

19.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 297/94

New Delhi, this the 21st October, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Subhash Chandra Malik,
A-210, Prashant Vihar,
Delhi.

... Applicant

(By Advocate: Shri G.K. Aggarwal)

Vs.

1. Union of India
through
Secretary,
Ministry of Urban Development,
Nirman Bhavan, New Delhi.

2. The Director General (Works)
Central Public Works Department,
Nirman Bhavan,
New Delhi.

3. Shri K.P. Ramakrishnan, EE (C)
Appropriate Authority, IT Office,
CGO Building, M.G. Road,
Church Gate, Bombay.

... Respondents

(By Advocate: Shri B. Lal)

O R D E R (URAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant is aggrieved by an order of the President dated 5.11.92 whereby the Assistant Engineers (Civil) were promoted on officiating basis as Executive Engineers (Civil) in the Central Engineering Service Group 'A' on adhoc basis informing the promotees that this adhoc promotion will not confer any right to claim regular appointment or seniority in the grade of Executive Engineer or for any other benefit of regular promotion.

(b)

He has prayed a direction to the respondents to consider the applicant for promotion for the grade of Assistant Engineer(Civil) to the next higher grade of Executive Engineer(Civil) in the batch of promotees shown in the impugned Annexure A-1 on the basis of seniority-cum-fitness with bench-mark of 'good' and if he made the grade, promote him with effect from 5.11.92 with arrears and all other consequential benefits and the name of the applicant be included in the impugned order dated 5.11.92.

2. In para 7 of the application, the applicant has also made an averment that he has also filed as co-applicant O.A. 211/94 against the order dated 8.9.93 which grants adhoc promotion to the 34 Assistant Engineers and where principle of seniority has been violated claiming that applicant is senior to Respondent No.3 and 4 of that petition.

3. Incidentally the decision of O.A.211/94 was delivered by Principal Bench vide its order dated 15.7.94 holding that the adhoc promotions granted by the impugned order dated 8.9.93 is justified, fully consistent with the submissions made by the respondents in their counter-affidavit supported by the decision of Hon'ble Supreme Court in Contempt Petition 120 of 1992. It was further observed that the direction given by Hon'ble Supreme Court has not been violated. The O.A. was dismissed and the grievance of the applicant for inclusion of his name in the promotion list of Executive Engineer(Civil) on adhoc basis in the order dated 8.9.93 was disallowed.

4. Heard the learned counsel for the parties at length.

5. The present application was filed on 27.2.94. On notice the respondents filed the reply and have taken a preliminary objection in their counter that the present application is not maintainable in view of the fact that the applicant filed a Contempt Petition 367/93 in Civil Appeal No. 5363/90 before the Hon'ble Supreme Court on 30.11.93 on almost similar grounds which was dismissed on 3.1.94. It is further contended that the applicant alongwith another applicant T.K. Mazumdar filed O.A. 211/94 almost on the similar grounds and the impugned the subsequent order of Assistant Engineers to the post of Executive Engineers on adhoc basis and the said application at the time of filing this reply was pending before Principal Bench. Now the judgement of the said O.A. has been delivered as said above and the relief claimed by the applicant in that O.A. was disallowed.

6. We considered this application for admission but before making our mind we felt that the present proceedings may be barred by the principles of res judicata meaning thereby that when 'Res' has already been adjudicated upon it cannot be judicially reviewed second time. The learned counsel for the applicant in reply to a query advanced the arguments that this principle is not applicable in the present case because of (a) cause of action is different; (b) the parties are different and the applicant could not assail the proceedings of both the QPCs jointly in one application

because of bar of Rule 10 of Administrative Procedure Rules 1987. He also supplemented the arguments by the fact that the application cannot be said to be barred by the principles of res judicata and that if a limitation is available to an aggrieved party even though the grievance may be of earlier date is not debarred from assailing matter by separate application or proceedings having filed earlier another proceeding of a subsequent grievance, otherwise the grievance will remain unsatisfied. We have considered these arguments and we do find that there is a substance in the preliminary objection by the respondents because "it is the issue" which bars the subsequent adjudication of a matter for adjudication, the issue should be similar. If the issue in the subsequent proceedings or in a proceeding decided earlier have been finally adjudicated upon then in a pending proceedings, if the same issue arise and it has been decided between the same parties or parties claiming the same interest then the decision given will bar the fresh adjudication of the same issue. If the contention of the learned counsel is accepted then a person always be free to raise any issue at any time, at his own violation, modulating the pleadings in order to fight a test case. The ambit of principles of res judicata have been enlarged and the scope widened by various latest precedent that an issue which should ought to have been raised and has not been raised at the relevant time will also bar the adjudication in the subsequent proceedings.

7. The C.P.C., being not applicable, but Order 2 Rule 2 C.P.C. makes it obligatory on a person to file claim for the entire subsisting grievance and cannot partly assail the grievance without the leave of the Court. By ^{analogy} making this principle also applies here.

When the applicant filed the O.A. No. 211/94 he was already superceded by non inclusion in the promotional list of the Executive Engineer dated 5.11.92 and he preferred to assail his grievance only with respect to non inclusion in the promotional list of 8.9.93. It was open to the applicant, if the contention is accepted that the application would have been barred by plurality of relief to get both applications combined together and disposed of together by common judgement. If he has not chosen so then the judgement delivered in O.A. 211/94 appears to have been filed earlier, because the number of this O.A. 297/94, then in that case the judgement of that case will operate as a bar for fresh adjudication of the same issue i.e. the adhoc promotions were not according to the directions of the Hon'ble Supreme Court or the administrative instructions were not observed or the administrative instructions were violated.

8. The learned counsel for the applicant has also taken to decide O.A. 297/94 and highlighted paragraphs 22 and 25 of the judgement pointing out that there appears to be incoherence when both the paragraphs are read together. We are not on the point of testing the judgement. We have only to read it and apply if the applicant felt that there is some point in the judgement which needs reconsideration. It was open to him to go in another proceeding before the same Bench either by way of review or before the higher court by way of special appeal.

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9. The learned counsel for the applicant has also emphatically pressed that it is not necessary that the decision given in the earlier application i.e. O.A.211/94 may be agreed to by this Bench. Probably we are on another point? Whether we can decide this application a fresh in view of bar of res judicata? As held above the 'Res' once decided cannot be adjudicated again. The question of any reference to larger Bench or of taking any other opinion then taken by the Bench deciding O.A.211/94 does not arise.

10. This was a fit case where the cost could be imposed on the applicant. But the applicant's counsel reiterated that there was certain point for consideration also and the cost has not been pressed by the counsel for the respondents, so we are not imposing cost on the applicant which we have assessed as Rs.500/-. The application is dismissed, leaving parties to bear their cost.

Copy of the judgement in O.A.211/94 is placed on the ^{pink} ~~pink~~ file of this court.


(B.K. SINGH)
MEMBER(A)


J.P. SHARMA
MEMBER(J)

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