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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 2612/2004

New Delhi, this the 29th day of October, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)**

P.Sankaran Kutty,
S/o Late Shri E.Rama Warrier,
R/o Type IV, Qtr. No. 176,
Block No. 22,
Indira Nagar,
Adyar, Chennai.

...Applicant

(By Advocate: Shri A.K. Behra)

-versus-

1. Union of India through
Secretary(R)
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road,
New Delhi – 110 011.
2. Additional Secretary (SR)
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road,
New Delhi – 110 011.
3. Director of Accounts,
Cabinet Secretariat (SW)
East Block-9, R.K. Puram,
New Delhi – 110 022.
4. Director (Pers)
Cabinet Secretariat
Room No. 7, Bikaner House (Annexe)
Shahjahan Road, New Delhi – 110 011.
5. Shri A.K. Chaturvedi,
Under Secretary,
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road, New Delhi – 110 011.

6. Shri K.S. Chhatwal
Under Secretary (Retd)
3/173, Subhash Nagar,
New Delhi – 110 027.
7. Shri A.K. Bose,
Under Secretary,
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road, New Delhi – 110 011.
8. Shri A.K. Sood
Under Secretary,
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road, New Delhi – 110 011.
9. Shri G.P. Sharma
Under Secretary,
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road, New Delhi – 110 011.
10. Shri S.K. Gupta,
Under Secretary,
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road, New Delhi – 110 011.
11. Shri Vinod Kumar,
Under Secretary,
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road, New Delhi – 110 011.
12. Shri E.M. Haridasan,
Under Secretary (Retd)
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road, New Delhi – 110 011.
13. Mr. Sneh Bahl
Under Secretary,
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road,
New Delhi – 110 011.
14. Shri S.C.Gupta,
Under Secretary,
Cabinet Secretariat,
Room No. 7, Bikaner House (Annexe)
Shahjahan Road,
New Delhi – 110 011.

15. Mrs. Nirmala Malla
 Under Secretary,
 Cabinet Secretariat,
 Room No. 7, Bikaner House (Annexe)
 Shahjahan Road, New Delhi – 110 011.

16. Shri S.L. Bhatia,
 Section Officer (Retd)
 2-E/189, NIT
 Faridabad (Haryana)-121001.

17. Shri M.B. Vashisht
 Under Secretary,
 Cabinet Secretariat,
 Room No. 7, Bikaner House (Annexe)
 Shahjahan Road, New Delhi – 110 011.

18. Shri B.K. Kamra,
 Under Secretary,
 Cabinet Secretariat,
 Room No. 7, Bikaner House (Annexe)
 Shahjahan Road, New Delhi – 110 011.

19. Mrs. Savita Mehta
 Under Secretary,
 Cabinet Secretariat,
 Room No. 7, Bikaner House (Annexe)
 Shahjahan Road, New Delhi – 110 011.

20. Shri A.K. Sehgal
 Under Secretary,
 Cabinet Secretariat,
 Room No. 7, Bikaner House (Annexe)
 Shahjahan Road, New Delhi – 110 011.

21. Shri P.D. Rajan
 Under Secretary,
 Cabinet Secretariat,
 Room No. 7, Bikaner House (Annexe)
 Shahjahan Road, New Delhi – 110 011.

22. Shri M.L. Gulati
 Under Secretary,
 Cabinet Secretariat,
 Room No. 7, Bikaner House (Annexe)
 Shahjahan Road, New Delhi – 110 011. ...Respondents

ORDER (ORAL)

By Justice V.S. Aggarwal, Chairman:

Applicant (P. Sankaran Kutty) joined as an Assistant on 4.8.1972 as a direct recruit. On the basis of the result of the Section Officers Grade Limited

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Departmental Competitive Examination held in May, 1986, he was promoted as Section Officer w.e.f. 30.09.1986. He claims that he earned another promotion on regular basis as Under Secretary w.e.f. 2.7.1999. His name was shown in the seniority list of 21.01.1991 as per rules of fixation of seniority.

2. The grievance of the applicant is that all of a sudden the impugned order was passed by respondent no. 1 adversely affecting the seniority and promotion of the applicant. He made enquiries and was surprised to note that certain Original Applications had been decided by this Tribunal in which he was not a party. The Tribunal had allowed the said Original Applications on 17.09.1999. Against the said decision of this Tribunal, the Union of India had filed Civil Writ Petition No. 76/2000 in the Delhi High Court. The Delhi High Court had stayed the operation of the order passed by this Tribunal. Thereafter the said Writ Petition had been withdrawn without valid reasons.

3. Learned counsel for the applicant contents that:

- a) a fraud has been practiced on the Delhi High Court and resultantly on the rights of the applicant;
- b) applicant was not a party to the original application filed in this Tribunal and, therefore, he can agitate the matter afresh; and
- c) the decision of this Tribunal is erroneous and has not considered certain basic facts.

4. We have heard the applicant's learned counsel and have seen the relevant record.

5. To keep the record straight, we deem it necessary to give certain other facts from the record of the present application.

6. One Shri A.K. Chaturvedi had filed O.A. No. 1051/1994. He was aggrieved by the seniority list issued by the official respondents by Memo of 21.1.1991 and seniority list of 27.2.1989 was revised. A Bench of this Tribunal on 17.09.1999 had allowed the said application and had passed the following order:

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“11. In the result, the impugned seniority list dated 21.1.1991 is quashed and set aside restoring the earlier seniority list of 27.2.1989 which is in order. Accordingly, the respondents are directed to take further action for promotion of the concerned officers to the next higher post by holding review DPCs in accordance with the Rules and instructions. Such officers who are promoted will be entitled to consequential benefits in accordance with the Tribunal’s order referred to in paragraph 10 above. No order as to costs.”

7. The Union of India had challenged the said decision of this Tribunal in a Civil Writ Petition, which we have referred to above. Initially the operation of the impugned order was stayed in terms that any further promotion from Under Secretary to the post of Deputy Secretary was not to be made till further orders. However, on 30.09.2003, the Union of India had prayed for withdrawal of the said Writ Petition. The Delhi High Court permitted the Writ Petition to be dismissed as withdrawn but the private respondents were permitted to take recourse to an appropriate remedy available to them in accordance with law.

8. So far as the contention that a fraud has been practiced on the Delhi High Court and, therefore, the applicant should be permitted to file the fresh application is concerned, in our opinion, the same has to be stated to be rejected. A fraud, if any, has been practiced on the Delhi High Court (we are not expressing any opinion on merits of this plea). Therefore, if there is any such fact as is being asserted, at this stage this Tribunal will not be competent to go into this controversy. Suffice to say that the Union of India had challenged the order of this Tribunal but had subsequently withdrawn the Writ Petition.

9. During the course of submissions, we have put it to the learned counsel for the applicant and he fairly conceded that in the petitions that were pending in this Tribunal, the applicant therein Shri A.K.Chaturvedi had arrayed certain private respondents. To our query, he stated that those private respondents were senior to the applicant. If that be so and those private respondents have not taken any recourse under law as permitted by the Delhi High Court, the result would be that



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the applicant cannot assail the order passed by this Tribunal dated 17.09.1999.

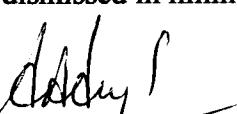
The reason being that in any event applicant cannot score a march over the persons who are admittedly senior to him and had been arrayed as private respondents in the original application before this Tribunal.

10. Somewhat a similar situation had arisen before the Supreme Court in the case of *Junior Telecom Officers v. Union of India*, AIR 1993 (SC) 787. The Supreme Court held that when the same issue was sought to be raised by filing a petition under the garb of a Forum on the ground that various aspects were not considered and employees who were adversely affected were not made parties, the plea was rejected.

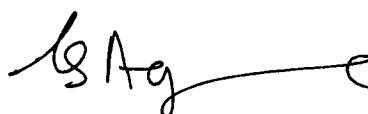
11. Identical is the position herein. Certain other colleagues, who are senior to the applicant, had contested the original application. An order adverse to their interest had been passed. They did not challenge that order and, therefore, the applicant must be held to be bound on principle of constructive res judicata.

12. Keeping in view the same, we deem it unnecessary to go into the third question agitated.

13. As a consequence of the aforesaid, the Original Application must fail and is dismissed in limine.


(S. A. Singh)

Member (A)


(V.S. Aggarwal)

Chairman

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