

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

DA 634/1994

New Delhi this the 11th of March, 1999.

Hon'ble Shri S.R. Adige, Vice Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

M.M.Mathur
S/O Late Shri K.S. Mathur,
R/O C-2/628, Lawrence Road,
Delhi-110035.

Joint Chief Departmental
Representative, Customs, Excise
and Gold (Control) Appellate
Tribunal, West Block 2, R.K.Puram,
New Delhi-110066

.. Applicant

(Present in person)

Versus

1. Union of India through the
Secretary to the Govt. of India,
Ministry of Commerce, Udyog Bhawan,
New Delhi.

2. Chairman-cum-Managing Director,
India Trade Promotion Organisation,
Pragati Maidan, New Delhi.
(Successor of Trade Development
Authority)

.. Respondents

(By Advocate Shri V.K. Rao)

ORDER

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant has filed this application praying that the respondents may be directed to grant him the pay scale of Rs 1800-2250 (pre-revised) during the time he had held the post of Resident Director in the office of the Trade Development Authority (TDA) at Tokyo from August, 1983 to August, 1987.

2. The applicant had filed an earlier application in the Tribunal (DA 303/90) in which he had sought, inter-alia, the following reliefs:-

(i) A declaration that the applicant is entitled to the pay scale of Rs. 1800-2250 (pre-revised) attached to the post of Resident Director held

by him in Tokyo from 21 August, 1983 to 28th August, 1987, and

(ii) A direction that the applicant be paid arrears of pay and allowances with interest from 21st August, 1983 to 28th August, 1987 consequent upon the grant of pay scale of Rs.1800-2250.

(59)

3. The Tribunal by order dated 17.7.90 agreed with the contentions of the respondents that in the absence of any notification issued by the Central Government u/s 14(2) of the Administrative Tribunals Act, 1985 bringing the DA within the jurisdiction of the Tribunal, the present application was not maintainable for want of jurisdiction. It was further observed that the applicant would, however, be at liberty to move appropriate forum and seek redressal of his grievance. The application was dismissed with the above observations. Against this order, the applicant filed RA 99/90 which was also disposed of by the Tribunal by order dated 30.8.91. In this order, the earlier order dated 17.7.90 was recalled, RA 99/90 was allowed and DA 303/90 was partly allowed by holding that the applicant was entitled to draw Foreign allowance. Against this order the applicant had filed SLP No.206/92 before the Supreme Court, the Supreme Court by order dated 19.8.92 disposed of the SLP as follows:-

"After learned counsel for the petitioner was heard for some time he prayed for permission to withdraw the SLP stating that the petitioner would seek relief from the appropriate authority to the extent not expressly granted by the Tribunal by making a claim for the same on the basis of the observations made by the Tribunal in the petitioner's favour.

The S.L.P. is dismissed as withdrawn."

4. The applicant contends vehemently that the present application is not barred by the principles of res-judicata. He also submits that the post of Resident Director was a promotional post according to the relevant rules Bye-laws on which he had been working in Tokyo office between 1983 to 1987. He claims that he is entitled to the higher pay scale of Rs.1800-2250 (pre-revised) which according to him the respondents had denied

3.

him by sending him on the same pay scale he was working i.e. Rs. 1500-1800 (pre-revised). He has referred to a number of judgements, copies placed on record. He has contended that as the earlier judgement of the Tribunal in OA 303/90 had not been disposed of on merits on the point he has agitated in the present application, there is no question of bar of the case on the principle of res-judicata. (See Sheodan Singh Vs. Daryao Kunwar (AIR 1966 SC 1332), Jewels of India and 2 others Vs. State and another (1997(32)E.L.T. 511(Del.)). He has also relied on certain observations of the Tribunal in OA 303/90, namely, that since he was an officer in the pay scale of Rs. 1500-1800 who was selected as Resident Director, he was entitled to the pay scale of Rs. 1800-2250 (pre-revised) and the respondents cannot deny him this pay with arrears due to him for the period from 21st August 1983 to 28th August, 1987. He has also relied on the judgement of the Full Bench of the Tribunal in K.K. Singh Vs. UOI & Ors. (OA 493/97 with connected cases) decided on 20.11.98 in which both of us (Hon'ble Shri S.R. Adige, Vice Chairman (A) and Smt. Lakshmi Swaminathan, Member (J) were also Members. His contention is that in the light of the recent judgement of the Full Bench, his present claim for higher pay scale as Resident Director from August, 1983 to August, 1987 should now be allowed, as the earlier judgement of the Tribunal in OA 303/90 was wrong and untenable.

5. The respondents in their reply have opposed the claim of the applicant on a number of grounds and we have also heard Shri V.K.Rao, learned counsel. One of the main grounds taken in opposition is that this application is not maintainable on the ground of res-judicata and secondly, that the order will amount to review of the order of the Supreme Court dated 19.8.92. He has also submitted that the applicant's representations dated 8.2.83, 14.2.83 and 24.3.83 have already been replied to by the respondents as far back as in April, 1983 and the contention of

the applicant to the contrary is, therefore, incorrect. The respondents have submitted that the applicant was posted as Resident Director in Tokyo Office by order dated 30.12.82, Memos dated 3.2.83 and dated 15.4.83. The applicant was then working on deputation as Deputy Merchandising Executive in the pay scale of Rs. 1500-1800 and he was posted in the same pay scale while posted abroad which he had accepted then and joined his duties in Tokyo on 21.8.83 till the end of the tenure in August, 1987. They have, therefore, submitted that in accordance with the terms and conditions of his posting to Tokyo Office, it was on a transfer basis and he had been duly informed that he would only draw same pay while posted there i.e. in the same pay scale of Rs. 1500-1800, and he had acquiesced in the terms and conditions and proceeded to Tokyo to join his duties. The respondents have submitted that, therefore, now he cannot claim higher pay scale as prayed for, and as the present OA is not maintainable the same may be dismissed.

6. After careful consideration of the contentions of the applicant together with the cases as well as those of the respondents and the documents on record, we find that we are unable to agree with the applicant's submissions. In the Tribunal's order dated 30.8.91 in RA 99/90 in OA 803/90, the Tribunal had concluded that the relief sought by the applicant in respect of the higher pay scale of Rs. 1800-2250, as applicable to the post of Resident Director in Tokyo could not be agitated before the Tribunal and this was accordingly not granted. He had thereafter filed SLP in the Supreme Court which was dismissed by order dated 19.8.92 as having been withdrawn. In another case filed in OA 2888/92 the Tribunal by order dated 5.8.97 has also noted these facts as regards the matter of jurisdiction regarding payment of foreign allowance to be paid by the Ministry of Commerce. The Supreme Court in the order dated 19.8.92 has noted the submissions made by the petitioner that he would seek relief

"from the appropriate authority to the extent not expressly granted by the Tribunal" by making a claim for the same on the basis of the observations made by the Tribunal in his favour. Admittedly he had made a representation on 17.9.92 to the Chairman, India Trade and Promotion Organisation (ITPO) which had succeeded TDP when it was dissolved on 31.12.1991) who had not agreed to his claim for higher pay scale. Thereafter he has filed this OA on 15.3.94, In the facts and circumstances of the case we find force in the submissions of the learned counsel for the respondents that granting the prayer in this OA would amount to a review of the Supreme Court order which will not only be illegal but most inappropriate for the Tribunal to do.

According to the applicant the judgement of the Tribunal in OA 303/90 is wrong and untenable on merits but at the same time we as a co ordinate Division Bench cannot sit on appeal to overrule the conclusion on merits, especially so in the light of the Supreme Court order in the SLP filed by the applicant against the Tribunal's earlier order dated 30.8.91. Therefore, in the peculiar facts and circumstances of the case, whichever way we look at it, this OA is clearly not maintainable and is also barred by the principles of res-judicata and is highly belated. We may also observe that under the specific terms and conditions of his posting to Tokyo at the relevant time, while he was on deputation to TDA as Dy. Merchandising Executive to which post he would return at the end of his foreign posting, as he had agreed to draw his own pay scale of Rs. 1500-1800/- which had been recommended by the Selection Committee, his claim for higher pay scale is untenable.

8. In the result, for the reasons given above, the application fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

sk