CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.853/2004

New Delhi, this the 18th day of **January, 2005**

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

Shri P.S. Vimal, IRTS (Retd.)
S/o Late Shri Angan Lal
R/o A-303, Rail Vihar
Sector-3, Vasundhara
Ghaziabad (UP). ... Applicant

(Applicant in person)

Versus

1. Union of India through
The Secretary
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi.

2. Member Traffic
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi.

3. General Manager
South Eastern Railway
Garden Reach
Calcutta.

4. General Manager
Eastern Railway
Fairlie Place
Kolkata. ... Respondents

(By Advocate: Sh. Rajinder Khatter)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant joined Indian Railway Traffic Service on 8.11.1968. On different occasions, he earned his promotion. By virtue of the present application, he seeks quashing of the chargesheet and setting aside of the impugned orders. The impugned order dated 6.8.2002 reads:

> "Whereas Shri P.S.Vimal, Chief Traffic Manager, (S&C) South Eastern Railway (since retired) had preferred an appeal dated 31.7.2001 against the penalty of reduction by one stage in time scale for a period of one month without cumulative effect imposed by the Railway Board vide order No. E(O)-I/97/PU-2/181 dated 15.6.2001;
>
> 2. NOW THEREFORE, the President, after careful consideration of the aforementioned appeal and all other relevant records of the case, in consultation with Union Public Service Commission, has come to the conclusion that there is no merit in the appeal filed by Sh. P.S.Vimal for the reasons given in the UPSC's letter No.F.3/87/02-S.I. dated 26.7.2002 (a copy of which is enclosed) and that the penalty of reduction by one stage in time scale for a period of one month without cumulative effect imposed on him by the Railway Board was not excessive and that the appeal of Shri P.S.Vimal should be rejected. Accordingly, the President has rejected the aforesaid appeal dated 31.7.2001 preferred by the said Sh. P.S.Vimal.
>
> Shri P.S.Vimal is required to acknowledge this order in writing.

V.S.Ag

By order and in the name of the President."

2. The application is being contested.

3. Some of the other facts, relevant for purposes of the present order, can also be delineated. The applicant had initially filed OA 1184/2002, which was disposed of directing that the appeal of the applicant should be decided within two months. The appeal was formally rejected on 6.8.2002. The applicant filed OA 30/2003 challenging the orders of 6.8.2002, 29.8.2002 and 21.10.2002. He had amended the OA and claimed his promotion to higher administrative grade.

4. As already pointed above, the application is being contested raising various preliminary objections. It is not disputed that earlier directions had been issued to dispose of the appeal of the applicant, which has since been decided. Thereafter, the applicant filed OA 30/2003. The same was being contested. Applicant filed MA 1650/2003 seeking to amend the various paragraphs of the OA. The applicant had unconditionally withdrawn all other causes of action and limited his dispute to the promotion. Therefore, it has been asserted that the present application is not maintainable because the applicant abandoned his cause of action. On merits also, the plea of the respondents is that the claim of the applicant is without merit.

5. We have heard the parties' counsel and have seen the relevant record.

6. Learned counsel for the respondents urged that so far as this particular relief claimed in the present application is concerned, which was also claimed in the earlier OA, the applicant had withdrawn the said relief without permission of this Tribunal and, therefore, under Order XXIII Rule 1 of the Code of Civil Procedure, in accordance with the principles which are well recognized, the applicant must be taken to have abandoned his claim.

7. The applicant had argued that there is no estoppel against the statute, therefore, he is not debarred from claiming the relief and in any case the Code of Civil Procedure does not apply. He explained that the said relief was given up keeping in view the objection raised by the respondents that under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987, multiple reliefs could not be claimed.

8. It is true that under Section 22 of the Administrative Tribunals Act, 1985, this Tribunal is not bound by the strict provisions of Code of Civil Procedure. However, it prescribes that it shall be guided by the principles of natural justice and should be subject to other provisions of the Act. All the same, Central Administrative Tribunal will not be, in strict sense, a Court to which the Code of Civil Procedure would apply. Still it has the trapping of a Court trying or hearing Writ Petitions.

9. Order XXIII Rule 1 of Code of Civil Procedure is based on the principles of natural justice. It specifically prescribes that, if without permission of the Court, a person abandons his claim, he

cannot file a separate suit on the same cause. In other words, if he had relinquished his claim, without permission of the Tribunal, he would be debarred from filing another application pertaining to the same cause.

10. Before proceeding further, it would be appropriate to set the facts in order. In the present case before us, the applicant prays that chargesheet that has been served should be quashed including the impugned orders imposing the penalty. It is not in dispute that in the earlier OA 30/2003, similar relief had been claimed. On 5.11.2003, this Tribunal had recorded:

> "The applicant states that he will confine his prayer limited to his promotion only. For this purpose, he seeks and is allowed time to amend the relief clause and other consequential amendments.
>
> A copy of this order be issued Dasti to both the parties.
>
> List it for orders in misc. matters on 25.11.2003.
>
> Sd/- Sd/-
> (Bharat Bhushan) (R.K.Upadhyaya)
> Judicial Member Administrative Member"

11. In this process, he confined his prayer in the earlier application with respect to his promotion only. He had withdrawn the prayer, which is made in the present application, in the earlier application. It must be taken that no permission of this Tribunal was obtained at that time.

12. When permission had not been taken, in our opinion, the broad principles of Order XXIII Rule 1 of Code of Civil Procedure would necessarily apply. As already referred to above, the

principles are based on fair play. The Supreme Court considered the same in the case of **SARGUJA TRANSPORT SERVICE** v. **STATE TRANSPORT APPELLATE TRIBUNAL, GWALIOR AND OTHERS**, AIR 1987 SC 88 and held:

> "7. The Code as it now stands thus makes a distinction between `abandonment' of a suit and `withdrawal' from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission referred to in sub-rule (3) of R.1 of O. XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying R.1 of O.XXIII of the Code is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. Invito beneficium non datur. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of R.1 of O.XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in S.11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file

a fresh suit, there is no prior adjudication of a suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of R.1 of O.XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the Court."

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9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying R.1 of O.XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Art. 21 of the Constitution since

such a case stands on different footing altogether. We, however, leave this question open."

13. Identical, indeed, is the position in the present case. Merely because the objection had been raised that multiple reliefs could not be claimed, will not come to the rescue of the applicant because he should have taken permission of the Tribunal while withdrawing the same which was not done. The applicant has contended that there is no estoppel against the statute. He relied upon the decision of the Supreme Court in the case of **AIR INDIA** v. **NERGESH MEERZA AND OTHERS**, 1982 (1) SLR 117. In the cited case before the Supreme Court, there were two awards, which were binding on the parties. The regulations concerning the department were challenged on the ground that the same were void under Articles 14 and 19 of the Constitution. The Supreme Court held, in this backdrop, that there was no estoppel against the statute. It is obvious from the aforesaid that the decision must be confined to the facts of that case and had little application to the principles of Order XXIII Rule 1 of the Code of Civil Procedure.

14. Reliance has further been placed on the decision of the **Jabalpur Bench** of this Tribunal in the case of **R.P.MISHRA** v. **UNION OF INDIA AND OTHERS,** 1988(5) SLR 667. Therein, there were plural remedies that were claimed. The said Bench of the Tribunal held that since the causes of action were separate, he could have filed a separate application, if he so desired. It is obvious from the perusal of this decision that permission had been granted by the Tribunal and, therefore, the decision will not come

in any way to help the applicant because in the present case, such permission had not been taken from the Tribunal.

15. On over all view, therefore, it is obvious that the applicant had withdrawn the relief that he is claiming in the present application. He had not taken permission of this Tribunal. He, therefore, in this process cannot file a fresh application on the analogy of the principles of Order XXIII Rule 1 of the Code of Civil Procedure.

16. For these reasons, the OA, being without merit, must fail and is dismissed.

(S.K.Naik)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/