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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1595/2001

New Delhi this the 21st day of March, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

1. A.K.Bhattacharya
S/o N.Bhattacharya
R/o J-1/354, DDA Flats, Kalkaji
New Delhi-110019.
2. Trilochan Singh
87 MIG Flats, Ashok Vihar
Phase-4, New Delhi-110052.
3. Inderjit Singh
S/o late Shri Govind Singh
A-3/207, Janakpuri
New Delhi.
4. Charanjit Singh
S/O Shri Ram Singh
R/o B-174 Indira Nagar
Delhi-110033.
5. S.K.Walia
S/o Sh. K.S.Walia
C-42 Shakti Nagar Extn.
Delhi-110052.
6. Surajmal
S/o Late Birdhi Chand
Flat No.2
Saubhagya Apartments
Sector-9, Rohini
New Delhi.

Applicants

(By Shri Yatish Mohan, Advocate)

vs.

1. State of Delhi through its
Chief Secretary,
Secretariat, I.P.Estate
ITO, New Delhi-110002.
2. The Secretary (Services)
Secretariat, I.P.Estate
New Delhi.

Respondents

(By Shri Vijay Pandita, Advocate)

O R D E R

Justice V.S.Aggarwal:-

The Delhi Administration Subordinate

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(Executive) Service was constituted and is governed by the Delhi Administration Subordinate Service Rules, 1967 (for short, "the Rules"). Under the said Rules, there are two distinct and separate subordinate services that had been created, namely (1) Delhi Administration Subordinate (Executive) Service and (2) Delhi Administration Subordinate (Ministerial) Service. These services have four grades.

2. The applicants were directly recruited to various posts in Grade -IV of the Service (Executive) on basis of their selection in the open competition. They were promoted subsequently to Grade-III.

3. Earlier, there was litigation and the Delhi High Court in Civil Writ Petition No. 1345 of 1980 upheld the Administration's powers to merge the two services. Rule 26 of the Rules referred to above had been quashed and a right was given to the Administration to promulgate the new Rule 26. In 1983-84, the applicants were promoted to Grade-II of the Service (Executive) on different dates. It is contended that they were so promoted by a duly constituted Departmental Promotion Committee.

4. The grievance of the applicants starts from here who contend that the Delhi Administration had continued to make promotions from the separate

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service and on 19.5.1989, the respondents amended the Rules. They affected the rights of various categories of employees. It is contended that the Rules so amended were contrary to the orders passed and suffer from vagueness and arbitrariness on basis of which the final seniority list had been issued on 8.6.1989 of Grade-III (Executive) and on 21.8.1989, the final seniority list of Grade-III (Ministerial) was issued. On 7.12.1989, the Delhi Administration published and circulated an integrated seniority list as on 4.12.1980 of the officials appointed before that date in Grade-III (Executive). The seniority list had been challenged in the Supreme Court.

5. On 14.2.1990, the Delhi Administration passed an order effecting promotions from Grade-III to Grade-II. The incumbents who were continuing in Grade-III till that date were sought to be transferred to the Ministerial cadre. The said order was challenged by virtue of OA No.463/1990 and OA No. 663/1990. Different orders were passed therein. It was thereafter that on 28.2.1992, a final seniority list was issued. The applicants contend that their seniority was badly affected. They filed OA Nos.1407/1992 and 1714/1992 in this Tribunal. Both the applications were dismissed by this Tribunal on 21.12.1992. Aggrieved by the same, they preferred an appeal by way of Special

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Leave Petition (Civil) No.4590-91/1993 before the Supreme Court. In the Supreme Court when the matter came up for hearing, the petition was dismissed, but keeping in view the statement of the counsel for the applicants that the decision of this Tribunal was not being followed, the Supreme Court observed that it would give a separate cause of action.

6. In pursuance of the decision of the Supreme Court, the applicants have filed the present application claiming the following reliefs:-

"(a) Issue writ order or direction of appropriate nature commanding and directing the respondent to regularise the services of the petitioners from the date of their initial appointments on grade II.

(b) Issue writ order or direction of appropriate nature commanding and directing the respondent to give the seniority to the petitioners from the date of their initial appointments on grade II, and subsequently they may be given next grade accordingly,"

When this matter came up for hearing, this Tribunal at the threshold dismissed the application holding that it is barred by the principle of res judicata on 3.7.2001. As against the order passed by this Tribunal, the applicants had filed Civil Writ Petition No.5110/2001. The Delhi High Court had set aside, the said order and remitted the matter

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with the following findings:-

"However, the Supreme Court while dismissing the SLPs by order dated 3.5.93 had observed as under:

"Mr. Sen, learned counsel for the petitioners states that the decision impugned in this petition is not being followed by the administration. If so, that forms a separate cause of action and cannot be looked into in the present petition. The petition is dismissed."

The aforesaid order clearly shows that the Supreme Court had in no uncertain terms stated that if the decision impugned in the petition was not followed by the administration that formed a separate cause of action. In that view of the matter, if it was a separate cause of action, fresh OA was maintainable. We find that in the impugned order dated 3.7.2001 the learned Tribunal has not adverted to this aspect, namely, whether the OA No.1595/2001 was on the basis of so called separate cause of action. If that was so then the OA could not have been dismissed on the ground of res judicata. Since this aspect has not been dealt with by the learned Tribunal, we have no option but to set aside the impugned order and remit the case back to the Tribunal for fresh adjudication.

Accordingly, we set aside the impugned order and remit the matter back to the Appellate Authority for its fresh adjudication."

It is in this back-drop that the present application has again come up for hearing. We have heard the learned counsel for the parties and have seen the relevant record.

7. The resume of the facts given above clearly shows that admittedly on an earlier occasion, the applicants had filed OA Nos.

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1407/1992 and 1714/1992. Therein the reliefs claimed by the applicants were in the following terms:-

"(i) quashing of:-

- (a) New Rule 26 of the Delhi Administration Subordinate Service Rules as promulgated in 1989 vide notification dated 19th May, 1989.
- (b) Regularization orders dated 14th November, 19th November, and 26th November, 1990 granting assumed dates of promotion in Grade II.
- (c) final seniority list of Grade II Officers as on 12th July, 1985 as circulated by circular dated 28th February, 1992.

(ii) Declaring the services rendered by the applicants in Grade II (Executive) from 1983/1984 onwards as regular and determination of seniority of the applicants in the said Grade II (Executive) separately from the employees of Grade II (Ministerial) at least for the period upto July, 1985 and preparing the integrated seniority list separately upto July, 1985."

The said applications had been dismissed on 21.12.1992 by a Bench of this Tribunal and we reproduce the operative part of the order passed by this Tribunal which reads:-

"28. The applicants who were promoted on ad hoc basis should continue to remain in Grade-II undisturbed and earn increments also, as agreed to by the respondents, and await regularisation in turn according to merged seniority lists. This much protection of the interest of the Officers would also be consistent with the observation of the Apex Court in the case of Banarsi Das & Ors. (supra). With this observation, the O.As are dismissed with no order as to costs. The interim orders get

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vacated."

It is abundantly clear from what has been reproduced above that the relief claimed in the present application pertaining to seniority and regularisation was very much alive when the earlier applications had been filed. The said applications had been dismissed and, therefore, we reiterate that since the matter has been agitated, it cannot be re-agitated in the present litigation.

8. Our attention has been drawn by the learned counsel for the applicants to a decision of the Supreme Court in the case of **Rudra Kumar Sain & Ors. v. Union of India & ors.**, 2000 (6) SCALE 54. On the strength of this decision, it has been contended that the seniority ~~list~~ has to be calculated and given effect to from the date a person is appointed even on ad hoc basis.

9. We need not delve into this controversy because these questions were alive when the earlier original application referred to above had come up for consideration before this Tribunal and the application was disposed of in the year 1992. The decision, if any, of the Supreme Court even if rendered subsequently will not inject life into something which has been settled to provide fresh ammunition.

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10. However, as already pointed above, since the Delhi High Court has remitted the matter back, we refer to the order passed by the Supreme Court in which earlier decision of this Tribunal dated 21.12.1992 had been upheld. The said order reads:-

"Mr. Sen, learned counsel for the petitioners states that the decision impugned in this petition is not being followed by the administration. If so, that forms a separate cause of action and cannot be looked into in the present petition. The petition is dismissed."

The only question, therefore, that can be adjudicated in the present application is that the decision of this Tribunal is not being followed by the administration. We have already reproduced above, the decision of this Tribunal. It reveals that the original applications were dismissed but it was directed that the applicants would keep on claiming the increments. They were to be regularised on their turn according to the merged seniority list and they were allowed to continue in Grade-II undisturbed. On our query, we have been informed that none of these applicants had been reverted and some of them have been regularised as per their turn and they were drawing increments. Once it is so, there is no option but to hold that there is no violation of the directions of this Tribunal.

11. Resultantly, the application must be held

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to be without merit. It fails and is dismissed.
No costs.

V.K.Majotra

(V.K. Majotra)
Member (A)

/sns/

V.S. Aggarwal

(V.S. Aggarwal)
Chairman