

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 14/87

~~Exxxxxxx.~~

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DATE OF DECISION 13-3-91

Shri P. J. Vaydande

Petitioner

Mr. G. S. Malia

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Mr. A. L. Kasturey,

Advocate for the Respondent

## CORAM

The Hon'ble Mr. M. V. Priolkar, M(A)

The Hon'ble Mr. T. C. Reddy, M(J),

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH  
NEW BOMBAY.

(19)

ORIGINAL APPLICATION No.14/87

Shri Pandurang Jijyaba Vaydande,  
Controller of Stores, Office,  
Western Railway, Churchgate,  
BOMBAY- 400020

.... Applicant

Vs.

1. Union of India  
through General Manager,  
Western Railway, Bombay-400020
2. Railway Board, through  
Secretary, Railway Board,  
Rail Bhawan, New Delhi.
3. General Manager, Western Railway  
Churchgate, Bombay - 400020

.... Respondents

CORAM : Hon'ble Member Shri M.Y.Priolkar, M(A)

Hon'ble Member Shri T.C.S.Reddy, M(J)

Appearance

Mr. G.S.Walia, Adv,  
for the applicant

Mr.A.L.Kasturay, Adv,  
for the Respondents.

JUDGMENT

DATED: 13-3-1991

(PER : T.C.S.REDDY, M(J)

This Original application is filed by the applicant herein under Section 19 of the Administrative Tribunal Acts, 1985 to set aside the dismissal order dated 15.12.1984 and have all the consequential service benefits.

2. The application is resisted in the reply by the respondents on two grounds viz. Res-judicata and limitation.

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3. Few facts have to be stated for proper adjudication of this matter.

4. The First Respondent in the Original Application is the Union of India, through General Manager, Western Railway, Bombay, the Second Respondent the Railway Board through the Secretary, Railway Board, New Delhi, and third Respondent General Manager, Western Railway, Churchgate, Bombay - 20.

5. The applicant herein was appointed as a Clerk in Western Railway in the Office of the Controller of Stores on or about 19.1.1951. The applicant was promoted as Senior Clerk in 1957 and further promoted as a Head Clerk in 1968, as Chief Clerk in 1970 and as Office Superintendent in 1973. The applicant was lastly promoted as the Assistant Controller of Stores (Class II service-Gazetted cadre), on or about 18.10.1975. While working as Assistant Controller of Stores, Western Railway during the period April 1977-78 made

~~it was illegal to do so~~  
purchase of different items for the said store of which he was incharge and which was required by the Railway, against the prescribed procedure, with exorbitant rates, without approval of competent authority and thereby he was guilty of a serious misconduct and that the applicant had also failed to maintain absolute integrity, devotion to duty. An inquiry was conducted against the applicant for the above said charges under Railway Servants(Disciplines and Appeal) Rules, 1968. The Inquiry Officer, who conducted the said inquiry of the applicant came to the conclusion that all the said charges against the applicant were proved, and as a result the dismissal order dated 15.12.1984 was served on the applicant. After <sup>the</sup> said order was served on the applicant, he approached the High Court of Bombay and filed Writ Petition No.1234/84 in the said Bombay High Court for quashing the said order of dismissal and other consequential service benefits. The said Writ Petition No.1234/84 came for hearing before

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Bombay High Court on 11.7.1984 for Admission. The following is the order dated : 11.7.84 passed by the Bombay High Court in the said Writ Petition No.1234/84.

"There is nothing on record to show that the comments if any, of the Central vigilance Commissioner, were taken into account by the Railway board in <sup>war</sup> amending punishment.

No satisfactory ground is made out for admission, Rejected"

After the said petition was rejected at admission stage in the Bombay High Court, the applicant then sent representation by way of appeal to the President of India on 13.2.1985. There was no response to the representation of the applicant from the President. So, the present application is filed by the applicant as already pointed out under Section 19 of the Administrative Tribunal Act, 1985 for the above said reliefs. The main contention opposing the application as already pointed out is on the ground of ~~rejudication~~. Before a plea of res-judicata can be given effect, the following conditions must be proved

(1) That the litigating parties must be same (2) That the subject matter also must be identical in the earlier case in the present case (3) That the matter must have been finally decided between the parties in the earlier case. (4) That the matters must have been decided in the earlier case by a Court of competent Jurisdiction. That the subject matter of the present Original Application and the subject matter of the said Writ Petition No.1234/84 decided by Bombay High Court is one and the same is ~~of~~ undisputed. The fact that the litigating parties in the present Original Application and in the said Writ Petition are also the same is undisputed.

The High Court of Bombay had jurisdiction to decide the said Writ Petition No.1234/84 is not in doubt. Further that the

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High Court has applied it's mind and had gone into merits and then decided the matter is quite evident from the order it self so as all conditions that are necessary to give effect to the plea of Res-judicata are satisfied, in this case, so the early order passed in 1234/84 by the Bombay High Court in <sup>our</sup> ~~my~~ opinion is certainly a bar to the filing of the present Original application by the applicant under Section 19 of the Administrative Tribunal Act 1985. The High Court had dismissed Writ Petition No.1234/84 after hearing the matter on merits. The Present petition on the same facts and for the same relief failed by the same party is a barred by applying the principle of Res-judicata. The binding character of <sup>Judgements</sup> ~~order~~ of Courts of competent jurisdiction is in essence a part of the rule of law on which Administration ~~of~~ of justice, so much emphasised by the constitution, is founded and the said order passed in Writ petition No.1234/84 after hearing on merits binds the applicant as well as respondents till ~~the same~~ is set aside <sup>in appeal</sup> by a competent Court and ~~so the applicant~~ cannot be permitted to be circumvented by filing petition under Section 19 of the Administrative Tribunal Act, 1985. The plea of the learned counsel appearing for the application is that the said Writ Petition 1234/84 is not decided on merits by the Bombay High Court and that Writ Petition 1234/84 is dismissed in limine, so the present Original Application filed under Section 19 of the Administrative Tribunal Acts, 1985 is not a bar under law. At page 19 in para 6.30, it is pleaded as follows by the applicant " The applicant states that the application filed a Writ Petition in High Court against the order of removal, but the same was rejected summarily, as seen Writ Petition No.1234/84 <sup>as</sup> having been dismissed in limine is not pleaded in the Original Application.

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It is only for the first time during the course of arguments that is contended by the learned counsel for the applicant that the said Writ Petition No.1234/84 had been dismissed in limine, ~~as~~ As it is not specifically pleaded that the said Writ Petition had been dismissed in limine by the Bombay High Court, ~~we are~~ <sup>we are</sup> unable to understand how such a plea can be allowed to be raised for the first time during the course of argument by the learned counsel for the applicant. Besides, a petition is said to be dismissed in limine, is dismissed on the grounds of laches ~~or~~ availability of alternative remedy etc. But this is not the case here in at all. As can be seen from the said order in Writ Petition No.1234/84 extracted above an affidavit of P. Chandran had been filed on 9.7.84 and the same had been taken on file, The Advocates both for the applicant and the respondents were present when the said Writ Petition No.1234/84 was heard at the time of admission. So, after hearing both sides the said order had been passed in the said Writ Petition No.1234/84 rejecting the same. So, it would not be correct to say that the Writ Petition 1234/84 had been dismissed in limine. In the circumstances of the case, we are of the opinion that the said order dated 11.7.84 passed in Writ Petition 1234/84 at the time of admission is an order on merits and High Court of Bombay passed the order after full consideration of the material before. The learned counsel for the applicant relied on a citation AIR 1986 SC 1780 ( Indian Oil Corporation Ltd V .State of Bihar and other) where in it is led down that the dismissal of a Special Leave petition in limine by Supreme Court by a non-speaking order was no bar to trial on the same issue in High Court under article 226 of the Constitution. We also relied upon a decision of the Supreme Court report AIR 1979 SC 1237(Mazharul Islam Hashmi V. State of Uttar Pradesh and another): Where in it is laid down,

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that an order passed without giving an opportunity of hearing is illegal. On the basis of said decisions it is ~~understood~~ intended that the said order passed in Writ Petition No.1234/84 does not operate as Res-judicata as the said order is not a speaking order. The decisions cited by the learned counsel for the applicant relate to the matter where ~~in the~~ two earlier cases were not disposed of on merits. In this case as already been pointed out, both the counsel had appeared for the respective parties in Writ Petition No.1234/84 filed in Bombay High Court. Both the advocates were heard and it is in their presence that the said order had been passed. So the said order passed in the said W.P.1234/84 has the characteristics of valid order and would bind the parties even though the said order is short, <sup>and brief</sup> ~~in itself~~. So, we have no doubt about the fact that the order passed in W.P.1234/84 on the file of Bombay High Court very much ~~has~~ <sup>to</sup> the filing of the present petition and hence on these ground the Original Application of the applicant is liable to be dismissed.

6. As already ~~has~~ pointed out the W.P.No.1234/84 filed in the Bombay High Court was rejected by the order dated 11.7.84 then the applicant had made representation to the President of India by way of appeal. The said representation to the Present of India, is made on 13.2.1985 as already pointed out. As to the said representation the applicant did not receive any reply from the President of India after waiting for a period of one year and 13 days. So the present Original Application 14/87 is filed by the applicant on 26.12.1986.

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7. Under Section 21 B of the Administrative Tribunal Act 1985, the application should be filed within one year from the date on which the final order rejecting any representation has been passed, within one year after expiry of six months from the date on which representation was made. However, the Tribunal <sup>may</sup> admit the application beyond the time limit, if the Tribunal is satisfied that there was sufficient cause for not making the application within the time limit. There is a delay of about six months for filing the present O.A. by the applicant before this tribunal. But his representation by way of appeal before the President of India was pending <sup>so</sup> he might have under an impression that the same would be disposed of. So, in view of the <sup>benificial</sup> belief by the applicant that his representation by way of appeal would be disposed of, he might not have rushed to the Court within one year after expiry of six months from the date of his representation by way of appeal to the President of India. So it is difficult to say that the applicant was either negligent or not negligent in prosecuting this application. So, we find sufficient cause for condonation of delay in filing this application, and so hold that this application is within the time.

8. So on the point of resjudicata as applicant fails this Original application is dismissed. In the circumstances of the case there will be no order as to costs.

T.C.S. REDDY  
(T.C.S.REDDY)  
M(J)

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(M.Y.PRIOLKAR)  
M(A)