

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 73/2004

New Delhi this the 29th day of November, 2004.

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S. A. SINGH, MEMBER (A)**

1. Shri Malkhan Singh
s/o Sh. Arjun Singh,
R/o 1217, Sector -IV,
R.K. Puram, New Delhi.
2. Shri N.K. Sharma,
S/o Shri R.L. Sharma,
R/o S-V/825, R.K. Puram,
New Delhi.
3. Shri D.D. Sharma,
S/o Shri Surat Singh,
R/o 1-C, R.K. Block Ext.,
Gali No. 20, Jain Road,
Mohan Garden,
New Delhi – 110 059.
4. Shri Rakesh Gupta
s/o Shri Murari Lal,
R/o D-78, Gali No. 4,
Laxmi Nagar,
Delhi – 110 092.
5. Shri C.P. Singh,
s/o Late Sh. Ghasita Singh,
R/o H.No. 7/E-150, Gali No. 7,
Garhwal Colony, Mehrauli Ward-II,
New Delhi – 110 030.
6. Shri Chattarsal Sehrawat,
s/o Late Shri Pyare Lal,
R/o DG-865, Sarojini Nagar,
New Delhi.
7. Shri Satpal Singh,
s/o Late Shri Mehar Singh,
R/o S-V/1093, R.K. Puram,
New Delhi – 110 022.Applicants

(By Advocate: Shri G. D. Gupta, Senior Advocate with
Sh. S.K. Gupta)

(14)

-versus-

1. Union of India through
Secretary,
Ministry of Science & Technology,
Technology Bhawan,
New Mehrauli Road,
New Delhi.
2. The Surveyor General of India,
Post Box No. 37, Hathi Barkhala Estate,
Dehradun (UP).
3. The Director,
Survey (Air),
West Block No. 4,
Wing No. 4, R.K. Puram,
New Delhi – 110 066.
4. The Director,
Western Printing Group,
Palam Village Road,
Near Railway Station,
Palam, Delhi Cantt,
New Delhi – 110 010.

...Respondents

(By Advocate: Shri J.B. Mudgil)

O R D E R

Mr. Shanker Raju, Hon'ble Member (J):

By filing this O.A., the applicants have sought the following reliefs:

- "(i) to quash and set aside the order dated 25.08.2003 (Annexure A-1);
- (ii) to declare the action of the respondents in denying the arrears of pay to the applicants, as illegal and arbitrary;
- (iii) to direct the respondents to treat the revised dates of holding the each grade as the actual date of holding the each grade for all purposes and grant the benefit under ACP Scheme and the actual arrears which have been denied in pursuance to the impugned orders;
- (iv) to award the cost of the petition."

2. Applicants earlier approached this Tribunal in OA No. 528/1993 seeking quashing of the seniority list and had claimed reckoning of period of training as Trainees Type-B (hereinafter

referred to as the "TTB") for the purpose of seniority and other consequential benefits, which was disposed of by the Tribunal vide its order dated 15.02.1999 with the following directions:-

"We, therefore, hold that the respondents shall consider the period of training also in reckoning seniority. We further direct the respondents to apply such of the principles as would be suitable to the respondents-department from the orders of the Ministry of Personnel & Training in OM No. 22011/7/86-Estt (D) dated 3.7.1986, to be found in Swamy's Complete Manual on "Establishment and Administration" for Central Government Offices. Fifth Edition-1996 at page 494 onwards. The Ministry of Personnel had spelt out with illustrations as to how to work out the seniority of direct recruits and promotees. The respondents shall carefully consider and redefine the principle on which seniority be based between the applicants and the promotees. After laying down the principle, a draft seniority list be circulated giving three weeks time to the contending groups to state their objections and thereafter finalise the seniority list. The whole exercise should be completed within a period of six months from the date of receipt of a copy of this order. The O.A. is disposed of with the above directions. No costs."

3. In pursuance thereof, the respondents have reckoned two years training period of direct recruits TTB, deemed dates of grade promotions were specified, but as applicants had not passed the prescribed trade test when the grade promotion is subjected to passing of such trade test on completion of residency period, the benefit of grade promotions from an ante^l date of passing the trade test was denied under FR 27 as well as DoP&T OM dated 10.4.1999.

4. Learned senior Counsel Shri G.D. Gupta, representing the applicants, contended that the grant of arrears and other benefits is a consequence of grant of seniority and ante-dating the promotion and the said date may be treated as deemed date of qualifying the trade test. Accordingly, applicants' junior, who had

been accorded the grade promotions and the arrears thereof, the same may not be deprived to the applicants.

5. Shri G.D. Gupta further stated that the applicants cannot be meted out a differential treatment, which would be in violation of Articles 14 & 16 of the Constitution of India.

6. In so far as Assured Career Progression is concerned, it is stated that once the seniority is accorded, the period should also be reckoned as an eligibility period for grant of upgradation under A.C.P. Scheme.

7. On the other hand, respondents' learned counsel Shri Mudgil vehemently opposed the contentions and contended that the relief of the applicants regarding consequential benefits raised in the earlier OA having not been specifically granted is deemed to be rejected and the relief claimed in the present OA is barred by Section 11(V) of the CPC and the matter would be barred by principle of res judicata. On merits as well, it is contended that while implementing the directions, the revised dates of grade promotions, as shown in the seniority list in Group IV, III and II, are deemed dates and will count for promotion from Grade-II to Div.-I only and was not for any other purposes as a condition precedent. For grade promotion, passing of the trade test cannot be deemed to be preponed and, as such, OA is liable to be dismissed.

8. Doctrine of res judicata and constructive res judicata are the principles laid down in Clause 11 of the CPC. Explanation (V) of Section 11 of the CPC provides as under:-

"(V) Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused."

9. Though strict provisions of CPC are not applicable but doctrine of principle of res judicata is an integral part of practice and procedure and has applicability under the Administrative Tribunal Act, 1985 as well.

10. In identical situation, when in OA, though relief was sought but not granted rejecting the case under Explanation (V) of Section 11 of CPC, Apex Court in **Chief Administrator & Anr. Vs. Dr. Abhaya Charan Mishra**, 1996(SCC) L&S 660 observed as under:-

“1. Special leave granted.

2. It appears that in the earlier petition filed by the respondent, OA No. 7 of 1988, that very relief was sought, but the same was not granted, in that, there was no reference to that relief. Counsel for the respondent says that it was on account of the fact that it was not pressed. Be that as it may, the relief was sought in view of Explanation V to Section 11 of the Code of Civil Procedure. Therefore, if the relief is sought and was not granted by the Court for whatever reason, a fresh petition seeking the very same relief could not have been entertained. We are, therefore, of the opinion that the Tribunal was in error in entertaining the second petition and granting the relief which was not granted in the earlier petition merely because in the judgment of the earlier petition, there is no reference to that relief. The rule of res judicata should apply in such cases. We, therefore, allow this appeal, set aside the order of the Tribunal and direct that the relief in regard to salary on the principle of equal pay for equal work granted by the Tribunal was not admissible to the respondent. There will be no order as to costs.”

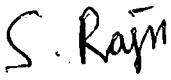
11. If one has regard to the above, in so far as relief of consequential benefits of reckoning training period towards seniority, there is no specific direction issued by the Tribunal. It is an admitted fact that the applicants had sought the said relief in

the earlier OA 528/1993. Having not granted the said relief, the same is deemed to be refused to the applicants and on the same cause of action, the present proceedings are barred by the principle of res judicata. However, in so far as grant of benefit under ACP Scheme is concerned, reckoning the aforesaid period towards eligibility as claimed in para 8(iii) of the OA, as the ACP Scheme had come into being on 9.8.1999 whereas the order passed by the Tribunal in OA 528/1993 was on 15.2.1999, Tribunal could not have foreseen the promulgation of ACP, which is a subsequent event. Accordingly, this part of the relief would not be constituted as a consequential relief. Accordingly, once the respondents have treated the training period towards the eligibility and for the purposes of seniority as well in the light of the stand taken in the counter reply, the aforesaid period has to be reckoned as an eligibility period for grant of benefits of ACP.

12. In this view of the matter, though relief claimed in para 8 (i) and (ii) are barred by res judicata, we partly allow this OA by directing the respondents to consider the claim of the applicants for grant of the benefits under the ACP Scheme as per the their eligibility in accordance with rules and instructions by reckoning the training period towards eligibility. If the applicants are entitled and due for the benefit under the ACP Scheme, the same would be accorded to them with all arrears etc. within a period of three months from the date of receipt of a copy of this order. No costs.


(S. A. Singh)
 Member (A)

/na


(Shanker Raju)
 Member (J)
 29/11/04