

(2018) 10 CAL CK 0010

In the Calcutta High Court

Case No : M.A.T. No. 1693 Of 2016, Can 10887, 10885 Of 2016

Union of India & Ors @APPELLANT@Hash Ram Dutta Ram

Date of Decision : 01-10-2018

Acts Referred:

Limitation Act, 1963 — Section 5
Constitution of India, 1950 — Article 226

Citation : (2018) 10 CAL CK 0010

Hon'ble Judges : Debasish Kar Gupta, J;Shampa Sarkar, J

Bench : Division Bench

Advocate : Achin Majumder

Final Decision : Dismissed

Judgement

In Re: CAN 10887 of 2016 (Section 5)

This is an application filed under Section 5 of the Limitation Act for condonation of delay of about 3 days in preferring the appeal. Having heard the

learned Advocate for the respective parties as also after considering the cause of delay in preferring the appeal, we are satisfied that sufficient

reasons have been assigned in paragraphs 2 to 6 of the instant application by the appellants for condoning the aforesaid period of delay. The delay in

preferring the appeal stands condoned and the application for condonation of delay being CAN 10887 of 2016 is allowed and disposed of accordingly.

There will be, however, no order as to costs.

In Re: CAN 10885 of 2016 (Stay)

This is an application filed in connection with an appeal preferred against a judgment and order passed in the writ application. The subject matters of

challenge in the writ application were the orders of punishment dated January 21, 2008 passed by the Senior Security Commissioner, Railway

Protection Force, Eastern Railway, Howrah imposing punishment of dismissal from Railway Services upon the respondent and dated November 17,

2008 passed by the Chief Security Commissioner, Railway Protection Force, Eastern Railway, Kolkata dismissing the appeal.

This matter has a chequered history. On the basis of a charge-sheet dated September 7, 1998, a disciplinary proceeding was initiated against the

respondent/writ petitioner. The Enquiry Officer submitted his report in connection with the disciplinary proceeding. An order of punishment dated

December 9, 1998 was passed against the respondent in connection with the above proceeding. It was affirmed in a statutory appeal by an order

dated February 14, 1999. The above order of punishment as also the order passed by the Appellate Authority were under challenge in an application

under Article 226 of the Constitution of India bearing W.P. No. 8790 (W) of 2000. The above writ application was dismissed.

In an appeal bearing M.A.T. No. 93 of 2001 preferred against the order of dismissal of the writ application, the appeal was allowed by the judgment

and order dated July 27, 2006 quashing and setting aside the order of punishment as also the order passed by the Statutory Appellate Authority.

Liberty was also granted to the Disciplinary Authority to initiate de novo proceeding on the basis of the charge-sheet dated September 7, 1998.

The Disciplinary Authority continued with the proceeding in terms of the liberty granted in the above appeal. The Enquiry Officer submitted his report

dated April 24, 2007 with a clear finding that from the evidence adduced by the prosecution side as well as the contention of the defence, the charges

levelled against the respondent could not be proved and, as such, he was found "not guilty". The Disciplinary Authority issued a show-cause

notice dated June 18, 2007 against the respondent recording difference of opinion with the finding of the Enquiry Officer and also proposed a

punishment of major penalty. It was under challenge in an application under Article 226 of the Constitution of India bearing W.P. No. 14495 (W) of

2007. By a final order dated September 18, 2007, the above show-cause notice was quashed and set aside by the learned Single Judge of this Court

granting liberty to the Appellant Authority to grant an opportunity of hearing and thereafter issue a show-cause notice afresh in the matter.

The Disciplinary Authority issued a fresh show-cause notice dated October 24, 2007 to the respondent showing the reasons for difference of opinion

with the Enquiry Officer but once again proposed a major punishment against the respondent. The respondent raised a specific objection against the above show-cause notice on the ground that the major penalty had been proposed in the show-cause notice dated October 24, 2007 before giving him an opportunity of hearing on the differences with the findings of the Enquiry Officer. The Disciplinary Authority passed an order of punishment dated January 21, 2008 once again against the respondent. The above order of punishment was affirmed by the Statutory Appellate Authority in its order dated November 17, 2008.

In the writ application which gives rise to this appeal, the subject matters of challenge were the aforesaid order of punishment as also the order passed by the Statutory Appellate Authority. In the writ application, the order of punishment and the order passed by the Statutory Appellate Authority were quashed and set aside i.e. the subject matter of challenge in this appeal. The only contention of Mr. Partha Sarathi Bose, learned Senior Advocate appearing on behalf of the appellants is that in the judgment and order dated September 18, 2007 passed in W.P. No. 14495 (W) of 2007, the direction was upon the Appellate Authority to give an opportunity of hearing to the respondent only. It was complied with and the orders impugned to this writ application were passed. According to Mr. Bose, those orders cannot be challenged in view of the doctrine of constructive res judicata.

Reliance is placed by Mr. Bose on the decision of Union of India & Ors. Vs. Southern Railway Employees Co-operative Stores Workmen Union & Ors. reported in (1998) 5 SCC 530 and T.P. Moideen Koya Vs. Government of Kerala & Ors. reported in (2004) 8 SCC 106 in support of his above submissions.

On the other hand, it is submitted by Mr. Achin Majumder, learned Advocate appearing on behalf of the respondent that by virtue of the judgment and order dated September 18, 2007, the actions impugned to this writ application were quashed and set aside. As a consequence, a show-cause notice dated October 24, 2007 was issued afresh but in the above show-cause notice, the punishment of major penalty was proposed once again repeating and reiterating the ultimate paragraph of the earlier show-cause notice dated June 18, 2007. According to him, in view of the above facts and circumstances, the doctrine of constructive res judicata has no manner of

application in this case and the learned Single Judge was right in quashing and setting aside the order of punishment as also the order passed by the Appellate Authority in connection with the Disciplinary Authority.

Reliance is placed by Mr. Majumder on the decision of *Lav Nigam & Ors. Vs. Chairman & MD, ITI Limited & Anr.* reported in (2006) 9 SCC 440

in support of his above submissions. Having heard the learned counsel appearing on behalf of the respective parties at length as also after considering

the facts and circumstances of this case, we find that the only point of law involved in this appeal as to whether the doctrine of constructive res

judicata has any manner of application in the instant case or not.

As such the appeal and this application for stay are taken up for hearing by treating the appeal as on day's list, with the consent of the parties.

Admittedly, the cause of quashing and setting aside the order of punishment and the order passed by the Statutory Appellate Authority by the

judgment and order dated September 18, 2007 passed in W.P. No. 14495 (W) of 2007 was recording of proposed punishment of the major penalty in

the show-cause notice dated June 18, 2007 and the ultimate paragraph of the above notice is quoted below:

"I, hereby, issue show cause notice to Sri R.D. Ram Constable/9873 as to why he should not be imposed with punishment of Major penalty as

prescribed in Rule no.148.2 of RPF Rule 1987 in 15 days from the receipt of this show-cause notice.

(Raja Ram) 18.06.07

Sr. Security Commissioner/RPF

Eastern Railway/Howrah-I

Disciplinary authority."

It is not in dispute that after quashing and setting aside the order of punishment and the order passed by the Statutory Appellate Authority, the above

show-cause notice was quashed and set aside with a direction upon the Appellate Authority to give the respondent an opportunity of hearing before

proposing to impose the punishment. It is also not in dispute that in the subsequent show-cause notice dated October 24, 2007, the punishment of major

penalty was proposed repeating and reiterating the same language and the same is quoted below:

â??I, hereby, issue show cause notice to Sri R.D. Ram Constable/9873 as to why he should not be imposed with punishment of Major penalty as prescribed in Rule no.148.2 of RPF Rule 1987 in 15 days from the receipt of this show-cause notice.

(Raja Ram) 24.10.07

Sr. Security Commissioner/RPF

Eastern Railway/Howrah-I

Disciplinary authority.â??

Therefore, the Appellate Authority repeated and reiterated the same procedure in the disciplinary proceeding in question, which was quashed and set

aside on an earlier occasion by the judgment and order dated September 18, 2007 passed in W.P. No. 14495 (W) of 2007. Such an action cannot be

sustained in law in view of the settled principles of law as decided in the matter of Lav Nigam (supra) and the relevant portion of the above is quoted

below:

â??10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the

view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant

that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice

relating to the punishment proposed.â??

Therefore, this is not a case of constructive res judicata in which the learned Single Judge could have restrained himself from interfering with the writ

application. With regard to the decision of Southern Railway Employees Co-operative Stores Workmen Union & Ors. (supra), the order of the

Tribunal as confirmed by the Honâ??ble Supreme Court was decided to be final and binding between the parties in the subsequent litigation.

In view of the distinguishable facts and circumstances recorded hereinabove, the above decision has no manner of application in this case. Similarly in

the decision of T.P. Moideen Koya (supra), the subject matter of challenge was relating to seeking a writ of habeas corpus for setting at liberty a

person, who has been detained under any of the detention laws. Taking into considering the distinguishable facts and circumstances in the above

matter, the principles of constructive res judicata was applied in the above case. In view of the distinguishable facts and circumstances in this case, the above decision also does not help the appellants in any way. This appeal and the application for stay being CAN 10885 of 2016 are, therefore, dismissed. However, since the time framed by the learned Single Judge to this appeal has already been expired, the same stands extended for a period of three months from date. There will be, however, no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.