

(B)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 140/1995
T.A. No.

199

DATE OF DECISION : 12.04.2000.

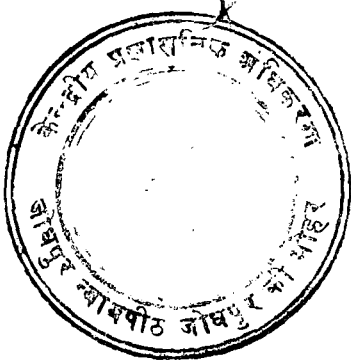
Narain Singh _____ Petitioner

Mr. R.K. Soni, _____ Advocate for the Petitioner (s)

Versus

Union of India & Ors. _____ Respondent (s)

Mr. Vineet Mathur, _____ Advocate for the Respondent (s)

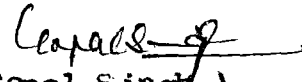


CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No


(Gopal Singh)
Adm. Member


(A.K. Misra)
Judl. Member

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of order : 12.4.2005.

O.A. No. 140/95

Narain Singh son of Shri Mohan Singh resident of Jawahar Nagar, House No. 225, Shastri Nagar, Lohagal Road, Ajmer.

... Applicant.

v e r s u s

1. Union of India through the Secretary, Ministry of Telecommunication, Government of India, New Delhi.
2. The Sub-Divisional Engineer, O.F.C. Maintenance, Udaipur.
3. The Assistant Engineer, Micro-wave (Maintenance)/O.F.C., Telecom Department, Government of India, Udaipur.
4. Shri A.S. Rathore, Assistant Engineer, Micro-wave, O.F.C. Maintenance, Telecom Department, Government of India, Banswara.

... Respondents.

Mr. R.K. Soni, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Gopal Singh)

In this application filed on 11.1.1995 under Section 19 of the Administrative Tribunals Act, 1985, applicant, Narain Singh, has prayed for setting aside the impugned orders dated 10.8.92, 17.1.94 and 26.9.94 and for a direction to the respondents to reinstate the applicant in service with all consequential benefits.

2. The applicant had also approached this Tribunal earlier through O.As Nos. 322/92, 196/94 and 77/94. These are discussed in subsequent paragraphs.

Gopal Singh



O.A. No. 322/92 filed on 3.9.92

In this OA, the applicant had prayed for setting aside the order dated 10.8.92 and for reinstatement in service. The operation of order dated 10.8.92 was stayed by this Tribunal on 3.9.92. This O.A. was dismissed as withdrawn with liberty to file fresh O.A. vide our order dated 12.1.94.

O.A. No. 196/94 filed on 15.5.94

In this O.A., the applicant had prayed for setting aside the order dated 10.8.92 and for grant of temporary status and further regularisation on the post of driver. This O.A. was dismissed on 23.11.94 as withdrawn with liberty to file fresh O.A.

O.A. No. 77/94 filed on 16.2.94

In this O.A., the applicant had prayed for setting aside the order dated 17.1.94 and for continuing the applicant in service. The operation of the order dated 17.1.94 was stayed vide our order dated 16.2.94. This stay was vacated on 26.9.94 with the following observations:-

"The applicant has challenged the order dated 17.1.94 in OA No. 77/94 and his main submission is that the order dated 10.8.92 is not under challenge. The question of granting stay against the order dated 17.1.94 does not arise as the order dated 10.8.92 has become operative and it is not under challenge in this OA. Particularly, we have also considered this fact that in OA No. 196/94, an application for condonation of delay has not been filed by the applicant. In these circumstances, any stay in both these OAs stand vacated."

This O.A. was dismissed on 23.11.94 as withdrawn with liberty to file fresh O.A.

3. With the vacation of the stay order the respondents removed the applicant from service vide order dated 26.9.94 (Annexure A/1) and, therefore, the present application.

4. Applicant's case is that while he was working as driver on daily wages, he was suspended vide respondent's letter dated 23.7.92

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(Annexure A/7) and was subsequently served with a charge-sheet on 29.7.92 (Annexure A/5) for rash driving of the Jeep that resulted in an accident and for misbehaviour with the fellow employees. The applicant submitted his reply to the charge-sheet and on consideration of the reply, the applicant was removed from service vide respondent's letter dated 10.8.92 (Annexure A/7). The applicant's contention is that the suspension order dated 23.7.92, the charge sheet dated 29.7.92 and the punishment order dated 10.8.92 were issued by the same authority, namely, the Assistant Engineer, Micro-wave (Maintenance), O.F.C., Telecom Department, Banswara (respondent No.4) further that this very officer had conducted the enquiry. It has further been contended by the applicant that respondent No.4 was travelling in the Jeep at the time of the accident and he was a witness to this accident and, therefore, he cannot impose the penalty on his own without going through the prescribed procedure like appointment of enquiry officer etc. and further one cannot be a judge in his own cause and as such, the punishment order dated 10.8.92 is illegal and deserves to be set aside.



5. Notices were issued to the respondents and they have filed their reply. The application has been contested on the ground that order dated 26.9.94 does not give any cause of action to the applicant as this order dated 26.9.94 only gives effect to the order dated 10.8.92 which was earlier stayed by the Tribunal and this stay has been vacated vide their order dated 26.9.94. It has further been submitted by the respondents that the applicant had submitted many OAs earlier seeking the same relief and he cannot be permitted to agitate the same relief again and again. The application is contested on the ground of limitation also. It is the contention of the respondents that with the vacation of the stay, the order dated 10.8.92 gets revived and it cannot be again challenged. It has also been averred by the respondents that the applicant is not governed by the C.C.S. (C.C.A) Rules, 1965, as he was a casual driver on daily wages. The applicant was afforded due opportunity before the order dated 10.8.92 was passed. It has thus been contended by the respondents that the application is not maintainable and deserves to be dismissed.

6. We have heard the learned counsel for the parties and perused the records of the case carefully.

7. It is seen from the records that the applicant had challenged the order dated 10.8.92 earlier in OAs No. 322/92 and 196/94. Both these OAs were withdrawn by the applicant, though ofcourse with liberty to

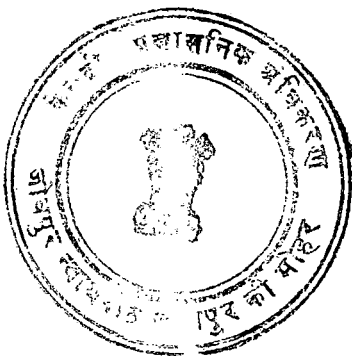
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file fresh OA. In our opinion, he cannot be permitted to challenge the order dated 10.8.92 in this OA as the prayer of the applicant is barred by res judicata. Though the applicant was given liberty to file fresh OA, if so advised, but in our view no new grievance has arisen to the applicant so as to challenge the order dated 10.8.92. By withdrawing these applications Nos. 322/92 and 196/94, the applicant, in our view, abandoned the right to challenge the same order dated 10.8.92. The implementation of the order dated 10.8.92 was earlier stayed by the Tribunal and the stay order was vacated by the Tribunal on 12.1.94 and 26.9.94. And therefore, the respondents were within their right to implement the order dated 10.8.92 which they have done vide their order dated 26.9.94 (Annexure A/1).

8. Coming to the question whether the applicant is governed by the C.C.S. (C.C.A.) Rules, 1965, it would be appropriate to go through the rule position. In Rule 2(h) of C.C.S (C.C.A.) Rules, 1965, a Government servant is defined as under :-

"2(h) 'Government servant' means a person who-

- (i) is a member of Service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority;
- (ii) is a member of a Service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;
- (iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government."



Further, Rule 3(1) provides as under:-

"3. Application-

- (1) These rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to-
 - (a) any railway servant, as defined in Rule 102 of Volume I of the Indian Railways Establishment Code,
 - (b) any member of the All India Services,
 - (c) any person in casual employment,
 - (d) any person subject to discharge from service on less than one month's notice,
 - (e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered

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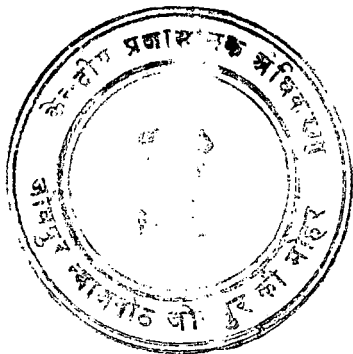
into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions."

9. In the light of the above definition of a Government servant and application of C.C.S. (C.C.A) Rules, 1965, the applicant cannot be put in the category of a Government servant. The applicant was working with the respondents as casual driver on daily wages basis and, therefore, he cannot challenge the action of the respondents on the ground that procedure prescribed in the C.C.S. (C.C.A.) Rules, 1965, was not followed.

10. The applicant was given an opportunity to defend his case by submitting an explanation to the charges levelled against him. The applicant had also submitted a reply to the charges and after due consideration of the applicant's reply, the respondents issued letter dated 10.8.92.

11. In the light of the above discussion, we are of the view that the application is devoid of any merit and deserves to be dismissed.

12. The O.A. is accordingly dismissed with no order as to costs.



Gopal Singh
(GOPAL SINGH)
Adm. Member

A.K. Misra
(A.K. MISRA)
Judl. Member

cvr.