

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(X)

C.A No. 265/2001
T.A No.

Date of Decision 25.10.2001

L.K. Singh

..Petitioner

Sh. M. M. Suriya

..Advocate for the Petitioner(s)

Versus

UOI through Cabinet
Secretary and Ors.

..Respondent

Sh. B. S. Jain

..Advocate for the Respondents

Coram:-

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

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to
other Benches of the Tribunal? No

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A.265/2001

(6)

New Delhi this the 25th day of October, 2001

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

L.K. Singh,
S/o Shri G.P. Singh,
66/11 Sector-I, Pushpa Vihar,
New Delhi-110017. Applicant.

(By Advocate Shri M.M. Sudan)

Versus

Union of India through

1. Cabinet Secretary,
Cabinet Secretariat,
South Block, New Delhi-110001.
2. Director General of Security,
East Block-V, R.K. Puram,
New Delhi-110001.
3. Deputy Director Administration,
Aviation Research Centre,
Charbatia, Distt. Cuttack,
Orissa-754028. Respondents.

(By Advocate Shri B.S. Jain)

O R D E R (ORAL)

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

In this application, the applicant has impugned the order dated 17.10.2000 passed by the respondents which is stated to be in compliance of the Tribunal's (Principal Bench) judgement dated 16.4.1999 in O.A.679/1998.

2. We have heard Shri M.M. Sudan, learned counsel for applicant and Shri B.S. Jain, learned counsel for respondents and perused the documents on record.

3. Learned counsel for respondents has taken a preliminary objection in the present O.A. that the

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(A)

applicant has not come before the Tribunal with clean hands. The respondents have stated clearly that even when filing the earlier O.A.679/1998 on 27.3.1998, the applicant had concealed the fact of filing Transfer Application No. 166/86 before the Cuttack Bench of the Tribunal which was dismissed by that Bench vide order dated 30.3.1987. The Special Leave Petition filed by the applicant/petitioner before the Hon'ble Supreme Court was also dismissed on 2.4.1990. We note that one of the findings of the Cuttack Bench in its order dated 30.3.1987 in TA 166/86 was that the applicant cannot be treated as senior to respondents 4 to 9 either as UDC or Assistant. Shri B.S. Jain, learned counsel, has drawn our attention to page 24 of the counter affidavit which is the petition for Special Leave to Appeal filed by the applicant before the Hon'ble Supreme Court (CMP No. 34501 of 1987 in SLP (Civil) No. 6201 of 1987) where Respondent No.5 is Sri Brajakishore Dash (Sri B.K. Dash), Assistant.

4. During the course of arguments, Shri M.M. Sudan, learned counsel, has submitted that the impugned order dated 17.10.2000 does not show proper implementation of the Tribunal's order dated 16.4.1999 in O.A.679/98. In paragraph 8(2) of the present application, the applicant seeks a direction to the respondents to modify the promotion order dated 17.10.2000 and grant him promotion with effect from the date "his junior B.K. Das has been promoted as Assistant and Section Officer with all consequential benefits of arrears of pay, promotion and seniority etc".

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5. The aforesaid prayer of the applicant is clearly contrary to the findings of the Cuttack Bench of this Tribunal in TA 166/86 read with the Hon'ble Supreme Court order dated 2.4.1990. In the facts and circumstances of the case, the prayer of the applicant to re-open his contentions that he is again senior to Shri B.K. Das at this stage by virtue of the present application, is not only improper and illegal but is totally not maintainable in the light of the SLP order of the Hon'ble Supreme Court dated 2.4.1990. The Cuttack Bench of the Tribunal has, as far back as 30.3.1987, held that the applicant cannot be treated as senior to respondents 4-9, including respondent No.5, Shri B.K. Das, as UDC or Assistant.

6. We find merit in the submissions made by Shri B.S. Jain, learned counsel that the applicant has not disclosed the facts in paragraph 7 of the O.A. that he had already filed a number of earlier petitions, referred to above, which he ought to have done in accordance with the proforma prescribed under the Central Administrative Tribunal (Procedure) Rules, 1987, Appendix A Form-I. We find that he has similarly not done so when he filed O.A.679/98. The contention of Shri M.M. Sudan, learned counsel that in this application, what the applicant is now praying for is, as a result of the Tribunal's order dated 16.4.1999 in O.A.679/98 which is quite different from the prayers made in earlier O.As, has no merit as this question has been dealt with by the Tribunal at Cuttack Bench in TA 166/86. Further, it is relevant to note that in the impugned order dated 17.10.2000, the applicant has been promoted to the post of Section Officer notionally w.e.f. 12.5.1998, that is the date of promotion of his immediate

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junior Shri S.K. Karmakar and not Shri B.K. Dash, with whom he is claiming monetary benefits of such promotion. In other words, it is evident from the facts and circumstances of the case, the applicant's claim is not maintainable.

7. In the facts and circumstances of the case, we do not find any infirmity or illegality in the order passed by the respondents dated 17.10.2000 which is stated to be in implementation of the Tribunal's order in OA 679/1998. At this stage and having regard to the earlier orders of the Hon'ble Supreme Court dated 2.4.1990, the applicant cannot turn round and seek further benefits vis-a-vis Shri B.K. Das, as his senior. We also see merit in the submissions made by Shri B.S. Jain, learned counsel that the applicant's claims are barred by the principles of constructive res judicata and are liable to be dismissed on this ground alone.

8. While, as stated above, the applicant has not followed the proforma prescribed under the Central Administrative Tribunal (Procedure) Rules, 1987 with regard to the information he has to furnish to the Tribunal under paragraph 7, Shri M.M. Sudan, learned counsel has pointed out that he himself had enclosed the copy of the judgement of the Cuttack Bench.

9. In view of what has been stated above, we see force in the submissions made by Shri B.S. Jain, learned counsel that the applicant ought to have mentioned the earlier application (TA 166/96) filed by him and disposed of by the Cuttack Bench of the Tribunal which he has not

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done. Similarly, he has also not disclosed the fact in paragraph 7 that he had earlier filed O.A. 679/98, although Shri M.M. Sudan, learned counsel, submits that the copy of this judgement/order dated 16.4.1999 has been referred to and annexed in paragraph 4.24 of the O.A. itself. While this may be so, we are of the view that the applicant ought to have disclosed this fact in answer to the specific queries in paragraph 7 in the proforma which he has failed to do so, while at the same time he claims promotion with consequential benefits, arrears of pay and seniority, etc. vis-a-vis Shri B.K. Das, whom he claims is his junior. In this view of the matter, it cannot be wholly held that the applicant has not tried to conceal the relevant facts in the present application for whatsoever reasons he thought it just and proper. In the circumstances, in the interest of justice and in the facts and circumstances of the case, we consider it proper that some costs should be imposed against the applicant as ^a deterrent, so that the relevant facts are before the Tribunal while taking an appropriate decision in the matter, as it was for the applicant to state in paragraph 7 of the O.A. that he had filed earlier applications, referred to above.

10. In view of what has been stated above, we do not consider it proper to give any such directions, as prayed for, by the applicant in paragraph 8(3) of the O.A. ^{any reasons is} or ^{to} to justify any interference in the matter. Therefore, the claim of the applicant in paragraph 8 (3) for a

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direction to the respondents to pay him full pay and salary w.e.f. 12.5.1998 is rejected, having regard to the facts and circumstances of the case.

11. In the result, for the reasons given above, we find no merit in this application. The O.A. accordingly fails and is dismissed. In the circumstances of the case, costs of Rs.1000/- (Rupees one thousand) is awarded against the applicant and in favour of the respondents which shall be paid to the CAT Bar Association Library Fund immediately,

(Govindan S. Tampli
Member (A))

SRD

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)