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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD

REVIEW APPLICATION SR 2884/95 in MA.371/94 in
ORIGINAL APPLICATION NO.37 of 1991

Date of decision: 22-4-96

Senior Divisional Mechanical Engineer
South Central Railway, Vijayawada and another
..... APPLICANT(S)


Versus


M.A.K. Jilani
.....

RESPONDENT(S)

FOR INSTRUCTIONS.

1. Whether it be referred to the Reporters
or not? N7
2. Whether it be circulated to all the
Benches of C.A.T. or not? N7


(H. Rajendra Prasad)
Member (Admn.)


(M.G. Chaudhari)
Vice Chairman/Member ().
~~xxxxxx~~

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

R.P. 3u/96

REVIEW APPLICATION SR. 2884/95
in MA. 371/94 in OA. 37/91

dated of decision: 22-4-96

Between

1. Senior Divisional Mechanical Engineer
Loco, South Central Railway
Divisional Office, Vijayawada

2. Assistant Mechanical Engineer
Loco / SC Railway, Rajahmundry

: Applicants/ Respondents

and

M.A.K. Jilani

: Respondent/Applicant

Counsel for the applicants/respondents : N.R. Devaraj,
SC for Railways

Counsel for the respondent/applicant : G.V. Subba Rao,
Advocate

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

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RA. 2884/95
in MA.371/94 in
OA.37/91

dt.22.4.96

Judgement
Oral Order

(Per Hon. Mr. Justice M.G. Chaudhari, V.C.)

We have heard counsel for both sides on the RA.
This application has been filed by the original respondents
2. By order dated 19-2-1991 passed in OA.37/91, the

order removing the applicant from service by way of
punishment dated 19-1-1988 passed by the Disciplinary
authority and the ^{appellate} appeal order dated 14-5-1990 confirm-
ing that order were set aside and the respondents were
directed to reinstate the applicant into service.

However, while passing ^{that} this order the following obser-
vations ^{were} were made :

"This decision may not preclude the disci-
plinary authority from revising the proceed-
ings and continuing with it in accordance
with the law from the stage of supply of
inquiry report in case where dismissal or
removal was the punishment."

3. It is to be noted that it was not an order remanding
the case for the purpose of completing the inquiry from
the stage of supplying inquiry report.

4. ~~What~~ ^{that} the respondents did was that they decided ~~a de-novo~~ ^{to start}
~~inquiry~~ ^{de-novo} inquiry rather than proceeding with the
original inquiry. By reasons of starting denovo inquiry
the observation to supply copy of the inquiry report in
the earlier inquiry could not survive. The applicant,
~~however~~ ^{therefore}, filed CP.38/93. From the order passed on that
CP dated 11-11-1993, it is clearly gathered that the
applicant had contended that the respondents have committed
contempt by conducting denovo inquiry when the direction
of the Tribunal was only to continue the inquiry from the

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P. J.

stage of the ~~said~~ supply of inquiry report. That ~~con-~~
~~contention~~
~~tinuation~~ has been dealt in paragraph 13 of the order.

The contention ~~was~~ raised was not accepted. It was
observed thus :

"So in all fairness to give opportunity to the applicant, the respondents seem to have taken steps. On one hand, the contempt petitioner complains that enquiry had been held ex parte. But when the respondents have taken steps to give an opportunity to the applicant the contempt petitioner complains that the order of this Tribunal is being violated. It is not open for the contempt petitioner to blow hot and cold. One one hand, the contempt petitioner points out a defect in the enquiry and when the said defect is sought to be rectified, the contempt petitioner complains that there is contempt in implementing the orders of this Tribunal.".....

and
5. "The action of the respondents in giving fair opportunity to the applicant to ~~participate~~ in the inquiry cannot be said to be in any way prejudicial^{al} to the applicant. As a matter of fact, the opportunity which the respondents want to provide to the applicant very much protects the interests of the applicant."

Although the CP was dismissed the finding recorded by the Tribunal ^{that there was} find no defect with the de-novo inquiry being initiated is binding upon the applicant.

6. What the applicant, however, did was to file MA.371 of 1994. He suppressed the material fact of filing the CP and order passed thereon in the said application. That MA was filed on 30-4-1994. ~~Unknowingly that~~ The applicant did not refer to CP and the order therein but in paragraph 7 of the ^{application} ~~applicant~~ he emboldened himself to reiterate the same contention which was rejected in the CP by urging in

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paragraph 7 as follows :

"It is pertinent to point out in this connection that the Hon'ble Tribunal never quashed the inquiry and exparte proceedings conducted by the respondents and there was also no direction to conduct fresh inquiry in which the same charge is set the question of conducting fresh inquiry does not ~~therefore~~ arise.

7. In the first place, ^{it cannot be understood as} ~~unnoticeable~~ ^{as to how it is} was stated that the earlier ~~ex-parte~~ proceedings were never quashed. Indeed, the order of removal was quashed and the applicant was directed to be reinstated. Secondly, although there was no direction to conduct a fresh inquiry, the respondents action in deciding to hold ~~an~~ a de-novo inquiry was not set aside in the CP and the contention of the applicant ~~in that respect~~ had been negatived. The same contention was, however, reiterated without disclosing the order passed in the CP ^{where it} ^{been} ~~which~~ had not accepted ~~that there is~~ ^{the said} ~~same contention and which~~ decision was binding ~~by~~ upon the applicant. The suppression of the order on the CP led to the order being passed on that MA on 5-8-1994, which the respondents now seek to get reviewed by filing the instant RA.

8. From the order dated 5-8-94, it ~~is~~ clearly appears that it was submitted on behalf of the applicant that he was not given a copy of the inquiry report as was observed in the original order and without the knowledge of the order passed in the CP in which the very same ^{contention} ~~grievance~~ had not been accepted, the MA was disposed of with a direction to the respondents to supply copy of the inquiry officer's report within two weeks. It was also ordered ^{that} till

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that was done, the inquiry ~~was~~ shall not proceed. Although this direction could be consistent with the observations in the original order ~~and~~ yet it ^{has} ~~is~~ brought into existence a conflicting situation. On the ^{one} ~~other~~ hand this order implies that the original inquiry was to proceed as ^{if} the matter was remitted with a direction to do so. ⁱⁿ ~~In~~ which case copy of the inquiry report ~~in the earlier inquiry~~ has to be supplied to the applicant. On the other hand, the respondents were left to proceed with the de-novo inquiry by the order in the CP. In view of the conflicting situation, the original respondent, now ^{seek the review.} ~~filed the instant RA.~~ The grounds urged are that :

- i) Had the order in the CP been brought to the notice of the Tribunal, the direction as is given in the order dated 5-8-1994 could have been different.
- ii) ~~Secondly, it is contented that~~ The order in the MA dated 5-8-94 is at variance with the order dated 11-11-93 in the CP ^{on} rather one and the same cause of action involved which has been the result of the suppression of the order in the CP. (by the applicant) ^{when the direction under review}

(~~In the Miscellaneous application when the direction in review~~ was obtained and thus there occurs an error apparent on the face of the record in giving a benefit to the original applicant ~~times~~ which might not have been intended by the Tribunal. We are of the opinion that the ^{above} grounds urged to review the order ~~deserve~~ to be accepted so that conflicting situation arising by reasons of the orders in the CP and in the MA ^{can} ~~has to~~ be removed. We are more than

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satisfied that as observed in the order ^{of} the CP, the de-novo inquiry cannot be said to be ~~prejudicial~~ to the applicant in any manner whatsoever. Once de-novo inquiry is initiated the earlier proceedings do not exist and no question of supplying the copy of the inquiry report in the earlier proceedings can survive. ^{consequently} Secondly, the direction given by the order dated 5-8-94 has to be recalled. Accordingly we admit the review petition and having ~~heard~~ ^{heard} it finally ~~and~~ pass the following order :

The direction given by the order dated 5-8-94 in MA. 371 of 94 to the respondents to supply copy of the inquiry officers report to the applicant and giving him time to submit his explanation and not to proceed with the inquiry till compliance of ~~these~~ directions is hereby recalled.

It is open to the respondents to proceed with the de-novo inquiry.

It has been stated in the petition that ~~in~~ compliance with the original order, the respondents have reinstated the applicant but have kept him under deemed suspension. It is needless to add that any question relating to suspension or relating to de-novo inquiry ~~or its~~ proceedings is not the subject matter of the instant RA. All those questions can form subject matter of appropriate proceedings in accordance with law. The instant order is confined only to recalling the directions contained in the order dated 5-8-1994 consistently with the order that was passed in CP 38/93 dated 11-11-1993.

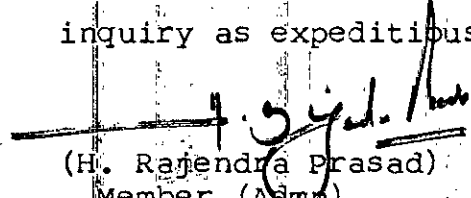
9. The RA is accordingly allowed as indicated above. Order dated 5-8-1994 stands recalled.

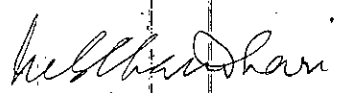
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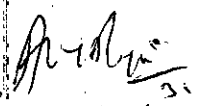
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10. Since the position is now made clear, we hope and expect that the respondents will complete the de-novo inquiry as expeditiously as possible.

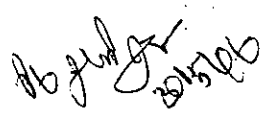

(H. Rajendra Prasad)
Member (Admin)


(M.G. Chaudhari)
Vice Chairman

Dated : April 22, 96
Dictated in Open Court


Deputy Registrar (D) CE

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20/5/96

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RP.
O.A. 37/91.

To

1. The Senior Divisional Mechanical Engineer,
Loco, S.C.Rly, Divisional Office,
Vijayawada.
 2. The Assistant Mechanical Engineer
Loco/SC Rly, Rajahmundry
 3. One copy to Mr.N.R.Devraj, SC for Rlys. CAT.Hyd.
 4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
 5. One copy to Library, CAT.Hyd.
 6. One spare copy for duplicate file.
 7. one copy to Sr(J)..
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