

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1830/2001

(u)

New Delhi, this the 8th day of August, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Krishan Lal Yadav
H.C.No. 105/N
S/o Shri Sheodan Singh
R/o B-64, Police Colony
Saraswati Vihar
New Delhi.

...Applicant.

(By Advocate Shri Anil Singhal)

V E R S U S

1. Commissioner of Police
Police Head Quarters
IP Estate, New Delhi.
2. Dy. Commissioner of Police
North Distt., Civil Lines
New Delhi.
3. Gurbax Singh (E.O.)
Inspector DIU/North

...Respondents

(By Advocate Shri Ajesh Luthra)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In this application, the applicant has prayed
for the following main relief :-

"(a) Call for the records of the case and set aside/quash the order dated 15-5-2001 (Annexure A-1) or give direction to the respondents to keep in abeyance the departmental enquiry initiated vide order dated 15-5-2001 during the pendency of the criminal case till the defence of the applicant is disclosed in the criminal case."

2. It is an admitted fact that this is the second round of litigation by the applicant against the same respondents - the earlier OA being OA 1383/2001 which was disposed of by the same Bench vide order dated 11-7-2001 (copy placed on record).

3. Para 1 of OA 1383/2001 reads as follows :-

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"The applicant is aggrieved by the order passed by the respondents dated 15-5-2001 by which it has been ordered that a regular Departmental inquiry is to be conducted against the applicant on certain charges. He has prayed that the impugned order should be stayed during the pendency of investigation and trial in case FIR No.299/2001 under Sections 377/384 IPC in the interest of justice.

(Emphasis Added)

4. Reply has been filed by the respondents on 7-8-2001. Shri Anil Singhal, learned counsel for the applicant, has very fervently pressed that he must be given sufficient time to file rejoinder to the reply. As a preliminary issue has been raised by the respondents that the present OA is not maintainable, as it is barred by the principles of res-judicata, which is an issue of a legal nature, we did not consider it necessary to grant him time to file rejoinder on the merits of the case. Further, it is relevant to note that Shri Anil Singhal, learned counsel, was prepared to make his submissions on the legal issue of res-judicata and we have heard him at length as well as Shri Ajesh Luthra, learned counsel for the respondents.

5. We have carefully considered the averments made by the learned counsel for the parties. Shri Ajesh Luthra, learned counsel, has relied on the judgements of the Allahabad High Court in Trilok Chand Vs. Savitri Devi (AIR 1972 (Allahabad) 52) and of the Supreme Court in Jaswant Singh Vs. Custodian of Evacuee Property (1985 (3) SCC 648). He has also relied on certain judgements of the Tribunal. (Madras Bench) in M.Prakasam Vs. Chief Signal and Telecommunication, Engineer, Southern Railway, Madras & Ors. (1988 (6) ATC 251), copies placed on record. He

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(b)

has submitted that in the earlier order of the Tribunal dated 11-7-2001 in OA 1383/2001, the same impugned order dated 15-5-2001 has been considered on all the pleas taken by the then counsel for the applicant. He has, therefore, submitted that all the tests laid down by the Supreme Court in Jaswant Singh's case (supra) are fulfilled in this case, namely, (i) forum of the competence of the Court, (ii) parties and the representatives (iii) matters in issue, (iv) matters which ought to have been made ground for defence or attack in the former suit and (v) the final decision. Therefore, he has contended that the present OA is squarely barred by the principles of res-judicata and constructive res-judicata and should be dismissed on this ground alone. Shri Ajesh Luthra, learned counsel, has contended that this is a case where there has been a misuse of the process of law by the applicant as he has indulged in multiple litigations soon after the order dated 11-7-2001 has been passed in OA 1383/2001. Learned counsel has, therefore, prayed that costs may be awarded against the applicant.

6. The above has been controverted by Shri Anil Singhal, learned counsel, who has submitted that the present OA is instituted because of the issuance of the chargesheet in the criminal case on 23-7-2001. Learned counsel for the applicant has stoutly contended that the present OA is on a different cause of action. His main contention is that in the previous OA (OA 1383/2001), the applicant was aggrieved by the action of the respondents in issuing the order dated 15-5-2001 initiating regular Departmental enquiry on which he had merely asked for

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stay of the proceedings as certain criminal investigations were in progress. He has vehemently contended that at no stage in OA 1383/2001, the applicant had asked for quashing of that order, which is the first prayer in paragraph 8 (a), although he does not deny the fact that the alternative prayer in the same paragraph is to keep in abeyance the Departmental enquiry initiated vide order dated 15-5-2001. He has contended that the cause of action is separate, as after the Tribunal's order was passed on 11-7-2001 in OA 1383/2001, the chargesheet has been issued on 23-7-2001 in the criminal case. He has, therefore, submitted that the order dated 15-5-2001 needs to be quashed or stayed, otherwise it will cause pre-judice to the applicant in the criminal case. The other main contention of the learned counsel for the applicant is the ground taken in paragraph 5.4 to which we have also seen the reply filed by the respondents which is on the issue of bar of res-judicata. Learned counsel for the applicant has relied on the case of Ex. Const. Narender Singh Vs. Govt. of NCT of Delhi & Ors. in OA 169/99 decided on 1-11-2000.

7. Having regard to the facts, issues and reliefs raised in OA 1383/2001 and the present OA, we fully agree with the submissions made by Shri Ajesh Luthra, learned counsel for the respondents, that this OA is barred by the principles of res-judicata and constructive res-judicata. The arguments of Shri Anil Singhal, learned counsel to the contrary cannot be accepted. As seen from the reliefs prayed for in the present OA, the alternative relief is exactly the same as what was prayed for in OA 1383/2001 and the earlier

alternative relief was to set aside the order dated 15-5-2001 which has been dealt with in Tribunal's order dated 11-7-2001.

8. We have carefully considered the facts and issues with regard to the five parameters laid down by their Lordships of the Supreme Court in **Jaswant Singh's** case (supra) to the facts in the present case. According to this judgement, which is fully applicable to the facts in this case, the OA is barred by the principles of res-judicata and constructive res-judicata. In a catena of judgements (**Daryao Vs. State of Uttar Pradesh** (AIR 1961 SC 1457), **The Workmen of Cochin Port Trust Vs. The Board of Trustees of the Cochin Port Trust and Anr.** (AIR 1978 SC 1283) and **Forward Construction Co. & Ors. Vs. Prabhat Mandal (Regd) Andheri & Ors.** (1986 (1) SCC 100), the Hon'ble Supreme Court has explained the significance and the need for application of the principles of res-judicata. In **Daryao's** case (supra) it has been held by their Lordships that "Res-judicata is a rule of universal law prevailing every well regulated system of jurisprudence and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity which makes it the interest of the State that there should be an end to litigation-interest republicae ut sit finish litium; the other, the hardship on the individual that he should not be vexed twice for the same cause-nemo debet bis vexari pro eaden causa"

9. Further, in the case of **Forward Construction Co. & Ors. Vs. Prabhat Mandal (Regd.)**

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Andheri & Ors. (supra), the Supreme Court has observed as follows :-

"An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence".

The above principles have also been dealt with by the Tribunal (Madras Bench) in M.Prakasam's case (supra). In para 6 of the judgement, it has been held that :-

"6. We do not see how the applicant can ignore the judgment of the Tribunal in a case in which he is a party. If a point has not been raised by him which he ought to have raised then, the principle of "Might and Ought" will apply and the applicant cannot raise the said plea at a later stage. It is for the applicant who was one of the respondents in the earlier writ proceedings which culminated in the order of the Tribunal dated 26-9-1986 to have raised the question of estoppel and sought a decision thereon. Having failed to raise that question he cannot avoid the application of the principle of res-judicata in the subsequent proceedings filed by him. The applicant, having been a party to the earlier judgement of the Tribunal, can challenge the same only in the Supreme Court. He cannot ignore or challenge the same before the same Tribunal, when the order of the Tribunal is given effect to and it results in certain consequences."

10. In the present case, as already mentioned above, the parties are the same as in OA 1383/2001. Apart from asking that the order dated 15-5-2001 should be kept in abeyance as already prayed in the previous OA, the applicant is also praying that the same order should be quashed and set aside. Nothing prevented him from praying to quash the same order in

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the previous OA. It is also relevant to note that Shri Anil Singhal, learned counsel for the applicant, has submitted categorically that he does not have any quarrel with the earlier judgement of the Tribunal dated 11-7-2001. That being the case, we do not also find any merit in the submissions made by him regarding what he terms as a fresh ground in paragraph 5 (4) of the present OA. It is a well recognised principle of law that the applicant cannot choose to agitate issues in successive litigations at his own choice and ^{will} ignoring ^{the} the principles clearly laid down by the Hon'ble Supreme Court in the aforesaid judgements. The need to follow the principle of res-judicata as a universal law pervading every well regulated system of jurisprudence has been enunciated in Daryao's case (supra).

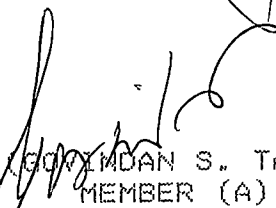
11. It is relevant to note that in para 7 of the present OA, the applicant has declared that he has not previously filed any application, writ or suit regarding the matter in question. Learned counsel for the applicant has also contended that what he is agitating in the present OA has no connection at all to the issues that were raised in OA 1383/2001. We are unable to agree with this contention because the same order, namely, the order issued by the respondents dated 15-5-2001 is the impugned order in the applications. The same issue has also been dealt with in the detail order of the Tribunal dated 11-7-2001 in OA 1383/2001. In the facts and circumstances of the case, the judgement of the Tribunal in OA 169/99 dated 1-11-2000 will also not assist the applicant to overcome the bar of res-judicata or constructive res-judicata.

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12. We find force in the submissions made by learned counsel for the respondents that taking into account the facts and circumstances of the case, the present OA is a misuse of the process of law. We say so because in paragraph 7 of the present OA, the applicant has not made any reference to the OA filed by him i.e. OA 1383/2001, which was disposed of on 11-7-2001. We also note that copy of that order has not been annexed to the OA. Shri Ajesh Luthra, learned counsel, has prayed that some costs must be awarded against the applicant, which may be given in favour of CAT Bar Association Library Fund. In the circumstances of the case, we find that this is a case where some costs have to be imposed against the applicant as he has not brought on record all the relevant facts. It would have been another matter for him to have mentioned that he had previously filed OA 1383/2001 and contended, what has been submitted orally by the learned counsel, that the previous OA will not be a bar to him to file the present OA. But that is not the case.

13. In the result, for the reasons given above, the OA is dismissed as barred by the principles of res-judicata. In the facts and circumstances of the case, the applicant is also directed to pay costs of Rs.500/- (Rupees five hundred) ¹² ~~as costs~~ in favour of the respondents, which shall be paid to the CAT Bar Association Library Fund.


(GOPINANDAN S. TAMPI)
MEMBER (A)

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(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)