

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A.491/87

S.R. Krishnamoorthi,
Building No. JN2/22/A8,
Opp. Fr. Agnells Polytechnique,
Sector 9, Vashi,
New Bombay-400 703.

.. Applicant.

vs.

1. Chairman,
Atomic Energy Commission
and Secretary to the Government
of India, 4th floor, Anushakthi Bhawan,
Chattrapathi Shivaji Maharaj Marg,
Old Yatch Club,
Bombay - 400 039.

2. Director,
B.A.R.C.,
7th floor,
B.A.R.C. Directors Office,
Central Complex,
B.A.R.C. Trombay,
Bombay - 400 085.

3. Union of India

.. Respondents.

Coram: Hon'ble Member(A) J.G. Rajadhyaksha.
Hon'ble Member(J) M.B. Mujumdar.

Appearances :

1. Applicant in person.
2. Shri J.D. Desai (for Shri M.I. Sathna)
Advocate for the Respondents.

ORAL JUDGMENT :

DATE : 14-3-1988

(Per: Shri M.B. Mujumdar, Member(J))

Heard the applicant Shri S.R. Krishnamoorthi in person and Shri J.D. Desai (for Shri M.I. Sathna) the learned advocate for the respondents.

2. The applicant was appointed as Scientific Officer/Engineer (SC 2) in 1962. In 1966 he was promoted as Scientific Officer/Engineer (SD 2). In 1973 he was promoted as Scientific Officer/Engineer (SE).

By an order dtd.8-6-1982 passed by the Under Secretary to the Government of India, Department of Atomic Energy he was transferred to Reactor Research Centre, Kalpakkam, Madras. He challenged that transfer by filing Misc. Petition No.1344 of 1982 in the High Court of Judicature at Bombay. In the same Petition he had also challenged his non promotion to higher posts. The Petition was dismissed on 3-9-1982. Against that decision he ^{had} filed Appeal No.522 of 1982. After hearing both the sides that appeal was also dismissed on 13-6-1983 by a Division Bench of the High Court. Against that decision the applicant had preferred Special Leave Petition No.9331 of 1983 in the Supreme Court of India. On 19-8-1983 that SLP was dismissed as withdrawn. The Supreme Court, however, observed "We hope that the new Chairman of the Atomic Energy Commission will consider the grievances if any, of the petitioner, uninfluenced by any allegations of malafide made by the petitioner earlier".

3. The applicant, did not join his posting at Kalpakkam, Madras. He, however, made various representations after the decision of the Supreme Court. On 10-1-1984 the respondents framed a chargesheet against him for unauthorisedly remaining absent from duty with effect from 16-9-1983 despite directives asking him to join duty at Kalpakkam. Though the applicant had requested for inspection of documents and some other information, he did not file his reply to the chargesheet. We are told that the departmental enquiry is completed and the report of the Inquiry Officer is submitted to the appropriate authorities. However, final orders are not yet passed.

4. On 2-2-1984 the applicant submitted an application for voluntary retirement. However, that request was rejected on 29-3-1984, probably because the departmental enquiry was then pending against him. On 5-5-1984 the applicant filed Writ Petition No.1962 of 1984 in the High Court of Judicature at Bombay for directing the respondents to accept his request for voluntary retirement. After hearing both the sides the High Court dismissed that petition on 23-1-1985. In spite of this, on

30-9-1986 the Director of Department of Atomic Energy sent a letter to the applicant suggesting that he may submit a fresh notice of voluntary retirement for consideration of the Department. This letter was sent because the applicant had already requested for voluntary retirement by his letter 2-2-1984. The applicant, however, by his letter dt.24-10-1986 refused to give notice of voluntary retirement at that stage.

5. On 16-7-1987 the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985. The prayers made by the applicant may be summarised as follows : (i) The adverse entries in the confidential report and confidential letters dtd. 3rd April, 1982, 3rd April, 1982 and 6th April, 1982 should be expunged as the same were not communicated to him; (ii) any action that followed the adverse remarks, such as transfer to Kalpakkam, Madras; chargesheet and Inquiry for unauthorised absence; non payment of regular salary and allowances; denial of promotion to Engineer Grade (SO(SF) from 1979 and thereafter to Engineer Grade SO(SG) from 1984; eviction from the Government accommodation; charging of penal rent totalling over Rs. 20,743- should be declared as void and illegal.

6. The applicant has produced a copy of the judgment of the Division Bench of the Bombay High Court in Appeal No. 522 of 1982 which was filed against the dismissal of Misc. Petition No. 1344/1982. The judgment shows that the applicant had challenged his transfer to Kalpakkam, Madras as well as his non promotions to higher posts. After hearing both the sides the Division Bench dismissed the appeal. Against the decision the applicant had filed SLP 9331/1983 in the Supreme Court but that was also dismissed as withdrawn. It is, therefore, clear that the applicant's request in the present application for setting aside his transfer to Kalpakkam as well as his non-promotion to higher posts prior to filing of Writ Petition are barred by the Principle of res-judicata. The applicant is, therefore, not entitled to file a fresh application under Section 19 of Administrative Tribunals Act, 1985 for the same reliefs.

7. It is the case of the applicant that his transfer and non promotion have taken place on account of the adverse remarks in some letters. These letters are referred to in para 15 of the application. In para 15(b) the applicant has quoted the material portion from the letter dtd. 3-4-1982 from Dr. P.K. Iyengar, who was the Director of BARC. It reads as follows :

"I was completely disappointed by his attitude. He seems to be suffering from mental aberrations which does not allow him to follow a practical approach in any of the Scientific problems. I am, therefore, of the opinion that irrespective of his technical capabilities it is impossible to get him to do any work without being medically treated for his hot temper and suspicious nature. I cannot visualise him working in close cooperation with any of the Scientist in BARC. I, therefore, recommend that the entire environment in which he works should be changed which is perhaps possible only on his leaving the Department of Atomic Energy."

In the same paragraph the applicant has referred to the letter dtd. 6-4-1982 from Dr. P.R. Dastidar, who was the applicant's previous group Director. Therein also Dr. Dastidar had observed that the applicant was alone and secretive worker, could not guide juniors, could not work in a team, his performance was not satisfactory and he should be transferred out of Bombay and ^{if} that was not possible he should be retired from service if retained in Bombay. In para 15(c) the applicant has referred to letter dtd. 3-4-1982 of Shri R.K. Garg. In that letter also Shri Garg had mentioned that the applicant did not have much interaction with others, he was not receptive to ideas of others and could not get along with colleagues. In para 15(d) the applicant has referred to the remarks of Shri Raja Ramanna the then Director of BARC and the Chairman of the Atomic Energy Commission. The remarks were made on 26th April, 1982 below Dr. P.K. Iyengar's letter dtd. 3rd April, 1982. According to Shri Raja Ramanna, "It looks as though it is impossible to rehabilitate

Shri Krishnamoorthi. Nobody with whom he has worked has a good word for him. As a last chance we can transfer him to RRC, Kalpakkam, Dr.C.VS has agreed to this".

8. We are of the view that the applicant was not entitled to communication of these remarks made in confidential letters. These remarks and letters were referred to in an affidavit filed on behalf of the respondents in the High Court. These remarks must have weighed with the High Court while dismissing the appeal preferred by the applicant. Obviously, the applicant must have been transferred in view of the remarks and the opinions expressed in these letters. What the applicant is now trying to do is to challenge these remarks and opinions which had led to his transfer. As the applicant's challenge to his transfer to Kalpakkam, Madras and non promotion to higher posts was rejected by the High Court, he is now challenging the ~~same~~ causes which led to his transfer and non promotion. Obviously, he is doing this for the purpose of challenging his transfer as well as non promotion. In our opinion this is a back door attempt to get the same reliefs which were rejected to him by the High Court, which should not be allowed.

9. Moreover, it was in April, 1982 that the applicant had come to know about the remarks and the opinions referred to above. It was two months thereafter that the High Court dismissed the appeal. If the applicant was so serious he should have got his ^{writ} petition amended suitably challenging these remarks also. He failed to do so. Hence he cannot be now permitted to challenge the adverse remarks and opinions in these letters by filing a separate application like this. What we have said about the letters equally applies to the adverse remarks in the annual confidential reports. Moreover, as the applicant had become aware of these remarks in April, 1982 i.e. within three years preceding the date on which this Tribunal started functioning, the applicant should have made this application within six months from ~~that date~~ ¹⁻¹¹⁻¹⁹⁸⁵. The Tribunal has started functioning from 1-11-1985 and as the period of six months was over on 1-5-1986 the applicant should have filed this application before

1-5-1986. The applicant seemed to be under a wrong impression that he could have filed this application within 3 years from the date on which the Tribunal started functioning. Mere perusal of Section 21(2) of the Administrative Tribunals Act shows that his impression is erroneous.

10. Lastly the applicant has challenged the chargesheet for remaining absent unauthorisedly from 16-9-1983. Admittedly, the applicant has not joined his posting at Kalpakkam, Madras even though the Writ Petition filed by him in the High Court was dismissed long back. The enquiry is still going on and no final orders are yet passed. If the result of the enquiry goes against the applicant he will be at liberty to approach the Tribunal by filing a fresh application after exhausting all the departmental remedies, if any, available to him.

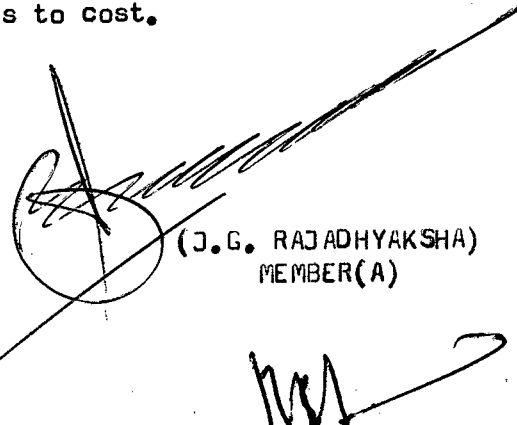
11. Eviction from the official quarters, charging of penal rent, etc. are all consequences of not joining the new posting at Kalpakkam. The applicant cannot make a grievance on these points as admittedly he has not joined his new posting at Kalpakkam in spite of dismissal of his writ petition by the High Court.

12. We heard the applicant on a number of occasions. We had at one time directed the respondents (without prejudice to the rights of parties) to give a statement as to what benefits he would get if he makes a fresh request for voluntary retirement and if it is accepted by the department. The respondents have given a statement on 18-1-1988. Still the applicant steadfastly refused to accept the calculations and further refused to consider submission of an application for voluntary retirement, ~~thereby~~

13. We have, therefore, no hesitation in holding that the applicant has no case whatsoever which should be adjudicated upon by this Tribunal at this stage.

14. We, therefore, reject the application summarily under Section 19(3) of the Administrative Tribunals Act, 1985. However, we make it clear

that the applicant will be at liberty to approach this Tribunal by filing a fresh application if the result of the departmental enquiry goes against him, after exhausting all departmental remedies, if any, available to him. No order as to cost.



(J.G. RAJADHYAKSHA)
MEMBER(A)



(M.B. MUJUMDAR)
MEMBER(J)