

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1388/95
T.A. No.

199

DATE OF DECISION 10.10.95

Shri V.K. Wadhwa

Petitioner

Shri A.K. Bhardwaj

Advocate for the Petitioner(s)

Versus

Union of India and ors

Respondent

Shri Madhav Panikar through
proxy counsel Sh. J. Banerjee

Advocate for the Respondent

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

The Hon'ble Mr.

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

(14)

Central Administrative Tribunal
Principal Bench.

O.A. 1388/95

New Delhi this the 16th October, 1996

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

V.K. Vadhwa, Accountant(Cash),
Department of Publications,
Civil Lines,
Delhi-54.

...Applicant.

By Advocate Shri A.K. Bhardwaj.

Versus

1. Union of India through
The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

2. The Director,
Directorate of Printing,
Nirman Bhawan,
New Delhi.

3. Dy. Director, Administration,
Directorate of Printing,
"B-Wing", Nirman Bhawan,
New Delhi.

4. The Controller of Publications,
Deptt. of Publication,
Civil Lines,
New Delhi-54.

...Respondents.

By Advocate Shri J. Banerjee, proxy for Shri Madhav Panikar.

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant is aggrieved by the action of the respondents in not allowing him to cross ¹⁸ ~~of~~ the Efficiency Bar (E.B.) ^{wef 1-12-1988 13} which he submits is arbitrary. A copy of the order dated 30.6.1994 which had been passed in pursuance of the

18.

Tribunal's judgement dated 11.2.1994 in an earlier case filed by the applicant against the Union of India & Ors. (O.A. 3338/92) (copy placed at Annexure A-26), has been filed at Annexure A-1. The competent authority in the letter dated 30.6.1994 has stated that the applicant's case was never examined and considered for crossing the E.B. w.e.f. 1.12.1989 and 1.12.1990, but the DPC had earlier examined his case and taken a decision to declare him not fit to cross E.B. w.e.f. 1.12.1988 which was held to be in order. The Directorate of Printing's O.M. dated 28.11.1991 conveying that the applicant was not fit to cross the E.B. w.e.f. 1.12.1989, 1.12.1990 and 1.12.1991 was quashed and he was declared fit to cross E.B. w.e.f. 1.12.1989.

2. The above order had been passed on the appeal filed by the applicant dated 1.4.1994 in which the applicant had submitted that the date on which he should have been allowed to cross the E.B. was 1.12.1988 and not 1.12.1989. The learned counsel for the applicant has been heard at length on the point whether this matter was agitated and placed before the Tribunal in O.A. 3338/92(supra). The first part of the judgement in O.A. 3338/92 refers to the grievance of the applicant regarding Annexure A-6 office memorandum dated 28.11.1991 which is placed at Annexure A-2 of the present O.A. This office memorandum on the subject of crossing of the E.B. dated 28.11.1991 reads as follows:

Shri V.K. Wadhwa, Accountant, Govt. of India Press Rashtrapati Bhawan, New Delhi was due to cross Efficiency Bar with effect from 1.2.1989 raising his pay from Rs.1800 to Rs.1850/- in the scale of Rs.1400-40-1800-EB-50-2300. His case has been duly considered by

JS.

Departmental Promotion Committee who have, after going through the relevant records, ruled that he is not fit to cross the said Efficiency Bar with effect from 1.12.1989.

2. Pursuant to the instructions contained in Department of Personnel & Training O.M. No. 29014/2/88-Estt. (A) dated 30.3.1989, the case of Shri Wadhwa was examined by the Departmental Promotion Committee for crossing of Efficiency Bar with effect from 1.12.1990 and 1.12.1991 also, but the Departmental Promotion Committee has again ruled that he is not fit to Cross Efficiency Bar with effect from those dates also".

3. The Tribunal has also reproduced the reliefs claimed in the ^{earlier} O.A. and omitting clause (c), as disconnected with the main reliefs, the other reliefs pertain to setting aside the impugned orders dated 28.11.1991, 19.3.1990 and 4.1.1991.

4. In the order passed by the Tribunal dated 11.2.1994 in O.A. 3338/92, the Tribunal came to the conclusion that since the departmental remedy by way of filing an appeal has not been exhausted, this opportunity was given to the applicant in terms of para 2 of Annexure R-1, i.e. O.M. dated 5.4.1993 by which the applicant was advised to file an appeal to the appellate authority, i.e. The Secretary, Ministry of Urban Development. In the circumstances, the Tribunal gave an opportunity to the applicant to file ~~the~~ appeal within one month from the date of receipt of the order, to the appellate authority in which it was open to him to take all ^{the} grounds which he had taken in that O.A. for quashing the order stopping him from crossing the E.B.

5. Shri A.K. Bhardwaj, learned counsel for the applicant, had in the course of the arguments submitted that other than the grievance relating to the crossing of the E.B. w.e.f. 1.12.1988 he is not pursuing the other reliefs with regard to the salary for the period from 29.12.1993 to 24.11.1994 which he may be allowed to agitate in a fresh O.A. He also submits that pursuant to the order of the appellate authority dated 30.6.1994, the respondents have not paid the full arrears of pay and allowances due to him. It is seen that this claim has also not been made in this O.A. and so no orders are required to be passed, but the applicant may make a representation to the respondents in this regard, if he so desires.

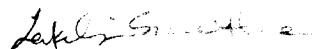
6. A careful perusal of the judgement/order of the Tribunal dated 11.2.1994 in O.A. 3338/92 and the reliefs claimed by the applicant in the present O.A. makes it amply clear that the applicant has not agitated the matter regarding the respondents' action in not allowing him to cross the E.B. w.e.f. 1.12.1988 which was the decision of the then DPC. No doubt, in the appeal filed subsequently on 1.4.1994, he has referred to this grievance i.e. non-crossing the E.B. w.e.f. 1.12.1988 which was not agitated or within the scope of the judgement of the Tribunal in that case. In other words, in the present O.A. what the applicant is trying to do is to agitate the matter of E.B. of 1988 which he ought to have taken up before the Tribunal for adjudication when he filed O.A. 3338/92. In that judgement, it is also clearly mentioned that in the appeal he could take "all grounds which he has taken in this O.A". As correctly pointed out by Shri J. Banerjee,

learned counsel for the respondents, in the facts and circumstances of the case, therefore, this O.A. on the question of crossing of the E.B. w.e.f. 1.12.1988 is clearly barred by the principles of res judicata as well as limitation as the O.A. has been filed only on 21.7.1995.

7. Apart from the above, the respondents have submitted in their reply that after the decision was taken not to treat the remarks in the Confidential Report of 1987 as adverse, the DPC had considered the case for crossing Efficiency Bar w.e.f. 1.12.1988 and recommended that he was not fit to cross the Efficiency Bar at that stage.

8. I have also considered the cases relied upon by the applicant in Sarath Chandra Tripathi Vs. Union of India (ATC 1992 Vol. 20, page 171) and Chitranjan Singh Vs. Union of India (ATR 1990(1) CAT 337) as well as the other judgements relied upon by the learned counsel for the respondents, namely, Administrator of Dadra & Nagar, Haveli Vs. H.P. Vora (ATC 1993 (23) SC 672) and Haryana Warehousing and Anr. Vs. Ram Avtar (SCC 1996(2) 98).

9. In view of the above facts and circumstances, I am of the view that this case is clearly barred by the principles of res judicata/constructive res judicata as well as limitation. In this view of the matter, there will be no necessity to look into the other aspects of the case. I find no merit in the application and it is accordingly dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'