

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 433/2003

Wednesday this the 28th day of May, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

D.Sundararajan
S/o G.Devarajan
Electrical Signal Maintainer
Southern Railway, Alleppey.
Residing at C/o Sri Xavier
Thyparambil, Beach Ward
Alappuzha.

Applicant

(By advocate Mr.T.C.Govinda Swamy)

Versus

1. Union of India represented by the
General Manager
Southern Railway
Headquarters Office, Park Town P.O.
Chennai.
2. The Divisional Railway Manager
Southern Railway
Trivandrum Division
Trivandrum.
3. The Senior Divisional Signal &
Telecommunications Engineer
Southern Railway, Trivandrum Division
Trivandrum.
4. The Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum.

Respondents.

(By advocate Mrs. Sumathi Dandapani)

The application having been heard on 28th May, 2003, the Tribunal on the same day delivered the following:

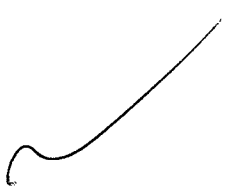
O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Applicant, an Electrical Signal Maintainer, Southern Railway, Alleppey, has filed this application seeking to set aside A-2 memo of charges dated 10.3.95 as also A-5 order dated 30.1.2001 of the Divisional Signal Telecommunication Engineer, Trivandrum, by which, simultaneously on reinstatement in terms of the orders of the Central Administrative Tribunal, Ernakulam

Bench in OA 1550/97, he was placed under deemed suspension from 30.9.96, the date of original removal from service. It is alleged in the application that the applicant was proceeded against on the basis of A-2 charge sheet, that he was removed from service after an ex-parte enquiry, that the order of the disciplinary authority removing him from service was vitiated, that the order of removal was challenged before this Tribunal in OA No.1550/97, that the Tribunal by its order dated 24.8.2000 allowed the application and set aside the order of penalty as also the appellate order, that thereafter the applicant was reinstated in service by A-4 order dated 30.1.2001 simultaneously placing him under suspension with effect from 30.9.96 by A-5 order, that as the criminal case against the applicant on the same set of allegations having resulted in his acquittal as is seen from A-8, there is no need to proceed further with the departmental enquiry, that the applicant made A-6 & A-7 representations requesting for putting him back to duty, that this has not been done and that, therefore, the applicant is entitled to have A-2 & A-5 set aside and for a direction to the respondents to deem the applicant to have continued on duty w.e.f. 31.10.94 to pay him his pay and allowances and also for a direction to the respondents to recover the arrears of pay and allowances being paid to the applicant from the official respondents for their illegal and arbitrary action.

2. We have gone through the application and all the material appended thereto and have heard Sri T.C.Govinda Swamy, the learned counsel of the applicant and Smt.Sumathi Dandapani, the learned counsel for the respondents.

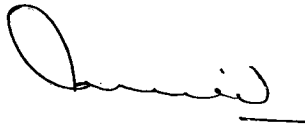


4. We find that the application is not maintainable for various reasons. Firstly, the application is barred by limitation because the orders under challenge A-2 & A-5 are dated 10.3.95 and 30.1.2001 respectively. The application having been filed only on 23.5.2003 beyond the period of limitation prescribed in the Administrative Tribunals Act is barred by limitation. Secondly, this Tribunal by its order dated 24th August, 2000 in OA No.1550/97 while setting aside the order of penalty removing the applicant from service and had observed that the order would not stand in the way of the respondents in proceeding with the disciplinary enquiry against the applicant after affording him an opportunity to participate in the proceedings from the stage immediately after the service of the memo of charges. This order is binding on the applicant. It is only in pursuance of the opportunity given to him that the respondents are proceeding with the disciplinary enquiry initiated under A-2. The applicant who is bound by the order this Tribunal is estopped from contending that enquiry on the basis of A-2 charge memo should not be held. The action of the respondents in placing the applicant under suspension by A-5 order in terms of Rule 5(4) of Railway Servants (Discipline and Appeal) Rules, 1968 is also perfectly in order as the Tribunal set aside the order of removal from service only on the ground that the order was passed violating the principle of natural justice and without affording an opportunity to the applicant to defend himself. The applicant has no right to get a direction to the respondents to recover the arrears of pay and allowances being paid to the applicant, from the official respondents, without alleging any malafide against them. The application, as



a whole, appears to be highly misconceived and does not disclose any valid cause of action. Hence this application is rejected under section 19 (3) of the Administrative Tribunals Act, 1985.

Dated 28th May, 2003.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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