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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.3154/2002

Monday, this the 1st day of September, 2003

Hon'ble Shri Justice V.S.Aggarwal, Chairman  
Hon'ble Shri S.K. Naik, Member (A)

Shri D.S.Hooda  
s/o Shri Surat Singh Hooda  
r/o 264/34 Janta Colony  
Rohtak - 124 001 (Retired as Senior  
Accounts Officer (IA) MTNL Tax Bldg.  
Eastern Courts, New Delhi-50

..Applicant

(By Advocate: Shri S.C.Vats)

Versus

1. Union of India through  
the Member Finance  
Telecom Commission, Sanchar Bhawan,  
New Delhi
2. Chief General Manager (Telephones)  
Mahanagar Telephone Nigam Limited  
K.L.Bhawan, New Delhi
3. The Chief General Manager  
BSNL Haryana Circle Ambala - 133 001

..Respondents

(By Advocate: Shri V.K.Rao)

O R D E R (ORAL)

Justice V.S.Aggarwal:

The applicant, by virtue of the present application, seeks the following reliefs:-

"a) directing the respondents for the payment of all service benefits like salary allowances etc. etc. as a result of dropping of the charges w.e.f. 28.3.2002 for the post of Chief Accounts Officer w.e.f. 15.9.1999 to 31.3.2002 till the retirement of the Applicant.

b) further directing the respondents to make all payments of Officiating Allowance like salary etc. for the post of Chief Accounts Officer for the period w.e.f. 27.3.1996 to 16.5.1996 and 29.6.1996 to 8.7.1997 as held by the Hon'ble C.A.T. in Ram Sewak Sharma's case decided vide O.A. No.2614/1997.

c) The respondents may further be directed to make payments of all salaries and allowances and other service



benefits, when after joining the MTNL on deputation (Respondent No.2) w.e.f.19.2.98 when juniors to the Applicant were promoted alongwith interest @ 18% per annum as per the judgement in O.A.No.2423/2000 the copy of which is annexed.

d) any other order, direction and relief as the Hon'ble Tribunal may deem just and proper be also awarded in favour of the applicant."

2. Some of the relevant facts are that the applicant was a Senior Accounts Officer. He was working with respondent No.2 as such. He was promoted on 27.8.1998 on local officiating basis as Chief Accounts Officer. On 27.12.1998, a charge-sheet was served to the applicant with respect to certain derelictions of duty. Admittedly, on 28.3.2002, the applicant was exonerated of the said charges. The applicant superannuated on 31.3.2002, i.e., three days after he was exonerated. It is on these broad facts that the above-said reliefs are being prayed.

3. The application has been opposed by the learned counsel for respondents contending that the applicant had preferred Civil Writ Petition No.6086/99 challenging his reversion. The said petition had been dismissed by the Delhi High Court on 11.1.2001. Therefore, once the said order of reverting the applicant has been upheld, he is not entitled to any relief and this was only a so-called promotion on local officiating basis and not a regular promotion and, therefore, the applicant cannot claim monetary benefits in this regard.

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4. The above-said facts clearly reveal that so far as the factual matrix of the case is concerned, there is no controversy. We have gone through the judgment of the Delhi High Court in Civil Writ Petition No.6086/99. The said judgment of the Delhi High Court will not come to the rescue of the respondents. The Delhi High Court did hold that the promotion order had not conferred any right on the applicant to continue on the said post. The factum of the charge-sheet served to the applicant could be the motive to revert the applicant but not the foundations. The order reverting the applicant was not stigmatic.

5. So far as this part of the order passed by the Delhi High Court is concerned, indeed, there is no controversy but the subsequent events after the order of the Delhi High Court are the provoking factor for the applicant to claim the said relief. We repeat at the risk of repetition that the applicant has been exonerated. It is not being disputed that persons juniors to the applicant had been given the benefit of the promotion even on local officiating basis. Once the applicant had been reverted because of the pending charges against him and he has been exonerated, we do not find any reason as to why the benefit should have been ignored to the applicant. Since the applicant has superannuated, we can only direct payment of the monetary benefits that would accrue to the applicant.

6. As regards the second submission once again though it was on a local officiating basis promotion to

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the applicant and it will not confer any right on a person, like a regular promotion, but when juniors to the applicant get a benefit then in that event for no valid reasons, the applicant cannot be denied the said benefit accruing to him.

7. For these reasons, we allow the present application in the following terms:-

- a) The relief claimed that the applicant is entitled to the salary and allowances and other benefits from 15.9.1999 will not be allowed and is declined unless a person junior to the applicant is given the said benefit from that date; and
- b) The applicant would be entitled to his salary and allowances of the post of Chief Accounts Officer from the date his juniors were promoted till the applicant superannuated. The necessary arrears due to the applicant should be paid within three months from today.

S. K. Naik  
 (S. K. Naik)  
 Member (A)

V. S. Aggarwal  
 (V. S. Aggarwal)  
 Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 3154/2002

New Delhi this the 17th day of March, 2004

Hon'ble Shri Kuldip Singh, Member (J)  
Hon'ble Shri S.A.Singh, Member (A)

Shri D.S.Hooda  
s/o Shri Surat Singh Hooda  
r/o 264/34 Janta Colony  
Rohtak - 124 001 (Retired as Senior  
Accounts Officer (IA) MTNL Tax Bldg.  
Eastern Courts, New Delhi-50

..Applicant

(By Advocate: Shri Varun Prasad)

Versus

1. Union of India through  
the Member Finance  
Telecom Commission, Sanchar Bhawan,  
New Delhi
2. Chief General Manager (Telephones)  
Mahanagar Telephone Nigam Limited  
K.L.Bhawan, New Delhi
3. The Chief General Manager  
BSNL Haryana Circle Ambala - 133 001

(By Advocate : Shri V.K.Rao with Shri Satish Kumar)

O R D E R (ORAL)

By Shri Kuldip Singh:

The applicant has filed this OA seeking the following  
reliefs:-

"a) directing the respondents for the payment of all service benefits like salary allowances etc. etc. as a result of dropping of the charges w.e.f. 28.3.2002 for the post of Chief Accounts Officer w.e.f. 15.9.1999 to 31.3.2002 till the retirement of the Applicant.

b) further directing the respondents to make all payments of Officiating Allowance like salary etc. for the post of Chief Accounts Officer for the period w.e.f. 27.3.1996 to 16.5.1996 and 29.6.1996 to 8.7.1997 as held by the Hon'ble C.A.T. in Ram Sewak Sharma's case decided vide O.A. No.2614/1997.

c) The respondents may further be

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directed to make payments of all salaries and allowances and other service benefits, when after joining the MTNL on deputation (Respondent No.2) w.e.f.19.2.98 when juniors to the Applicant were promoted alongwith interest @ 18% per annum as per the judgement in O.A.No.2423/2000 the copy of which is annexed.

d) any other order, direction and relief as the Hon'ble Tribunal may deem just and proper be also awarded in favour of the applicant."

2. This OA was allowed by an order dated 1.9.2003. Thereafter, respondents filed Review Petition No.352/2003 in which the respondents had taken a plea that since an order was passed by the Tribunal in another OA on 30.4.2002, which was also filed by the present applicant, the present OA is barred by the principles of res judicata. Keeping in view this fact, the Tribunal recalled its earlier order dated 1.9.2003. That is how the matter was listed again for hearing.

3. We have heard the parties and gone through the record.

4. Since a preliminary objection regarding doctrine of res judicata has been raised, we have to see whether the present OA is barred by the principles of res judicata or not.

5. To consider whether the present OA is barred by the principles of res judicata or not, we shall have to refer to OA 1120/2002, which was filed by the applicant earlier and was decided on 30.4.2002. In OA-1120/2002, the applicant had asked for the following relief:-

(A) To set aside the order of Reversion dated 15.9.1999 (communicated on 27.9.99) as per well settled law propounded by the Hon'ble Tribunal as well as the Hon'ble Supreme Court of India which has become the Law of the land under Article 141 of the Constitution of India i.e. where the promotion is already made of an employee/officer, there shall not be any reversion on the basis of the chargesheet issued later on, after the promotion, thereby consequently directing the respondents for the payment of all benefits like salary, allowances and other service benefits etc. w.e.f. 15.9.1999 to 31.3.2002 till the retirement of the Applicant.

(B) Further directing the respondents to make payment of Officiating Allowance like salary etc. for the post of Chief Accounts Officer for the period w.e.f. 27.3. to 16.5.1997 and 29.6.1996 to 8.7.1997 as held by the Hon'ble CAT in 'Ram Sewak Sharma's Case' decided vide OA NO.2614/1997.

(C) The respondents may be directed to make payment of all salaries and allowances and other service benefits w.e.f. 14.2.1997 when juniors to the applicants were promoted by the respondents along with interest @ 18% per annum with all consequential benefits as held in 'Bhajan Lal vs. Union of India' the copy of which is annexed."

6. The aforesaid OA was disposed of vide order dated 30.4.2002 and the court found that since the applicant had earlier approached the High Court against his reversion and the High Court had dismissed the Writ Petition of the applicant, so the court found that the decision of the High Court would operate res judicata against the applicant. Thus the said OA was dismissed.

7. Shri Varun Prasad, leaned counsel appearing on behalf of applicant submitted that the decision in OA 1120/2002 cannot operate res judicata because the relief claimed by the applicant in OA had not been considered and thus the issue, which has been raised by the applicant, had not been finally adjudicated upon and unless those issues

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are finally adjudicated upon, the principles of res judicata cannot apply.

8. On the contrary, learned counsel for the respondents submits that since in the earlier OA the applicant had also sought direction regarding for payment of officiating allowances like salary etc. he had based his arguments to the effect that the charges against the applicant had been dropped by the disciplinary authority and the appointing authority. So on that count, the court had not granted other reliefs, which are now being claimed in the present OA. Thus the applicant could have either filed a Review Application or could have challenged the order before the High Court which has not been done. It seems that the claim which had been made in the earlier OA. had been decided and therefore the present OA is hit by the principles of res judicata.

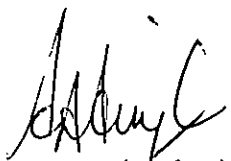
9. We have considered the contention raised by the learned counsel for the parties.

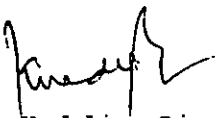
10. It is not disputed that the reliefs which are being claimed in the present OA were also claimed in OA 1120/2002. The said OA was dismissed and the order has been placed on record by the learned counsel. The question arises whether it is open to decide the issue afresh on the plea that since the issue raised in the earlier OA had not finally been adjudicated upon as pleaded, so the principles of res judicata are not applicable. In our considered opinion, this plea of the applicant has no force because it is not disputed that the applicant raised this issue in the

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earlier OA. We may further mention that the jurisdiction being exercised by the Tribunal is in exercise of power of judicial review, which is akin to power of grant of Writ by the High Court under Article 226 of the Constitution of India. The proceedings before the Tribunal are not like a Civil Suit where the provisions of res judicata as enshrined under Section 11 of the CPC are to be applied. It is the principles of res judicata, which are applicable and not the provisions of Section 11 of the CPC. It is endeavour of a judicial Tribunal that the litigation initiated by any of the aggrieved parties attains finality, and in this case, when the earlier OA was dismissed by this Tribunal and the applicant had not taken it further in any other superior court goes to show that the judgement given in the earlier OA had attained finality. By filing the present OA, the applicant cannot file a Writ Petition on the same issue again. Thus, we find that the present OA is squarely barred by principles of res judicata and the OA has to be dismissed.

11. In view of above discussion, the OA is dismissed. No order as to costs.

  
 ( S.A. Singh )  
 Member (A)

  
 ( Kuldip Singh )  
 Member (J)

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