

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1064/95

New Delhi, this is 25th day of July 1996

Hon'ble Mr. A.V. Haridasan, Vice Chairman(J)

Hon'ble Mr K. Muthukumar, Member(A)

Sh. N.J. Singh
R/o 24/63-B, Tilak Nagar,
New Delhi-110018.Applicant
(By Advocate: Sh.D.S.Mehendru)

VERSUS

1. Secretary to the Govt. of India
& Director General C.S.I.R.,
Rafi Marg, New Delhi.
2. Joint Secretary(Admn),
C.S.I.R.,
Rafi Marg, New Delhi.
3. Deputy Secretary (C.O.),
C.S.I.R.,
Rafi Marg, New Delhi.
4. P.V.V.Satyananarayan,
Deputy Secretary,
C.S.I.R.,
Service to be effected through,
Joint Secretary(Admn),
C.S.I.R.,
Rafi Marg, New DelhiRespondents
(By Advocate: Sh.Manoj Chatterjee)

ORDER (Oral)

Hon'ble Mr A. V. Haridasan, VC(J)

The applicant who retired from service on
30.11.1992, has filed this application under Section
19 of the Administrative Tribunals Act,1985 praying

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for the following reliefs:-

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- "(a) allow the present OA with costs;
- (b) direct the respondents to step up the pay of the applicant at par with respondent no.4 in Grade of S.O. w.e.f.13.3.81 to 23.6.86 and further in Grade of Under Secretary w.e.f. 18.8.86 the date from which the applicant became regular to the said post.
- (c) quash the order of recovery dated 11.3.93 whereby the amount of Rs.6951.10 was ordered to be recovered from the applicant & also order dt. 26.5.94.
- (d) direct the respondents to pay all consequential benefits to which the applicant may become entitled to after such stepping up. ... "

2. The respondents have after receiving notice in the OA, filed a reply opposing the admission of this application on the ground of limitation as also on the ground that the claim made by the applicant has been barred by res-judicata in view of the decision in OA.987/95. When the application came up for hearing on admission, since the applicant states that he would argue the case himself and he does not need assistance of the counsel, we have heard him at considerable length. There are two prayers in this application - one to step up the pay of the applicant at par with respondent no.4 in the grade of S.O. w.e.f. 13.3.81 to 23.6.86 and further in w.e.f. the grade of Under Secretary/18.8.86, the date on

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which the applicant became regular to the said post. Impugning ~~that~~ the action on the part of the respondents in promoting the respondent No.4 and another person, the applicant had filed an application (OA.No.987/95). In that application the applicant had stated that of the two officers promoted as Under Secretary w.e.f. 1.1.1986, he was senior to one of them and, therefore, the promotion was unsustainable. That application was rejected under Section 19(3) of the Administrative Tribunals Act, 1985 finding that the claim of the applicant was barred by limitation. The same is the situation here also. The applicant stated that in the earlier OA he challenged the promotion of another person who was not the respondent in this case and, therefore, the cause of action is different in this case. If respondent No.4 was promoted ahead of the applicant and if he had a grievance against that and if he had chosen not to make the issue before the Tribunal at that time, then his claim is barred by the principles of constructive res-judicata because this was a claim which he had chosen not to enforce at the appropriate time. Further, regarding the claim to have his pay stepped up on par with the so called junior respondent No.4, from the pleadings in this case and material placed on record it is abundantly

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clear that the respondent No.4 was promoted earlier than the applicant and had earned increment in the promoted post and, therefore, he became entitled to higher fixation of pay though he was junior to the applicant in the entry grade.

3. Now coming to the next prayer of quashing the order dated 11.3.1993, we find that the applicant has not filed the application within a period of one year from the date of receipt of a copy of the said order. After receipt of the copy of the order, the applicant has not made any representation against that. Therefore, this claim also does not lie. As regards the order at Annexure A-2 dated 26.5.1994, the applicant states that since his original representation dated 28.8.1986 was pending with the respondents till that date, i.e. 26.5.1994 when the representation was disposed of by them, the cause of action arose to the applicant from that date only and hence the OA is within limitation. The order dated 26.5.1994 (Annexure A-2) is only a reiteration of the decision taken and communicated to the applicant on 13.5.1993 and also on 29.3.1993. It has been held by the Hon'ble Supreme Court in S. S. Rathore Vs UOI (AIR 1990 SC 10) that repeated unsuccessful

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representations does not revive the time barred cause of action.

5. In the result, we find that the OA is totally barred by limitation as also on account of principles of constructive res-judicata and, therefore, the same is rejected under Section 19(3) of the Administrative Tribunals Act, 1985. There is no order as to costs.


(K. Muthukumar)
Member (A)


(A. V. Haridasan)
Vice Chairman (J)

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