

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 577 of 2013

Today this the 7th day of November, 2016.
CORAM

***Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P.Gopinath, Administrative Member***

R. Shanmugam, aged 47 years
S/o Rajagopal,
(Ex-Section Engineer/Works/Southern Railway
Salem division) compulsorily retired
residing at C/o Swaminathan, Valiyakalam House,
Thennilapuram PO, Anjumurthy (Via)
Palakkad-678682.

(By Advocate Mr. T.C. Govindaswamy) ...Applicant

Versus

- 1 Union of India represented by
the General Manager, Southern Railway,
Headquarters Office, Park Town PO,
Chennai-600003.
- 2 The Senior Divisional Engineer (Coordination)
Southern Railway, Salem Division, Salem 636005.
- 3 The Principal Chief Engineer,
Southern Railway Headquarters Office,
Park Town PO, Chennai.600003.
- 4 The Senior Divisional Engineer (Coordination)
Southern Railway, Palghat Division,
Palghat-678002.
- 5 The Chief Personnel Officer,
Southern Railway Headquarters Office,
Park Town PO, Chennai.600003.

6 The Chief Planning & Designs Engineer,
Southern Railway Headquarters Office,
Park Town PO, Chennai.600003.

7 The Divisional Railway Manager,
Southern Railway, Salem Division,
Salem-636005.

....Respondents

(By Advocates : Mrs. Sumathi Dandapani (Senior Advocate)
with Mrs. K. Girija)

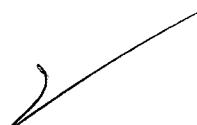
This application having been finally heard on 31.10.2016, the Tribunal on 07.11.2016 delivered the following:

ORDER

Per: Justice N.K. Balakrishnan, Judicial Member

The applicant seeks quashment of Annexures A1 to A3. As per Annexure A1 the order passed by the disciplinary authority a penalty of compulsory retirement from service was imposed on the applicant. His appeal was dismissed vide Annexure A2. The revision petition also met with the same fate as per Annexure A3 order dated 13.5.2013. So many grounds have been stated by the applicant challenging the validity or legality of Annexures A1 to A3. The reply statements have been filed by the respondents denying the allegations made in the OA.

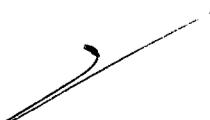
2. The learned senior counsel for the Respondents has raised the preliminary issue regarding jurisdiction and hence we are inclined to pass an order on the jurisdiction issue raised by the respondents.



3. A specific plea was raised by the respondents in Para 29 of the reply statement that the applicant has his permanent address at No.5/616, Rawther Street, Subramanya Nagar Post, Salem. The applicant, in order to file this application before this Tribunal, has conveniently given a Care of address as "C/o Shri M.Swaminathan, Valiyakalam House, Tehnnilapuram PO, Anjumurthy (Via), Palakkad-678682". It is contended that the applicant cannot choose the forum by giving an address of his choice, which was given by him for communication purpose. The "C/o address" furnished is not the place of his ordinary residence and as such no part of the cause of action arose within the territorial jurisdiction of this Tribunal. Hence the respondents contend that this Tribunal has no jurisdiction to entertain this application.

4. A rejoinder has been filed by the applicant. In para 11 therein it is stated that the applicant had shifted to the address given in the OA and thus he filed OA 54/2011 before this Tribunal and that was disposed of by this Tribunal on 4.7.2012. It is further stated that the impugned orders were sent to the address given by the applicant and so this Tribunal has jurisdiction to entertain this OA.

5. An additional reply statement has been filed by the respondents. In para 12 therein it is sated that the impugned orders were sent to the applicant in the address furnished by him for communicating the orders but



that is not the place of his ordinary residence. Not only that, the letter which was sent to the applicant was in fact returned with the remarks "returned to sender as unserved" as shown in the Annexure R.6 and R7 produced by the respondents.

6. Though an additional rejoinder has been filed, the applicant has not stated anything regarding the averments raised in para 12 of the additional reply statement. Again a 2nd additional reply statement has been filed by the respondents wherein it was specifically stated that the permanent address of the applicant is shown as No.5/616, Rawther Street, Subramanya Nagar Post, Salem. It is further stated that the applicant has given the "C/o address" as stated earlier only for correspondence purpose and that the address shown therein is not his ordinary residence.

7. We have heard the learned counsel appearing on both sides. The only point that now requires consideration is whether this Tribunal has jurisdiction to entertain this Original Application?

8. Rule 6 of CAT Procedure Rules which is relevant in this context is quoted as under:

"6. Place of filing applications –

(1) An application shall ordinarily be filed by an application with the Registrar of the Bench within whose jurisdiction –

(i) the applicant is posed for the time being, or

(ii) the cause of action, wholly or in part, has arisen:



Provided that with the level of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the bench which has jurisdiction over the matter.

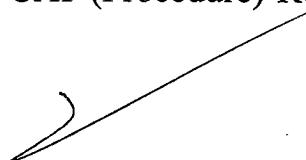
(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

9. Rule 6(1) (i) has no application. Rule 6(1)(ii) has also no application, the learned counsel for respondents submits.

10. The misconduct alleged did not take place within the jurisdiction of this Tribunal. The charge memo was issued at Salem. The inquiry was conducted at Salem. Annexures A1, A2 & A3 the impugned orders were also passed by the authorities concerned at Salem. Therefore, no part of the cause of action has arisen within the jurisdiction of this Tribunal.

11. The learned counsel for the applicant wanted to contend that the orders were sent to the address shown in this original application which is "C/o address as C/o Shri M.Swaminathan, Valiyakalam House, Tehnnilapuram PO, Anjumurthy (Via), Palakkad-678682"". It is important to note that the applicant furnished that C/o address only for the purpose of correspondence; namely that the letters or notices are to be issued in that address. A party cannot choose the forum by giving a "C/o address" and then contend that the Tribunal gets jurisdiction by virtue of that "C/o address".

12. Rule 6(2) of the CAT (Procedure) Rules quoted above may have



relevance if the applicant shows that after the retirement, dismissal or termination from service, he is ordinarily residing within the jurisdiction of the Tribunal at the time of filing the application. The fact that he has chosen to give the residential address of his friend or near relative situated in Palakkad can at no stretch of imagination be said that it is a place of his ordinary residence. He had furnished an address at Salem which is shown in the service register. Even though averments were made by the respondents in the reply statement that the applicant is a person having his residence at Salem in the address mentioned earlier that has not been countered at all by the applicant. The applicant does not say on what basis the "C/o address" was given or how, by giving such a C/o address the jurisdiction can be conferred on this Tribunal. A party cannot confer jurisdiction by furnishing an incorrect address or by furnishing a C/o address. It was a subtle device devised by the applicant to file this application before this Tribunal, the learned senior counsel for the respondents submits.

13. Annexure R4 has also been pressed into service by the learned senior counsel for the respondents. Applicant has furnished the address as 'R.Shanmughan, No. 5/616, Rawther Street, Subramanya Nagar Post, Salem'. That was the address furnished by him on 23.7.2010 stating that the documents mentioned therein will be collected by him. It appears it was



done during the conduct of the inquiry. Even de hors Annexure R.4, the applicant cannot contend that this Tribunal has got jurisdiction when there is nothing on record to show that he is a person ordinarily residing at Palakkad (in the C/o address) at the time of fling of the application. \

14. In para 12 of the additional reply statement it was stated that when a letter was sent to the applicant by registered post in the address mentioned in this OA, the letter was returned unclaimed – returned to sender. Of course it is argued that the endorsement 'unclaimed' or 'returned to sender' does not mean that he is not a person ordinarily residing there. But there is a further statement that the applicant went to the office of the disciplinary authority in person and received that letter. If as matter of fact the applicant was ordinarily residing in the address furnished in the OA, then certainly the letter would have been accepted/received by him.

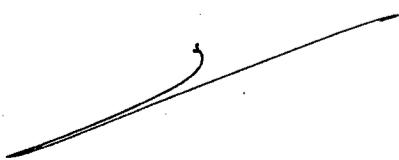
15. Though it was specifically contended by the respondents that the applicant should produce the address proof namely; Adhar Card, Family ration card, Voters identity card, driving licence, PAN card or passport in order to establish his ordinary place of residence, he did not bother to produce any of those documents. What more, he did not even state anything to dispute the fact that he is not a person having his ordinary place of residence in Palakkad or within the jurisdiction of this Tribunal. Therefore, when that is the uncontroverted and unsurmountable position, it is



indiscernible as to how the applicant can contend that this Tribunal has got territorial jurisdiction to entertain this OA. At the risk of repetition it has to be stated that a party cannot choose the forum by giving a false address or a C/o address. What is required is that after retirement or removal from service he must be a person "ordinarily residing" in that address at the time of filing of the application. Casual or occasional visit will not confer jurisdiction. It is a case where the applicant has a place of residence which is in Salem. But that is outside the jurisdiction of this Tribunal. It is not known why the applicant has chosen to file the OA before this Tribunal.

16. The applicant has now come forward with a contention that the earlier OA (original application) filed by him was disposed of by this Tribunal with a direction to the appellate authority to reconsider the issue. Since after the passing of that order again the disciplinary authority, the appellate and revisional authorities passed the same order, the applicant has filed this original application before this Tribunal.

17. It is not a case where the issue of jurisdiction was raised before the Tribunal when Annexure A22 proceedings was pending. The fact that the jurisdiction issue was not raised when A22 was pending is no reason to say that the Tribunal would get jurisdiction. When a question of jurisdiction is raised it goes to the root of the matter. That is not a curable irregularity. Nor is there anything to show that the respondents had submitted to the

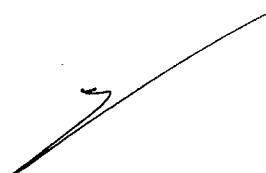
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jurisdiction of this Tribunal. True that there is difference between want of inherent jurisdiction (jurisdiction over the subject matter) and territorial jurisdiction. But still Rule 6 of the Procedure Rules makes it mandatory that the applicant must be a person, if he has ceased to be in service by reason of retirement/termination ordinarily residing within the jurisdiction. The contention that the earlier round of litigation has given a cause of action to the applicant and so this Tribunal gets jurisdiction is found to be untenable. The fact that the orders/communications were sent to the applicant's C/o of address is no reason to say that he is a person ordinarily residing within the jurisdiction of this Tribunal. C/o address is the address of a friend or a relative of the applicant. The applicant may be a causal or occasional visitor. That is not what is required under Rule 6(2) quoted above. The very fact that the applicant did not even controvert any of the statements relating to want of jurisdiction in the rejoinder filed by him, would clearly establish that the applicant himself is aware of the fact that he is not a person ordinarily residing within the jurisdiction of this Tribunal. He did not produce any document to show that he is a person ordinarily residing within the jurisdiction of this Tribunal. As stated earlier, the mere fact that communications were sent to the applicant in the address furnished by him, will not confer jurisdiction on this Tribunal. Jurisdiction cannot be conferred by consent or agreement also. When Rule 6 says as to where the

original application is to be filed that is the statute which governs the forum to file the application. There can be no *estoppel* against the statute nor can acquiescence if any of the respondents will clothe the Tribunal with the jurisdiction. Want of jurisdiction goes to the root of the matter.

18. Though it was vaguely contended that in the earlier round of litigation this Tribunal had passed Annexure A22 order directing the appellate authority to reconsider the issue, there is no plea that the issue of want of jurisdiction now raised by the respondents is barred by *res judicata*. When a plea of *res judicata* is not specifically raised in the present case which is dealt with by the Court/ Tribunal, the plea of *res judicata* itself will get barred by *res judicata* as has been held by the Hon'ble High Court of Kerala in ***Appi Pennu Vs. Kalyambi Nanan --1984 KLT 763.***

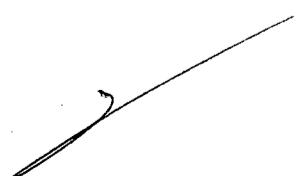
19. To put forward a plea of *res judicata* there must have been a previous decision of a competent court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right. The issue whether this Tribunal had jurisdiction was not raised in the earlier case and was not considered nor was any decision rendered on that point. The issue relating to jurisdiction is not a pure question of fact. It is the interpretation of the rule that is relevant. Hence it would actually be a decision on an issue of law. Even an erroneous decision on question of law will not operate as *res*

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judicata. It is trite law that decision on question of law can never be a *res judicata* in a subsequent proceedings between the same parties. Questions of procedure, questions affecting jurisdiction and questions of limitation may all be questions of law. It is stated that in such matters the rights of parties cannot be the only matter for consideration. See the decision of the Hon'ble Supreme Court in *Mathura Prasad Sarjoo Jaiswal and other Vs. Dossibai N.B.Jeejeebhoy --AIR 1971 SC 2355* and also *Isabella Johnson (Smt) Vs. MA Susai (Dead) by LRs -- (1991) 1 SCC 494*. A court which has no jurisdiction in law cannot be conferred jurisdiction by applying principles of *res judicata*. It is also well settled that there can be no estoppel on a pure question of law. The question of jurisdiction is a pure question of law.

20. It is also pertinent to note that there was no necessity for the respondents to challenge the earlier order passed by the Tribunal which only directed the respondents to re-consider the issue. No final adjudication was given by the Tribunal pertaining to the issue of jurisdiction involved in this case. Therefore, that also a reason to hold that no plea of *res judicata* can be put forward by the applicant.

21. It is all the more important to note that no plea of *res judicata* has been raised by the applicants in this case. Hence the applicant cannot contend that the Tribunal is having jurisdiction to decide the issue when

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admittedly no cause of action did arise within the jurisdiction of this Tribunal. As found earlier the applicant is not a person ordinarily residing within the jurisdiction of this Tribunal. Therefore, we have no hesitation to hold that this Tribunal has no jurisdiction to decide this case. This OA is hence dismissed for want of jurisdiction. The applicant is at liberty to move the competent Tribunal for redressal of his grievance which may be subject to the law of limitation. No order as to costs.


(Mrs. R. Gopinath)
Administrative Member

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(N. K. Balakrishnan)
Judicial Member