

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

NEW BOMBAY BENCH

O.A. No. 205/88  
~~TA No.~~

198

DATE OF DECISION 3.6.1988Shri B.D.Raikar PetitionerShri C.M.Jha Advocate for the Petitioner(s)

Versus

General Manager, Western Rly. Hd. Qrs. Respondent  
Office, Churchgate, Bombay.Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. J.G.Rajadhyaksha, Member (A)

The Hon'ble Mr. M.B.Mujumdar, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

3  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.No. 205/88

Shri B.D.Raikar,  
Sen Nagar Rly.Colony,  
Quarter No. 105-A,  
Santacruz (East),  
Bombay 400 055.

Applicant

VS.

Union of India  
through  
General Manager,  
Western Railway  
Head Quarter Office,  
Churchgate,  
Bombay 400 020.

Respondent

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

ORAL JUDGMENT

Dated: 3.6.1988

(PER: M.B.Mujumdar, Member (J))

The applicant, Shri B.D.Raikar, has filed this application under Section 19 of the Administrative Tribunals Act. We have heard Mr.C.M.Jha, learned advocate for the applicant on the point of admission.

2. The applicant is working as Head Clerk in the Commercial Branch, Refund Goods Section of the respondents at Bombay. He was initially appointed as Typist in 1955 in the grade of Rs.110-180 and he was posted in Establishment Branch of Head Quarter Office at Churchgate, Bombay. After passing examination, he was appointed as a clerk in the grade of Rs.110-180 by an order dated 15.7.1965. The applicant was protesting against that order because he was placed in a lower grade. As his grievance was not favourably redressed, he filed OA.NO. 397/86 before this Tribunal. In para 7 of that application, he had requested that he should be treated as Senior Clerk in the grade of Rs.130-560 from 15.7.1965 onwards instead of Junior Clerk in the

grade of Rs.110-400. After hearing Mr.S.Natarajan who was appearing for the applicant in that case, we summarily rejected the application.

3. We have held in that order that the application was hopelessly time barred. While holding so we relied on a judgment of the Principal Bench of the Central Administrative Tribunal in V.K.Mehra V. Secretary, Ministry of Information, ATR 1986 CAT 203, in which it is laid down that the Act does not vest any power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1.11.1982 i.e. more than 3 years prior to constitution of the Tribunal on 1.11.1985. It is further held in that case that in such a case, there is no question of condoning the delay in filing the petition.

4. It appears that after the above decision, the applicant had made another representation dated 5.2.1987. He had also requested for an interview with the General Manager. After considering the representation and the interview the applicant was informed that seniority was correctly fixed as per the rules. He was also advised that in case he wants to go back to Typists cadre he may apply for the same, which would, however, be examined again under the rules. After the above reply, the applicant has approached this Tribunal by filing this application on 14.3.1988.

5. Again the request of the applicant is the same viz. that his pay be fixed in the grade of Rs.130-300 from the date of absorption in clerical cadre from 15.7.1965. In other words, his grievance in the present application as well as in the previous application is the same. We are of the view that the present application is barred by the principles of Res judicata.

6. We are fortified in taking this view by a judgment by the Supreme Court in Virudhunagar Steel Rolling Mills vs. Madras Government, AIR 1968 Supreme Court 1196. After referring to an earlier judgment of the Supreme Court in Daryao vs. State of U.P., AIR 1964 Supreme Court 1457, the Supreme Court has held in para 6 as follows :

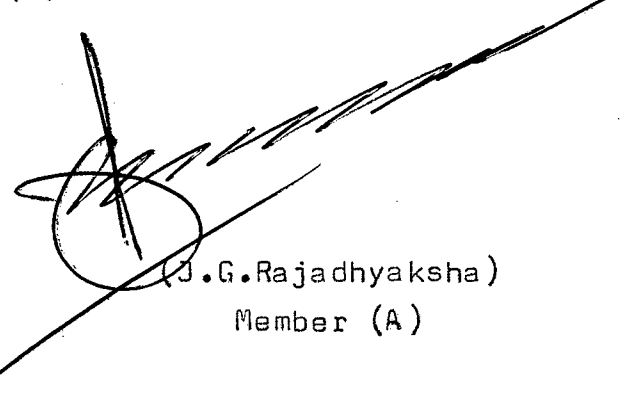
"Even where notice might not have been issued by the High Court and the writ petition dismissed in limine, the question whether such dismissal would bar a petition under Article 32 would depend upon the nature of the order dismissing it in limine. This is perfectly clear from the later observations made at p.592 in the same case. Where therefore a writ petition is dismissed without notice to the other side but the order of dismissal is a speaking order and the petition is disposed of on merits, that would still amount to res judicata and would bar a petition under Article 32. The petitioner's only proper remedy in such a case would be to come in appeal from such a speaking order passed on the merits, even though the High Court may not have issued notice to the other side. What has been decided in Daryao's case, (1962) 1 SCR 574 = (AIR 1961 SC 1457) is that the High Court should have decided the petition on the merits by a speaking order. If that is done, it is immaterial whether notice was issued to the other side or not before such a decision was given. The bar arises not because there was a notice issued but because the High Court has dealt with the merits of the petition before it and has passed a speaking order even though no notice might have been issued."

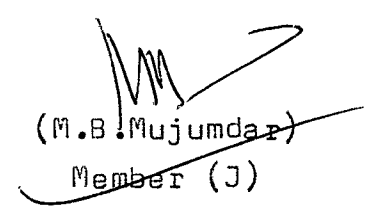
7. It is true that the previous application was summarily rejected after hearing the learned advocate for the applicant <sup>though</sup> without issuing the notices to the respondents. We have held in that order after giving reasons that the application was barred by limitation. We have given our reasons for that view. Hence, in view of the above observations of the Supreme Court in Virudhunagar Steel Rolling Mills' case, we have to hold that the present application is barred by the principles of res judicata. In this connection, we may also refer to the judgment of the Supreme Court

in Sarguja Transport Service vs. State Transport Appellate Tribunal, AIR 1987 Supreme Court 88.

In that case, the previous writ petition under Article 226 of the Constitution of India was withdrawn without permission to file fresh petition and a question arose whether such writ petition for the same cause of action was permissible. The Supreme Court held that the principle underlying Order 23 Rule 1 of the Civil P.C. should be applied in the interest of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy. According to the Supreme Court that would discourage litigants from indulging in bench-hunting tactics. Though the case is not directly applicable, the latter observations should explain why we are holding that the present application is not maintainable. To hold otherwise would allow the petitioner to try his luck before another bench, as he may legitimately request that the Bench which rejected his previous application may not take up this application.

7. In the result, we reject this application summarily under Section 19 (3) of the Administrative Tribunals Act, 1985.

  
(J.G. Rajadhyaksha)  
Member (A)

  
(M.B. Mujumdar)  
Member (J)