

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Allahabad this the 20th day of December 2001

Original Application no. 1922 of 1994.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman  
Hon'ble Maj Gen KK Srivastava, Administrative Member

R.D. Agarwal, Advocate,  
S/o late P.D. Agarwal,  
R/o 171/5 Civil Lines,  
Bareilly.

... Applicant

By Adv : In person

Versus

1. Union of India through the Divisional Commercial Manager, N. Rly.,  
MORADABAD.
2. Sr. Divisional Commercial Manager, N. Rly.,  
MORADABAD.

... Respondents

By Adv : Sri A.K. Gaur

ORDER

Hon'ble Maj Gen KK Srivastava, Member-A.

In this OA filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged suspension order dated 27.5.1992 (Ann I) and charge sheet dated 24.6.1992 (Ann. 2) and has prayed for quashing the same as the respondents failed to comply with the directions of this Tribunal dated 18.8.1992. He has also prayed that the respondents be directed that

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since the relationship of master and servant ceased on 20.8.1992 and no compliance of the direction dated 18.8.1992 were made upto December 1992 as such he is legally entitled to get all benefits in accordance with rules.

2. The facts in brief are that the applicant was charged for committing serious misconduct that while working as ERC/Rampur, He insulted Smt. Prem Lata Khare Sr. TC/Rampur on 23.5.1992 at 930 hrs by throwing four Nirodh Pouches towards her in Reservation-cum-Head Ticket Collector Office. He was suspended by order dated 27.5.1992. He filed O.A. no. 1001 of 1992 on 8.7.1992. This Tribunal passed the directions at the admission stage on 18.8.1992 in OA 1001 of 1992 that applicant shall submit reply to the charge sheet within a period of four weeks and thereafter, the enquiry shall be completed within a period of three months and applicant shall fully co-operate with the enquiry. As per applicant the applicant was also given liberty to approach this Tribunal in case the enquiry was not completed within the stipulated period despite full co-operation of the applicant for conclusion of enquiry proceedings. Through this O.A. the applicant has approached this Tribunal on the grounds that inspite of full co-operation on his part the enquiry has not been completed. This has been contested by the respondents on the ground that the applicant did not co-operate at all. The respondents have also submitted written arguments.

3. The applicant appeared in person and submitted that though in compliance to the directions dated 18.8.1992 he submitted reply to the chargesheet on 5.9.1992, but the respondents failed to complete the enquiry initiated against him. He applied for voluntary retirement on 21.5.1992 and he is deemed to have retired from Railway Service on 20.8.1992 in absence of any communication from the respondents. Therefore, suspension order dated 27.5.1992 and charge sheet dated 24.6.1992 are illegal. In support of his contention that he proceeded on voluntary retirement w.e.f. 20.8.1992, he invited our attention to certificate dated 29.11.1992 issued by Station Supdt. Northern Railway, Rampur (Ann. 6).

4. Finally the applicant has pleaded that since he has instituted several cases against respondent no. 1, he was biased and prejudiced and therefore, even after receiving the application dated 21.5.1992 for voluntary retirement he issued the impugned suspension order dated 27.5.1992 and charge sheet dated 24.6.1992 with malafide intentions. He has also failed to conclude the enquiry within stipulated period of 3 months as per this Tribunal's order date 18.8.1992 and hence suspension order dated 27.5.1992 (Ann A-1) and charge sheet dated 24.6.1992 (Ann A2) should be withdrawn. Finally it has been submitted that the applicant was honourably acquitted from the criminal charge by order of <sup>Rampur</sup> Judicial Magistrate dated 17.12.1998 in case no. 67 of 1992.

5. Sri A.K. Gaur learned counsel for the respondents submitted that inspite of directions of this Tribunal

that the applicant would co-operate in enquiry proceedings, the applicant never co-operated. The Enquiry Officer was appointed by order dated 16.10.1992. He was asked to submit names of his defence helper but he never responded. Therefore, inspite of several attempts made the enquiry could not be finalised due to non co-operation of the applicant.

6. Sri A.K. Gaur submitted that in another case after completion of departmental enquiry, the applicant has been removed from service w.e.f. 2.12.1992 vide order dated 1.12.1992. The applicant preferred appeal which was rejected as the applicant failed to appear for personal hearing when called for. Hence on 29.3.1993, it was decided that it would not be proper to proceed in the enquiry as the applicant had already been removed.

7. The learned counsel for the respondents through written arguments has submitted that after expiry of the period of three months as stipulated by order dated 18.8.1992, the applicant kept mum for more than 2 years and awoke from slumber and filed Misc. application no. 2526 of 1994 in OA 1001 of 1992 for review order dated 18.8.1992 which was rejected by order dated 07.11.1994. The applicant had challenged the suspension order dated 27.5.1992 and charge sheet dated 4.6.1992 issued against the applicant in OA no. 1001 of 1992 and the same has been challenged in OA 1922 of 1994. This is liable to be dismissed on the ground that it is premature and is not filed against the final order/<sup>as stipulated in Tribunals order dated 18.8.1992.</sup> Besides it is barred by principle of res judicata.

8. The application of the applicant dated 21.5.1992 seeking voluntary retirement was not entertained as two major penalty cases were contemplated/pending against the applicant and on completion of departmental enquiry in another case he was removed from service vide order dated 1.12.1992. The only course open for the applicant was to file contempt petition which he did not resort to/it stood barred by time when the applicant filed this O.A. on 22.12.1994.

9. We have given careful consideration to the submissions of the applicant and Sri A.K. Gaur, learned counsel for the respondents and perused records.

10. The contention of the applicant that he should be deemed to have retired voluntarily w.e.f. 20.8.1992 as he had served the notice for the same upon respondents on 21.8.1992 is misconceived. The applicant was placed under suspension on 27.5.1992 and was served with major penalty charge sheet on 24.6.1992 and, therefore, the applicant could not have proceeded on voluntary retirement till the finalisation of disciplinary proceedings. In addition to this, another major penalty case was pending against the applicant which culminated into removal from service w.e.f. 2.12.1992 and, therefore, the argument of the applicant that he should be deemed to have retired w.e.f. 20.8.1992 has no force.. The applicant, in support of his contention has produced certificate from Station Supdt., Northern Railway, Rampur dated 29.11.1992 (Ann A-6). We reproduce the same as under :-

"Certified that Shri Ram Dass Agarwal, Chief Reservation Supervisor, Northern Railway Rampur has worked upto 20.8.1992 and submitted his voluntarily retirement on 21.5.92. Thereafter he is no more

in service of Railway Deptt.

He bears a good moral character."

11. The above certificate has no value in the eyes of law and, therefore, unacceptable for two reasons. Firstly, it has been issued by Station Supdt., Northern Railway, Rampur, who is not competent to issue such certificates mentioning that the applicant was no more in service of Railway Department and Secondly how could the Station Supdt certify that the applicant worked upto 20.8.1992 and proceeded on voluntary retirement especially when the applicant was under suspension.

Obviously the Station Supdt., Northern Railway, Rampur has transgressed his authority and his conduct is questionable.

12. It is not disputed that the applicant submitted his reply to the charge sheet dated 24.6.1992 on 5.9.1992 but he has failed to adduce any evidence that he co-operated with the respondents after the Enquiry Officer was appointed by order dated 16.10.1992.

13. We would like to go through the developments in this case. The applicant filed OA 1001 of 1992 challenging the suspension order dated 27.5.1992 and charge sheet dated 4.6.1992 issued against the applicant. This Tribunal while disposing of the O.A. no. 1001 of 1992 passed order on 18.8.1992 that the enquiry should be concluded within 3 months by the respondents. The applicant was directed to co-operate and was given liberty to approach the Tribunal if the enquiry was not concluded in the stipulated time. The proper course open for the applicant was to approach the Tribunal after expiry of the period of three months as stipulated by the order dated 18.8.1992 but the applicant did not take action for two years and filed Misc. Application

no. 2586 of 1994 in O.A. no. 1001 of 1992 for review of the order dated 18.8.1992. Which was disposed of by passing the following order on 7.11.1994 :-

"O.A. No. 1001/92 has been finally disposed of on 18.8.92. That being so, the same cannot now be reviewed by filing a Misc. Application. The applicant, if aggrieved by the order passed in the departmental proceedings, may file fresh case subject to limitation."

Thus the only course open to the applicant was to challenge final order passed after completion of disciplinary proceedings by filing fresh O.A. if the applicant felt aggrieved by the same. In this case even the enquiry <sup>has not been</sup> completed and, therefore, the question of any final order being passed does not arise. The main point before us for consideration is whether the applicant can again challenge the suspension order and charge sheet by means of a fresh O.A. which he had already challenged in O.A. no. 1001 of 1992. Our answer to this question is in negative. We agree with the submission of the learned counsel for the respondents that the present O.A. is barred by principle of res-judicata. The reliefs

claimed in O.A. no. 1001 of 1992 are similar and identical in the present O.A. If the applicant was aggrieved with <sup>of</sup> the action of the respondents about not completion/the enquiry in the stipulated time frame as per Tribunal direction dated 18.8.1992, he should have approached this Tribunal any time after expiry of such period within period of limitation.

14. We have also perused the order dated 17.12.1998 of Judicial Magistrate Rampur enclosed as annexure RJ 1 filed alongwith RA. This order, acquitting the applicant pertains

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to an incident of 12.3.1992 and is no way connected with the subject matter of the present O.A. The applicant has been suspended by order dated 27.5.1992 and charge sheet dated 24.6.1992 for an incident of 23.5.1992 which has been challenged by the applicant. Thus the order dated 17.12.1998 of Judicial Magistrate, Rampur is of no relevance in the present O.A.

15. In view of the facts and circumstances and our aforesaid discussion, the O.A., besides being barred by principles of res-judicata, is devoid of merit and accordingly dismissed.

16. There shall be no order as to costs.

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