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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA NO. 1735/97

New Delhi, this the 24<sup>th</sup> day of July, 1998

Hon'ble Shri T. N. Bhat, Member (J)  
Hon'ble Shri S.P. Riswas, Member(A)

D.R. Kapila  
r/o A-179, Dayanand Colony,  
Lajpat Nagar,  
New Delhi.

...Applicant

By Advocate: Shri R.N. Chawla

Versus

Govt. of N.C.T. of Delhi through

1. Chief Secretary,  
5, Sham Nath Marg,  
Delhi.
2. The Secretary,  
Department of Social Welfare,  
Government of Delhi,  
5-Sham Nath Marg,  
Delhi.
3. Director,  
Department of Social Welfare,  
Government of Delhi,  
5-Sham Nath Marg,  
Delhi.
4. Joint Director (Admn)  
Department of Social Welfare,  
No.1-Kasturba Gandhi Marg,  
New Delhi.

...Respondents

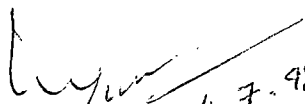
By Advocate : Shri Rajinder Pandita

O R D E R

Hon'ble Shri T.N. Bhat -

With the consent of the learned counsel for the parties we have heard their arguments for final disposal of the O.A. at the admission stage itself. We have also perused the material on record.

2. The applicant, who was working as Deputy Superintendent in Social Welfare Department, Govt. of

  
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N.C.T. Delhi, submitted a written request on 6.9.1993 in the form of an application seeking voluntary retirement. According to the Rules in force the applicant's request was required to be accepted or rejected within a specified time. However, the respondents did not pass any order on the applicant's application. Instead, a chargesheet was served upon the applicant. The applicant approached the Tribunal by way of OA-891/96. That OA was partly allowed by this Tribunal by the judgement order dated 9.1.1997 and the order of the respondents dated 15.2.95 treating the period between 1.8.1993 to 6.9.1993 as absence from duty was set aside and the respondents were directed to treat the aforesaid period as leave of the kind due. There was a further direction to the respondents to treat the applicant to be in continued service till the date of voluntary retirement i.e. 1.4.1994 and to disburse to him full pay and allowance treating the period as spent on duty.

3. It may be stated here that before the filing of that O.A. the chargesheet against the applicant had been dropped by the order dated 15.2.1995 but while doing so the respondents had ordered that the period of unauthorised absence from 1.8.1993 to the date of chargesheet excepting the period from 1.9.1993 to 6.9.1993 could not be treated as spent on duty and for that period the applicant would not be entitled to any salary. While partly allowing the O.A. the Tribunal upheld the order dated 15.2.1995 so far as that order accepted the applicant's request for voluntary retirement w.e.f. 1.4.1994. This was done on a specific concession of the applicant and his counsel that they would restrict the claim in the OA only to challenge that part of the impugned

*by...*

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order dated 15.2.1995 which says that the period between 1.8.1993 till date except 1.9.1993 to 6.9.1993 shall be treated as leave of the kind due.

4. In view of the above circumstances it really surprises us to find that in the instant OA the applicant has assailed the same order dated 15.2.1995 so far as it accepted the applicant's request for voluntary retirement retrospectively from 1.4.1994. Applicant is claiming salary from 1.4.1994 to 15.2.1995 i.e. the date on which the departmental enquiry against the applicant was dropped and his request for voluntary retirement was accepted but from a back date. When we pointed out to the learned counsel for the applicant as to how the instant OA is maintainable when this part of the claim had been abandoned by the applicant and his counsel while making submission in OA No. 891/96, the learned counsel for the applicant took the plea that since this part of the relief was still under consideration of the respondents at the relevant time the applicant had thought it fit not to press this claim in the earlier OA and that, therefore, the principle of res judicata would not apply to this claim. We are afraid, this contention cannot be accepted for the simple reason that this was quite clearly one of the reliefs claimed by the applicants in the earlier OA in which the applicant had assailed the order dated 15.2.1995. The aforesaid order of 1995 specifically mentioned the fact that the applicant's request for voluntary retirement is accepted w.e.f. 1.4.1994. We have summoned from the records the file of OA No. 891/96 and on going through para 8 of that OA we find that the applicant had prayed for the relief that the acceptance of the voluntary retirement

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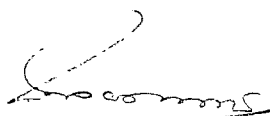
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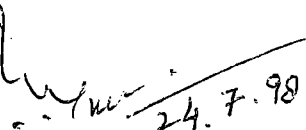
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notice be declared illegal and malafide and that all consequential reliefs with compensation and interest may be granted to the applicant. We further notice that while abandoning this part of the prayer the applicant never prayed for a liberty being granted to him to assail that part of the impugned order by filing a separate OA later. The Tribunal also, in the operative part of the judgement, specifically sustained the order dated 15.2.1995 to the extent it accepted the applicant's request for voluntary retirement w.e.f. 1.4.1994. That being so the applicant cannot now be heard to say that the cause of action for filing a fresh OA in respect of that relief still survives to the applicant.

5. Learned counsel for the applicant sought to rely upon the judgement of the Apex Court in K.P. Gupta v. Controller of Printing & Stationery, reported in AIR 1996 (SC) 408. We have gone through that judgement and do not find anything in it that could be of some help to the applicant. That case related to the question as to whether the Central Administrative Tribunal would have jurisdiction to entertain a claim under the Payment of Wages Act.

8. In view of what has been held and discussed above, we hold that this OA is not maintainable, being hit by res judicata. The OA is accordingly dismissed, leaving the parties to bear their own costs.

  
(S.P. Biswas)  
Member (A)

  
24.7.98.  
(T. N. Bhat)  
Member (J)