

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.2060/2000

New Delhi this the 2nd day of January, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).  
Hon'ble Shri Govindan S. Tampi, Member(A).

Kanti Prasad,  
S/o late Shri Har Dev Singh,  
R/o 242/2, Shiv Lok Puri,  
Kankarkhera,  
Meerut. ... Applicant.

(By Advocate Shri N.S. Verma)

Versus

- 1. Union of India, through  
The Secretary,  
Government of India,  
Ministry of Defence (Finance),  
New Delhi.
- 2. The Controller General of Defence  
Accounts,  
West Block-V, R.K. Puram,  
New Delhi.
- 3. The Controller of Defence Accounts,  
(P.D.),  
Meerut Cantt. ... Respondents.

(By Advocate Shri R.V. Sinha)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swamianthan, Vice Chairman (J).

This application has been filed by the applicant  
impugning the order passed by the respondents dated  
6.7.1999. This order has been passed in pursuance of the  
directions of the Tribunal dated 10.2.1999 in OA 2155/95.  
Prior to the filing of OA 2155/95, the applicant had filed  
an earlier application (OA 2241/90). While disposing of OA

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2241/90, the Tribunal had vide its order dated 11.12.1992 held as follows:

"9. Admittedly, the applicant participated in the departmental enquiry in which he had contended that he was being tried in the criminal case for the very same charges which have been brought against him in the departmental enquiry. He has also stated that an amount of Rs.10,000/- has been deposited by his wife with the Police authorities at the Police Station, Bahadurgarh out of his L.T.C. and scooter advance. He has further contended that when his LTC and scooter advance money has been adjusted against the loss of Government money, the extreme penalty of dismissal is not justified.

10. The gravamen of the charge against the applicant in the departmental enquiry relates to misappropriation of Government money to the extent of Rs.10,000/-. This precisely is the charge brought against him in the criminal case. As the departmental enquiry has already been conducted and the penalty of dismissal from service has been imposed on the applicant by the impugned order dated 11.10.1990, we are of the opinion that he cannot be granted the relief sought by him in the present application. At the same time, we are of the opinion that after the criminal court renders its judgement in the criminal case brought against the applicant, the respondents should review his case in the light of the said judgement and pass appropriate orders. We order and direct accordingly. The application is disposed of on the above lines. There will be no order as to costs".

2. The above two paragraphs of the order dated 11.12.1992 have also been quoted and referred to in Tribunal's order dated 10.2.1999. After considering the relevant facts, the Tribunal was of the opinion that the revising authority had not taken into account the verdict of the Judicial Magistrate in his order dated 22.4.1994 acquitting the applicant of the criminal charge framed against him, on the ground that the prosecution had failed to prove its case beyond every shadow of reasonable doubt. Therefore, in terms of the directions in Tribunal's order

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dated 11.12.1992, the O.A. was partly allowed, setting aside the order of the revising authority dated 15.11.1994. The case was remitted to the revising authority for passing a fresh order in the context of the various findings and conclusions of the Judicial Magistrate. In pursuance of these directions, the impugned order dated 6.7.1999 has been passed in revision which has been challenged in this O.A. Apart from this order, Shri N.S. Verma, learned counsel, has challenged a number of other orders. He has submitted that the disciplinary proceedings held against the applicant were illegal and the suspension order dated 12.9.1986 forwarded by letter dated 16.9.1986 and the subsequent revocation of suspension on 4.8.1987, is also not in accordance with the Rules. Learned counsel has submitted that the punishment order passed against the applicant of dismissal from service is not warranted. He has submitted that in terms of the Tribunal's order in OA 2155/95, the applicant is, therefore, entitled for reinstatement in service with all increments of pay from 1987 to 1990 as well as other consequential benefits of reinstatement, including pension.

3. On the impugned order dated 6.7.1999, the learned counsel for applicant has submitted that the revising authority did not take into account the conclusions of the Judicial Magistrate in his order dated 22.4.1994 in the criminal case in which the applicant had been acquitted on the same charges. He has referred to the findings of the Hon'ble Judicial Magistrate and has submitted that the applicant has written in the Day Book

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about the shortfall of the money of Rs.10,000/-. He submits that this is, therefore, a case of no evidence. He has also submitted that there are a number of lacunae in the conduct of the departmental proceedings against the applicant. He has submitted that the charge-sheet which is based on suspicion should be struck down and he has relied on the judgement of the Calcutta High Court in P.C. Dutta Vs. Collector of Calcutta and Ors. (1979 (1) SLR 44). His other contention is that the conclusions arrived at by the disciplinary authority should be based on evidence and not mere suspicion. He has also relied on the judgements of the Supreme Court in Nand Kishore Prasad Vs. The State of Bihar and Ors. (AIR 1978 SC 1277) and Madhya Pradesh High Court in Ramshaval Yadav Vs. Chief Security Officer, Railway Protection Force, Bombay and Ors. (AIR 1967 M.P. 91). Learned counsel has also, relying on K.S. Yadav Vs. M.C.D. New Delhi (1981 (1) SLR 394 - Delhi High Court) submitted that the punishment imposed on the applicant is too harsh and excessive. For these reasons, learned counsel has submitted that the impugned revising authority's order should be quashed and set aside and the applicant should be deemed to have been reinstated in service with effect from 1.11.1990 with all consequential benefits.

4. We have seen the reply filed by the respondents and heard Shri R.V. Sinha, learned counsel. He has submitted that all the arguments advanced by the learned counsel for the applicant impugning the disciplinary proceedings at this stage are barred by *res judicata* as the

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applicant has already agitated the same issues in the earlier two O.As referred to above. On the question of quantum of punishment, learned counsel has submitted that the charge proved against the applicant involved moral turpitude and it cannot be held that in the circumstances the punishment of dismissal from service was too harsh or unconscionable to justify the Tribunal reducing the same. He has relied on the judgement of the Supreme Court in Om Kumar & Ors. vs. Union of India (2000 (VIII) AD (SC) 521)

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

6. For the reasons given below, we <sup>find</sup> ~~find~~ no merit in this application which is accordingly dismissed.

7. The order impugned in this application is the order passed by the revising authority dated 6.7.1999 in pursuance of the earlier order passed by the Tribunal dated 10.2.1999 in O.A.2155/95. The contention of Shri N.S. Verma, learned counsel that in spite of the clear directions of the Tribunal in paragraph 10 of the order dated 10.2.1999 in OA 2155/95, allowing the O.A. only partly to the extent directed therein, the entire disciplinary proceedings held against the applicant are open to challenge in the present O.A. cannot be agreed to. It is relevant to note that the applicant had filed an earlier O.A. (OA 2241/90) which was disposed of by order

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dated 11.12.1992 wherein he had prayed for quashing the impugned order dated 11.10.1990 with all consequential benefits, including re-instatement in service. In paragraph 5 of the Tribunal's order dated 10.2.1999, reference has been made to the submissions made by the same learned counsel in that O.A. where he has stressed on various shortcomings in the inquiry conducted by the respondents and the impugned order of the disciplinary authority. The Tribunal had come to the conclusion that "this question cannot be gone into at this stage as the applicant has already agitated the same relevant reliefs in O.A.2241/90". In the facts and circumstances of the case, the attempt of learned counsel for the applicant to re-argue the same grounds which he had apparently taken in OA 2155/95, in the present O.A. is, therefore, clearly barred by the principles of res judicata. Similarly, the Tribunal had come to the conclusion that the applicant's prayer for a direction to the respondents to grant him the increments due to him from 1987-1990, is also barred by the principle of constructive res judicata. We respectfully reiterate these conclusions and accordingly these prayers are rejected.

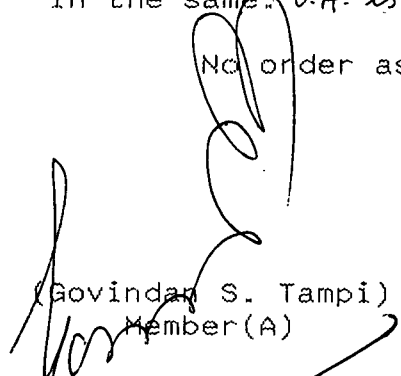
8. Therefore, taking into account the previous order passed by the Tribunal dated 10.2.1999 with the order dated 11.12.1992, the only question remains is whether the revising authority has passed the impugned order dated 6.7.1999 in the light of the findings and conclusions of the Judicial Magistrate acquitting the applicant in the criminal case in his order dated

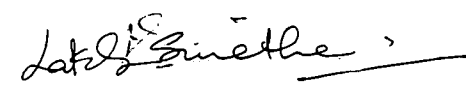
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22.4.1994. After perusal of this order and the order dated 6.7.1999, we are satisfied that the directions of the Tribunal dated 11.12.1992 have been complied with by the revising authority. The cases relied upon by the learned counsel for the applicant will, therefore, not be of any assistance to him at this stage. In the facts and circumstances of the case, as the directions of the Tribunal have been complied with by the respondent, we do not find any justification to interfere in the matter.

9. Although the learned counsel for applicant had in passing submitted that the order of suspension and its revocation were not in accordance with FR 54-B, he did not press this point during the arguments which was also stressed by Shri R.V. Sinha, learned counsel. In any case, this is also an issue which could have been agitated by the applicant when he filed earlier two O.As. He cannot, therefore, agitate this issue at this stage which is barred by the principles of constructive res judicata. We have also considered the other submissions made by the learned counsel for the applicant but do not find any merit in the same. *O.A. is accordingly dismissed.*

No order as to costs.

  
 (Govindan S. Tampi)  
 Member (A)  
 'SRD'

  
 (Smt. Lakshmi Swaminathan)  
 Vice Chairman (J)