

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application 683 of 2004

Dated: This the 21st day of July, 2004

HON'BLE MRS. MEERA CHHIBBER, JM

Krishna Murari Singh son of Shiv Shankar
aged about 38 years, resident of village
Sonaran Ka Purwa, Post and Tehsil, Manjhanpura,
District - Kaushambi (Allahabad).

.....Applicant

By Advocate: Shri Arvind Yadav

Versus

1. Union of India, through General Manager,
Northern Central Railway, Allahabad.
2. Divisional Railway Manager, Northern Central
Railway, D.R.M. Officer, Nawab Yusuf Road,
Allahabad.
3. Senior Divisional Personnel Officer,
Northern Central Railway, D.R.M. Officer,
Nawab Yusuf Road, Allahabad.
4. Senior Divisional Commercial Superintendent,
D.R.M. Officer, Nawab Yusuf Road, Allahabad.

.....Respondents.

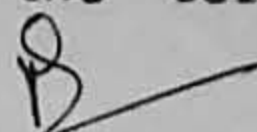
By Advocate: Shri A.K.Gaur

O R D E R

By Hon'ble Mrs. Meera Chhibber, JM

By this O. A. applicant has sought the following relief(s):

- (A) to issue a writ, order or direction in the nature
of mandamus directing the respondents to regular-
ise/ absorb the services of the applicant.



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- (b) to issue a writ, order or direction in the nature as the Hon'ble Court may deem fit and proper in the circumstances of the case.
- (c) Award cost to the petition to the applicant."

2. Learned counsel for the respondents at the ^{has} threshold/raised a preliminary objection on the question of maintainability of the O.A. itself on the ground that applicants had earlier filed O.A. No. 963 of 1992 in this Tribunal alongwith number of other persons, which was disposed off on 03.11.1995 as follows(pg. 62 at 65):-

"i/- All the applicants shall be considered for regularisation in their own turn and in case any of the juniors has been regularised the applicants and were senior and are considered fit for regularisation shall be considered to have been regularised from the dates of regularisation of such juniors.

ii/- Meanwhile they shall be considered for re-engagement as casual waterman in preferes to their juniors."

The applicant herein filed a contempt petition alleging disobedience of the orders dated 03.11.1995 as referred to above, which was dmissed by this Court on 01.11.1999 (pg.66 at 82). However it was observed, in case applicants are aggrieved by the said orders passed by the respondents they can agitate the said matter by filing Original Application. It is submitted by the counsel for respondents that if applicants wanted they could have filed O.A. thereafter, but they did not file any O.A. Present O.A. has been filed only on 22.3.2004 he, therefore, submitted this O.A. is npt maintainable at this stage.

3. Counsel for the applicant on the other hand submitted that after the order dated 01.11.1999 was passed in the Contempt Petition, applicant had filed writ petition in the Hon'ble High Court of Allahabad challenging the order dated 01.11.1999 but since that

would not be maintainable he has withdrawn the said writ petition from Hon'ble High Court, therefore, this O.A. may be entertained as he had chosen a wrong forum.


4. Counsel for the respondents on this aspect contended that even in the order, which has been passed by Hon'ble High Court, no liberty has been sought by the applicant to approach this Tribunal and the law is well settled that once a writ petition is dismissed without giving liberty to the applicant to re-agitate the matter subsequent petition on the same ground cannot be entertained. He, thus, prayed that this O.A. should be dismissed.

5. I have heard both the counsel and perused the orders as referred to above. Copy of the order dated 12.5.04 passed by Hon'ble High Court of Allahabad has been placed on record by the applicant. It is seen that in the order dated 01.11.99 applicant was given categorical liberty to challenge the orders passed by the respondents by filing O.A. but applicant chose not to file any O.A.. On the contrary he challenged the said order itself before Hon'ble High Court by filing writ petition no. 1024 of 2000. Thereafter he filed fresh O.A. on 22.3.04 when the matter was still pending in the Hon'ble High Court, therefore, this O.A. could not have been filed in any case during the pendency of the writ petition in Hon'ble High Court. In the order dated 12.5.04 it is clearly written that counsel for the petitioner is no longer interested in prosecuting the writ petition any further and prays that writ petition may be dismissed as not pressed. Accordingly writ petition was dismissed as withdrawn. If counsel for the applicant felt that the writ petition was not the correct approach, he ought to have taken liberty from the Hon'ble High Court to file the O.A. before this Tribunal while setting the writ petition dismissed as withdrawn. Admittedly neither any such request was made by the applicant's counsel nor any liberty has been granted by the Hon'ble High Court of Allahabad. At this juncture it would be relevant to quote the judgment of Hon'ble Supreme Court reported in (1997) 2 Supreme Court Cases 534 wherein it was held that where the first writ petition challenging the order of termination of service was withdrawn

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without grant of liberty by the Court to file a second writ petition, the second writ petition for that very purpose ^{was} rightly held by the High Court to be attracting the principle of constructive res judicata and, therefore, not maintainable. This ratio shall be applicable in the present case as well because initially even though liberty was given by the Tribunal to file the fresh O.A. It was not availed by the applicant but he preferred to challenge the same in the Hon'ble High Court by challenging the order passed in the contempt petition. The Writ Petition was pending for almost 5 years in the Hon'ble High Court and it is quite possible that writ petition was withdrawn because it was likely to be dismissed as is normally done by the parties. Even otherwise counsel for the applicant should have taken liberty from the High Court to file the O.A. before Tribunal if he wanted to file fresh O.A.. It was held in the case of Zachariah Mathew Vs. Union of India and Others also reported in (1988) 7 Administrative Tribunals Cases 478 that where petition was withdrawn from Hon'ble High Court without obtaining leave of the Court to refile, it cannot be entertained by the Tribunal.

6. In view of the above judgments I am convinced that the present O.A. is not maintainable. The same is accordingly dismissed with no order as to costs.


Member-(J)

Brijesh/-