

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 489/94

DATE OF DECISION: 3/7/2000

Shri Mohamad Ninoo

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri S.C.Dhawan

Advocate for
Respondents.

CORAM:

Hon'ble Shri S.L.Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not? NO
2. Whether it needs to be circulated to NO other Benches of the Tribunal?
3. Library. Yes

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(SHANTA SHAstry)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:489/94
DATED THE 3rd DAY OF SEPT, 2000
October

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Mohamad Ninoo,
employed as Semi Skilled
Khalasi in Electric Locomotive
Workshop, Central Railway,
Bhusawal and residing at
Gawali Wada, Mamaji Talkies,
Bhusawal.

... Applicant

By Advocate Shri D.V.Gangal

V/s.

1. Union of India,
through the General
Manager, Central Railway,
Bombay VT, Bombay-1.

2. Divisional Railway Manager,
Central Railway,
Bhusawal.

3. Assistant Works Manager(M),
Electric Locomotive Works,
Central Railway,
Bhusawal.

... Respondents

By Advocate Shri S.C.Dhawan.

(ORDER)

Per Smt.Shanta Shastry, Member(A)

The Applicant in this OA has challenged the order dated 20/9/93 issued by Respondent No.3 and has prayed to quash and set aside the order enclosing the charge sheet against the applicant and to hold and declare that the applicant should be granted full backwages and continuity in service from 22/2/90 till he was reinstated in 1991 and also grant him all promotions as per his

...2.

seniority. He has also claimed interest. The applicant had also prayed for Interim Relief and the same has been granted with the result the enquiry proceedings against the applicant have been stayed.

2. The brief facts are that the applicant was serving as a temporary Khalasi as on 6/9/70. His services were terminated on 20/2/80 on the ground that he had filled the attestation form for appointment by concealing and giving false information. The applicant suppressed the fact that there was a criminal proceeding pending against him in the Sessions Court. Aggrieved by his termination the applicant filed a Civil Suit - 369/80 in the Junior Division, Bhusawal against his termination order. The same was decided in his favour vide judgement dated 23/1/84. The respondents were directed to reinstate the applicant. The respondents filed an appeal against the said judgement which was transferred to the Tribunal as TA No.27/89. The Tribunal decided the appeal on 13/11/90 by rejecting the same and upholding the conclusion of the Civil Court. Thereafter the applicant was reinstated in service from 24/1/91. After the applicant had continued for more than two years as such, the applicant was served with a charge sheet by the Impugned order dated 20/9/93 for the charge that he had committed a serious misconduct in that he had deliberately concealed the factual information regarding his antecedent, and gave false information to the Administration in Column No.12(a) and (b) of Attestation form. The applicant is aggrieved that when the Civil Court as well as the Tribunal had decided the matter finally in his favour and had directed to reinstate him in service, the same issue cannot now be reopened.

The issues are the same. The Charge is identical and therefore it is not proper on the part of the respondents to have started a fresh disciplinary action against him. The Learned Counsel states that this matter is now covered by resjudicata as defined in Section 11 of CPC. According to this no Court shall try any suit or issue which has been in issue in a former suit between the same litigating parties, where the subject matter of the suit is identical and which has been finally decided between the parties by a Court of Competent Jurisdiction. All these conditions are met in the present case and therefore the respondents are barred from issuing the charge sheet in the same matter. It has been explained further in explanation IV under section 11 of CPC that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. The Respondents had put up all possible defence in the suit. Suppression of information had been gone into^m the civil suit. The applicant has already faced Court proceedings on the same question. All possible defences of the respondents were examined in the Court case, therefore they are estopped from re-opening the issue which stood concluded. Issuing of a charge sheet now amounts^{is barred by principle of} to resjudicata. Further, charge sheet is being issued to him for an action which took place 13 years ago. This is not sustainable. Moreover, the respondents never asked either the Tribunal for liberty to initiate disciplinary proceedings on the same question neither did the Tribunal give any such liberty. The applicant therefore pleaded that the issue of Impugned ^{charge sheet} order is uncalled for.

3. The respondents maintain that the charge sheet issued by them is as per rules. The applicant had filed a regular suit in the Civil Court challenging his removal from service on the ground that no disciplinary proceedings had been taken against him and being a temporary employee not issuing the chargesheet to him before removal was bad in law. Noting this, the Civil court ordered the reinstatement of the applicant. However, the Hon'ble Judge observed in his judgement that it was not right on the part of the defendants to terminate the services of the plaintiff. It ought to have started any preliminary enquiry or departmental enquiry against him on the grounds of misconduct for not giving true information in the said attestation form, and set aside the order of removal ... The Tribunal by judgement dated 12/11/90 also held that it was obligatory on the part of the Railway to issue a notice giving details as to the alleged default committed by the Respondents and after getting the reply and taking a decision and then the Railway could have passed an order of termination. The Tribunal all the same upheld the judgement of the Civil Court without however endossing all reasons given by the City Civil Judge. Learned Counsel for the respondents urged that neither the Civil Court nor the Tribunal had anywhere stated that the Respondents are not entitled to initiate departmental proceedings against the applicant. The respondents deny that the reading of both the judgement of the Civil Court and the order of the Tribunal clearly show that the question of suppression of information in the attestation form is closed and no fresh proceedings can be started. The Learned Counsel asserts that the thrust of the judgement of the Civil Court and the order of the

Tribunal was on the fact that the Applicant had been denied natural justice. Thus the order of removal of the applicant was set aside mainly on technical ground and not on merits. Therefore the respondents are now free to give such an opportunity to the applicant and then take suitable decision in the matter. Accordingly, the charge sheet has been issued on 20/9/93. The learned counsel for the respondents has denied further that this is a case of resjudicata. The issues framed in the civil suit are different than the issue in the impugned charge sheet. In the civil suit the charge was of illegal termination, in the charge sheet the issue is of serious misconduct in concealing information about antecedents. The Learned Counsel for the Respondents relies upon the judgement in the case of New India Assurance Ltd. V/s. R.Srinivasan decided on 28/2/2000 reported in 2000 3 SCC 242. In this case a complaint had been filed by the owner of an insured vehicle claiming damages for his vehicle. The complaint was dismissed in default by the State Commissioner and even the restoration application was dismissed. The same complainant filed a fresh complaint before District Forum under the Consumer Protection Act. The Hon'ble Supreme Court held that the Courts cannot extend the rule of prohibition contained in Order 9 Rule 9(1) to the proceedings under the Consumer Protection Act. According to the Respondents therefore nothing is wrong in starting departmental proceedings against the applicant for misconduct. The learned counsel is also drawing support from the judgement of the Supreme Court in the matter of Bhagat Ram V/s. State of Himachal Pradesh and Other (1983) 2 Supreme Court Cases 442. In

para 13 of this judgement it has, been observed that ordinarily where the disciplinary enquiry is shown to have been held in violation of principles of natural justice the enquiry would be vitiated. It is well settled that in such a situation it would be open to the Disciplinary Authority to hold the enquiry afresh. That would be the normal consequence. The respondents are therefore justified in issuing the charge sheet.

4. The respondents have also averred that there is no delay on their part. Infact, they had taken action against the applicant by removing him from service. It is only due to the Court cases, that they could not issue the charge sheet. Also the charge sheet is being issued for the first time. No charge sheet had been issued earlier when the applicant was removed from service. The respondents therefore have opposed the OA.

5. We have given careful consideration to the arguments advanced by the Learned Counsel for the Applicant as well as the Respondents. It is a fact that both the Civil Court as well as the Tribunals ruled against the removal of the applicant. Both Courts also made observations that the respondents had not followed the principles of natural justice and had not given opportunity to the applicant by way of a show cause notice before removing him from service. The applicant has argued that the issuing of charge sheet on identical issue amounts to resjudicata and the Hon'ble Civil Court or Tribunal had not intended that the disciplinary proceedings should be taken up, else they would have said so in specific terms. Inspite of making the observations about not following the principles of natural justice, both the Civil Court as well as Tribunal have refrained from granting any

specific liberty to the respondents to proceed with fresh departmental proceedings. At the same time, there is nothing to show that the respondents cannot proceed with departmental action. The arguments of the applicant that the respondents cannot open up the issue now after 13 years also cannot be accepted because initially the matter was in the Court and later on also a stay has been granted on the enquiry proceedings. As the termination order has been set aside mainly on the ground of natural justice it follows that the matter has to be dealt with afresh. We have perused section 11 of CPC. In our view the issue in the charge sheet is about misconduct of concealing information whereas the issue in the civil suit was of illegal termination. Therefore this cannot be said to be res judicata.

6. We are satisfied that there is no prejudice even though there is delay of about two years and nine months in issuing charge sheet after reinstatement of the applicant. Still the applicant has not been able to establish any prejudice. In the absence of that, the delay is to be condoned.

7. We therefore do not consider it necessary to interfere with the action of the respondents or with the Impugned order. The OA is accordingly dismissed. No costs.

Shanta Shastray

(SHANTA SHAstry)
MEMBER(A)

S.L.Jain

(S.L.JAIN)
MEMBER(J)