

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Review Application No.22 of 1998
(in Original Application No.1138 of 1997)

New Delhi, this the 22nd day of April, 1998 (12)

Hon'ble Mr. T.N.Bhat, Member (Judicial)
Hon'ble Mr. N. Sahu, Member(Admnv)

Shri P.N.Malhotra, Ex Stores
Superintendent (No.6955147), group VI,
COD, Agra Resident of 11/73,
CHILLIPARA, SHAHGANG, AGRA (U.P.) - APPLICANT

(By Advocate Shri K.N.Rai)

Versus

1. Director General of Ordnance Service, Master General of Ordnance Branch, Army Headquarters, New Delhi-11
2. Officer Incharge, Sena Ayudh Corps Abhilekh Karyala, Army Ordnance Corps Record P.O.Box No.3, Trimugherry, Post Secindrabad-500015.
3. The Administrative Officer, COD Agra (U.P.), C/o Commdt COD, Agra (U.P.) - RESPONDENTS

O R D E R

By Mr. T.N.Bhat, Member(Judicial) -

Heard Shri K.N.Rai, learned counsel for the review-applicant.

2. The only ground agitated in the review application is that while disposing of the earlier Original Application (in short 'O.A.') the Tribunal had not given any finding on some of the grounds which had specifically been raised in the O.A. It is further contended that while disposing of the O.A. the Tribunal had stated that there was no need to

A. Bhat

W. S. Sahu

advert to the other grounds and had restricted the discussion to only one of the grounds viz. applicability of Article 311 of the Constitution of India.

being O.A. 1138/97,

3. In the present O.A. which has been disposed of by an order dated 10.11.1997, the Tribunal held that the O.A. was hit by the principles of constructive res judicata as the applicant in the O.A. had failed to specifically raise the question in the Civil Appeal or the Review filed earlier before the Apex Court and it should be deemed that those grounds also have been rejected.

4. We have gone through the detailed judgment of the Hon'ble Supreme Court in the Civil Appeal filed by the respondents in the earlier O.A. and find that even the Apex Court has held that though several grounds were raised in the Original Application filed by the respondent in the Civil Appeal the only point urged by his counsel at the time of argument was the one relating to inapplicability of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as the '1965 Rules'). It needs to be mentioned here that admittedly, the 1965 Rules were held to be inapplicable to the applicant on the ground that he was only a civilian defence employee and was being paid out of the defence estimates. It was further held by the Tribunal, and

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14

affirmed by the Hon'ble Apex Court, that Article 311 of the Constitution of India was not attracted in the case.

5. In the circumstances discussed above, it is reasonable to infer that the respondent in the Civil Appeal, who is the review-applicant herein, had not raised any plea relating to the additional grounds even before the Apex Court. It is stated by the learned counsel for the review-applicant that he had filed a review application before the Apex Court as well, which came to be dismissed. Considering all these facts, we are convinced that the order sought to be reviewed is perfectly correct and there is no error which warrants exercise of powers of review in the instant case. The only remedy available to the review-applicant was to raise those additional grounds while making submissions in the Civil Appeal filed by the opposite party or in the Review Application filed against the judgment of the Hon'ble Apex Court. The matter having been finally settled by the judgment of the Apex Court both in the Civil Appeal as well as in the Review Application, it was not open to the review-applicant to file a fresh O.A. on the same ground. Accordingly, we must affirm the earlier order wherein it has been held that the O.A. is hit by the principle of constructive res judicata. The mere fact that those grounds were not actually decided nor was any finding given is not sufficient to hold that the principle of constructive res judicata would not be applicable.

(5)

6. In view of the above, we find no merit in this review application which is dismissed at the preliminary hearing stage itself.

Narasimha

(N. Sahu)
Member (Admnv)

2-4-98
(T.N.Bhat)
Member (Judicial)

rkv.

08