


O.A.No. 592 of 2003
Satyaranjan Mishra Applicant
Vrs.
Union of India and others Respondents
ORDER DATED 27th MAY 2007
JUNE

N.D.RAGHAVAN, VICE-CHAIRMAN

This Original Application was filed by the applicant on 13.8.2003 praying for the following relief:

- “(a) appropriate direction to be given to the Respondents to fix up his seniority in view of the position obtained in Annexure 2 and accordingly to revise the seniority position of the applicant by quashing Annexure 14.
- (b) after giving due weightage to his seniority and merit, his case be considered for promotion to the post of J.E. II (P.Way) in place of Respondent No.5 and quashing his promotion vide Annexure-16.
- (c) And pass such further order/orders for financial as well service benefits as admissible under law.

The Union of India through GeneralManager, East Coast Railway, Bhubaneswar; the Chief Personnel Officer, East Coast Railway, Bhubaneswar, Dist. Khurda; the Divisional Personnel Officer (I), East Coast Railway, Waltair, Andhra Pradesh; the Senior Section Engineer (P.Way), East Coast Railway, Waltair, Andhra Pradesh; and Shri Rudra Narayan Muduli, J.E.II (P.Way), East Coast Railway, Bobbli, Dist. Vijayanagaram, Andhra Pradesh, have been respectively impleaded as Respondent Nos. 1 to 5.

2. Though the Registry of the Bench has noted Shri R.Ch.Rath, Standing Counsel (Railways) to have entered appearance for Railway- Respondents 1 to 4, yet no Vakalatnama has been filed by Shri Rath as has been done by Shri Rath in the other cases. The Memo of Appearance filed by Shri



Rath is also not in Form 11 prescribed under Rule 62 of the CAT Rules of Practice, 1993. Despite all these defects, a counter was purported to have been filed by the Respondents. Private Respondent No. 5 has entered appearance through learned counsel, but no counter has been filed on his behalf.

3. The O.A. was taken up for hearing on several dates, but the learned counsel for either side took adjournment. On 24.5.2007 when the matter was listed for hearing, the applicant's counsel filed a Memo dated 24.5.2007 submitting that the applicant might be "permitted to withdraw the case to approach the authority to consider the case of the applicant afresh as the authorities have assured to do at their freedom". Neither there is any evidence in this regard nor is it written even by the applicant.

3. As there appears to be no provision in the A.T.Act, CAT (Procedure)Rules and CAT Rules of Practice, we refer to Order 23, Rule 1, of the Code of Civil Procedure 1908 to consider the Memo filed by the applicant's counsel on 2.5.2007 although the Tribunal shall not be bound by the provisions of the same but be guided by the principles thereof.

4. Order 23, Rule 1, Code of Civil Procedure 1908 reads as follows:

**"ORDER XXIII
WITHDRAWAL AND ADJUSTMENT OF SUITS**

1. Withdrawal of suit or abandonment of part of claim.-(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants, abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

Abd

(3) Where the court is satisfied,-

- (a) that a suit must fail by reason of some formal defect, or
- (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms, as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff –

- (a) abandons any suit or part of claim under sub-rule (1), or
- (b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

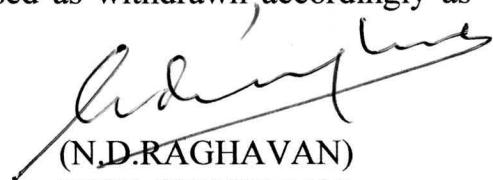
he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorize the court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.”

5. The ground taken by the applicant in the Memo filed by his learned counsel seeking permission of the Tribunal to withdraw the O.A. is not covered by sub-rule (3) of Rule 1 of Order XXIII of the Code of Civil Procedure, 1908. Therefore, in terms of the above Rule 1(4) of Order 23 and in the light of Rule 24 of the CAT (Procedure)Rules, the applicant shall be liable to pay costs and shall be precluded from instituting any fresh O.A. in respect of the subject-matter involved in the present O.A, especially when withdrawal is prayed after about four years since the institution of O.A. on 13.8.2003 troubling so far, thus the time of not only the Respondents but also the Registry as well as the Bench of this Tribunal. Hence, we direct that the applicant shall pay costs of Rs.500/- (Rupees five hundred) to the Respondent No.1 and Rs.500/- (Rupees five hundred) to private Respondent No. 5 by Bank Drafts, without liberty to institute any fresh O.A. in respect of the same subject-matter.

6. In the result, this O.A. is dismissed as withdrawn accordingly as above.

(B.B.MISHRA)
ADMINISTRATIVE MEMBER


(N.D.RAGHAVAN)
VICE-CHAIRMAN

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MR.B.B.MISHRA, MEMBER(A):

7. I have had the benefit of going through the order prepared by my Learned brother and I am unable to agree with his conclusion that “.....Therefore in terms of the above Rule 1(4) of Order 23 and 'in the light of Rule 24 of the CAT (Procedure) Rules, the applicant shall be liable to pay costs and shall be precluded from instituting any fresh OA in respect of the subject matter involved in the present OA, especially when withdrawal is prayed after about four years since the institution of OA on 13.08.2003 troubling so far, thus, the time of not only the Respondents but also the Registry as well as the Bench of this Tribunal. Hence, we direct that the applicant shall pay costs of Rs.500/- (Rupees five hundred) to the Respondent No.1 and Rs. 500/- (Rupees five hundred) to private Respondent No.5 by bank Drafts, without liberty to institute any fresh OA in respect of the same subject-matter” on the grounds stated herein below:

8. Short fact of the matter is that Applicant is a Permanent Way Mistri (P.W.M) in the office of the Senior Section Engineer, East Coast Railway, Pravatipuram, Waltior, Andhra Pradesh. By filing this OA on 13th August, 2003 he has sought for the following relief:

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- “(a) appropriate direction to be given to the Respondents to fix-up his seniority in view of the position obtained in Annexure-2 and accordingly to revised the seniority position of the applicant by quashing Annexure-14;
- (b) after giving due weightage to his seniority and merit, his case be considered for promotion to the post of JE -II (P.Way) in place of Respondent No.5 and quashing his promotion vide Annexure-16;
- (c) and pass such further order/orders for financial as well service
- (d) benefits as admissible under law.”

9. On 23.09.2003 notice was issued to the Respondents , who have filed their counter on 10th March, 2004 to which the Applicant has filed rejoinder on 12th May, 2004. Thereafter the matter was placed in the warning list but for one reason or the other the matter had undergone adjournments. Finally, when the matter was listed on 24.05.2007, Learned Counsel for the Applicant by filing a Memo has sought for permission to withdraw this OA to ventilate his grievance before his authority **to which Learned Counsel for the Respondents/Railways has expressed no objection.**

10. Therefore, the question for consideration as to whether the Applicant has any substantial right to seek for withdrawal of a petition and if so, as to whether imposing costs in absence of any prayer/objection on the other side is proper.

11. In this connection I would like to observe that in absence of any ex facie provisions in the A.T. Act, 1985 and the Rules made there under, this Tribunal shall have to follow the procedures codified in the CPC on the subject.

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O.23 r.1 provides as under:

"(1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim:

Provided that where the plaintiff is a minor or other person, to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(a) that a suit must fail by reason of some formal defect, or
(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of others."

12. While interpreting the provisions quoted above, Their Lordships of the Hon'ble Apex Court in the case of ***Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others***, AIR 1987 SC 88 (Para-6) held as under:

"6. It may be noted that while in sub rule (1) of the former R.1 of O.XXIII of the Code the words 'withdraw his suit' had been used in sub rule (1) of the new R.1 of OXXIII of the Code, the words 'abandon his suit' are used. The new sub-rule (1) is applicable to a case where the Court does not accord permission to withdraw from a suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim. In the new sub rule (3) which corresponds to the former sub-rule (2) practically no change is made and under that sub-rule the Court is

empowered to grant subject to the conditions mentioned therein permission to withdraw from a suit with liberty to institute a fresh suit in respect of the subject matter of such suit. Sub-rule (4) of the new R.1 of XXIII of the Code provides that where the plaintiff abandons any suit or part of claim under sub-rule (1) or withdraws from a suit or part of a claim without the permission referred to in sub-rule (3) , he would be liable for such costs as the Court might award and would also be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.”

(emphasis supplied)

13. Similarly Rule 24 of the CAT (Procedure) Rules, 1987

deals and provides as under:

“24. ORDERS AND DIRECTIONS IN CERTAIN CASES-The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

14. From this it is clear that ‘cost’ can be awarded by applying sub rule (4) of Rule 4 of Order 23 where the parties approach the Court on the self same ground after withdrawing an application without leave to pursue it once again. Likewise, Rule 24 empowers the Tribunal to make any order for giving effect to an order passed by this Tribunal. But none of the principles is applicable to the present case. Therefore, awarding cost on the wishes of the Applicant to withdraw a petition is unwarranted.

15. Next question arises for consideration as to whether any right is available to a litigant to seek for withdrawal of an application

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filed before this Tribunal if so, as to whether the Court is bound to accede to such request.

16. In this regard, instead of going deep into the matter it would suffice to quote the observations of the Hon'ble Suopreme Court made in the case of ***Bijayananda Patnaik v. Satrughna Sahu and others***, AIR 1963 SC 1566 (V 50 C 231=AIR 1962 Orissa 177) which run thus:

“We have already said that sub-rule (1) gives absolute power to the plaintiff to withdraw his suit or abandon part of his claim against all or any of the defendants, and where an application for withdrawal of a suit is made under O. 23, R.1 (1), the Court has to allow that application and the suit stands withdrawn. It is only under sub rule (2) where a suit is not being withdrawn absolutely but is being withdrawn on condition that the plaintiff may be permitted to institute a fresh suit for the same subject matter that the permission of the court for such withdrawal is necessary. The provisions of O 23 R.1(1) and (3) also apply in the same manner to withdrawal of appeals. In *Kalyan Singh v. Rahmu*, ILR 23 All 130 it was held that where no objection had been filed by the respondent, the appellant had an absolute right to withdraw his appeal at any time before judgment.”

(emphasis added)

17. Besides I may say that doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a

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court (Ref: AIR 1989 SC 1933 at page 1939, Union of India v. Raghubir Singh).

Cardozo propounded a similar thought with more emphasis:

“I am not to mar the symmetry of the legal structure by the introduction of inconsistencies and irrelevancies and artificial exceptions unless for some sufficient reason, which will commonly by some consideration of history or custom or policy or justice. Lacking such a person, I must be logical just as I must be impartial, and upon like grounds. It will not do to decide the same question one way between one set of litigants and the opposite way between another.” (The nature of the judicial Process by Benjamin N. Cardozo p.3) {extracted from the decisions reported in 2007(3) SLR 338, Eastern Coalfields Limited v. Shri Sudama Das and others p.344}.

18. The reason of quoting the above is that the Division Bench consisting of present Hon'ble Vice-Chairman and Member(A) have already allowed prayers for withdrawal of Applicants, in many number of cases, without imposing any costs. Therefore, imposing cost on the prayer for withdrawal of this OA will be contrary to the view already taken and discriminatory. I do not think it necessary to burden this judgment by referring to all of those cases, some of recent cases are quoted herein below:

<u>Sl.No.</u>	<u>Registration No.</u>	<u>Date of dismissal/disposal as withdrawn.</u>
1.	OA No. 96/07	11.04.2007
2.	OA No. 127/07	03.04.2007
3.	OA No.391/06	26.03.2007
4.	OA 795/2005	07.03.2007
6.	OA 883/06	26.02.2006
7.	OA 539/2004	14.02.2007

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19. I do not find any substantial ground in this case, so as to take a different view from the view already taken while 'dismissing/disposing of the aforesaid OAs as withdrawn' by accepting the Memo of the Applicants.

20. As regards delay in disposal of this OA, I may record that Sub Section 2 of Section 22 of the A.T. Act, 1985 clearly provides that a **Tribunal shall decide every application made to it as expeditiously as possible.** Rule 16 of the CAT (Procedure) Rules, 1987 also empowers this **Tribunal to decide an application *ex parte* in case any of the parties is not present on the date of hearing.** It is also seen from the record that delay in taking decision, in this case, some times, occurred due to the fault of the Respondents. Therefore, for the delay in disposal of this OA, the Applicant alone cannot be held responsible.

21. In view of the discussions made above; especially on the face of the no objection raised by the Learned Counsel for the Respondents, on the basis of the Memo dated 24.5.2007, this OA is dismissed as withdrawn. There shall be no order as to costs.

B.B.MISHRA
(B.B.MISHRA)
Member (A)

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ORDER DATED:

In view of the above difference in opinion, we refer the matter to the Hon'ble Chairman under Section 26 of the Administrative Tribunals Act, 1985 for deciding on the following points:

- (a) As to whether the Applicant has any right to seek for withdrawal of an application at any stage of proceeding;
- (b) As to whether in the event of allowing the prayer for withdrawal of OA imposition of costs is necessary;

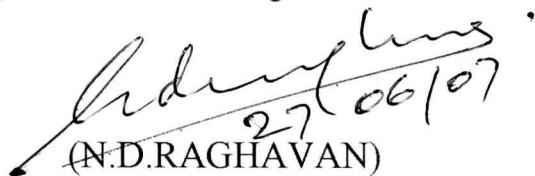
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(N.D.Raghavan)
Vice-Chairman

BBM
(B.B.Mishra)
Member(A)

While referring this case to the Hon'ble Chairman under Section 26 of the A.T.Act, 1985, since the difference of opinion pointed out by my erudite Brother, with great respect to him, does not bring out the precise nature of difference, I am constrained to humbly differ even on such points in issue, as below:

- c) Whether, or not, on the facts and under the circumstances of the case, the applicant has any right to seek withdrawal of the O.A. at any stage of its proceedings without assigning any lawful ~~reason~~ therefor and without leave of this Court ?
- d) Whether, or not, on the facts and under the circumstances of the case, costs can be awarded on the applicant for his withdrawal of the O.A., when the case is fit enough with convincing reasons to award so ?.


27/06/07
(N.D.RAGHAVAN)
VICE-CHAIRMAN