

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA.No.478 of 1991

Dated New Delhi, this the 18/5 day of May, 1994

Hon'ble Mr Justice S. K. Dhaon, Vice Chairman (J)
Hon'ble Shri B. K. Singh, Member (A)

Shri Zia-ud-Din
S/o Shri Fakhruddin
R/o 2246, Naya Mohalla
Gali Kasim Jan
DELHI-6

... Applicant

By Advocate: Shri B. S. Charya

VERSUS

1. The Secretary (Services)
Delhi Administration
5, Alipur Road, Delhi
2. Delhi Administration
5, Alipur Road, Delhi
(Through Chief Secretary)
3. The Commissioner of Industries
Delhi Administration
C.P.O. Building
Kashmere Gate
DELHI-6

... Respondents

By Advocate: Mrs Avnish Ahlawat

ORDER

Hon'ble Mr. B.K. Singh, M(A)

The material averments in OA Nos. 586/87 and 478/91 are practically the same. The main relief sought in OA No.586/87 was also that the applicant should be deemed to have been promoted w.e.f. 17.7.64 and treating it as the crucial date, he should have been given further promotion. Alternatively, it was prayed that the ex-cadre post of Draughtsman should be treated as encadred along with 7 posts which were encadred in 1964 and he should be allowed the same benefits given to the other seven.

2. This matter was gone into depth by the Tribunal and finally the Tribunal ^{its judgment} delivered on 27.10.89. The operative portion of the judgment is as follows:

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"We, therefore, order and direct in the interest of justice and equity that the respondents should encadre the post of Public Relation Assistant w.e.f. 1982 to the mainstream inspectorial cadre and consider the applicant for appointment against the same in accordance with the rules with consequential benefits of his fitment in the DASS. If the respondents feel that any officer in the service is thereby likely to be adversely affected, a supernumerary post may be operated in the relevant cadre for the applicant which may be allowed to lapse with his retirement on superannuation. The consequential benefits by way of arrears of pay and allowances should be paid to him w.e.f. 1.1.89. The applicant is due to retire in the next three years on superannuation. We, therefore, direct that the procedure of encadring the post and subsequent appointment and fitment of the applicant under the rules and creation of supernumerary post, if considered necessary, should be complied with within three months from the date of communication of this order. The parties will bear their own costs."

3. The respondents complied with the orders of the Tribunal and encadred the applicant in Grade-II DASS w.e.f. 2.2.82 and as per the order of the Tribunal he was placed below those whose posts had been duly encadred prior to 2.2.1982. This Tribunal was also not competent to decide any grievance arising to a particular person prior to three years before its constitution. The Tribunal was constituted on 1.11.1985 and the applicant had full opportunity to raise his grievance before a competent forum, i.e. the High Court of Delhi. The very fact that he had ^{not} raised the grievance when others were getting encadred ^{and promoted} implies that he acquiesced in the matter. He filed a belated civil writ petition before the High Court when the Central Administrative Tribunal had already come into being and accordingly the petition was transferred to this Tribunal for disposal. The words "encadrement" and "fitment" both imply that he will be placed below those who have been encadred prior to him and 'fitment' implies his placement below those already encadred and above those who came later than him in the cadre. His notional seniority will count from the date of encadrement.

4. After the compliance of the orders of the Tribunal, a CCP was filed before the Bench comprising Hon'ble Mr. P.K. Kartha, Vice Chairman and Hon'ble Mr. D.K. Chakravarty, Member. The original order was passed by the Bench comprising Hon'ble Mr. P.K. Kartha, VC and Hon'ble

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Mr. I.K. Rasgotra, Member. The original ^{judgment} was delivered by Hon'ble Mr. Kartha and in the CCP also the judgment was delivered by him on 26.10.1990. The operative part of the judgment and order in the CCP is as follows:

4. "It will be noticed that while the petitioner is claiming seniority from 1964 onwards, the respondents have given him seniority from 2.2.1982. The respondents have also referred to Clause 6 of Sub-rule (1) to Rule 26 of the Delhi Administration Subordinate Service Rules, which reads as follows:

"In respect of officials inducted to the cadre from ex-cadre, the seniority, unless otherwise specified, will count from the date of notification through which the official was inducted in a particular grade of service".

5. In the light of the above, it would be apparent that the respondents have implemented the judgment of the Tribunal according to their understanding. It may be that more than one view is possible in the matter and the respondents have adopted one view. This is not a case where the respondents can be said to have deliberately flouted the directions contained in the judgment. We ~~xxx~~ see no merit in the CCP and the same is dismissed. The notice of contempt is also discharged."

5. The Tribunal came to the decision that there is no merit in the CCP and accordingly the same was dismissed and notice of contempt was also discharged.


6. In the present OA, No. 478/91, the same averments have been made which were made in the previous OA No.586/87 and practically the same grounds have been taken. The same reliefs have been sought, namely, that the seniority of the applicant should be fixed w.e.f. 17.7.64 in Grade-II/^{DASS} and he should be allowed promotion and consequential benefits on the basis of his fixation of seniority from that date.


7. We have heard the counsel for the parties and perused the record of the case and also the reliefs prayed for. The OA No.478/91 is barred by res judicata. ~~xxx xxxxxxxxxx xxx~~ It is not permissible to obtain a second judgment for the same civil relief on the same cause of action. The cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. In the instant

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case, not only the judgment and order was pronounced but even the CCP was filed which was also decided in favour of the respondents and against the applicant. Therefore, the present applicant cannot give rise to another cause of action on the same facts. Nothing survives in this OA which has not already been thoroughly adjudicated upon once in the OA itself and second time in the CCP by a Division Bench presided by the same Hon'ble Vice Chairman. The facts are same and the parties are also same. There is no fresh cause of action. When the first OA was filed, all the matters involved in the case were raised by the applicant and when he was filing the OA it was presumed that he would not leave any cause for a fresh OA. If in such a case a person is allowed to choose and sue upon one cause of action at one time and reserve the other for subsequent litigation, that would aggravate the burden of litigation. The Courts have, therefore, treated such a course of action as abuse of its process. In this case, on the same set of facts, one OA No.586/87 was filed and then a CCP was filed for non-compliance and the Tribunal explained its own orders and justified the action of the respondents.

8. Thus, the present application is barred by res judicata and dismissed as such leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(S.K. Dhaon)
Vice Chairman (J)