

Central Administrative Tribunal, Principal Bench

Original Application No.306 of 2000

New Delhi, this the 29th day of June, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman  
Hon'ble Mr. V.K. Majotra, Member (Admnv)

JP Jain, 395, Laxmibai Nagar, New  
Delhi-110023

- Applicant

(By Advocate Shri G.K. Aggarwal)

Versus

1. Union of India thro' Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi-110011.
2. The Director General (Works), Central Public Works Deptt., Nirman Bhawan, New Delhi-110011.
3. The Secretary, Union Public Service Commission, Shahjehan Rd, New Delhi-110001-Respondents

(By Advocate Shri S.M. Arif)

O R D E R (Oral)

By Justice Ashok Agarwal, Chairman.-

Applicant along with 27 others had earlier filed an OA being OA No. 2374/1999. Aforesaid OA was dismissed. The applicant has now proceeded to institute the present OA containing the very same reliefs which were contained in aforesaid OA 2374/99. The grounds now taken are different from the ones taken in aforesaid OA.

2. In our judgment present OA is barred by principles of res judicata or principles analogous to res judicata under Section 11 of the Code of Civil Procedure. Present OA is also barred under the provisions of Order 2 Rule 2 of the Code of Civil Procedure. Grounds which could have been taken by the applicant and were not taken in the earlier OA cannot be availed of by the applicant by instituting a fresh OA.

decisions of the Apex Court to cite a few - Daryao Vs. State of Uttar Pradesh, AIR 1961 SC 1457, The Workmen of Cochin Port Trust Vs. The Board of Trustees of the Cochin Port Trust and another, AIR 1978 SC 1283 and Roshal Lal Ahuja Vs. Dr. S.C.Jain, 1986 (4) SLR 285.

3. Shri Aggarwal, learned counsel appearing in support of present OA has sought to wriggle out of the aforesaid legal position by taking resort to Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 which provides as under :-

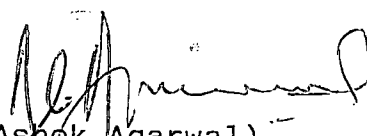
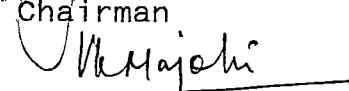
"Notwithstanding anything contained in sub-rules (1) to (3) the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause of action and the nature of relief prayed for that they have a common interest in the matter."

4. Based on the above rule Shri Aggarwal has contended that the applicant has been permitted to join in a joint application along with 27 others. He could, therefore, take only such contention which were not against the interest of his co-applicants. The applicant in the circumstances should be held entitled to claim the very same reliefs claimed in the earlier OA by taking fresh grounds which he could not in law take since he had joined the other applicants in the earlier OA. In our judgment there is no merit in the aforesaid contention. In case the applicant had grounds which were in conflict with the interest of co-applicants, he need not or should not have joined them in filing the earlier OA. Aforesaid rule relied upon merely enables

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the earlier OA, he is deemed to have abandoned the grounds which he did not or could not take in the earlier application. The said rule in our view will not and cannot wriggle out the applicant from the <sup>regress</sup> ~~recourse~~ of Section 11 and Order 2 Rule 2 of the Code of Civil Procedure.

5. Present O.A. in the circumstances we find is not maintainable. The same is accordingly dismissed. No order as to costs.

  
(Ashok Agarwal)  
Chairman  
  
(V.K. Majotra)  
Member (Admnv)

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