IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1875/1991 DATE OF DECISION: 10.10.1991

SHRI S.K. JAIN ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI J.P. VERGHESE, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Shri S.K. Jain of the Publications Division has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order No.A-19012/2/81-Admn.I dated 4.4.1991 issued by the respondents, purporting to revert the applicant to the lower post. The said order reads as under:-

> ".....Review application in Regd.No.TA-813/85 filed by Shri S.K. Jain, Accounts Officer (Adhoc) in the Employment News unit of this Division seeking review of the Central Administrative Tribunal's Judgement dated 26.07.1990, has been rejected by the Central Administrative Tribunal, Principal Bench, New Delhi vide their order No.RA101/90 in TA-813/85 dated 19.03.1991.
>
> In view of the order of the above mentioned judgement Shri S.K. Jain, Accounts Officer (Ad-hoc) is hereby reverted to the post of Senior Accountant in the scale of pay of Rs.1640-2900 with immediate effect."

Before admitting the Original Application we considered it necessary to go through the record and the decision of the Tribunal in T-813/85 (CW-1774/82) Shri S.K. Jain & Others v. Union of India & Others decided on 26.7.1990. In S.K. Jain & Ors. (supra) we have observed that the Employment News became part and parcel of the Publications Division from the date it was transferred from the DAVP. It did not enjoy the status of a separate entity in the DAVP - the parent organisation and therefore, cannot incarnate itself in a separate form in the Publication Division. This view was supported by the fact that the employees like Shri S.K. Jain were given the option to revert to the parent organisation, DAVP, if they so chose. Shri S.K. Jain was an ad-hoc Senior Accountant in DAVP in the scale of pay of Rs.455-700 whereas the post of Senior Accountant in the Publication Division is in the pay scale of Rs.500-900. Accordingly, it was held that:-

> "The petitioners, therefore, cannot claim equality with the Senior Accountants in the PD and their seniority had to be worked out taking into account the regular posts, they were holding, as on 1.1.1978. Their inter-se-seniority was rightly worked out on crucial date on 1.1.1978 in the matrix of Accounts Clerks in the Publication Division. Once the seniority has been assigned to them in the PD, the other consequences will follow. They have not raised any objection to the seniority assigned to them in April, 1987. We do not, therefore, see any merit in the arguments that they have an inherent right to occupy the posts of Senior Accountant (Rs.500-900) from the date the posts in the higher scale, were created in March, 1981 on the premise that Employment News is a separate unit."

The petition was, therefore, held to be devoid of merit and dismissed.

2. In the present application the applicant has traversed the same grounds to justify his occupation of a higher position as had been argued in T-813/85. In paragraph 4.6 of the application the applicant submits that he was already holding the posts of Senior Accountant in Employment News and the pay scale was upgraded and the same required substitution under FR 23. In fact this was the main thrust of their argument in T-813/85 which was rejected on the consideration dealt with in detail in the judgement dated 26.7.1990. The argument that they had appeared in the common departmental examination held in 1971 had also been agitated in TA-813/85. Briefly put, the applicant by advancing same/identical grounds is seeking relief against his reversion from the post of ad-hoc Accounts Officer, which appears to have been ordered as a consequence of the decision in TA-813/85, where too the applicant herein was a party.

3. We have heard the learned counsel for the applicant Shri J.P. Verghese on admission of the O.A. 1875/91 on 26.9.1991 and have given our deep thought to the matter. We feel that the present OA has to be viewed against the back drop of the provisions relating to doctrine of res-judicata made in Section 11 of the Code of Civil Procedure. The said doctrine debars the trial of a suit or issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit. "The doctrine of res-judicata is a universal doctrine laying down the finality of litigation between the parties. When a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violative of Article 14 of the Constitution. So far as the parties are concerned, they will always be bound by the said decision. In other words, either of the parties will not be permitted to reopen the issue decided by such decision on the ground that such

decision violates the equality clause under the Constitution. There is no question of overruling the provision of Article 14, as contended by the learned Attorney General."- (**Supreme Court Employees Welfare Association v. Union of India & Anr. JT 1989 (3) SC 188.**

It has thus been held that the doctrine of res judicata is not infractive of Article 14 of the Constitution. The applicant cannot get any help by adoption of this line of argument. He has however chosen to seek a different relief on the same set of facts and grounds as were earlier agitated in TA-813/85 although the relief claimed were clothed in different terminology. Merely because the relief sought for now is different than the relief prayed for in the earlier application does not provide the fresh lease of life to the cause of action. Their Lordships of the Hon'ble Supreme Court in **State of U.P. v. Nawab Hussain AIR 1977 SC 1680** have observed:-

> "4. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and Somervell L. J., has answered it as follows in Greenhalgh V. Mallard. (1947) 2 All ER 255 at page 257:"I think that on the authorities to which I will refer it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them".

This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive res judicata which in reality, is an aspect of amplification of the general principle."

In **Forward Construction Co. & Ors. v. Prabhat Mandal & Ors.1986 (1) SCC 100** their Lordships have again observed that:-

"An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence.

In effect, therefore, as provided in explanation IV under Section 11 of Code of Civil Procedure any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. The present O.A. is the logical conclusion of the judgement delivered by us in TA-813/85 where certain reliefs were sought on the same/similar set of facts and grounds. That decision having become final it is not open to the applicant to get the case reopened on a cause of action which is given rise to by the same set of facts and circumstances which have been adjudicated earlier. On the above conspectus of the case, we are of the view that the present O.A. 1875/91 is not maintainable and is barred by

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the doctrine of **constructive res judicata** . Accordingly, the O.A. is dismissed with no order as to costs.

(I.K. RASGOTRA)
MEMBER(A)

10.10.91

(T.S. OBEROI)
MEMBER(J)

'SKK'