

Central Administrative Tribunal  
Principal Bench

(22)

O.A. No. 996 of 1995

New Delhi, dated this the 5<sup>th</sup> day of April, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)  
Hon'ble Mr. T.N. Bhat, Member (J)

Shri I.S. Bhama,  
A-1/244, Paschim Vihar,  
New Delhi-110063.

... Applicant

(By Advocate: Shri B.B. Rawal)

Versus

Union of India through  
the Secretary,  
Ministry of Information & Broadcasting,  
Shastri Bhawan, New Delhi. ... Respondents

(By Advocate: Shri R.V. Sinha)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant seeks a direction to respondents to place him above Shri R.S. Bhole and below Shri J.D. Baveja as Asst. Director, AIR with all consequential benefits including notional promotion w.e.f. 20.3.71 and further promotions to the post of SD (SG), DDG, ADG and DG vis-a-vis his juniors.

2. Applicant had earlier filed O.A. Nos. 761/86, 203/88 and 2339/88. All three O.As were disposed of after hearing both parties with certain clarifications vide order dated 24.9.91. Against that order applicant filed CCP No. 112/93 in O.A. No. 76/86 which was disposed of with certain directions after hearing both parties by order dated 5.4.94. Thereupon applicant filed yet another CCP in O.A. No. 761/86 bearing No. 198/94. That CCP was dismissed after hearing both parties by order dated 6.10.94 in which the Bench held that it was satisfied that the Tribunal's

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order dated 24.9.91 as clarified by order dated 5.4.94 in CCP No. 112/93 had been complied with and respondents were not guilty of contempt of court. In its order dated 6.10.94 the Bench inter alia also addressed itself to applicant's claim to be assigned seniority above Shri R.S. Bhole and held thus:

"The ld. counsel challenged the assignment of seniority contained in Govt. of India's order dated 1.10.93. By this order, the applicant has been assigned seniority below Shri R.S. Bhole and above Shri V.S.N. Camphor. According to the ld. counsel, the applicant should have been placed above Shri Bhole. The submission of the ld. counsel cannot be sustained. It is mentioned in the Government's order itself that Shri Bhole was the last direct recruit recommended for appointment as Asst. Station Director in the year 1965. From the emphasised portion in the Tribunal's judgment dated 24.9.91, it is apparent that the applicant was not entitled to claim seniority over direct recruits corresponding to the year to which the applicant was allotted. The applicant was allotted to the year 1965. Shri Bhole is a direct recruit of that year. Accordingly, Shri Bhole was entitled to rank senior to the applicant in terms of Tribunal's judgment in the original application. The ld. counsel for the applicant submitted that Shri Bhole was recruited against the reserved vacancy and, therefore, he cannot rank senior to the applicant. There is no observation in the judgment of the Tribunal that reserved category candidates were to be differently treated. The submission of the ld. counsel is entirely misconceived and is overruled."

3. Against that order dated 6.10.94 applicant approached the Hon'ble Supreme Court who after hearing, dismissed the challenge on 20.3.95 with the following order.

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"The only scope of these matters is to see whether any interference is required to be made in the Tribunal's order dismissing the Contempt Petition taking the view that the direction given by it has been complied with. In view of the details given in the supplementary affidavit filed on behalf of the respondents, we are satisfied that no interference is called for the Tribunal's order which takes the view that there is no disobedience of the Tribunal's order. It need hardly be mentioned that the extent of the relief to which the petitioner may be entitled is not a matter for examination in the present cases wherein the limited scope is of a verification about the compliance of the direction given by the Tribunal. The observations made herein are read limited to this extent.

The SLP and WP are dismissed with these observations."

4. We have heard applicant's counsel Shri Rawal and respondents' counsel Shri Sinha.

5. Shri Rawal denies respondents' preliminary objections that the O.A. is hit by Res Judicata and places reliance on the Hon'ble Supreme Court's order dated 13.1.82 in WP No. 1337/79 Ex Captain A.K. Sawhney Vs. UOI & Ors. which he contends fully covers applicant's case. He asserts that had this order dated 13.1.82 been noticed at the appropriate time, his prayer for placement above Shri Bhole would have been allowed on merits and alleges that although respondents were aware of this order dated 13.1.82 they intentionally did not refer to it, with malafide motives. He has also contended that <sup>as</sup> the aforesaid order dated 13.1.82 was not noticed, when the matter was before the Tribunal and the Hon'ble Supreme Court, their orders must be treated as per incurium, and it is still open to this Bench to adjudicate on

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applicant's claim to be placed in the seniority list above Shri Bhole with consequential benefits, on merits, more particularly as the Tribunal had rejected those claims by order dated 6.10.94 not in an O.A. but in a C.P. which was limited only to ensuring compliance of earlier orders.

6. We find ourselves unable to accept these arguments advanced by Shri Rawal. The Bench in its order dated 6.10.94 in CCP No. 198/94 inter alia addressed itself to applicant's claim to be placed in the seniority list above Shri Bhole which is precisely the claim in the present O.A. also, and decisively rejected the same. It was open to applicant to have cited the ruling in Sawhney's case (Supra) when the Bench heard C.P. No. 198/94, or sought for a review of the order dated 6.10.94 by citing that ruling but he did not do so. We as a Coordinate Bench are bound by that finding in order dated 6.10.94 notwithstanding the fact that it was recorded in a C.P. More importantly applicant assailed the Tribunal's order dated 6.10.94 in the Hon'ble Supreme Court, but that challenge was also dismissed. It was open to applicant to have cited the ruling in Sawhney's case (Supra) when the matter came up for hearing before the Hon'ble Supreme Court, or prayed for a review of the Hon'ble Supreme Court's order dated 20.3.95 by citing that ruling, but nothing has been shown to establish that applicant did so. We are bound absolutely by the Hon'ble Supreme Court's order dated 20.3.95 and accepting Shri Rawal's

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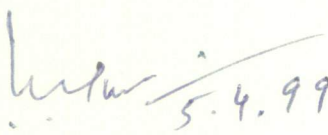


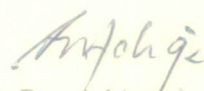
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contentions would imply our reviewing the Apex Court's order dated 20.3.95 dismissing applicant's challenge to the Tribunal's order dated 6.10.94 whereby his claim for being placed above Shri Bhole in the seniority list was considered and rejected, which is precisely the claim advanced in the present O.A. also.

7. In the result the preliminary objection raised by respondents that the O.A. is barred by Res Judicata is sustained and the O.A. is dismissed. No costs.

8. Before parting with the case, a copy of respondents' order dated 4.12.98, handed over by Shri Sinha across the bar during hearing with copy to Shri Rawal, is taken on record.

  
(T.N. Bhat)  
Member (J)

  
(S.R. Adige)  
Vice Chairman (A)

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