

Central Administrative Tribunal
Principal Bench: New Delhi

RA No.15/95
MAS 72 & 73/95 in
OA-1508/92

5th New Delhi this the Day of April, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

J.L. Jain,
Son of Sh. Sunder Lal Jain,
F.A. & C.A.O. (Northern Railway)
SC-6, Basant Lane,
New Delhi-110055.

...Applicant.

Versus

1. Union of India through
Secretary, Ministry of
Railways, Rail Bhavan,
New Delhi-110 001.
2. Joint Secretary (Estt),
Railway Board, Rail Bhavan,
New Delhi-110 001.
3. General Manager,
Northern Railway,
Baroda House,
New Delhi-110001.
4. Commissioner for
Departmental Inquiry,
(Sh. S.K. Roy),
Central Vigilance Commission,
Jam Nagar House,
Akbar Road,
New Delhi-110011.

...Respondents

ORDER (By circulation)

Hon'ble Mr. N.V. Krishnan:-

OA-1508/92 was dismissed by our order dated 26.10.94. This application has been filed seeking a review of that order. MA-72/95 has been filed for an interim stay of that order pending the disposal of the Review Application. MA-73/95 has been filed for oral hearing.

2. OA-1508/92 was to quash an ex parte order passed on 18.5.92 in the disciplinary proceedings initiated against the applicant on 22.2.89. The disciplinary proceeding itself was challenged in an earlier OA-649/89, which, after detailed hearing, was dismissed. During the pendency of that OA, several MPs were filed in OA-1508 of 1992. The OA as well as MPs were heard and disposed

of by the order dated 26.10.94. The OA was dismissed. We have passed a detailed order in respect of the OA and the MPs.

3. We have considered the request in the MA-73/95 for a hearing of the Review Application before any orders are passed. We are of the view that no case has been made out to require such a hearing. In the circumstances, we are satisfied that the RA can be disposed of by circulation. Hence, MA-73/95 is dismissed.

4. The Review Application itself runs into 58 pages with accompaniments running into ^{u an} other 60-70 pages. The very size and the length of the Review Application itself suggests that there could, possibly, no grounds justifying a review. For, if a review is sought, the grounds should be such as would hit the eye of the authority who is requested to review the order (see judgement of the Supreme Court in Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhury (JT 1994 (7) SC 536).

5. We have waded through this lengthy application to find out precisely the grounds on which it has been made. It would be useful to recall here that we dismissed the OA-1508/92 on the principal ground that it was in respect of an inter-locutory order in a disciplinary proceeding and that, therefore, that order cannot be challenged before the Tribunal and we held that if any illegality has been committed in issuing the impugned order in the disciplinary proceedings the applicant could challenge it only after the final order was passed by the disciplinary authority. We also dismissed many MPs filed on two principal grounds viz. that they tend to alter the character of the OA and that they are barred by the principle of constructive res-judicata.

6. In the Review Application it is first stated that our assumption that the order dated 18.5.92 in the disciplinary proceedings is an inter-locutory order is wrong. Secondly, in any case, even if it is held to be inter-locutory order this Tribunal has jurisdiction to adjudicate upon the matter. Thirdly, the decision has resulted in miscarriage of justice and fourthly, as OA-649/89 was not dismissed on the merits of the case, there is no question of res-judicata. We notice that all these points have been dealt with in the elaborate order, which we have passed after considering a number of authorities cited by the learned counsel for the applicant. The only new point that has been made is the decision of the Supreme Court in *Madhu Limaye Vs. State of Maharashtra* (AIR 1978 SC 47). Paragraphs 12, 13, 14 and 15 of that judgement have been cited more particularly the following extract of that judgement:

"An Order rejecting the plea of the accused on a point which, when accepted will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397 (2)".

We are of the view that this observation has no relevance in so far as the applicant's case is concerned. We have noted the order impugned in the OA in the opening para of our order. Due to the absence of the applicant on 18.5.92 when the DE was fixed for further enquiry, the enquiry officer took up the proceedings ex parte. He took on record exhibit S-1 document. As the Presenting Officer did not produce or examine any prosecution witness the enquiry officer concluded the case. This order is only an interlocutory order in the disciplinary proceedings.

7. In so far as the argument that OA-649/89 having been disposed of in the manner we did - namely that we did not find any reason to interfere with the chargesheet issued to the applicant - it did not operate as a res-judicata, the Review Application is argumentative and it does not point out any error apparent on the face of record. We are of the view that the applicant seems to be aggrieved by the order sought to be reviewed on its merits and if so the proper course is not to file a Review Application but to seek other remedies.

8. The R.A. is, therefore, dismissed. MA-74/95 for interim stay is also, therefore, dismissed.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

N.V. Krishnan
(N.V. Krishnan)
Vice-Chairman(AO)

'Sanju'