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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A. No. 2254/95

New Delhi : this the 27th day of November, 1995.
HON'BLE MR. S. R. ADIGE MEMBER (A).

HON'BLE DR. A. VEDA VALLI, MEMBER (J).

Manbir Singh s/o Shri Bishan Singh
Rawat working as Clerk at 4H/3H-
Sub Division, H Division, DIZ Area,
Sector-I, Gole Market,
New Delhi

.....Applicant

(By Advocate: Shri S. M. Garg)

Versus

1. Union of India
through Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-1

2. The Executive Engineer,
H Division,
4/6, Pandit Pant Marg,
New Delhi

.....Respondents

(By Advocate: Shri B. Lall)

JUDGMENT

BY HON'BLE MR. S. R. ADIGE MEMBER (A)

The applicant seeks regularisation as
Clerk and pay as such from the date of his
initial appointment and atleast after 7.3.89
together with consequential benefits.

2. The applicant has himself admitted in para 4
of the OA that he
along with one more similarly placed employee
had filed a Writ petition (C) No. 611/1988 before
the Hon'ble Supreme Court seeking the relief of
salary for the post of Clerk and regularisation
which was dismissed. The applicant contends that
as the dismissal order was in limine, and not
on merit, the present OA is not barred by Res-
judicata. In this connection, he placed reliance

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on the Hon'ble Supreme Court Ruling in Hoshnak Singh Vs. UOI & Ors- 1979(3) SCC 135. In that case where the first petition under Article 226 of the Constitution was dismissed in limine without passing a speaking order by the Hon'ble High Court and subsequent petition before the said Court was preferred after exhausting alternative remedy of appeal or revision, it was held that the same in the facts of that case would not be barred by res judicata, the cause of action in the two cases being different and furthermore in view of the fact that the relief claimed in the first petition, which was for cancellation of his permanent settlement rights, was different from the relief claimed in the second petition, namely the prayer for cash compensation for acquisition of his land by the Govt.

3. Thus on facts the judgment in Hoshnak Singh's case (Supra) cited by the applicant is distinguishable from the present one before us, because in the present case, not only was there no alternative remedy of appeal or revision but, the cause of action is the same, and the relief claimed, namely regularisation as Clerk and grant of pay as such with consequential benefits is also the same. Moreover, the aforesaid W.P(C) No.611/88, it is noticed, was dismissed by the Hon'ble Supreme Court after hearing counsel for both the parties, during the preliminary hearing by their order dated 7.3.1989 (Annexure-III to the applicant's affidavit dated 20.9.96).

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Hence the judgment in Hoshnak Singh's case (Supra) does not help the applicant and we hold that the OA is squarely hit by res judicata. Furthermore we find that the OA is hit by limitation under Section 21 of the A.T. Act, 1985 in as much as the applicant himself claimed the salary as Clerk at least after 7.3.39 while the OA was filed on 21.11.95.

4. The OA therefore warrants no interference and is dismissed. No costs.

A Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

M/Chg
(S. R. ADIGE)
MEMBER (A)

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