

**Central Administrative Tribunal  
Principal Bench**

MA No. 1561/2006  
in  
OA No. 2947/2003

New Delhi, this the 17<sup>th</sup> day of January, 2007

**Hon'ble Mr. Justice B. Panigrahi, Chairman**  
**Hon'ble Mr. V.K. Agnihotri, Member (A)**

**Vijay Kumar Agarwal**

**V/s**

**Union of India & Ors.**

Present: Applicant in person.

Shri R.K. Adsure and Shri Gautam Godara, counsel for  
respondent no. 2.

None for respondent no. 1.

**ORDER**

**By Mr. V.K. Agnihotri, Member (A)**

In this MA, the applicant has stated that OA No. 2947/2003 was dismissed as not maintainable. It, therefore, necessarily follows that this Tribunal has not made any observation on the merits of the case. He has, therefore, accordingly sought a clarification that this Tribunal has not made any observation on the merits of the case. In this context, he has cited the ruling of the Hon'ble Supreme Court in **Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.**, AIR 1978 (SC) 851 to argue that an obiter binds none, not even the author.



2. This Tribunal had passed a common order dated 18.05.2004 in respect of OA Nos. 2947/2003, 3092/2003 and 3141/2003 in which three different reliefs were sought by the same applicant against the same respondents.

3. In OA No. 2947/2003, the applicant had specifically sought setting aside of the Enquiry Report dated 01.11.2003 relating to a Charge Memo issued purportedly for his unauthorized absence from duty. In a related OA No. 3092/2003, the applicant had sought setting aside of Memo dated 05.10.1998 and letter dated 20.09.2003, which were served on him under Rule 10 of the AIS (Discipline & Appeal) Rules, 1969 asking him to submit his representation with regard to the alleged violation of Rule 16 of the All India Services (Conduct) Rules, 1968. In the common order dated 18.05.2004, this Tribunal, on the strength of a catena of judgments, gave the following ruling:-

“30. From the aforesaid, it is clear that when only a show-cause notice is served or where the only inquiry report has been made and the disciplinary authority has not passed any final order, it would be premature for this Tribunal to entertain the Original Applications. We are purposefully, therefore, not delving into any other aspects though the same were raised by the applicant.

31. In the present cases before us, since in one matter the inquiry report has been filed and in the other only a show-cause notice for minor penalty has been served, it would be appropriate for the applicant to raise his grievance, if any, in case of any final order is passed. At this stage, all the aforesaid three Original Applications must be taken as premature or not maintainable.



32. For these reasons, we find that the aforesaid Original Applications are without merit and the same are accordingly dismissed."

4. The respondents have stated that the MA No. 1561/2006 is clearly not maintainable under Rule 24 of CAT (Procedure) Rules, 1987. In view of the order of this Tribunal dated 18.05.2004 in OA No. 2947/2003 *et al*, order dated 10.01.2006 in RA No. 90/2005 & MA No. 1336/2004 and order dated 17.08.2006 in MA No. 1064/2006, present application is sheer abuse of process of law. They have further stated that this Tribunal has already observed in order dated 18.11.2003 in OA No. 1714/2003 that the applicant had remained unauthorisedly absent after being posted by an order dated 07.06.1996. Various RAs and MAs for recalling the said order of the Tribunal have already been rejected. Hence, the present MA too is liable to be dismissed.

5. From a simple reading of the order of this Tribunal dated 18.05.2004, we find that therein there is no discussion at all of the Enquiry Report, which was the subject matter of OA No. 2947/2003. As such, the citation of the case of **Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.**, (supra) is not relevant to the facts and circumstances of the present case.

6. Taking the totality of facts and circumstances into consideration and also in view of the fact that the Tribunal in its order dated 18.05.2004 (supra) had given the liberty to the applicant to raise his grievance, if any, in case any final order is passed, we do not consider it necessary to issue any further clarification in the matter.



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7. In the result, MA No. 1561/2006 is devoid of merit and is accordingly dismissed. There will be no order as to costs.



**(V.K. Agnihotri)**  
Member (A)

/na/



**(B. Panigrahi)**  
Chairman