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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH AT NAGPUR
----- CAMP : NAGPUR

O.A. 649 of 1987

Present : Hon'ble Mr. A.P.Bhattacharya, Judicial Member
Hon'ble Mr. P.S.Chaudhuri, Administrative Member

P. K. PHALNIKAR

VS

UNION OF INDIA & ORS

For the applicant : Mr. M. M. Sudame, advocate

For the respondents : Mr. Ramesh Darda, advocate

Heard on : 15.1.90 & 16.1.90

Judgement on : 19.1.1990

J U D G E M E N T


A.P.Bhattacharya, J.M. :

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Pandharinath Phalnikar against the Union of India, represented by the Secretary, Ministry of Communication and four others.

2. The applicant was appointed initially as Sorter in the Indian Audit & Accounts Department in the office of Senior Deputy Accountant General (P & T). Subsequently he was employed as a Lower Division Clerk under Respondents 3 and 4. He was declared quasi-permanent on 1.7.64. He was qualified for promotion to the post of Auditor in 1974. In 1975 on the basis of an enquiry a penalty was imposed on him by reducing him in rank from Lower Division Clerk to Sorter for a period of two years. On the basis of a policy decision of the Govt. of India taken on 1.3.76 he was transferred as a Sorter to the office of Respondent No. 4 at Nagpur. The applicant states that he was not willing to be so transferred. In 1978 he filed two suits


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in the court of Civil Judge, Senior Division at Nagpur challenging the disciplinary proceedings resulting in his reduction in rank. Both the suits were decided in his favour. Another disciplinary proceeding was started against him in 1979 in which an enquiry was held. On the basis of the report submitted by the Inquiry Officer, Respondent No. 4 imposed a penalty of dismissal from service on him. That was modified to reduction to the minimum of the pay-scale of Rs. 260/- by the P & T Board, New Delhi. In 1982 another departmental enquiry was started against him which was initiated by the Accounts Officer (Customs Duty Section). The Inquiry Officer after holding the enquiry submitted his report on 29.12.83 and agreeing with the findings of the Inquiry Officer, Respondent No. 4 passed an order on 20.2.84 compulsorily retiring the applicant with effect from that date. He further ordered for striking off his name from the strength of his Establishment. Consequently, the applicant submitted his joining report to Respondent No. 5 on 26.3.84. After his continuous attempts for redressal of his grievance, Respondent No. 5 by his letter dated 22.10.85 informed him that the C.A.G. had directed that on departmentalisation of Postal Accounts with effect from 1.4.76, he was permanently transferred to P & T Deptt. and ceased to be an employee of the Indian Audit & Accounts Deptt. Feeling aggrieved with the decision of the respondents, the applicant had filed the instant application praying for issuing direction upon respondent No. 1 to re-deploy him in the office of respondent No. 5, for quashing the order of compulsory retirement passed on 20.2.84 and for declaring all actions taken by the Accounts Officer as illegal and void. He has further prayed for issuing direction upon respondent No. 5 to review his case for promotion as Auditor and for payment of all his back wages due to him from time to time.

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3. The application has been contested by the respondents. In their reply, the respondents have stated that the application filed by the applicant deserves no consideration and it being devoid of merit, is liable to fail.

4. Appearing for the applicant, Mr. M.M. Sudame, learned advocate, limited his arguments on two points - first, the Accounts Officer having no disciplinary power initiated the departmental enquiry against the applicant in which a penalty of compulsory retirement was imposed on him and as such, the said penalty is liable to be set aside, and secondly and alternatively, the applicant should be granted pension if his challenge against the imposition of penalty fails. While meeting his first argument, it had been contended by Mr. Ramesh Darda, learned advocate appearing for the respondents that the applicant's present challenge against the imposition of penalty of compulsory retirement cannot be entertained by this Tribunal in view of his unsucccess in a writ application filed by him on the self-same point in the High Court at Bombay (Nagpur Bench). In support of his contention Mr. Darda had produced before us the copies of the writ application filed by the applicant and the affidavit-in-opposition filed by the respondents and the order passed by the Nagpur Bench of the Bombay High Court. It appears from the copy of the writ application filed by the applicant that he challenged the order passed by the disciplinary authority on 20.2.84 imposing the penalty of compulsory retirement and the order passed by the appellate authority on 19.9.84 on the appeal preferred by ^{him} ~~the applicant~~. The copy of the order passed by the Nagpur Bench of the Bombay High Court shows that after hearing both sides, the writ application was rejected. It had been contended by Mr. Darda that the applicant is non-suited in view of the fact that his earlier application on the same point had been rejected by a competent court. In reply to that, reliance had been placed ^{by the side of the applicant}.

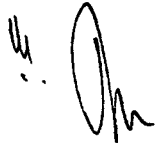
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on the decisions of the Supreme Court in the cases of Daryao & Ors -vs- Union of India & Ors reported in A.I.R. 1961 SC p. 1457 and P.D.Sharma -vs- State Bank of India reported in A.I.R. 1968 SC 985^{respectively}. It is the contention of the applicant that the rejection of the writ application by a non-speaking order would not stand as a bar to the filing of another application on the same point subsequently before the court of competent jurisdiction. On going through the decisions of the Supreme Court in the cited cases, we are unable to accept the applicant's contention. In the earlier case the question for determination before the Supreme Court was whether prior decision by High Court on a writ application under Art. 226 of the Constitution by a non-speaking order would operate as a bar to filing a petition before the Supreme Court under Art. 32 of the Constitution. In that case it was held by the Supreme Court that if the petition filed in the High Court under Art. 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32. It was further held that if a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. In this case, all what we find is that the applicant had challenged the orders passed by his disciplinary authority and the order passed by the appellate authority on the appeal preferred by him. The respondents filed their affidavit-in-opposition traversing all the points taken by the applicant in his writ application. If after considering

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considering the pleadings of both sides, the High Court had thought it wise to reject the application and did so, we have no reason to say that without going into the merits of the case such an order was passed. Coming to the latter case cited by the applicant, we find that it has no manner of application to the case before us. The question involved in that case was whether summary dismissal of a writ application by a non-speaking order would constitute ^{as} res-judicata in filing an appeal before the Supreme Court, under Art. 136 of the Constitution. It was held that when in an appeal under Art. 136 the Supreme Court can go into the question of facts as well as law whereas the High Court in the writ application could have equally considered the questions which would have been strictly relevant in an application for a writ of certiorary, such an appeal would be maintainable. The facts and circumstance of the case before us are entirely different. We have already mentioned that after going through the pleadings of the applicant made in his writ application and the pleadings of the respondents made in their affidavit-in-opposition the Nagpur Bench of the High Court of Bombay rejected the applicant's writ application. In our opinion, the applicant is estopped from taking the self-same plea of challenge by filing another application. Considering all, we are of opinion that the instant application is not maintainable.

5. Much has been argued by the side of the applicant on the authority of the Accounts Officer in initiating a departmental enquiry against him in which the impugned order of compulsory retirement was passed against him. In support of his contention reference has been made to the judgement passed by the New Bombay Bench of the Central Administrative Tribunal in Transferred Application No. 29 of 86 between the Union of India and the present applicant reported in A.T.R. 1986(2)CAT 175. It has been contended by the side of the applicant that

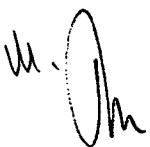


in that case the departmental enquiry initiated by the order of the Deputy Director of Accounts having no authority to initiate such, was found to be bad and ~~was~~ vitiated the whole proceeding. We are not prepared to accept this contention.

In that case as the Deputy Director of Accounts had no authority to initiate a departmental enquiry prior to 20.12.77, such observation was made by the New Bombay Bench of the Tribunal. But we find that after 1977 such authority to initiate a departmental enquiry was conferred on the Accounts Officer. Considering that aspect of the matter, we are of opinion that the observation made by the New Bombay Bench of the Tribunal in that case would have no manner of application to the case before us and that the applicant is not entitled to avail of that judgement. So, the argument advanced by the side of the applicant in that regard fails.

6. It is pertinent to note in this connection that in the present application the applicant has only challenged the order passed by his disciplinary authority on 20.2.84 and has not challenged the order passed by his appellate authority on 19.9.84 which was challenged by him in his writ application. We are unable to reconcile such discrepancy. Even if the applicant succeeds in this case with regard to his challenge against the order passed by his disciplinary authority that would be of no avail when he has not challenged the order passed by his appellate authority which confirmed the decision taken by his disciplinary authority agreeing with the findings of the Inquiry Officer. In our opinion, the present application is liable to fail in that score also.

7. The last argument advanced by the side of the applicant was that after working for a considerable period of time as a quasi-permanent employee the applicant should have been allowed pensionary benefits. In reply to that it had been contended by the side of the respondents that no pensionary

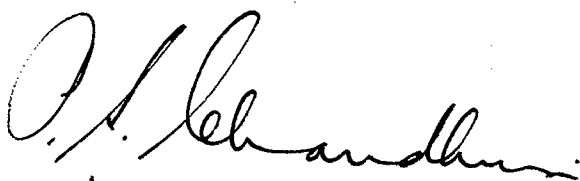
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benefits could be made available to the applicant as he was not permanent in any post. There is much difference between a Govt. servant as quasi-permanent and as permanent. Besides, we find that at para 7 of his application the applicant has not made any prayer in that regard. He has not even prayed for issuing any direction on the respondents to pass an order releasing his pension, even if his challenge against the order of compulsory retirement fails. All what we find from para 8 of his application^{is} that he has prayed for an interim order for issuing direction upon respondent No. 4 to pay the pension due to him on purported compulsory retirement with effect from 20.2.84. In fact, when the applicant has not made a specific prayer in that regard, the respondents have not specifically met that point. Naturally, therefore, we do not find it proper to make any observation on that point either in favour of the applicant or against him. We like to keep that point open.

8. In view of our observations made above, we are of opinion that this application is liable to fail. Accordingly we dismiss this application without, however, making any order as to costs keeping the question of sanction of pension to the applicant^{by the concerned authority} open. The applicant is given the liberty to file a fresh application on that point, if not otherwise barred.



(P.S. CHAUDHURI)
ADMINISTRATIVE MEMBER
19.1.90


(A.P. BHATTACHARYA)
JUDICIAL MEMBER
19.1.90