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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 502/99

New Delhi, this the 1st day of November, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Sh. N.K.Saha,
S/o Late Rajeswar Saha,
r/o Type-IV-G-13, Raksha Nagar,
P.O. Oihar Township,
Dist. Nasik,
Maharashtra. Applicant
(None).

VS.

1. Union of India
through the Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Director General
Aeronautical Quality Assurance,
Ministry of Defence,
H-Block, New Delhi. Respondents
(By Advocate: sh. D.S.Mahendru)

ORDER (ORAL)

By Mr. Justice V.Rajagopala Reddy,

None appears for the applicant. Heard learned counsel
for the respondents.

2. The applicant was working as Junior Scientific Officer (JSO, for short). A list of eligible candidates for promotion to the post of Sr. Scientific Officer (SSO, for short) from Jr. Scientific Officer was published in 1979. The first batch of candidates was promoted on 6.2.79 and the applicant was one of the promotees. Thereafter the new rules, Defence Aeronautical Quality Assurance Service Rules were promulgated. According to the applicant, by virtue of these rules he would not be eligible for promotion to the post of SSA Grade-II. This OA is, therefore, filed challenging the above rules.

[2.1.4]

3. A preliminary objection was taken by the learned counsel for the respondents that the OA is not only barred by limitation but also by res judicata. It is stated that he filed OA-556/87 Nirmal Kumar Saha vs. Union of India & Others before the Calcutta Bench of the Tribunal against his non-promotion to the post of SSO Grade-II which was to be made in accordance with the rules which are now impugned in this OA. The said OA was disposed of directing the respondents to hold a DPC afresh for promotion to the post of SSO Grade-II and to consider the case of the applicant alongwith others, who fulfil the necessary educational qualifications in view of Schedule 1 of the rules. If the applicant qualifies himself for promotion to SSO Grade-II, he should be promoted with all pecuniary benefits admissible in respect of the post. This order was however set aside by the Hon'ble Supreme court when the matter was carried to the Supreme Court by the respondents and a direction was issued to the Tribunal to dispose of the OA afresh. Accordingly, the OA was taken up for consideration but it was dismissed on merits. It is, therefore, contended by the learned counsel for the respondents that this judgment operates as res judicata and this OA is liable to be dismissed on that ground.

4. We have given careful consideration to the contentions raised. In the earlier OA-556/87 filed before the Calcutta Bench the applicant questioned about his non-promotion to the SSO Grade-II on account of the change in the criterion in the new rules. His application was, however, ultimately dismissed. The validity of the same rules are now sought to be questioned in this OA. The applicant ought to have questioned the validity of the new rules in the earlier OA itself. It is no ground to say that the validity of the rules



was not under challenge in the earlier OA. The applicant ought to have urged this ground also in the earlier OA. The cause of action in two OAs is also same and it is not permissible to raise the grounds piece-meal on the same cause of action. The earlier OA operates as constructive res judicata. In the circumstances the OA is liable to be dismissed on the grounds of constructive res judicata. The OA is accordingly dismissed. No costs.


(GOVINDAN S. TAMPI)
Member (A)

'sd'


(V. RAJAGOPLA REDDY)
Vice Chairman (J)