

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

ORIGINAL APPLICATION NO. 1106 OF 2004.

ALLAHABAD THIS THE 8th DAY OF December 2006.

Hon'ble Mr. Justice Khem Karan, V.C

Hon'ble Mr. P.K. Chatterji, A.M

Dr. S.R.P. UPadhyaya s/o late Sri C.B. Upadhyay, Education Officer, Resident of 14, Hargovind Nagar, (Behind Bansal Marble) Pilibhit Road, Bareilly (U.P).

.....Applicant

(In Person)

Versus.

1. Union of India through its Secretary, Shram Shakti Bhawan, Rafi Marg, New Delhi-11
2. Central Board for Workers Education through its Director, near VRCE Gate, North Amba Jhari Road, Nagpur, (Maharashtra).

.....Respondents

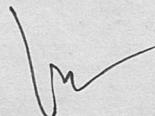
(By Advocate: Sri R.K. Tewari/Sri S. Singh

O R D E R

By Mr. Justice Khem Karan, V.C

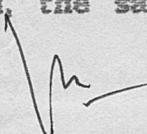
The applicant, who retired from service of respondent's establishment on 30.11.2002, has filed this O.A under section 19 of Administrative Tribunals Act 1985 for the following reliefs:

- "(a) That this Hon'ble Tribunal may be pleased to direct the respondents to fix/count his seniority w.e.f date of his initial appointment i.e. 21.7.78 and not from the date of confirmation and the same may be counted for all other practical purposes.
- (b) That this Hon'ble Tribunal may be pleased to set aside his confirmation w.e.f 30.1.1992 and declare him to be confirmed w.e.f. 20.7.1990.



- (c) That this Hon'ble Tribunal may be pleased to direct the respondents to consider the applicant on the basis of his correct seniority and to promote for the selection grade of Education Officer from 30.11.1993 and for R.D. from 2.6.1998 and to pay all other benefits accordingly.
- (d) That this Hon'ble Tribunal may be pleased to direct the respondents to cross the E.B from 1.7.1994 not to 8.6.1995 and pay all the benefits with interest.
- (e) That this Hon'ble Tribunal may be pleased to direct the respondents to expunge the ACR relating to years 1984, 1993 and 1996.
- (f) May be pleased to pass any such other order or direction as this Hon'ble Tribunal may deem fit under the facts and circumstances of the case.
- (g) Award the cost of the O.A to the applicant".

2. In brief, his case is that though he successfully completed 2 years probation on the post of Education Officer as indicated in letter dated 30.9.1981 (Annexure A-1), he was confirmed as late as on 31.1.1992. His grievance is that his seniority in the grade of Education Officer is being wrongly reckoned from 31.1.1992, the date of his confirmation and according to him it should be reckoned from 21.7.1978, when he was initially appointed. It is also stated that he was wrongly denied promotion to the post of Education Officer Selection Grade w.e.f. 30.11.1993 and to the post of Regional Director w.e.f 2.6.1998. He alleges that adverse annual remarks awarded to him in the years 1984, 1993 and 1996 ~~and~~⁵ were actuated by malice justice with a view to cause him harm in his career. He filed one O.A. NO.1170/1999, which this Tribunal disposed of vide order dated 4.12.2001. Copy of that order reveals that the applicant had sought almost the same reliefs, which he is seeking in the present O.A. In para 4 of that order dated 4.12.2001, the Tribunal concluded that there was no ground for the applicant to challenge the seniority list dated 15.3.1995 and according to the Tribunal, the same was in



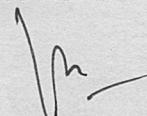
order. As regards the non-consideration of the candidature of the applicant for promotion to the post of Education Officer Selection Grade, the Tribunal observed in para 5 that it was not clear as to whether his name for promotion fell within the zone of consideration and as to whether, he was considered for promotion after his having been confirmed on 30.1.1992. As regards the adverse remarks, this Tribunal stated as under in para 6 .

"His representation was considered but not accepted by the respondents, we find that first paragraph of the remarks extracted above of maintaining of relaxation of ordinary nature cannot be construed to be adverse at all. The same are, therefore, to be disregarded in considering the case of the applicant for promotion. As regards the adverse remarks for 1996, the adverse remarks is a specific with regard to not proceeding on tour in January, 1996 and non-achievement of target allotted to be. The representation of the applicant had been considered. The applicant has not been able to show whether he has represented against the adverse remarks of 1996 and, therefore, his prayer for disregarding the remakrs fro the period ending 31.1.1996 cannot be allowed".

In the result, the Tribunal issued following directions:

"In the effect the respondents are directed to see whether the applicant came within the zone of consideration for promotion to the post of Education Officer Selection Grade on the basis of the seniority as according to him after his confirmation w.e.f. 30.1.1992 and if it has not been so considered, the respondents shall consider him for grant of the post of Education Officer Selection Grade within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs"

3. From the above, it is clear that except in regard to the promotion to the post of Education Officer Selection Grade, the rest of prayers in regard to the seniority and adverse remarks were impliedly refused.
4. The applicant filed one contempt petition no.251/2, which this Tribunal finally disposed of, vide order dated 31.7.2003. Its operative portion is as follows:

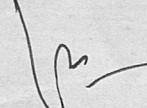


"As the respondents have considered the claim of the applicant as directed by this Tribunal, it is difficult to say that any case of contempt is made out against the respondents. The contempt application is accordingly dismissed. Notices are discharged. However, in case the applicant is dissatisfied with the order, he may challenge the same in original side. As the contempt application is finally decided, the M.As NO.1704 and 1705/2003 are also disposed of.

5. Getting inspiration from the words "in case, the applicant is dissatisfied with the orders he may challenge the same in the original side" appearing in para 3 of order dated 31.7.2003 as mentioned above, the applicant has filed this O.A. almost for the same reliefs for which he filed earlier O.A. NO.251/02 which this Tribunal finally disposed of vide order dated 4.12.2001.

6. In their reply the respondents have, after referring to the facts and litigation have said that O.A. is not only time barred but is also barred by res-judicata or principles of res-judicata (see para 6 of reply of respondents NO.2 and 3).

7. The applicant argued his case without assistance of any legal expert. We heard him quite at length and during the course of arguments, we put a straight question to him as to how this section O.A. for the same reliefs, for which earlier O.A. was filed and disposed of, could be maintained simply on the basis of what has been observed in contempt proceedings. Sri Upadhyay was not able to satisfy us. As all three matters, one relating to seniority, other relating to promotion to the post of Education Officer Selection Grade and third in regard to adverse remarks were duly agitated in the said O.A. and were considered by this Bench and orders passed. We are of the view that no such second petition can be brought on the same cause of action and for the same purpose. This Tribunal can not entertain and decide repeated petitions for the same reliefs and on the same cause of action. Whether the order of the Tribunal passed in the O.A. is justified or unjustified in one respect or the other, is a matter to be looked into by the



Superior Court. If such successive petitions will be allowed after final decision in the earlier petitions, almost on the same cause of action for the same reliefs, there will no end to litigation and it would be sheer wastage of public time and energy. Once issues have rightly or wrongly been decided and once the same has attained finality, none of the litigants can agitate the matter again in the same Court or Tribunal by adding or substituting one relief or the other or by adding or deleting one plea or the order. We agree with the argument of learned counsel for the respondents on the point that this second O.A almost for the same reliefs and on the same cause of action, is barred by principles of res-judicata and deserves to be dismissed on this ground alone.

8. This Tribunal need not go to other aspects of the matter though Sri Tripathi tried his best to take ^{us} through the relevant material on record to convince us that his seniority should not have been linked to his confirmation and had his seniority been reckoned with effect from the date his initial appointment, he would have been given promotions on due dates much before the dates from which his juniors were given such promotions. But for the reasons stated in preceding paras, we restrain from entering into those questions, as the same have already been gone into and decided in earlier O.A.

9. So the O.A. is dismissed but with no order as to costs.

Meenakshi
Member-A

8.12.56
Vice-Chairman.

Manish/-