

9

7.4.93.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.A. NO. 2114/91

DECIDED ON :

Subhash C. Saini

... Applicant

Vs.

Lt. Governor, Delhi & Ors.

... Respondents

CORAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Shri B. B. Raval, Counsel for Applicant
Mrs. Avnish Ahlawat, Counsel for Respondents

J U D G M E N T

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

The applicant who was working as UDC in the office of the Deputy Commissioner, Delhi Administration, was selected for appointment to the post of Assistant Superintendent (Jail) in the Central Jail on transfer on deputation basis for a period of six months w.e.f. 29.4.1986. However, vide order dated 9.1.1987 the applicant was repatriated from Jail^L and posted to Delhi College of Engineering w.e.f. 12.1.1987 as UDC. The grievance of the applicant is that persons who were similarly selected and appointed to the post of Assistant Superintendent (Jail) along with the applicant have been retained and the applicant has been repatriated because he has pointed out certain loopholes and corruption prevalent^L in the Jail^L Administration and highlighted the same by making certain endorsement on the attendance diary maintained in the Jail.

2. In the present application the applicant has prayed for the grant of following reliefs :-

le

- (a) Direction to the respondents to dispose of the departmental appeal by way of posting the applicant in Jail on the post of Assistant Superintendent (Jail) to which he was exclusively selected by duly constituted DPC/SSP.
- (b) The respondents be directed to release the salary from 1.1.1987 and thereafter from 13.1.1987 onwards in the pay scale of Assistant Superintendent (Jail) with interest as per rules.
- (c) The respondents be directed to consider the case of the applicant for appointment on the same terms and conditions on which other similar Assistant Suptd. are functioning as per assigned seniority.

3. The respondents in their reply contested this application and stated that the present application is barred by the principles of res judicata as well as the application is barred by limitation.

4. The applicant filed rejoinder and along with the rejoinder has also annexed certain papers including newspaper reports supporting the averments detailed in the O.A. The applicant has also filed M.P. No. 3462/92 annexing certain more documents along with the M.P. The applicant has also filed another M.P. No. 221/93 in which he has prayed for summoning of certain documents from the respondents and the respondents have at the time of hearing brought those documents and those which were having bulky volumes, the extract of the same have been provided for the perusal of the Bench.

26

5. As regards the plea of res judicata, it is on record that the applicant has earlier filed C.A.220/87 in the Principal Bench in which he also assailed his repatriation and also prayed for his posting in the Central Jail w.e.f. 13.1.1987. This application was dismissed as devoid of merit on 28.5.1987 vide judgment enclosed as Annexure H-1 to the counter. The operative part of the judgment in para 4 is reproduced below :-

"4. The circumstances in the instant case being more or less identical, we hold that the applicant has no right to continue on deputation as Assistant Superintendent, Jails and his reversion and his posting to the Delhi College of Engineering cannot be faulted. He should be given a notice to join his new posting within a specified period of receipt of the notice and the period between his date of relief from the Jails Department and the date of his taking over in his new posting should be regularised by granting him such leave as is due to him, if the applicant so chooses."

6. The applicant, aggrieved by the above judgment, filed SLP before the Hon'ble Supreme Court (No. 0113/87) which was also dismissed. Incidentally, the applicant also preferred a review petition (No.53/87) against the aforesaid judgment dated 28.5.1987 which was also dismissed vide order dated 21.7.1987 and SLP in the Hon'ble Supreme Court (No.15284/87) was also dismissed on 20.1.1988 with the following order :-

"The special leave petition is permitted to be withdrawn as the counsel for the petitioner wants to prefer an appeal to the appropriate Departmental authority. In the meantime, petitioner may be given suitable posting on the basis that he was sent out from a particular post to the Tihar Jail."

Thus, the judgment dated 28.5.1987 has become final and on the principles of res judicata, the res once decided cannot be again agitated before the competent court.

lc

7. The learned counsel for the applicant, however, argued that since he has preferred an appeal on 22.2.1988 to the respondents which was rejected on 15.4.1988, ^{and} He again preferred an appeal to the Lt. Governor on 7.3.1990 against the rejection order dated 15.4.1988 followed by reminder on 23.10.1990. He, therefore, argued that the present application is not barred by the principles of res judicata. The contention of the learned counsel for the applicant ^{is} that the present application is outcome of the first and opening portion of the decision of the Hon'ble Supreme Court in SLP (C) No. 15284/87, hence, it is not barred by the principles of res judicata. This contention of the learned counsel cannot be accepted. In fact, the applicant also preferred CCP No. 17795/88 before the Hon'ble Supreme Court regarding the rejection of his so-called appeal vide order dated 15.4.1988. The said CCP was also dismissed on 26.9.1988. In view of the above clear factual position, the present application is barred by the principles of res judicata and the matter cannot be filed again for adjudication of the grievance allegedly harboured by the applicant on the same cause of action of repatriation vide order dated 29.1.1987.

8. On the point of limitation also the alleged appeal of the applicant was dismissed by the respondents on 15.4.1988. It was not a statutory appeal and can only be treated as a representation. The applicant cannot gain time by making unwarranted representations as he has alleged to have filed one on 7.3.1990 followed by another on 30.10.1990. In view of this factual position, the present application which has been filed on 5/12.9.1991 cannot be said to be in time as held by the Hon'ble Supreme Court in the case of S.S.Rathore vs. State of MP : AIR 1990 SC 10.

B

9. The applicant has also along with the application filed a letter dated 11.9.1991 addressed to the Registrar of the Principal Bench of the Tribunal stating therein that the present application is within limitation. This letter has also been perused but in view of the established law on the point it cannot be said that the present application is within time.

10. Learned counsel for the applicant has also referred to certain facts regarding the retention of some of the selected persons along with the applicant as Assistant Superintendent (Jails) in the Central Jail and also the fact that the applicant has not been actually relieved. In fact, the contention of the learned counsel is that he was directed by the order dated 9.1.1987 to report to the Deputy Secretary (Service) and the Deputy Secretary (Service) vide memorandum dated 12.1.1987 asked him to report back to the Central Jail, Delhi and in view of this, the applicant reported to Jail authorities on 13.1.1987 and he was also issued uniform and that he continued to visit Jail. The extract of the daily record put up for the perusal of the Bench shows that the applicant from 13.1.1987 to 9.2.1987 visited the Jail for certain hours and the explanation given by the respondents' counsel is that since the applicant was earlier posted in Jail, on the pretext of meeting some staff members he got his entry in the daily register and this will not by itself show that the applicant was put to work. It is admitted case of the parties that the applicant has now joined Delhi College of Engineering after repatriation and is no more working in the Central Jail.

le

63

12. In view of the above facts and circumstances, the present application is dismissed as barred by principles of res judicata as well as by limitation and also on merits, leaving the parties to bear their own costs.

S. R. Adige
(S. R. Adige)
Member (A)

J. P. Sharma
(J. P. Sharma)
Member (J)

as