

In the High Court of Judicature at Madras

Reserved on : 06.08.2015

Dated : 17.08.2015

Coram:

The Hon'ble Mr.Justice S.MANIKUMAR  
and  
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.23516 of 2015  
and M.P.No.1 of 2015

Dr.S.Sivalingam .. Petitioner  
Vs.

- 1.Union of India  
rep. by The Chairman,  
Railway Board, Ministry of Railways,  
Raisana Road, Rail Bhavan,  
New Delhi.
- 2.The General Manager,  
Southern Railway,  
Chennai-600 003.
- 3.The Chief Claims Officer,  
Southern Railway, MMC V Floor,  
Chennai-600 003.
- 4.The Deputy Chief Commercial Manager/Claims,  
Claims Office, MMC V Floor,  
Southern Railway, Park Town,  
Chennai-600 003.
- 5.Ajeeth Saxena,  
Chief Claims Officer,  
Commercial Head Quarters Officer,  
MMC V Floor, Southern Railway,  
Park Town, Chennai-600 003.
- 6.P.Vallinayagi,  
Deputy Chief Commercial Manager/Claims,  
Service through CCO,  
Moore Market Complex V Floor,  
Southern Railway,  
Chennai-600 003.

7.A.Sundar,  
Inquiry Officer,  
The Deputy Chief Commercial Manager/PRS,  
II Floor, Moore Market Complex,  
CCM/PRS/Office,  
Southern Railway,  
Chennai-600 003.

8.Sathyanarayana Hari,  
DCM/MAS & IO,  
Divisional Railway Manager Office,  
NGO Annexure Building,  
I Floor, Southern Railway,  
Chennai Division,  
Park Town,  
Chennai-600 003.

9.Prabhu Premkumar,  
ACM/Rates/MAS,  
CCM/O/MAS,  
G.M. Office, Ground Floor,  
Southern Railway,  
Park Town,  
Chennai-600 003.

10.The Registrar,  
Central Administrative Tribunal,  
Chennai Bench,  
High Court Campus,  
Chennai-600 104.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorari, calling for the records relating to the order dated 27.07.2015 in M.A.No.310/00392/2015 in M.A.No.310/00356/2015 in O.A.No.310/00282/2015 passed by the Tenth Respondent and quash the same.

For Petitioner : Mr.M.Gnanasekar  
For Respondent : Mr.V.Radhakrishnan,  
Nos.1 to 4 Senior Counsel  
for Mr.P.T.Ramkumar,  
Standing Counsel for Railway

O R D E R

[Order of the Court was made by  
M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records relating to the order dated 27.07.2015 in M.A.No.310/00392/2015 in M.A.No.310/00356/2015 in O.A.No.310/00282/2015 passed by the Tenth Respondent/Central Administrative Tribunal, Chennai.

2.The Tenth Respondent/Central Administrative Tribunal, Chennai while passing the impugned order in M.A.No.310/00392/2015 in M.A.No.310/00356/2015 in O.A.No.310/00282/2015 on 27.07.2015 at para 9 has observed the following:

"...9. We are not adjudicating the issue where single OA is maintainable questioning the 3 charges and one penalty at this stage. We are at the issue whether the original applicant has any valid reason to move fresh miscellaneous application being MA.356 of 2015 pending consideration of MA.334/15. The only ground urged is that issuance of notices by respondents 7 to 9 requiring him to attend before inquiry. The applicant has to pursue the MA 334/15 and obtain necessary orders. Moving of another MA being 356/15 pending earlier MA 334/2015 cannot be justified. Since no stay has been granted in MA.356/15, there is no bar on IOs in issuing notices to the original applicant directing to be present and take proceedings in inquiry pursuant to the charge sheets impugned in the OA. Therefore, we find that the very filing of the MA.356/15 is improper and therefore, the same is hereby dismissed. Consequently, this vacate stay petition is allowed and interim stay granted on 27.05.2015 stands vacated."

Further, the Tribunal has directed the Original Application to be posted on 19.08.2015.

3.The Learned counsel for the Petitioner submits that the order passed by the Tenth Respondent/Central Administrative Tribunal, Chennai in M.A.No.310/00392/2015 in M.A.No.310/00356/2015 in O.A.No.310/00282/2015 dated 27.07.2015 was made without reference to the facts of the case and as such, liable to be set aside. Also, the Learned counsel for the Petitioner contends that

the Tenth Respondent/Tribunal should have seen that the M.A.No.310/00356/2015 was entertained by it earlier and after hearing, an order was passed by the Tribunal on 27.05.2015. As such, there was no occasion for the Tenth Respondent/Tribunal to decide the maintainability of M.A.No.310/00356/2015. That apart, it is nobody's case that M.A.No.310/00356/2015 was not maintainable.

4.The Learned counsel for the Petitioner projects an argument that the finding of the Tenth Respondent/Tribunal that no stay order was granted in M.A.No.310/00356/2015 and further, since there was no bar on the enquiry officers to issue notice to the Petitioner and directing him to appear in the enquiry is an illegal and incorrect one. In fact, there was an interim stay granted by the Tribunal in M.A.No.310/00356/2015 on 27.05.2015 and there is a bar under Section 19(4) of the Administrative Tribunals Act, 1985 which runs as follows:

"Where an application has been admitted by a Tribunal under sub-Section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

5.It is represented on behalf of the Petitioner that the Tenth Respondent/Central Administrative Tribunal, Chennai already granted an interim order on 27.05.2015 in M.A.No.310/00356/2015 by assigning reasons. Apart from that, the plea taken on behalf of the Petitioner is that the charge memos were challenged on the ground of lack of jurisdiction and as such, there was no justification for the Respondents to have proceeded with the enquiry during the pendency of O.A.No.282 of 2015, particularly, when they were put on notice in M.A.No.310/00334/2015. Continuing further, the Learned counsel for the Petitioner proceeds to take a stand that since the Respondents proceeded to conduct the enquiry taking advantage of the fact that there was no interim stay order, Petitioner filed M.A.No.310/00356/2015 on the basis of subsequent cause of action.

6.The prime contention advanced on behalf of the Petitioner is that the proceedings before the Tenth Respondent/Tribunal are governed by the Central Administrative Tribunal (Procedure) Rules, 1987 and it is open to a party to file an Original Application under Section 19 of the Administrative Tribunals Act, 1985 and further, there was no prohibition that only one MA to be filed under Rule 8(3) of the Central Administrative Tribunal (Procedure)

Rules, 1987 which runs as under:

"An applicant may, subsequent to the filing of an application under Section 19 of the Act, apply for an interim order or direction. Such an application shall, as far as possible, be in Form III."

7.The Learned counsel for the Petitioner contends that the Tenth Respondent/Tribunal took 27 days to dismiss M.A.No.310/00356/2015 without going into the merits of the case.

8.Conversely, it is the submission of the Learned Senior counsel for the Respondents 1 to 4 that the original application filed by the Writ Petitioner before the Tribunal combining three charge memos and penalty orders is per-se not maintainable in the eye of Law. Further, it is brought to the notice of this Court on behalf of the Respondents 1 to 4 that the Petitioner filed M.A.No.334 of 2015 before the Tribunal and during the pendency of the said MA, the Petitioner filed another M.A.No.356 of 2015. Moreover, the contents of the previous application and the subsequent application in M.A.No.356 of 2015 are one and the same.

9.At this juncture, the Learned Senior counsel for the Respondents 1 to 4 refers to Section 19 of the Administrative Tribunals Act, 1985 which speaks of 'Applications to Tribunals'. Also, he refers to Rule 8(2) of the Central Administrative Tribunal (Procedure) Rules, 1987 which enjoins that "it shall not be necessary to present a separate application to seek an interim order or direction if in original application, the same is prayed for".

10.The Learned Senior counsel for the Respondents 1 to 4 cites the decision of the Hon'ble Supreme Court Badshah V. Urmila Badshah Godse and another reported in 2014 (1) Supreme Court Cases at page 188 and at Special page 198, whereby and where under in para 20, it is observed and held as follows:

"20.Thus, while interpreting a statute the Court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon case [1584 (3) Co Rep 7a:76 ER 637] which became the historical source of purposive interpretation. The Court would also invoke the legal maxim of construction ut res magis valeat quam pereat in such cases i.e., where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of

the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under section 125 Cr.P.C., such a woman is to be treated as the legally wedded wife."

11.A cursory perusal of the contents of the O.A.No.310/00282/2015 filed by the Writ Petitioner (as Applicant) before the Tenth Respondent/Tribunal shows that apart from the main relief in para 8, an interim relief is also sought for in para 9. In this regard, this Court extracts the state of reliefs sought for in paragraphs 8 and 9 of the Original Application which runs as follows:

VIII.Relief(s) prayed for:

In view of the facts and grounds mentioned in paras IV and V, it is prayed that this Hon'ble Tribunal may be pleased to set aside the following major charge memo SF5 and penalty order dated 23.01.2015, namely,

- 1.Order No:C.415/VII/3/DAR/SF5/SS dated 03.09.2014
- 2.Order No:C.415/VII/3/DAR/SF5/SS-II dated 16.09.2014
- 3.Order No:C.415/VII/3/DAR/SF5/SS-III dated 21.11.2014
- 4.Order No:C.415/VII/I/DAR/SF-II/SS- Penalty Advice for 3 years Increment Cut dated 23.01.2015, passed by Sixth Respondent and also call for the file OA.No.265/2009/RCT/SC and OA.329/2012 RCT/GKP and pass such further orders to meet the ends of justice, award costs and thus, render justice.

IX.Interim Relief:

Pending final decision on the original application, the applicant prays that this Hon'ble Tribunal may be pleased to grant an order of interim stay of the operation of the following orders namely:

1.Order No:C.415/VII/3/DAR/SF5/SS dated 03.09.2014  
2.Order No:C.415/VII/3/DAR/SF5/SS-II dated 16.09.2014  
3.Order No:C.415/VII/3/DAR/SF5/SS-III dated 21.11.2014  
4.Order No:C.415/VII/I/DAR/SF-II/SS - Penalty Advice for 3  
years Increment Cut dated 23.01.2015 passed by 6<sup>th</sup>  
Respondent.

12.It appears that OA.310/00282/2015 was admitted by the Tenth Respondent/Tribunal on 27.02.2015 and notice was issued to the Respondents by dusti through Court, returnable by 01.05.2015. Also, it comes to be known that the Writ Petitioner before the Tenth Respondent/Tribunal filed M.A.No.334/2015 in O.A.No.310/00282/2015 seeking relief of interim stay of the operation of the following orders:

1.Order No:C.415/VII/3/DAR/SF5/SS dated 03.09.2014  
2.Order No:C.415/VII/3/DAR/SF5/SS-II dated 16.09.2014  
3.Order No:C.415/VII/3/DAR/SF5/SS-III dated 21.11.2014  
4.Order No:C.415/VII/I/DAR/SF-II/SS - Penalty Advice for 3  
years Increment Cut dated 23.01.2015 passed by 6<sup>th</sup>  
Respondent.

On 29.04.2015 in Dy.No.2869/2015/MA. in O.A.No.282/2015 (for stay), the Tribunal had recorded as follows:

"As no appearance on other side, M.A. in O.A.282 of 2015 (for stay) may be posted for admission on 30.04.2015".

13.When that be the fact situation, the Writ Petitioner (as Applicant) filed MA.310/00356/2015 in O.A.310/00282/2015. It is seen that the said application dated 25.05.2015 (seeking the relief of interim injunction from the Tenth Respondent/Tribunal) restraining the Respondents therein from conducting the departmental enquiry on the basis of impugned orders in OA during the pendency of O.A.282 of 2015. Furthermore, the said application in Dy.No.3209/26.05.2015 (for interim stay) was sought to be posted for admission before the vacation Bench.

14.It is not in dispute that an interim stay was granted by the Tenth Respondent/Tribunal on 27.05.2015 in M.A.310/00356/2015. However, the Respondents 1 to 4 filed M.A.310/00392/2015 in O.A.282/2015 to vacate the stay granted by the Tenth Respondent/Tribunal on 27.05.2015 in M.A.No.310/00356/2015 in O.A.282/2015. The Tenth Respondent/Tribunal ultimately came to the conclusion that filing of the M.A.356/2015 was improper because the writ petitioner had earlier filed M.A.334 of 2015 etc.

15. At this stage, this Court aptly refers to the observation of the Hon'ble Supreme Court in the decision *Badshah V. Urmila Badshah Godse* and another [2014 (1) Supreme Court Cases at page 188 and at Special page 197] whereby and whereunder at paras 16 to 18 observed as follows:

"16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

17. Cardozo acknowledges in his classic "..... no system of *jus scriptum* has been able to escape the need of it." and he elaborates:

"It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. .... There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a Judge's troubles in ascribing meaning to a statute..... Says Gray in his lectures.

"The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."

18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision - libre recherche scientifique ie., "free scientific research etc."

16. It is to be remembered that "the safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases" as per decision *Barrell V. Fordree*, [(1932] A.C. 676, per Lord Warrington of Clyffe at page 682). Furthermore, the rule of construction is 'to intend the Legislature to have meant what they have actually expressed' as per decision *R.V. Banbury (Inhabitants)* [(1834) 1 A. & E. 136, per Parke J. at p.142]. After all, the object of interpretation is 'to discover the intention of Parliament, but the intention of Parliament must be deduced from the language used' as per decision *Capper V. Baldwin* [(1965) 2 Q.B. 53, per Lord Parker C.J. at p.61].

17. One cannot brush aside a very vital that where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd. As the case may be, indeed, the duty of Court is to expound the Law as it stands, and to 'leave the remedy (if one be resolved upon) to others' as per decision *Sutters V. Briggs* [(1922) 1 A.C.1, per Lord Birkenhead L.C. at p.8]. No one wonder, 'an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially' as per decision *Woodward V. Sarsons*, [(1875) L.R. 10 C.P. 733, per Lord Coleridge C.J. at p.746]. It is the duty of Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed' as per decision *Liverpool Borough Bank V. Turner* [(1860) 2 De G.F. & J. 502, at pp. 507, 508]. Moreover, enactments regulating procedure in courts are usually construed as imperative' as per decision *R.v. Justices of Oxfordshire* [(1813) 1 M. & S. 446].

18.It is to be borne in mind that "when the language of the statute is plain and unambiguous, it would not be open to the Courts to adopt a hypothetical construction on the ground that such a construction on the basis of such a construction is more consistent with the alleged object and policy of the Act. But where such a plain reading leads to anomalies, injustices and absurdities, the Court may look into the purpose for which the statute was enacted and try to interpret it so as to adhere to the purpose of the statute. Also that, if words are to be added by the Court in order to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law" as per decision of the Hon'ble Supreme Court in Lalit Mohan Pandey V. Pooran Singh, [(2004) 6 SCC 626].

19.At this juncture, it is worthwhile to cite the decision of this Court Jabeen Taj V. M.Parveen Banu and another reported in 2005 (3) MLJ at page 24 and at Special page 28 wherein at para 146 it is observed and held as under:

"Since the defendants 1 and 2 attempted to trespass and also attempted to alienate, the property allotted to the share of the plaintiff as per final decree in O.S.No.44 of 1995, the same necessitated the plaintiff to file the suit O.S.No.196 of 2004 for declaration and permanent injunction. Though the trial Court as per order dated 04.03.2004 in I.A.Nos.252 and 253 of 2003, made the interim injunction already granted till the disposal of the suit O.S.No.196 of 2004, however, the trial Court has committed an error in passing order in I.A.No.291 of 2004, filed by the second defendant ordering to maintain status-quo by both parties till the disposal of the suit. Such order being irregular, it is to be set aside."

20.In this connection, it is not out of place for this Court to make a significant to mention that when an enactment/Act permits certain thing to be done in a particular manner prescribed by it, it cannot be done in any other fashion. Apart from that, there is no two opinion of the fact that as per Rule 8(2) of the Central Administrative Tribunal (Procedure) Rules, 1987 that it shall not be necessary to present a separate application to seek an interim order or direction if in original application, the same is prayed for. Equally, Rule 8(3) points out that an applicant may

subsequent to the filing of an application under Section 19 of the Administrative Tribunals Act, 1985 apply for an interim order or direction etc. Further, Rule 10 of the CAT (Procedure) Rules, 1987 under the caption 'plural remedies' enjoins that 'an application shall be based upon a significant cause of action and may seek one or more relief provided that they are consequential to one another.

21. A close reading of the contents of Rule 8 of the Central Administrative Tribunal (Procedure) Rules, 1987 lead one to take a genuine, reasonable and prudent view that nowhere the said rule permits expressly the filing of second or successive application by a party for the reliefs sought for by him, especially, if the reliefs claimed are one and the same or more or less the same.

22. Inasmuch as Rule 8(2) and 8(3) of the Central Administrative Tribunal (Procedure) Rules, 1987 speak to the effect that it shall not be necessary to present a separate application to seek interim order or direction if in original application, the same is prayed for and that an applicant may subsequent to the filing of an application under Section 19 of the Act (Administrative Tribunals Act, 1985) apply for an interim order or direction by negative implication in the form of affirmative words (employed in the aforesaid rules) the filing of second or successive application with verbatim words (except to indulge in camouflaging of words like 'stay' in M.A.No.334 of 2015 or 'injunction' in M.A.No.356 of 2015) claiming the relief sought for by an applicant on earlier application (no new or changed circumstances cropped in) is impermissible, in the considered opinion of this Court. Further, a Court, in construing the language of the Section used may, imply negative from affirmative words where the implication promotes, but not where it defeats the intention as per decision *Cohen V. Verginia Wheat* [264 (US), 5 L Ed 257]. This reasoning can only be deduced from the construction of words/language employed in the aforesaid rules and this Court is not inclined to take a different view than the one taken by it because of the reason, it is its duty to expound the Law based on 'elementary rule of purposive' construction. Even otherwise, the propriety and comity of judicial discipline require a party/litigant not to file successive/second application as the case may be for the reliefs sought for by him on the earlier application, especially, when no new or changed circumstances had emerged in the considered opinion of this Court. In the instant case, it can be recalled at the risk of repetition that in main OA.282 of 2015 itself the Writ Petitioner (as an Applicant) had sought the relief of interim stay of operations of the orders as stated therein. As a matter of fact, the Writ Petitioner projected M.A.No.334 of 2015 seeking the relief of stay in respect of four orders stated therein. In the aforesaid backdrop, filing of another M.A.356 of 2015 in O.A.No.282 of 2015 by the Writ Petitioner

(seeking the relief of interim injunction but obtained later an order of interim stay on 27.05.2015 and the same later got vacated in M.A.No.392 of 2015 on 27.07.2015) is not only an irregular one but the second M.A.356 of 2015 is per se not maintainable in the eye of Law. Viewed in that perspective, the Writ Petition Sans merits.

23.In view of the foregoing reasons, the Writ Petition is dismissed. It is made clear that this Court while dismissing the Writ Petition has not traversed upon the merits of the matter concerning the parties. Per contra, it has only dealt with the issues pertaining to the maintainability of successive applications projected by the Applicant. Further, since the main O.A.No.282 of 2015 is posted before the Tenth Respondent/Tribunal on 19.08.2015, it is made clear that the dismissal of the Writ Petition will not preclude the Petitioner and the parties concerned to raise all factual and legal pleas in the manner known to Law and in accordance with Law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

True Copy

Sub Assistant Registrar

DP

To

- 1.The Chairman,  
Union of India,  
Railway Board, Ministry of Railways,  
Raisana Road, Rail Bhavan,  
New Delhi.
- 2.The General Manager,  
Southern Railway,  
Chennai-600 003.
- 3.The Chief Claims Officer,  
Southern Railway, MMC V Floor,  
Chennai-600 003.
- 4.The Deputy Chief Commercial Manager/Claims,  
Claims Office, MMC V Floor,  
Southern Railway, Park Town,  
Chennai-600 003.

5. The Registrar,  
Central Administrative Tribunal,  
Chennai Bench,  
High Court Campus  
Chennai - 600 104.

1 cc to Mr. M.Gnanasekar, Advocate Sr.No.43113  
1 cc to Mr.P.T.Ramkumar, Advocate Sr.No.43985

W.P.No.23516 of 2015  
and M.P.No.1 of 2015

gj (co)  
pmk.3.9.2015



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