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O.A. No. 290/2009

ORDER DATED 28<sup>th</sup> MARCH, 2011

P. Satyanarayan ..... Applicant

Vrs.

Union of India & Others ..... Respondents

Coram:

HON'BLE MR. C.R. MOHAPATRA, MEMBER ADMN.

&

HON'BLE MR. A.K. PATNAIK, MEMBER JUDL.

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The applicant at present working as Tech. Gr.-III (M/W), Carriage Repair Workshop, Mancheswar, East Coast Rly. has moved this Tribunal in the present Original Application assailing the order dated 27/29.10.2008 (Annexure-A/10); whereby, his prayer for extension of benefit of the judgment in O.A. No.409/01 has not been acceded to.

2. The Respondents Rlys. have filed their counter opposing the prayer of the applicant. It reveals from the record that earlier the applicant had moved this Tribunal in O.A. No.167/99 seeking direction to the Respondents to place his name in the seniority list with reference to the date of his ad hoc promotion as skilled Gr.III w.e.f. 31.08.1984 and to grant other benefits to which he is entitled to. This Tribunal vide order dated 16.10.2001 disposed of the matter with the following observation:-

"In view of this we hold that the applicant is not entitled to count his period of service from 01.05.1985 as MM Gr.III towards his seniority in that grade put in order dated 13.01.1999, the applicant has been regularized as MM Gr.III from 01.01.1988 and his seniority has been incorporated against Sl. No.10 of MM Gr.III in the seniority list circulated in letter dt. 04.12.1998. In view of this we order that in case any of the juniors in the list i.e., position coming below Sl. No.10, have been given promotion to the higher grade then the

applicant will be entitled to such promotion from the date his junior in the seniority list of 04.12.1998 has been given such promotion subject of course, to his passing the trade test if any."

3. Being aggrieved, the applicant sought review of the aforesaid order by filing R.A. No.01/2002, where upon vide order dated 09.04.2002, this Tribunal, while directing notice to the opposite parties, as an interim measure, issued direction to the effect that "Pendency of this R.A and disposal of the O.A. No.167/99 shall not stand as a bar before the Respondents/Opposite parties to consider the case/grievance of the applicant by keeping in mind the judgement rendered in O.A. No.372/1991; expecially because the views expressed in the said judgement has virtually been affirmed by the Hon'ble Supreme Court in SLP (C ) No.11695-97/92". While the matter stood thus, on a memo being filed by the Ld. Counsel for the review applicant, the said R.A., vide order dated 17.02.2005 was allowed to be withdrawn. In the above background the applicant, as it reveals from the record, had preferred an appeal "not annexed to the O.A. dated 26.09.2008." with a prayer, interalia to extend the benefit of certain judgment in O.A. No.409/01 which having been not acceded to, the present O.A. has been filed by the applicant seeking the following relief:

"(i)To quash the order dated 27/29.10.2008 contained in Annexure-10;

(ii)To direct the Respondent to place the applicant in the seniority list dated 07.07.1998 contained in Annexure-5 with reference to the date of his promotion as Skilled Gr.III w.e.f. 01.05.1985 and to grant him all consequential benefits accruing there from;"

4. We have heard the Ld. Counsel for the parties and considered the submissions made by them. Since the applicant has not annexed copy of

the purported appeal dated 26.09.2008, it is not possible on our part to determine as to when exactly the cause of action in that behalf for the applicant arose. Besides the above, it appears that the result of the O.A. 167/99 having not been palatable, the applicant sought review of that order thereof. However, for the reasons best known the said R.A., on the request made by the applicant was allowed to be withdrawn. From this it implies that the applicant has approached this Tribunal in the present O.A. in the camouflaged manner to get some relief over and above the relief granted to him in O.A.167/99, by placing reliance on O.A.409/01. However, the fact remains that the Tribunal having considered the same and similar question arising out of the facts as that of O.A.167/99, it is not expected to reopen the matter in another O.A. with a view to giving him certain benefit of a judgment that has been delivered by this Tribunal at a later stage.

5. In the above circumstances the Tribunal is hardly left with any scope to adjudicate the present O.A. as the principles of constructive resjudicata would operate in the instant O.A. Accordingly, the O.A. is dismissed. No cost.

  
MEMBER JUDL.

  
MEMBER ADMN.