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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No; 702 of 1992

Shri Abdul Hakim ..... Applicants.

Versus

Union of India & Ors. .... Respondents.


Hon'ble Mr. T.L.Verma, Member-J

The petitioner, Shri Abdul Hakim, who claims to have retired as Office Superintendent (Transportation) on 31.8.1988, has filed this application for issuing a direction to the respondents to allow him scale of pay of the post of Superintendent grade 2000-3200/- w.e.f. 7.10.86 with all consequential benefits including fixation of pension and payment of arrears with interest there on at 20 % per annum.

2. The petitioner, who was appointed as Clerk, thereafter, it is stated, was promoted as Assistant Superintendent grade 1600-2600 (RPS) and Supdt. grade 2000-3200/-. It is stated that there was some dispute regarding his promotion relating to the post of Asstt. Supdt. and thereafter to the post of Office Superintendent grade 2000-3200/- on the basis of seniority cum fitness. The dispute, however, could not be settled while he was in service. Although there were 3 clear vacancies of the post of O.S. and the applicant was senior most among the general candidates but the appointments could not be made against the said vacant post on account of interim order passed by the High Court in W.P. No. 16905/84, M.A.Siddiqui Vs. Union of India & Ors. The respondents however, passed order in the case file to promote the applicant and one Shri G.P.Sahu w.e.f. 17.1.86 to officiate as Superintendent Grade 2000-3200/- vide A-3 & A-4 to compilation No.II Annexure A-2/ but, no formal order of promotion was passed. The Senior D.P.O., Senior D.O.S. and Additional D.R.M. accorded their approval for the officiating promotion of the applicant on the post of Superintendent Grade 2000-3200/- w.e.f. 7.10.1986. He worked on the said post up to 31.8.1988, the date on which

he retired. The applicant, it is stated was not paid the salary of the Superintendents Grade 2000-3200/-.

After his retirement, his pension and other retiral dues and have not been settled treating him as office Superintendent. He has made several representations to the competent authority to issue formal order of his promotion. As the representations filed by the applicant did not yield any result, he filed O.A. No. 500/1987 seeking the following reliefs;

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- (a) That by means of a decree of declaration, it be held that the claimant/petitioner is entitled for confirmation and promotion to the post of office Supdt. w.e.f. 7.10.1986 in the pay scale of 700-900 and revised pay scale of 2000-3200 with further relief ~~xxx xx~~ that the claimant is entitled for arrear of pay of the post of Asstt. Supdt. of the pay scale of 550-750 w.e.f. 1.1.1984 till March 1984 as well as the arrear of revised pay scale w.e.f. 1.1.1984 till 6.10.1984 as well as of any other further revised pay scale which may be enforced by the respondent No. 1 with retrospective effect;
  - (b) That by means of mandatory and directory order the respondent be directed to fill and confirm the vacant post of Asstt. Supdt. in accordance with law with a stipulation period prescribed by this Hon'ble Tribunal;
  - (c) Cost of this petition be awarded to the claimant against the respondent;
  - (d) Any other and further relief, which this Hon'ble Tribunal deems fit and proper in the circumstances of the case be pleased to award to the claimant/petitioner against the respondent, which may not have been placed by the petitioner, but is found just and proper, in the circumstances of the case."

The above O.A. was disposed by judgement and order dated 26.7.1988. ~~xxx xxxxxxxxxxxxxx xxxxxxxxxxxx of~~ with the following observations;

"As far as promotion to the grade of Office Supdt. is concerned, it was the applicant's claim that he was officiating as O.S. from 7.10.1986 but he has not been able to show any orders giving him adhoc promotion to the post of O.S. In the absence of the same it is difficult

to accept his claim. However, we leave it to the respondents to check if they have promoted him on an adhoc basis as a D.S. and if he was so promoted he would be entitled to the officiating pay in the post of D.S. from the date he was ordered to promoted on adhoc basis. The events of the case, however, show that on account of the confusion in the mind of the respondents regarding reservation in vacancies and not posts they might nor have issued any orders. However, now with the observations made by us the position has been clarified and suitable action has to be taken by them immediately. If the applicant has been denied a promotion as A.S. on the grounds that the posts were reserved when as a matter of fact they should not have been reserved in terms of the Allahabad High Court's directions in J.C.Mallick's case and our directions in V.P.S.Chauhan's case, the applicant should be considered for regular promotion from the date when he became due on the basis of his seniority and availability of vacancies and being found suitable he would evidently be entitled to consequential benefits."

3. After the judgement of this Tribunal in O.A. No. 518 of 1987, the applicant filed representations (Annexures A-5 and A-6) to allow him the benefit of grade 2000-3200/- w.e.f. 7.10.1986 to 31.8.1988. The respondents have refused to give to the applicant benefit of the grade of D.5. by non-speaking order dated 24.4.1992 (Annexure A-1). The impugned order, it is stated, is arbitrary and against the principles of equal pay for equal work.

4. The respondents have contested the claim of the applicant inter alia on the ground that the application is barred by the principle of res judicata and that the applicant was never appointed to officiate as Office Superintendent entitling him to grade 2000-3200.

5. The first question that falls for consideration is whether the application is barred by principle of res-judicata. For application of the principle of resjudicata it has to be established that the matter directly and substantially in issue <sup>in the Case</sup> ~~is~~ <sup>a suit</sup> between the same parties, or between

the parties under whom they are any of them claim, was heard and finally decided by a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, ~~xxx xxx xxx xxx xxx~~ ~~xxxxxxx xxxxxxxx~~ ~~xxxxxxx~~. The reliefs claimed in O.A. No. 500/1987 and the finding of the Tribunal in the said O.A. has been quoted above. It is clear from the reliefs quoted <sup>above</sup> and that the applicant had sought for a declaration that he was entitled for confirmation and promotion on the post of Office Superintendent w.e.f. 7.10.1986. The Court, ~~xxx~~ after examining the matter, held that the applicant had not succeeded in showing any order giving him adhoc promotion to the post of O.S and that in absence of the same it was difficult to accept his claim. The respondents, however, were directed to check if promotion on adhoc basis as Office Superintendent had been given to the applicant or not and if so, he should be given monetary as well as other consequential <sup>extracted</sup> benefits. From the finding of the Tribunal as/above, it is thus clear that the claim of the applicant that he had been given adhoc promotion to officiate as O.S. has not been accepted by the Tribunal. In the instant ~~xx~~ application also the relief claimed by the applicant is to the effect that the respondents be directed to allow officiating pay of the post of O.S. grade 2000-3200/- with arrears and entire settlements w.e.f. 7.10.1986 to 31.8.88. The reliefs claimed in the two OAs, it would thus appear, is substantially the same. The parties to both the O.A.'s are the same. It has however, been disputed ~~whether~~ that the matter directly and substantially in issue in O.A. 500/1987 which has been raised in this O.A. <sup>also not</sup> has been heard and finally decided in the said O.A. ~~xx xxx~~. The learned counsel for the applicant has argued that the matter

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raised in that O.A. was not finally decided inasmuch as it was left to the respondents to check whether the applicant had been given adhoc appointment and if so, to give him such benefit as may have been admissible to him, had he been given promotion with consequential benefits.

6. It is not in dispute that formal order appointing the applicant on the post of O.S. by competent authority has not been issued. The applicant is claiming that a right to hold that post has been created in his favour by office notes (Annexure A-2 and order Annexure A-3). Annexure A-2 is photo copy of office notes dated 7.10.1986 in which proposal for giving officiating appointment to the applicant and one another was mooted. There is an order at the bottom of the note to the fact that the applicant and Shri R.C.Sahu being senior most the local officiating was permitted. Annexure A-3 is an order issued by Superintendent (J) DRM office Northern Railway where by the applicant who has locally shouldering higher responsibility by working as Superintendent w.e.f. 7.10.1986 to 31.10.1986 was ordered to further continue to officiate in the same capacity till regular arrangement was made or any final direction was issued. These documents appear to have been considered by this Tribunal in O.A. 500/1987. These obviously, were not considered sufficient to support the claim of the applicant that he had been appointed to officiate as O.S. on adhoc basis. No further material, on the basis of which, it could be concluded that the applicant was given adhoc appointment as Office Superintendent, has been brought on record. Even if such a material had been brought on record, this would not have given to the applicant fresh cause of action for

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filing this suit for the same reliefs which he had claimed in O.A. No. 500/1987. The failure on the part of the respondents to regularise his appointment as Office Superintendent in that case would have given -J him cause of action for filing a petition for disobedience of Court's order. The applicant, had, infact, filed contempt petition No. 8/1989 alleging disobedience of the direction of the Tribunal. The contempt petition, however, seems to have been disposed of with the observation that no case for contempt was made out.

From what has been stated above, it is thus clear that the issue before the Tribunal in O.A. No. 500/1987 was considered and finally decided. That being so the applicant is now debarred from raising same issue under the principle of resjudicata.

7. In view of the foregoing conclusion, the second question that arises for consideration is whether the applicant had been appointed to officiate as Office Superintendent on adhoc basis. As has already been mentioned above, except the office note (Annexure A-2) and order for local arrangement (Annexure A-3) there is no material on record as may suggest that the applicant had ever officiated on the post of Office Superintendent. In absence of order passed by competent authority appointing the applicant to officiate as Office Superintendent, ~~it is~~ ~~xxxxxxx to hold that xxxxxxxxxx~~ Annexure A-2 & A-3 creat no justiciable right in favour of the applicant.

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8. In view of the discussions made above, I find that there is no merit in this application and the same deserves to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

*J. J. Meena*  
Member-J

Allahabad Dated: 8.7.94

/jw/