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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 696 of 1986

Ram Lakhan Chaturvedi Applicant.

Versus

General Manager, N.E.Rly.,
Gorakhpur & others Respondents.

Hon'ble Ajay Johri, A.M.

In this application received under Section 19 of the Administrative Tribunals Act XIII of 1985 on 19.11.1986 the applicant, Ram Lakhan Chaturvedi, who retired as Office Superintendent (OS) on the North-Eastern Railway, has challenged the order No.E/II/255/Mech/L, dated 4.2.1985 issued by the Senior Divisional Mechanical Engineer (Sr.DME), N.E.Railway, Lucknow fixing his pay as Head Clerk in the grade of Rs.425 - 700 and has made a number of prayers regarding his promotion and payment of difference of wages ~~as~~ as well as the retirement benefits which accrued to him in accordance with the Board's order of 30.4.1983. The reliefs claimed by him are that the order dated 4.2.1985 be declared illegal and against Railway Rules and the applicant may be made entitled for promotion as Senior Clerk with effect from 20.8.1958, as Head Clerk with effect from 1.9.1977, as OS Grade II with effect from 26.6.1982 and as OS Grade I with

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effect from 1.6.1985 and that he is entitled to the difference of wages which accrued to him consequent to the revision of his seniority in 1983. He has further requested for a direction to be issued for refixing his pay and revising his pensionary benefits on the basis of his last pay drawn and to arrange to pay him the difference of pensionary benefits, DCRG, leave encashment, etc.

2. When this case was heard the learned counsel for the respondents, Sri A.V. Srivastava, pointed out that a similar request had been made by the applicant in Registration (O.A.) No. 360 of 1986, Ram Lakan Chaturvedi v. Union of India, which was dismissed at the admission stage on the ground that it was barred by limitation on 8.8.1986. The learned counsel further pointed out that on the restoration application against the dismissal order of 8.8.1986 the applicant had filed an application alleging that he had no information of the date of hearing and as such could not appear on that date and that this restoration application was also decided finally on 2.9.1986. The learned counsel placed the judgment on this restoration application before me for perusal. In this judgment, which has been given by a Division Bench of this Tribunal, the following observations have been made :-

"We have considered over the matter. The petitioner challenges the order of his confirmation dated 2.7.83, the order of his promotion dated 12.9.1983, and the order dated 4.2.1985, stating the various dates

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regarding fixation of his pay. All these three orders were passed more than one year before the application u/s 19 of the Administrative Tribunals Act was moved on 1.8.1986. The applicant had sought his promotion w.e.f. 20.8.1985 with re-fixation of pay from that date as well as to revise the pensionary benefits on that basis. The applicant has alleged that he exhausted all the departmental remedies but there is no document on record to show that he ever made any representation or appeal, on the basis of which the period of limitation could be extended. He has also not made out any ground for condoning the delay. Thus despite the absence of the applicant on the date his petition was taken up by this Bench, it was rightly dismissed as barred by limitation and we see no justification to set aside that order and to restore the petition."

3. This application has been filed by the applicant on 19.11.1986, i.e. immediately after the dismissal of his earlier application on the point of limitation. In this application he has made no mention about the fact that he had raised similar issues in the earlier application which was rejected at the admission stage by a Division Bench of this Tribunal. This application was, therefore, admitted on 15.12.1986 and has come up for final hearing ~~today~~ before me. ³² ₃₁

4. I have heard the learned counsel for the parties. The learned counsel for the applicant contended that this application could not be ~~res~~ ³² ~~barrd by~~ ₃₁ ~~res~~ ³² judicata because if an application is dismissed on limitation and laches then a second application cannot be treated

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as barred by res judicata. In this connection he has relied on the case of Munna Lal Tewari v. State of U.P. and others (1986 UPLBEC 235), a decision of the Lucknow Bench of the High Court of Judicature at Allahabad. In paras 6 to 9 of the judgment the Lucknow Bench of the Allahabad High Court had made the following observations :-

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"6. So far as Munna Lal Tewari is concerned, ordinarily a second Writ Petition under Article 226 of the Constitution cannot be entertained. The principles akin to res judicata and constructive res judicata are applicable to writ petition. If a writ petition is disposed of by a speaking order in which reasons are indicated why the writ petition has been dismissed a second petition on the same facts and cause of action would not lie, not even on a new ground which could or ought to have been raised in the earlier writ petition (See AIR 1973 SC 974 : AIR 1965 SC 1150 and Pearey and another v. Deputy Director of Consolidation and others 1983 Lucknow Civil Decisions 376, decided by one of us (S. Saghir Ahmad, J.)

7. But if the earlier writ petition was dismissed in limine by a non-speaking order, the position would be different.

8. In the leading case of Daryao v. State of U.P. (AIR 1961 SC 1457), it was laid down that if a petition under Article 226 of the Constitution is dismissed by the High Court in limine on the ground of laches in applying for the writ or on the ground of alternative remedy, then the dismissal would not constitute a bar to the subsequent petition under Article 32. This principle was reaffirmed in Virudhunagar Steel Rolling Mills Ltd. v. The Government of Madras, AIR 1968 SC 1196 in which Daryao's case (supra)

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was also considered and explained. It was held that the dismissal of a petition in limine by a non-speaking order does not create a bar of res judicata. In *Trilok Chand Moti Chand v. H.B. Munshi*, AIR 1970 SC 898 the ratio in Daryao's case was affirmed by the majority of Judges that the dismissal of a petition under Article 226 by a non-speaking order does not bar a subsequent petition under Article 32. A preliminary objection about the bar of res judicata on similar grounds was negatived in *P.D. Sharma v. State Bank of India*, AIR 1968 SC 985.

9. These cases were considered in *Hoshnak Singh v. Union of India* AIR 1979 SC 1328 in which it was laid down as under :-

"It must follow as a necessary corollary that a subsequent petition under Article 226 would not be barred by the principles analogous to res judicata."

The Supreme Court further observed as under :-

"It is, therefore, incontrovertible that where a petition under Article 226 is dismissed in limine without a speaking order, such dismissal would not constitute a bar of res judicata to a subsequent petition on the same cause of action....."

The observations made in *Munna Lal Tewari's* case are easily distinguishable. What has been held in this case is that if a petition under Article 226 of the Constitution is dismissed in limine without a speaking order such dismissal would not constitute a bar of res judicata to a subsequent petition. This, however, is not the case in this application. The earlier application was dismissed at the admission stage because it was barred by limitation. Section 21 of the Administrative Tribunals Act, 1985 is on limitation and lays down that -

"21. Limitation. - (1) A Tribunal shall not

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admit an application, -

- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

A second application for the same reliefs, which were earlier considered in Original Application No.360 of 1986 cannot be agitated before this Tribunal again.

5. I also find that in terms of the reliefs claimed by the applicant, i.e. in regard to his promotion and arrears of salary and retirement benefits a Single Member Bench does not exercise the jurisdiction and power in respect of such cases and, therefore, this case be put up before ^{the} Division Bench, for final ~~final~~ disposal on 4.11.1988, who decided the earlier application. The Deputy Registrar (J) will take suitable action in this regard.

MEMBER (A).

Dated: September 26, 1988.

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