

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 16<sup>th</sup> DAY OF DECEMBER, 1996

Review Application No. 112 of 1996

In

Original Application No.1712 of 1992

HON.MR. JUSTICE B.C.SAKSENA, V.C  
HONMR. S. DAS GUPTA, MEMBER(A)

Basant Ratnakar, s/o Late shri Bal  
Chand Upadhyaya, Foreman, A.C. Coach,  
N.E. Railway, House No. 151, Mohalla Zafra Bazar, Gorakhpur.

...Applicant

BY ADVOCATE SHRI ANAND KUMAR

Versus

1. Ministry of Railways, Union of India  
New Delhi
2. District Electrical Engineer  
(Colony), N.E. railway, Gorakhpur.
3. Chief Personnel officer(non-Gazetted) N.E.  
Railway, Gorakhpur.

... Respondents

BY ADVOCATE SHRI AMIT STHALEKAR

O R D E R

JUSTICE B.C. SAKSENA, V.C.

This review petition has come up by circulation. We have gone through the review petition. The OA is directed against an order dated 11.7.96 passed by us in OA 1712/92. One of the grounds taken for the review is that the OA had been taken up for final hearing on 11.7.96 without affording an opportunity of hearing to the counsel for the applicant namely Sri Anand Kumar. This plea is wholly baseless. The order sheet in the OA discloses that the OA and the contempt petition as per order passed on 29.3.95 has been shown as part heard of this Bench. Before the case could be taken up on 24.5.95 a misc. application seeking the release of the case and not being treated as tied up was moved on the ground that a typographical error appears to have been occurred in the order passed on 24.5.95. The said application was rejected on 24.5.95. On that date the applicant appeared

Recd

and in person ~~stated~~ that Shri S.K. Misra counsel is suffering from Jaundice and therefore requested for adjournment of the case.

2. The learned counsel for the respondents indicated that Sri Anand Kumar ~~had~~ filed his vakalatnama after the No objection has been endorsed by Sri S.K. Mishra and therefore it was urged ~~whether~~ <sup>that</sup> the request for adjournment of the case on the ground of illness of Sri S.K. Misra is meaningless. The applicant was asked ~~where Sri Anand Kumar advocate was~~ <sup>BC</sup> since he was the counsel to appear, the applicant stated that he had gone out of station in a marriage. Subsequently he gave another reason that perhaps the said counsel is not appearing because of the resolution of the Bar Association to boycott the court of one of us viz the V.C. As noted in our order dated 24.5.95 this ground was unconvincing. Two OAs viz OA 119/95 and OA 305/95 which were listed before us on the same date viz 24.5.95 for admission and in which Sri Anand Kumar was the counsel. Sri C.P. Gupta, proxy counsel for him had argued the cases for him. It was also noted that this excuse taken up for non appearance of Sri Anand Kumar in the partheard case is nothing but a dialatory tactic. We noted that it is not open to a counsel after being engaged to refuse one case and appear in another case. However, with a view to enable the applicant either to engage another counsel or to persuade his counsel <sup>to</sup> appear we had adjourned the case. Since a stay <sup>vacation</sup> application was also pending and was insisted for being taken up by the learned counsel for the respondents, We in the circumstances however, provided one more opportunity to the applicant and fixed 2.6.95 and also provided that no further request for adjournment by the applicant will be entertained.

3. When the case came up on 2.6.95 we directed it to come up on 25.7.95 but in view of the order passed on 24.5.95 we had heard the learned counsel for the respondents on the application ~~for~~ <sup>to</sup> vacation of interim relief and passed appropriate order. On 10.7.96 as the ordersheet discloses Sri Anand Kumar stated before us that the applicant had taken back the file from him. The other counsel S.K. Mishra had also not appeared. We directed the record of TA 1196/86 <sup>to</sup> be placed on the next date before us. When the case was taken up on the next date i.e. 11.7.96 none appeared on behalf of the applicant. It is an afterthought that a request for adjournment was made. In view of the said position as disclosed from the ordersheet we proceeded to hear the learned counsel for the respondents. Therefore the ground taken that the case was heard without affording opportunity of hearing to the counsel is wholly baseless and untenable.

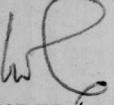
4. The other ground taken in the review petition is with regard to the observation in para 2 of our order that the applicant was guilty of suppression of material facts inasmuch as no averment what so ever has been made in the OA indicating the factum of filing of a suit and its withdrawal. It has been indicated in the review petition that in the OA in para 62 the applicant had stated about the filing of suit no. 178/83. That appears to be correct but nothing turns on this and the order passed in the OA does not call for any review. The statement in para 62 of the OA though stated about the filing of the suit but it did not state about the suit having been withdrawn, or <sup>To</sup> that extent there was suppression of material fact.

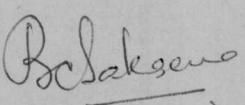
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5. The other ground taken is as to the correctness of the view taken by us that though an application was filed before the trial court for withdrawing the suit the same was pressed when the suit stood transferred to this Tribunal and was registered as TA 1196/86. The application was allowed by an order passed on 18.4.87 and the suit was dismissed as withdrawn. The submission of the learned counsel for the respondents was that no liberty was sought or granted to file a fresh suit. In view of this it was urged that this OA would be barred on the principle of resjudicata. A Supreme court decision was cited and we held that the same situation obtained in the case before us. The suit having been withdrawn and no permission having been sought to file a fresh OA in respect to the same cause of action OA No. 1712/92 would be barred on the principles of resjudicata.

6. A review petition does not lie on the ground that the proposition of law laid down is not correct.

7. In view of the above, the review petition lacks merit and is accordingly dismissed summarily.

  
MEMBER(A)

  
VICE CHAIRMAN

Dated: December. 10<sup>th</sup> 1996

Uv/