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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A. No. 2254/94

New Delhi: this the 3rd day of July, 1997.

HON'BLE MR.S.R.ADIGE MEMBER (A).

HON'BLE DR.A.VEDAVALLI MEMBER (J).

Shri D.N.Sharma,
S/o Late Pt. Lachman Das,
R/o 32, Engineers Enclave,
Pitampura,
Delhi - 110034

.... Applicant

(In person)

Versus

Union of India through

1. Secretary,
Ministry of Defence,
South Block,
New Delhi- 110011.

2. Engineer-In-Chief,
Army Headquarters,
Kashmir House, Rajai Marg,
New Delhi- 110011.

3. Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi - 110011.

.... Respondents.

(By Advocate: Shri V.S.R.Krishna).

JUDGMENT

BY HON'BLE MR.S.R.ADIGE MEMBER (A).

In the present OA, the applicant seeks the full benefits of past service from 1.4.58 to 23.4.62 rendered by him in other Central Govt. Departments, and has inter alia prayed for retrospective promotions to the grades of Executive Engineer w.e.f. 24.4.64; Superintending Engineer w.e.f. 24.4.71; Addl. Chief Engineer w.e.f. 24.4.73; Chief Engineer Level II w.e.f. 24.4.77; Chief Engineer Level I w.e.f. 24.4.78; Addl. Director General w.e.f. 3.2.88/27.8.88, Certain alternative dates for these retrospective

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promotions have also been suggested. Arrears of salary on account of such promotions along with 18% interest thereon till the date of payment from the date of accrual has also been sought.

2. We note that applicant had earlier filed O.A.No.488/91 before CAT PB which was dismissed on merits by detailed judgment dated 10.4.92 after completion of pleadings and hearing both parties. In that OA applicant had prayed identical reliefs, namely retrospective promotions as;

- i) Executive Engineer w.e.f. 24.4.64;
- ii) Superintending Engineer w.e.f. 24.4.71
- iii) Addl. Chief Engineer w.e.f. 24.4.73.
- iv) Chief Engineer Level II w.e.f. 24.4.77
- v) Chief Engineer Level I w.e.f. 24.4.78.
- vi) Addl. Director General w.e.f. 1.1.86.
- vii) Arrears of salary on account of such promotions along with interest @ 18% p.a.

3. In that judgment, it was noted that applicant was recruited as Asstt. Executive Engineer in MES upon his selection by UPSC through combined Central Engineer Services Exam. 1960 and he joined as such on 24.4.62. Not being satisfied with his placement in the seniority list prepared in August, 1963 and rejection by respondents of his representation, he had filed a Civil Suit which was dismissed by the Trial Court and appeals to the District Judge and High Court were likewise rejected. Thereupon applicant filed Civil Appeal No. 3324/89 in Hon'ble Supreme Court who by their judgment dated 8.8.89 directed that applicant's seniority position be shown below the recruits of

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1960 and above those of 1961 and he may be bracketed with one who had been assigned that position and an appropriate rectification be made in the 1967 seniority list. Respondents were also directed to consider applicant's entitlement to promotion on the basis of this position within 4 months. The Tribunal further noted that thereafter applicant had filed CCP No.278/90 in Hon'ble Supreme Court against respondents alleging non-implementation of their judgment dated 8.8.89 in letter and spirit which was disposed of by the Hon'ble Supreme Court on 11.2.91 after hearing applicant's counsel, wherein they held that they were satisfied that no cause for contempt was made out, but applicant's grievances, if any, may be examined by the appropriate forum, while it was open to him to move.

4. The Tribunal noted that it was in the background that OA No.488/91 had been filed in which his case was that despite Hon'ble Supreme Court's judgment dated 8.8.89 respondents have not given him due promotions which he was eligible on account of his placement in the 1967 Seniority List at Sl.No.114A. The Tribunal further noted applicant's plea was that before his appointment as AEE, he had worked as Design Assistant in CJC from 1.4.58 to 28.1.60 and later as Lecturer in Delhi Polytechnic from 28.1.60 to 24.4.62 and in view of his experience in these posts he had been granted 3 advance increments in the post of AEE which should have

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been given effect to in 1964 while carrying out promotions against yearwise vacancies as against clubbing of the same and promoting him as E.E. in 1968 when he was promoted as such, and if that had been done it would have affected his subsequent promotions as Superintending Engineer, Addl. Chief Engineer, Chief Engineer etc. The Tribunal noted that applicant's grievance was that though his seniority as A.E.E. had been set right by giving him a place at Sl.No.114 A instead of 483 which was originally granted, this had not been done properly in subsequent promotional posts or in the seniority list of the said promotions.

5. The Tribunal in its judgment dated 10.4.92 rejected applicant's contentions and dismissed the OA on the ground that the two posts the benefit of which applicant claimed for being considered for higher promotion posts from Ex.Engineer onwards were Class II posts and therefore by no means equivalent to those posts, and the benefit which applicant deserved had already been granted to him by way of 3 advance increments. While dismissing the OA the Tribunal noted that this point had also been pressed by applicant in the CCP moved by him against respondents for not properly implementing the Hon'ble Supreme Court's judgment dated 8.8.89 but the same had been rejected by the Hon'ble Supreme

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Court's judgment dated 8.8.89 but the same had been rejected by the Hon'ble Supreme Court holding that no case of contempt was made out.

6. We note that against that judgment dated 10.4.92 (supra) applicant filed SLP No. 1480/92 in Hon'ble Supreme Court on which, by order dated 17.12.92 notice was issued to respondents to show cause why applicant's earlier service in the Govt. should not be counted for pension and consequential benefits like arrears. Thereupon by order dated 28.3.94 in the presence of both parties the said SLP was dismissed.

7. A recital of the above facts makes it clear that the relief sought for in the present OA is not different from the reliefs sought for in OA No. 488 of 1991 against which SLP No. 14890/92 was dismissed by the Hon'ble Supreme Court by their order dated 17.12.92. Clearly therefore the present OA is hit by Res-Judicata, as defined under section 11 CPC. The mere fact that certain alternative dates for the retrospective promotions have been suggested, or that in the event retrospective promotions as prayed for were allowed, certain Govt. orders would have to be modified, does not change the legal position that the matter directly and substantially in issue before us in the present OA had been directly and substantially in issue before the CAT PB in O.A. No. 488/91 and also before the Hon'ble

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Supreme Court and under the circumstances we unequivocally hold that we are precluded from adjudicating upon this issue again.

8. Applicant, who argued this case in person, has contended that the present OA is not barred by Res Judicata as he has come to the Tribunal on a fresh cause of action which was not a part of OA 488/91. He has also cited certain rulings in this connection including Nand Kishore Vs. State of Punjab 1995(5) SCALE 582. We are unable to agree with this contention. Applicant has himself admitted in his written submissions dated 13.12.96 which are taken on record that respondents counted his past services from 1.4.58 to 23.4.62 for certain purposes by their order dated 27.10.92. If applicant was dissatisfied with that order, he should have challenged the same by taking all the grounds available to him at the time of hearing of SLP No. 14980/92 in Hon'ble Supreme Court on 17.12.92, in accordance with Order 2 Rule 2 O.P.C. The Hon'ble Supreme Court's order dated 17.12.92 has become final and it is not open to us to allow reopening of the issue. The ruling in Nand Kishore's case (*supra*) is not relevant to the facts of the present case, because no materials have been shown to us to establish that any fresh cause of action has accrued to applicant after the Hon'ble Supreme Court's order dated 17.12.92.

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9. Under the circumstance this DA is dismissed. No costs.

A. Velavalli
(DR. A. VELAVALLI)
MEMBER(J).

R. Radige
(S. R. RADIGE)
MEMBER(A).

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