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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.998/1995

New Delhi, this 13th day of January, 2000

Hon'ble Shri Justice Ashok Agarwal
Hon'ble Smt. Shanta Shastry, Member(A)

Dharampal
UDC, Estt.VII, Central Water Commission
Sewa Bhavan
New Delhi-66

.. Applicant

(By applicant in person)

versus

Union of India, through
Secretary
Ministry of Water Resources
Shram Shanti Bhavan
New Delhi

.. Respondent

(By Shri D.S. Mehandru, Advocate)

ORDER

Hon'ble Smt. Shanta Shastry

The applicant filed the OA seeking a direction to Respondent No.1 to allow him to cross Efficiency Bar (EB for short) with effect from 1.2.89 with 24% interest on the withheld amount of increment since 1.2.89 till date of payment. He has now filed the amended OA. The prayers in the amended OA are as under:

- (i) Direct the respondent to redress his grievance within one month by hearing him and to refund all withheld payments and excess deductions alongwith 24% interest;
- (ii) To quash the impugned notification dated 25th August, 1986;
- (iii) Direct the respondents to produce documents/notification vide which respondent or Mr.J.L.Chugh, Under Secretary is authorised by the President under Section 23(1) CAT Act to appoint an advocate to defend his own act/conduct at the cost of public fund against a low paid employee and denied to the applicant;

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- (iv) Direct the respondent to promote the applicant to replace Mr. Mansa Ram, ex-cadre.

3. The applicant was initially appointed as LDC in the Ministry of Steel Mines & Metal on ad hoc basis with effect from 15.12.64. Subsequently, on his own request he was transferred to Central Water & Power Commission (now Central Water Commission - CWC for short) with effect from 15.2.68. He was promoted as UDC in the year 1972 and he belongs to the field cadre of subordinate cadre of CWC. He was on deputation with the Pay & Accounts Office, Ministry of Water Resources from 1.7.84 till 30.6.87 and on his repatriation was posted to North Eastern Investigating Circle, CWC, Shillong vide Office Order dated 9.3.87. He joined the new place of posting only on 26.12.88.

4. Applicant's first contention is that he was due for crossing EB with effect from 1.2.89 but the DPC considered him unfit and did not allow to cross the EB. He was allowed to cross the EB only with effect from 1.2.91. He represented against this and has requested to review the case. According to him, no adverse remarks have been communicated to him in respect of any ACR, which was not taken into consideration by the DPC while taking a decision in regard to crossing EB with effect from 1.2.89.

5. According to the applicant, unauthorised government employee or a 3rd party should not have been allowed to file counter on behalf of any respondent or government employee through his advocate. He is sore that while the Desk Officer in the Ministry of Water Resources was

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allowed to engage an advocate, he himself was denied any legal help. His further grievance is that since 1972 till 9.7.93 he was never posted in the Head Office of the Ministry of Water Resources as in the case of Shri Mansa Ram. According to him there is no subordinate office of CWC.

6. Respondent withheld the payment of duty pay and allowances amounting to Rs.52,123 minus Rs.7454 for the period from 1.7.87 to 25.12.87 which should have been refunded to him with 24% interest to compensate for the loss. Against a balance amount of Rs.44549, only Rs.8633 was disbursed to him on 3.7.89. Remaining payment plus excess deduction alongwith interest have not been sanctioned and paid to him till the date of filing of the OA. He is entitled to the same and should be paid accordingly. He further urges that he was due for promotion since 1977 to the post of Assistant against ministerial post of CWC Head Office as his seniority was maintained by that office but he was not promoted, instead one Shri Mansa Ram, UDC was promoted against the post of CWC ministerial.

7. The respondent in his counter has mentioned that in the original application filed by the applicant, respondent had taken objection to impleading the officers by name who had retired from government service and not to address the respondents by name. This Tribunal had directed the applicant to amend the OA to change memo of parties. However, applicant has totally

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changed the earlier OA which was focussed only on crossing of EB by the applicant from 1.2.89. According to the respondent, amended OA is also hit by the principles of resjudicata and therefore is liable to be dismissed on this ground alone.

8. Respondent submits in the counter that the applicant belongs to ministerial cadre of subordinate office of CWC and has compared his promotional prospects with those belonging to other ministerial cadres of Central Secretariat Clerical Services and Central Secretariat Service. There is no provision for crossing cadre for promotion to the post of other cadres.

9. Respondent has averred that all the reliefs sought by the applicant have been considered earlier in OA No.715/88, CCP No.78/90, CCP No.93/94 in CCP No.78/90 in OA No.715/88, OA No.1689/94 with OA 1859/93 and OA 2426/94 and have been adjudicated upon by the decisions of this Tribunal dated 5.5.93, 7.6.94, 8.3.95 and 22.8.95. According to the respondent, therefore, nothing survives in the present OA and it should be dismissed.

10. The applicant has merely repeated his arguments.

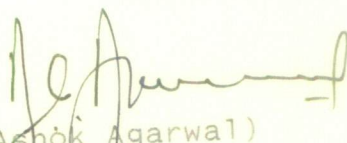
11. We have considered the pleadings of the applicant and the various documents produced by him as well as the counter reply filed by the respondent. We have also perused various judgements of this Tribunal as cited by

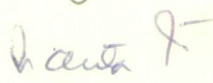
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the respondent. We are satisfied that the prayer of the applicant in the present OA have been considered fully and decided in OA Nos.1689/94 with 1859/93 and again in OA No. 2426/94 on 8.3.95 and 22.8.95, respectively. The applicant cannot be allowed to reagitate the same issues again. There is no fresh point.

12. We, therefore, do not find any merit in the present OA. It is a clear case of resjudicata. The OA is accordingly dismissed. No costs.


(Ashok Agarwal)
Chairman


(Smt. Shanta Shastri)
Member(A)

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