

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1150/86
T.A. No.

198

DATE OF DECISION 2-2-1990.

V.S. Tyagi Applicant (s)

In person Advocate for the Applicant (s)

Versus

Union of India through Respondent (s)

G.M. Northern Railway.

Shri Shyam Moorjani Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

By this application, filed on 15.12.1986, by Shri V.S. Tyagi, working as Pharmacist in the Divisional Hospital, Northern Railway, New Delhi, at the relevant time, under section 19 of the Administrative Trib-unals Act, the applicant has challenged an order dated 28.4.1983 passed by the disciplinary authority, imposing penalty of withholding of increments in time scale of pay for a period of two years with cumulative effect.

2. It would be apt to mention here that this application was dismissed by a Division Bench of this Tribunal vide order dated 18.12.1986 on the ground of limitation. The applicant had filed a Review Application against the order by which his application was dismissed. However, by an order passed by a Division Bench of this Tribunal on 19.9.1988, his application was admitted without deciding the RA.

3. The brief facts of the case are that the applicant

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was charged for failure to maintain absolute integrity inasmuch as he fraudulently got the pay of Shri Sher Singh, Seasonal Waterman, appointed by him, released from 1.5.1980 though he was actually appointed with effect from 28.5.1980. An enquiry was held against the applicant in which the charge levelled against him was held proved by the Enquiry Officer. Thereafter, the disciplinary authority imposed the penalty of withholding of increments in time scale of pay for a period of two years with cumulative effect. The applicant filed a review petition against the said punishment, which was rejected on 6.9.1984. Aggrieved by the said rejection, the applicant filed this application in the Tribunal.

4. The respondents have filed the counter affidavit in which they have stated that the impugned order dated 28.4.1983 has been set aside by the appellate authority after conducting suo moto revision. A copy of the letter dated 29.7.1988 has been annexed to the counter affidavit as Annexure R-I. In view thereof, the learned counsel for the respondents submitted that the application has become infructuous as the cause of action no longer survives in this case. It is stated by the learned counsel for the respondents that the applicant has accepted the order passed by the appellate authority setting aside the punishment imposed on him.

5. Faced with this situation, the applicant has filed Misc. petition No. 1634/89 seeking permission to amend the application praying that he may be allowed all the consequential benefits alongwith the fare for withheld passes etc. The respondents have filed a counter affidavit strongly opposing the prayer made in the MP. The applicant has also filed a rejoinder

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thereto.

6. The applicant argued his case in person. The respondents were represented through Mr. Shyam Moorjani, counsel. We have heard the parties and gone through the documents placed before us very carefully.


7. The applicant strenuously contended that he can amend the application during its pendency. In support of his contention, he called in aid the judgment of the Supreme Court in Shikharchand Jain vs. Digambar Jain Praband Karini Sabha and others - AIR 1974 SC 1178 - wherein it was held that to shorten litigation, it would be just and proper to allow the amendment sought for. The applicant also relied on the judgment of the Supreme Court in Bikram Singh and others Vs. Ram Baboo and others - AIR 1981 SC 2036 wherein the Supreme Court allowed the petitioner to amend his plaint. Yet another citation on which the applicant placed reliance is the judgment of the Supreme Court in 1969 (1) SCC 869 - Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon, in which the Supreme Court, inter alia, held that the court always gives leave to amend the pleading of a party.

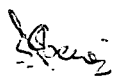
8. The learned counsel for the respondents, stoutly refuting the prayer made in the M.P., submitted that the applicant cannot amend his application by adding substantial reliefs after the application has become infructuous by virtue of the fact that the relief claimed in the application has already been allowed suo motu by the respondents. He further submitted that the applicant has not made any representation to the department for grant of relief which he is now claiming by way of the present M.P.

The learned counsel for the respondents averred that the respondents have not passed any order denying the consequential relief to the applicant. Therefore, his prayer in the M.P. is premature.

9. Having bestowed our careful consideration to the arguments putforth by the parties, we are of the view that since the relief claimed by him in the O.A. has already been granted by the respondent, the O.A. has become infructuous. As regards the prayer for consequential relief arising out of setting aside of the punishment order, the applicant should first move the appropriate departmental authorities. In case, he fails to get relief from the department, after exhausting all the departmental remedies, he will be at liberty to file a fresh application in the Tribunal, in accordance with law.

10. In view of the foregoing discussion, we find no merit in the M.P. (No. 1634/89) and dismiss the same. Since the O.A. has already become infructuous, the same is also dismissed. There will be no order as to costs.


(I.K. Rasgotra)
Member (A) 2/2/90

 2.2.90.
(T.S. Oberoi)
Member (J)