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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

C.A./T.A. No. 2883 / 19 92 Decided on: 1.10.96

O.P.Gupta ..... APPLICANT(S)  
(By Shri B.B.Raval ..... Advocate)

VERSUS

UOI & Anr. .... RESPONDENTS  
(By Shri K.C.Sharma ..... Advocate)

CO RAM

THE HON'BLE SHRI S.R.ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI S.R.~~ / DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No

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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

O.A. No.2883 of 1992

1<sup>st</sup> October

New Delhi, dated the ~~1<sup>st</sup> September~~, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri O.P. Gupta,  
S/o late Shri B.R. Gupta,  
R/o House No.117,  
Sector 3, Pocket C-11,  
Rohini,  
Delhi-110085.

..... APPLICANT

(By Advocate: Shri B.B.Raval)

VERUS

1. Union of India through  
the Secretary,  
Ministry of Urban Development,  
Government of India,  
Nirman Bhawan,  
New Delhi.

2. The Director General (Works),  
C.P.W.D.,  
Nirman Bhawan,  
New Delhi-110001.

..... RESPONDENTS

(By Advocate: Shri K.C.Sharma)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri O.P.Gupta, Asst. Engineer (Retd.) has prayed for quashing of the impugned order dated 7.4.92 (Annexure A) and for promotion to the grade of Executive Engineer (Civil) from 26.7.73 i.e. the date w.e.f. the date his immediate junior was promoted, with all consequential benefits.

2. During hearing respondents' counsel Shri Sharma raised the preliminary objection that this O.A. was barred by Res Judicata because the same issue, between the same parties has been finally adjudicated upon.

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3. In this connection our attention was invited to O.A. No.1654/88 filed by the same applicant against the same parties (UOI & Ors.) in which the same relief had been sought i.e. promotion to the post of Executive Engineer (Civil) w.e.f. the date his immediate junior was promoted. That O.A. was disposed of by judgment by dated 19.11.90 with the following directions:

" In view of the above discussion, the application is allowed in the manner that the respondents shall consider the case of the applicant for promotion by having a review DPC and in case the review DPC finds the applicant fit for promotion the basis of the service records of the applicant, then he shall be given promotion from the date of his junior had been promoted. The applicant, if found fit for promotion shall also be entitled to enhanced pay from the date of promotion and arrears of pay and will also be entitled to revised retirement benefits. In case the applicant is not found fit for promotion by the Review DPC which shall be convened by the respondents within a period of six months then the applicant shall not be entitled to any relief. The application stands disposed of accordingly."

4. In compliance with those directions, the respondents issued the impugned order dated 7.4.92.

5. Meanwhile the applicant had filed C.P. No.250/91 \_\_\_\_\_ alleging \_\_\_\_\_ contumacious non-implementation of the Tribunal's directions extracted above.

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6. The C.P. came up for hearing on 8.4.92 which was disposed of by the following orders

" It is no doubt that the judgment of the Tribunal has not been complied with for quite some time. There is a considerable delay in this behalf. Shri Verma, ld. counsel for the respondents to-day placed for our perusal office order No. 122 of 1992 dated 7.4.92 which says that the case of the petitioner for promotion during the relevant period was considered and he was found not fit for promotion to the grade of Executive Engineer (Civil) on ad hoc basis during the period from March, 1973 to March, 1978 during which time some of his juniors were promoted. It is also stated that he had attained the age of superannuation on 31.3.78. Hence, we are satisfied that though late, the direction of the Tribunal has been complied with. Whatever survives for consideration now is the delay in complying with the judgment of the Tribunal. Shri Verma expressed regret for the delay and explained that this is on account of the fact the records of a very old case were required to be traced and considered. He, therefore, explained that they delay is on account of administrative difficulties and expressed his regret for the same. We accept the expression of regret and drop these proceedings."

7. We note that the direction in the Tribunal's judgment dated 19.11.90 to the respondents was to consider the applicant's case for promotion by means of a review DPC. If the applicant was found fit he was to be promoted with consequential benefits and if not found fit, the applicant was not to be entitled to any relief. The respondents reported compliance of those directions to the Tribunal in C.P. No.750/91 by producing before the Bench

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their Office Order dated 7.4.92 and the Tribunal was satisfied that though late, the directions of the Tribunal had been complied with.

8. During hearing of the present O.A. applicant's counsel Shri Raval contended that (i) Office Order dated 7.4.92, which had been issued only one day before the C.P. came up for hearing, was suddenly sprung upon the applicant on the day of the hearing, and neither the applicant nor his counsel had opportunity to react to the same (ii) by the Tribunal's direction dated 19.11.90 the respondents had been directed to consider the applicant's case in a review DPC but no review DPC had been constituted (iii) in the present O.A. it is the order dated 7.4.92 which had been impugned, which had not been impugned earlier, and hence the present O.A. was not barred by Res Judicata.

9. None of these contentions have merit. In O.A. No.1654/88 the applicant had sought promotion as Executive Engineer (Civil) w.e.f. the date his immediate junior was promoted, which is exactly what he has sought in the present O.A. before us. O.A. No.1654/88 was disposed of with certain directions and the compliance of these directions by the respondents was accepted by the Tribunal in its order dated 8.4.92 in C.P. No.250/91. If the

applicant was aggrieved by the respondents' order dated 7.4.92 he should have voiced his grievance during hearing of C.P.No.250/91 but there is nothing<sup>in the</sup> Tribunal's order dated 8.4.92 to indicate that he did so. Even thereafter, if he was aggrieved by the Tribunal's order dated 8.4.92 it was open to him to challenge that order in accordance with the procedure prescribed by law, but he did not do that either. We as a Coordinate Bench of the Tribunal are bound by the Tribunal's order dated 8.4.92 in C.P.No.250/91 arising out of OA 1654/88 and we have to hold that as the same issue between the same parties has been finally adjudicated upon, this OA is barred by res-judiciata.

10. Under the circumstance the respondents preliminary objection succeeds. This OA is therefore dismissed. No costs.

*A. Veda Valli*  
( DR. A. VEDAVALLI )  
MEMBER (J)

*S. R. Adige*  
( S. R. ADIGE )  
MEMBER (A)