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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 18th day of July 2006.

Original Application No. 795 of 2005.

Hon'ble Mr. A.K. Singh, Member-A
Hon'ble Mr. K.Elango, Member-J

K.P. Dubey, S/o Sri M.B. Dubey, aged about 49 years, Trained Graduate Teacher (Mathematics) Kendriya Vidyalaya, HPC Banbasa, P.O. Chandani, District Champawat (Uttaranchal), presently dismissed from service and residing at Pratibhayan C-119, G.T.B. Nagar, Kareilly, Allahabad.

. . . . Applicant

By Adv: In person

V E R S U S

1. Kendriya Vidyalaya Sangathan through the Joint Commissioner (Administration), 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. Audit and Accounts Officer through the Assistant Commissioner, Kendriya Vidyalaya Sangathan (Regional Office) Salawala, Hathibarkala, Dehradun.
3. The Principal, Kendriya Vidyalaya NHPC Banbasa P.O. Chandani, District Champawat (Uttaranchal).

. . . . Respondents

By Adv: Sri N.P. Singh

O R D E R

By A.K. Singh, Member-A

The short question involved in this O.A. is whether by any judgment or order any matter in issue has been directly and explicitly decided, and whether the applicant can file another O.A. on the identical issue. In this case, the Tribunal while deciding O.A. no. 196 of 2004 had given directions by means of the order dated

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13.1.2005 to the respondent no.3 to decide the pending representations of the applicant dated 10.2.2000 & 25.7.2000, wherein he had raised points relating to non-settlement of T.A. bills by the respondents. In pursuance of the order of this Tribunal dated 13.1.2005, the respondent no. 2 has passed the order dated 3.5.2005 whereby he has decided the TA bills of the applicant. The applicant, who appeared in person, submits that the T.A. bills which were passed after the order of this Tribunal has not been preferred by him, but by some-one else.

2. On the other hand, the learned counsel for the respondents submits that in the first place the O.A., in question, is hit by the principles of res-judicata as it has been preferred on the same points, on which decision has already been taken by this Tribunal vide order dated 13.1.2005. In the second place, the signature of the applicant on the O.A. as well as on TA bills were shown to the independent members of the Bar and were also perused by the Court and were found to tally. In view of the above, the respondents pray for dismissal of the O.A., in question.

3. We have perused the signature of the applicant on the T.A. bills as well as on O.A. and we also find by mere visual examination that the same be broadly tallies. More-over, this Tribunal as a court of law has no investigative roll to play and has to base its findings on the basis of facts available on record. In the second

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place, we also find that the O.A. is hit by the principles of res-judicata.

4. In the case of C. Subramanian Vs. Director of Accounts (Postal) Tamil Nadu Circle & Another reported in 1988 (7) ATC 365 (CAT Madras Bench), the Tribunal has held that "it is not possible to entertain a second application for the same relief merely on the basis that the applicant was able to raise a new point. Once an application is filed, he is expected to urge all the points in support of that for getting that relief and if he omits to raise a point and the application is decided on merits, he cannot seek to raise a new point and file a fresh application for the same relief. If such successive applications are allowed for the same relief, then a person can go on filing successive applications raising one point or the other on each occasion and this will lead to multiplicity of litigation and there will be no finality to any proceedings before this Tribunal."

5. Similarly the Apex Court in the case of The Workmen of Cochin Port Trust Vs. The Board of Trustees of Cochin Port Trust and Anr. Reported in AIR SC 1283, has held that "if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res-judicata and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of res-judicata also comes into play when by the judgment and order a decision of a particular issue is implicit in it, it must be deemed to

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have been necessarily decided by implication, then also the principle of res-judicata, on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding, but was not so made, then such a matter in it is deemed to have been constructively in issue and, therefore, is taken as decided."

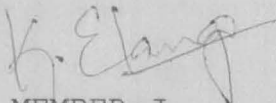
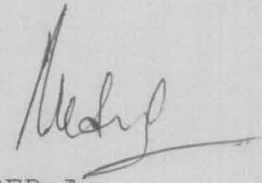
6. Further in the case of Daryao Vs. State of U.P. reported in AIR 1961 SC 1457, the Hon'ble Supreme Court has held thatthe judgment of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties coming incidentally in question in another Court for a different purposes.". Such a matter raised again is hit by the principles of res-judicata.

7. During the course of arguments, it is also noticed that the applicant alleged that the T.A. bills which were passed by the respondents pursuant to the order of this Tribunal have been preferred by someone else and not by the applicant. In that eventuality, the burden was on him to prove the allegations by filing supporting evidence and not upon the authorities on which the allegations have been made, but the applicant have failed to do so. It is an established principle of Court and criminal jurisprudence that the burden to prove an allegation is on the person who alleges the same. The O.A., in question, is clearly unsubstantiated and merits dismissal on this ground also.

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8. In view of the above and the principles laid down by the Apex Court as above, we find that the O.A., in question, is not only substantiated by any convincing or reliable evidence and is also hit by the principles of res-judicata and is also consequently of any merits. The same is, accordingly, dismissed. No costs.


MEMBER-J
MEMBER-A

GIRISH/-