

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 05th day of May 2011

Original Application No. 660 of 2007

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. Ashok Kumar, Member (A)

Karnail Singh Premi, S/o late Medai Lal, R/o Mohalla Gadhiana,
Chungi, Near Barafkahan, Negohi Road, Shahjananpur.

By Adv : Sri R. Verma

...Applicant

V E R S U S

1. Union of India through its Secretary, Ministry of Defence,
Department of Defence Production, Govt. of India, New
Delhi.
2. Additional Director General, Ordinance Factories, OEF,
Group Head Quarter G.T. Road, Kanpur.
3. General Manager, Ordnance Clothing Factory,
Shahjahanpur.

By Adv: Shri Ajai Singh

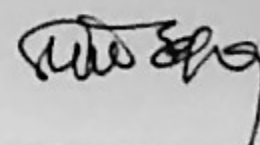
...Respondents

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, Member (J)

Under challenge in the OA ^{is the 2} order dated 28.09.1994 passed
by respondent No. 2 (Annexure A-2) and un-communicated
Appellate Order dated 31.03.1995 (Annexure A-4). Further prayer
has also been made in order to quash the order dated
14.11.2004 (Annexure A-12) and direct the respondents to
reinstate the applicant.

2. We have heard Sri R. Verma, advocate for the applicant
and Sri Ajai Singh, advocate for the respondents. While hearing
the final arguments of learned counsel for the parties preliminary
objection was raised by Sri Ajai Singh, learned counsel for the



respondents. He argued that the OA is barred by principle of res-judicata as the same order of termination were challenged before this Tribunal in OA No. 1143 of 1995 and decided on merit on 13.05.1996. The termination order which was challenged in the OA was dated 28.09.1994 and in the present OA also under challenge the order of termination dated 28.09.1994. The judgment was delivered by this Tribunal on 13.05.1996 and the OA was dismissed on merits. Annexure -7 is the copy of the order passed in OA 1143 of 1995. It is also relevant to state that after the decision of the Tribunal in the OA one Review Application No. 65 of 1996 was also filed and this Review Application was decided on 09.07.1996.

3. Compassionate appointment was given to the applicant and the applicant was kept on probation for a period of two years. But during the period of probation the work of the applicant was not found satisfactory and the termination order was accordingly passed. Applicant's counsel argued that it is a fact that he had challenged the order of termination in the earlier OA No. 1143 of 1995 and it is also the fact that the OA was dismissed on merit and even the Review Application was also dismissed. Applicant's counsel argued that in the previous OA the termination order was challenged on different grounds whereas in the present OA the same has been challenged on entirely different grounds. Under these circumstances the principle of res-judicata will not come into play.

4. Respondents' counsel argued that the arguments advanced by the applicant's counsel is not at all tenable and the termination order was challenged before this Tribunal, it may be

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a different matter that in the earlier OA the termination order was challenged on different grounds whereas in the present OA the grounds are different. The position of law is entirely different. If the matter was directly and substantially in issue² in the previous case then also principle of res-judicata will be applicable.

5. We have perused the relevant provision i.e. Section 11 of Code of Civil Procedure and it will be appropriate to reproduce Section 11 in order to appreciate the arguments of the learned counsel for the respondents:-

"11. Res judicata.-No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

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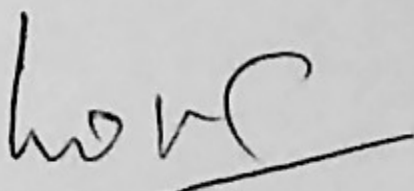
Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

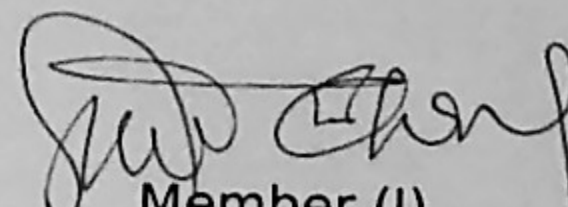
6. From perusal of the above provision regarding principle of res-judicata as provided under Section 11 of Code of Civil Procedure if any matter was directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title then the Court is^{not 2} competent to try such subsequent suit. It has also been provided^{that if 2} any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Under these circumstances we disagree with the arguments of learned counsel for the applicant. It may

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be a different matter that in the earlier OA the same grounds were not agitated as agitated in this OA. The ground of this OA were also directly and substantially in issue or some ground ought to have been made ground of attack in former suit then also principle of res-judicata shall be applicable in the present OA as in the earlier litigation also same termination order was challenged and the OA was dismissed on merit. Even the Review Application was also dismissed then remedy available to the applicant was to challenge the order before higher forum, it is unjustified to agitate the matter before the same forum again and again. Considering the above principle of res-judicata as provided in Code of Civil Procedure, we are of the opinion that as the termination order was challenged before the Tribunal in the earlier OA and the same ground ought to have been taken in previous OA than as ground are different in the earlier OA then also subsequent OA is not maintainable. But this is a lame excuse that the termination order could not be challenge on the ground on which challenged in the subsequent OA. We agree with the arguments of learned counsel for the respondents Sri Ajai Singh that the OA is barred by principle of res-judicata. Hence it is not required to record the findings on the other contentious issues raised in the subsequent litigation and the OA is liable to be dismissed.

7. The OA is dismissed on the ground that it is barred by principle of res-judicata. No cost.


Member (A)


Member (J)

/pc/