asked us to set aside the same on the ground that the Tribunal's judgment dated 2.6.94 is ~~PER~~ INCURIAM and the suspension order itself suffers from various infirmities. He has sought to support his arguments by quoting a very large number of judgments.

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9. We are unable to accept this preposition advanced by the applicant Shri Dewan. It was open to him to have taken all these grounds before the Hon'ble Supreme Court when Civil Appeal No.2228/96 came up for hearing there. We note that in that Civil Appeal, Shri Dewan had appeared in person, and after hearing both parties, the Hon'ble Supreme Court by its detailed order had held that it was not open to him to reagitate the question regarding his suspension in view of the Tribunal's judgment dated 2.6.94 in OA No.222/94. We are bound absolutely by the order of the Hon'ble Supreme Court dated 19.1.96, and as they have upheld the impugned suspension order dated 10.2.93, and indeed ~~with~~ the Tribunal's judgment dated 2.6.94 in OA No.222/94, we hold that under no circumstance is it open to us now at this stage to permit the applicant to reagitate before us the question of the validity of the impugned suspension order dated 10.2.93 (Annexure A-1). In this view of the matter, the other reliefs prayed for by the applicant viz. placing of the two officers under suspension; payment of salary from 1.12.92 and his posting in Delhi need no consideration.

10. The O.A. is therefore dismissed. No costs.


(Dr. A. VEDAVALLI)
/GK/ Member (J)


(S.R. ADIGE)
Member (A)