

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 9<sup>th</sup> day of Dec, 97.

O.A. No. 1121/97

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S.DAS GUPTA, MEMBER(A)

(Captain) S.C. Gulati, resident of H.NO. 18 HG(D)

ADA Awantika Naini, Allahabad.

Applicant

Applicant in person.

versus

1. Union of India through DC(SSI) Nirman Bhawan, New Delhi.

2. Shri G.S. Kashyab Inquiry Officer, O/O The DC (SSI) Nirman Bhawan, New Delhi.

Respondents.

ORDER(RESERVED)

HON. MR. JUSTICE B.C. SAKSENA, V.C.

We had heard the ~~learned counsel for the~~ applicant who appeared in person when the O.A. came up for orders as regards admission. Through this O.A. the applicant challenges the orders dated 23.3.95 (Annexure A-3), order dated 17.9.97 and the order dated 28.7.97 (Annexure -1). The order dated 23/30.3.95 is an office memorandum i.e. a charge sheet intimating the applicant about the proposal to hold an enquiry against him under rule 14 of the CCS(CCA) Rules, <sup>as also</sup> the substance of the imputations of misconduct or misbehaviour in respect of which the enquiry is proposed to be held is set out in the statement of articles of charges. The statement of imputation of misconduct and misbehaviour and list of documents by which the article of charges are sought to be proved. The order datd 17.9.97(though wrongly mentioned in the relief clause as 17.9.96) is a letter sent to the applicant informing him that the next date of conducting enquiry has been fixed on the 29th October, 97 and the place of enquiry was also indicated. The applicant was advised and asked to attend the enquiry on the place and time which was indicated therein that if he failed to attend the enquiry, proceedings will be initiated exparte. The

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applicant has annexed the copy of the proceedings held on 28.7.97 which shows that on the applicant stating that he had not received article of charges, he was supplied a set of complete documents and receipt for acknowledgement was obtained.

2. The applicant has also indicated that he had earlier filed O.A. before this Bench which was numbered as O.A. No. 661/96 against the said memo dated 23.3.95. After going through the said decision we find that the plea taken therein and also raised in the present O.A., had been duly considered. The plea was that the applicant was no longer under the disciplinary control of his erstwhile employer and therefore, no proceedings could be initiated against him after his retirement. The applicant had retired from service on 31.7.95 and since by that time the proceedings initiated against the applicant had not been brought to conclusion, the proceedings which were instituted prior to his retirement, were continued after his superannuation. The Division Bench which decided O.A. 661/96 had clearly in paragraph 9 rejected the plea raised by the applicant in view of the provisions of rule 9 (2)(a) of the C.C.S.(Pension) Rules and had held that the departmental proceedings which was initiated prior to the applicant's retirement, can be continued after his retirement. Thus, the applicant through the second O.A. cannot be permitted to challenge the enquiry proceedings on the basis of charge sheet dated 30.3.95. The findings in the said O.A. clearly constitute res-judicata between the parties.

3. The applicant on the erroneous assumption that the disciplinary proceedings on the basis of the charge sheet dated 30.3.95, cannot be continued after his retirement, challenges the notice dated 17.9.97 indicating the next date of enquiry.

4. In this O.A. the applicant has repeated the same very pleas which had been raised in the earlier O.A. 661/96. The pleas have already been adjudicated in the earlier O.A., cannot be permitted to be raised and in any event deserve to be ignored.

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5. The next question which arises for our consideration is whether an O.A. challenging the enquiry proceedings <sup>before a final order had been passed</sup> is premature. This question has been the subject matter of consideration by two Division Benches, of which one of us viz V.C. was a Member. The said decisions are (1) Deolal and others vs. Union of India and others through Secretary Ministry of Railways and others (O.A. No. 1509 of 1993 decided on 25.10.94 and (2) Veer Kumar Jain vs. Union of India, Ministry of Defence through Secretary, New Delhi and others (O.A. No. 272/93 decided in March, 95).

6. In the aforesaid two decisions, we had occasion to consider some decisions of various Benches of the Tribunal on the said question. A specific reference may be made to a decision of Madras Bench in V.P. Sidhan vs. Union of India and others reported in 1988 7, A.T.C. page 40. Before the Madras Bench the question of maintainability of petition under section 19 of the Administrative Tribunals Act at interlocutory stage of proceedings was considered. The submission of the learned counsel for the applicant therein was that section 19 of the Act does not use the expression 'final order' and it merely refers to 'any order'. Relying on an earlier decision in O.A. 103/87, it was held that the Tribunal cannot interfere in the order passed at the interlocutory stage will over ride the view taken in the earlier decision that the word 'any order' as occurring in section 19 of the Act has only to be construed as 'final order' which was followed and approved in the later decision of the Madras Bench. In our earlier decision referred to hereinabove, we had followed the proposition of law laid down by the Madras Bench and had also taken note of another decision of Madras Bench in Guna Vijayan vs. Assistant Director, Census Operation reported in AIR 1986 (2) CAT 603. In the said decision, a view had been taken that if O.As are entertained at an interlocutory stage of disciplinary proceedings where no final order has been passed by the concerned disciplinary authority, would render sections 20 and 21 of the <sup>A.T.</sup> Act practically otiose.

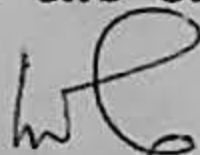
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7. The following decisions had persuaded <sup>us</sup> to take a view that an O.A. would not be maintainable at interlocutory stage of disciplinary proceedings:

- i) Ram Pratap vs. Union of India, O.A. No. 1565/92 decided on 10.9.93 by the Principal Bench.
- ii) In Veer Kumar Jain vs. Union of India supra, the Division Bench of this Tribunal had analysed various Supreme Court decisions Viz. Union of India and others vs. K.D. Dhawan reported in 1993 SCC, L&S PAGE 324 AND Union of India vs. Upendra Singh, reported in J.T., 94 1, S.C. page 658.

8. In the light of the discussions hereinabove, the O.A. deserves to be dismissed accordingly and is dismissed on the ground of its being premature and not maintainable at this interlocutory stage of <sup>the proceedings</sup> ~~decision~~. The O.A. is also barred by the principle of res-judicata since many pleas raised in the present O.A. have been found to be untenable in the earlier decisions in ~~the~~ O.A. No. 661/96.

  
MEMBER (A)

  
VICE CHAIRMAN

Allahabad Dated: 9.12.97

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