

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 508 of 1996

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman
Hon'ble Mr. S. Dasgupta, Administrative Member

Shri N.S. Giani, s/o Late Beant Singh,
resident of P-4, Scheme No.52, New C.I.T.
Road, P.O. Entally, Calcutta-14 last
worked as Assistant Iron & Steel Contro-
ller(Grade-II) in the office of the Iron
& Steel Controller, now redesignated as
Development Commissioner from Iron & Steel,
234/4, A.J.C.Bose Road, Calcutta-700 020

..... Applicant

-vs-

1. Union of India, service through the
Secretary to the Government of India,
Ministry of Steel & Mines, Department of
Steel, Udyog Bhavan, New Delhi-110 011 ;
2. Development Commissioner for Iron &
Steel(previously known as Iron & Steel
Controller), Government of India, 234/4,
A.J.C.Bose Road, Nizam Palace, Cal-20.

..... Respondents

For applicant : Mr. R.K. De, counsel

For respondents : Mrs. B. Ray, counsel

Heard on : 7.4.98, 4.5.98, 5.5.98, -
5.6.98 and 30.5.98

Order on : 7 -8-1998

O R D E R

S.N. Mallick, VC

This application was filed on 22.4.96. When this application was taken up for hearing after admission on 5.5.98, the petitioner was permitted to amend paragraph-7 of the application on the prayer made by his counsel. In pursuance of the said order, the petitioner filed a composite copy of the application incorporating the amendment on 8.6.98. It may also be noted that although the matter was initially directed to be heard on a preliminary

objection taken by the Ld.Counsel for the respondents as per our order dated 7.4.98, the matter was heard on merits along with the preliminary objection taken by the Ld.Counsel for the respondents that the application was barred by the principles of res judicata on 4.5.98, 5.5.98, 5.6.98 and 30.6.98.

2. The petitioner has prayed for a direction upon the respondent authorities to give him notional promotion to the post of Assistant Iron & Steel Controller(Grade-I) with effect from the date his juniors as named therein were given promotion to the said post and also to grant him further promotion to the post of Deputy Iron & Steel Controller(now Joint Development Commissioner for Iron & Steel) w.e.f. 1.9.1969 on the basis of the recommendation made by the U.P.S.C. against the vacancy created on that date in "direct recruitment" along with all consequential benefits regarding arrears of pay consequent upon such promotion and other retiral benefits.

3. The facts of the case are as follows :

The petitioner was initially appointed in the Class-II Gazetted Post of Deputy Assistant Iron & Steel Controller in the office of the respondent No.2. Being selected by the U.P.S.C., he was appointed to the post of Assistant Iron & Steel Controller (Grade-II), which was a Class-I Gazetted post w.e.f. 27.5.60, vide Annexure A/1. He was placed under suspension by an order dated 10.9.63, which was, however, cancelled by an order dated 7.5.64. His suspension order was made effective only from a new date i.e. 4.6.64. The Commissioner for departmental enquiries was appointed as Inquiry Officer in the departmental proceeding initiated against him. The Inquiry Officer, after holding the enquiry submitted a report dt.14.9.64 stating that the charges against the petitioner were not proved. The said report was duly accepted by the President of India and the departmental proceedings were dropped. The

relevant order passed by the Government of India, Ministry of Steel & Mines (Department of Iron & Steel) dated 14.4.65 (Vide Annexure A/2), which states as follows :-

" After careful consideration of the materials on record and the findings of the Inquiry Officer in the report, the President has come to the conclusion that the charge against Shri N.S.Giani has not been proved. The charge against Shri Giani is, therefore, hereby dropped. "

Consequential order regarding treatment of suspension period and the pay and allowances due to the petitioner for the said period was issued by the respondent No.1 under order dated 16.4.66 (vide Annexure A/3). This order, however, provided as follows :-

" This order is made without prejudice to the late Department of Iron & Steel Order No.VIG-2(23)62 dated the 9th April, 1965 placing Shri N.S.Giani under suspension on account of criminal proceeding against him. "

In the meantime, the respondent authorities gave officiating promotion to one Shri S.B.Basu in the post of Assistant Iron & Steel Controller(Gr.I), who was junior to the petitioner in the basic cadre of Assistant Iron & Steel Controller(Grade-II) by a Notification dated 9.1.65 (vide Annexure A/4).

4. In the criminal case tried by the Learned Special Judge, Delhi, the petitioner was charged u/s.120B I.P.C. and u/s.5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and also u/s.467 & 471 I.P.C. The petitioner was convicted by the Learned Special Judge and punishment of three years R.I. and fine etc. was imposed upon the petitioner as per judgment passed by the Learned Special Judge dated 31.7.72. In view of the aforesaid order of conviction and punishment, the petitioner was dismissed from service with retrospective effect from 31.7.72 as per Government order dt.10.10.72 (Vide Annexure A/6). This order of dismissal

was, however, withdrawn and cancelled by a subsequent Notification dt.13.8.74(Vide Annexure A/6A), whereby he was deemed to have been placed under suspension with effect from the date on which he was originally convicted by the Special Court i.e. 31.7.72. The judgment of the Special Court convicting the petitioner was challenged by the applicant before the Delhi High Court and the Delhi High Court, by its judgment dated 13.9.74, set aside the judgment and the orders of conviction and sentence (vide Annexure A/7). The Delhi High Court in the aforesaid judgment observed that in the conflict between the Directors of Industries and the Iron & Steel Controller, the appellant i.e. the present petitioner appeared to have been made the scapegoat.

5. After being acquitted by the Delhi High Court, the petitioner thereafter challenged the order of deemed suspension dated 13.8.74(Annexure A/6A) in a writ application before the High Court at Calcutta. The Calcutta High Court in its order dated 7.1.76 (Vide Annexure A/8) passed in C.R.No.7448(W) of 1974 set aside the aforesaid suspension order dt.13.8.74 in view of the judgment of the Delhi High Court dated 13.9.74(Annexure A/7). The appeal preferred by the respondents against the order dt.7.1.76 was also dismissed by the Division Bench of the Calcutta High Court by the order dt.3.8.79(Vide Annexure A/8 collectively at page-34). Even after that, the petitioner was again placed under suspension by the respondent authorities by an order dt.7.6.76(Vide Annexure A/9) on a plea that the trial of a criminal case against him was still pending. The petitioner moved the High Court at Calcutta challenging the aforesaid order of suspension dt.7.6.76 in C.R.No.7819(W) of 1976 and the High Court set aside the same by its order dated 17.1.80 vide Annexure A/9 collectively.

6. The respondent authorities thereafter issued a fresh Notification dt.30.8.80 as per Annexure A/10, whereby the order of suspension was revoked and the period of suspension from 14.4.65 to

22.2.76 was treated as period spent on duty directing that the petitioner shall be given full pay and allowances to which he would have been entitled had he not been placed under suspension. On 1.9.80, the petitioner made a representation to the respondent No.1 claiming service benefits with his promotion to the post of Assistant Iron & Steel Controller, Gr.I, to which he allegedly stood selected by the D.P.C. and requested to open the sealed cover. In his representation, he also made grievance of his super-session by his junior Shri S.B. Basu to the post of Assistant Iron & Steel Controller, Gr.I w.e.f. 1.9.64. He also prayed for his further promotion to the higher post of Deputy Iron & Steel Controller w.e.f. 1.9.69. The said representation dt.1.9.80 is Annexure A/11 to the Original Application. The respondent authorities by their letter dt.16.10.80(Annexure A/12) informed the applicant that as the State ~~xxx~~ had taken out an appeal before the Supreme Court of India against the judgment and order of acquittal passed by the Delhi High Court as referred to above, he could not be given any promotion during the pendency of the aforesaid appeal. The Supreme Court by the judgment dt.4.4.90, dismissed the appeal preferred by the State ~~xxx~~ against the aforesaid Delhi High Court judgment in favour of the present petitioner with the observation that the view taken by the appellate court appeared to be quite reasonable and sound and there were no grounds to interfere. The petitioner thereafter by his letter dt.16.4.90, while referring to the above Supreme Court judgment, requested the Government to issue immediate order regarding his promotion(vide Annexure A/14). Getting no response to the said representation, the petitioner submitted another representation dt.4.10.90(vide Annexure A/14 collectively) requesting the respondent No.1 to give him promotion, which was due to him till the date of his superannuation i.e. 31.10.80. The petitioner was only favoured with a cryptic reply issued on behalf of the respondent authorities dt.29.11.90(Annexure A/15), wherein he

was informed that the matter was being looked into. The petitioner filed another representation before the respondent authorities, who by their letter dt.28.1.91(Annexure A/16) informed him that the matter had been referred to the D.C.I.S., Calcutta, who was processing the case and the final position would be intimated in due course. According to the petitioner, the respondents thereafter took resort to dilatory tactics. In a letter dt.28.2.91, the respondent authorities asked him to furnish a certified true copy of the Supreme Court judgment dt.4.4.90 and also to confirm that no other case was pending against him in any Court of Law(vide Annexure A/16A). The petitioner in his reply dated 7.3.91 as per Annexure A/17 furnished a duly certified copy of the judgment of the Supreme Court and also confirmed that no other case was pending against him in any Court of Law, which was duly received by the respondent authorities.

7. The respondent authorities not having taken any positive steps in the matter of redressal of the grievance of the petitioner after the Supreme Court judgment, the petitioner again sent a representation to the respondent authorities dt.3.1.95 in the matter of restoration of his service benefits after the dismissal of the said appeal by the Supreme Court, vide Annexure A/18. Nothing happened thereafter. On the above facts, the petitioner's grievance is that the respondent authorities have acted malafide and in a most arbitrary manner denying him his legitimate claims regarding promotional benefits and retiral benefits with all consequential arrears. According to the petitioner, the respondents have acted whimsically and capriciously even after he has been honourably acquitted in the criminal case by the Delhi High Court judgment confirmed by the Supreme Court. It is asserted by the petitioner that the respondents have illegally superseded him without paying any heed to his prayer to open the sealed cover containing the recommendation of the D.P.C. after he was cleared of all the charges levelled against him in the criminal case. The

petitioner has superannuated from service w.e.f. 31.10.80 and still he has to beg for mercy from the respondent authorities in granting him his legitimate dues.

8. The petitioner in his original application in para-7 stated that he had not previously filed any application before any Court or Tribunal for the reliefs claimed in the instant application, but subsequently with the leave of the court, the petitioner has amended the paragraph-7 of the OA vide order dated 5.6.98 passed by this Tribunal in M.A. No. 207 of 1998, wherein it has been clarified that he had earlier filed a writ petition in the High Court at Calcutta being C.R. 10028-W of 1980 on 1.10.80 as his representation dt.1.9.80 still remained undisposed of, to which he was informed by the Govt. of India by its letter dt.16.10.80(Annexure A/12) that pending decision of the ~~Statement~~ appeal before the Supreme Court, his case could not be considered. The writ petition stood transferred to this Tribunal and was numbered as T.A. 937 of 1986. In the reply furnished in the aforesaid T.A.937/86, the present respondents took the same plea that as the appeal was pending before the Supreme Court, nothing could be done. Under the circumstances, his Lawyer submitted for withdrawal of the case which was granted on 21.6.89.

9. The instant application has been contested by the respondents by filing a reply. The respondents have not challenged the facts, which are matters of record. It is the specific case of the respondents that in view of the order dated 29.6.89 passed by this Tribunal in T.A. No.937/85, the present application cannot be entertained and is liable to be rejected. It is also the case of the respondents that the statement made in paragraph-7 of the OA is palpably false and as such the application is bad for suppression

of material facts as the petitioner had filed a writ application being C.R. No.10028(W) of 1980 before the High Court at Calcutta, which came on transfer to this Tribunal and numbered as T.A. 937 of 1986 and was dismissed by this Tribunal under its order dated 29.6.89. According to the respondents, the present application is barred by the principles of res judicata and is liable to be dismissed.

10. At the time of hearing, Ms. B. Ray, Ld. Counsel appearing for the respondents has submitted in support of the plea taken in the reply that the present application is barred by the principles of res judicata or atleast barred by the principles laid down in the provision of Order 23, Rule 1(4)(b) in view of the order dated 29.6.89 passed by this Tribunal in T.A.No.937 of 1986 as per Annexure R/I. The background of this order has been explained by the petitioner in his amended O.A., which we have already noted in para-8 of this judgment. It has been stated in the amended para-7 of the original application that he filed a writ petition before the High Court, Calcutta on 1.10.80 being C.R.No.10028-W/1980 as his representation dt.1.9.80(Annexure A/11) remained undisposed. The petitioner was, however, intimated by a letter dated 16.10.80(Annexure A/12) that pending the decision of the Supreme Court on the Statexxxx appeal against the applicant's acquittal in the criminal case as per judgment of the Delhi High Court, his case could not be considered. We have already noted that the said writ application stood transferred to this Tribunal and was numbered as T.A. No. 937 of 1986. It is also the case of the petitioner that the present respondents in their reply furnished in T.A. 937/86 took the same plea that the appeal before the Supreme Court was pending and the subject-matter of the writ application was a sub judice matter depending upon the decision of the Supreme Court. It is not disputed that the reliefs claimed in the writ

application are almost same or similar to the reliefs claimed in the present application. Be that as it may, it would be helpful to go through the order passed by the Tribunal on 29.6.89 in T.A. 937/86, which is the main weapon of the respondents to resist the petitioner's application on ground of res judicata or under Order 23, Rule 1(4)(b) of the C.P.C. The order runs as follows :-

" When this matter is called, Mr.S.Mustafi, counsel appears for the applicant and submits on instruction that his client does not want to proceed with the matter. He prays for leave to retire. Leave is granted. Mr.S.N.Banerjee, counsel appears for the respondents.

The application is accordingly dismissed for non prosecution. There will be no order as to costs. "

The application was dismissed for non-prosecution. It was, however, noted in the aforesaid order that the Ld.Counsel for the applicant submitted on instruction that his client did not want to proceed with the matter and the Ld.Counsel prayed for leave to retire which was granted. We do not find any reason when there was instruction upon the Ld.Counsel to submit that his client did not want to proceed with the matter, why he should pray for leave to retire. If a Counsel appearing for a party wants to retire and such leave is granted by the Court, then the usual course is to direct the party to engage another Lawyer on his behalf to proceed with the matter. There is nothing to show in the above order that the present petitioner was present in Court when the said order was passed. Be that as it may, we are not supposed to sit on appeal against the aforesaid order dt.29.6.89. But for the purpose of the present application, it is necessary to see whether the aforesaid order will stand as a bar to the filing of the instant application.

11. Before analysing the facts on record in order to find an answer to the said question, it would be helpful to refer to the law settled by the Apex Court in this regard. In a case reported in A.I.R. 1987 S.C. 88 (Sarguja Transport Service -vs- State Transport Appellate Tribunal, Gwalior & Ors.), the Supreme Court has decided the issue of applicability of the principles of res judicata and bar under Order 23, Rule 1 C.P.C. in respect of writ application under Art.226. It has been laid down there that a petitioner after withdrawing a writ petition filed by him in the High Court under Art.226 without the permission to institute a fresh petition, cannot file a fresh writ petition in respect of the same cause of action in the High Court under that Article. The Supreme Court has observed as follows :-

"We are of the view that the principle underlying R.1 of O.XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-bunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art.226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art.32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art.226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission."

Our attention has also been drawn to a recent decision of the Supreme Court, reported in 1998 SCC(I&S) 712 (H.P.State Electricity Board v. K.R.Gulati), wherein it has been held that the

petitioner-respondents there could not reagitate his claim by filing a fresh application before the Tribunal challenging the very same cause of action, which arose on 11.8.82, against which he filed a writ petition before the High Court, Himachal Pradesh and withdrew the same on 12.9.85.

12. In this context, it would be helpful to again refer to the decision of the Apex Court in Sarguja Transport Service -vs- State Transport Appellate Tribunal, Gwalior & Ors. (supra), wherein the Apex Court has settled the law regarding the application of the rule of res judicata and the principle underlying Rule 1 of Order 23 of C.P.C. The Apex Court has noted that as per provisions of the Code of Civil Procedure (Code for short), there is a distinction between abandonment of a suit and 'withdrawal' from a suit with permission to file a fresh suit. Under Order 23, Rule 1, it is provided that where the plaintiff abandons a suit or withdraws from a suit without the permission referred to in Sub-rule (3) of Rule 1 of Order 23, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The Supreme Court has emphasised that the principle underlying Rule 1 of Order 23 of the Code is that when a plaintiff institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the court to file fresh suit. The Supreme Court has observed :-

"Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3)

of R.1 of O.XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in S.11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue in a former suit between the same 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. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule(4) of R.1 of O.XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule(3) in order to prevent the abuse of the process of the Court."

It may be noted here that u/s.22 of the A.T. Act, 1985, it is provided, inter alia, that a Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure but shall be guided by the principle of natural justice. There are certain matters specified in Section 22(3), where the provision of the Code will apply to the proceeding before an Administrative Tribunal. The above principle laid down by the Supreme Court in the case of Sarguja Transport Service(*supra*) will be applicable to a proceeding before the Administrative Tribunal as a matter of public policy.

13. Keeping the above principles in our mind, it is to be seen whether the instant application filed by the petitioner is barred by the principle of res judicata or by the provision of

Order 23, Rule 1(3) of the Code. In the earlier paragraphs of our judgment, we have given a detailed history of the case, which would show that the petitioner was once dismissed from service and suspended three times in his long service career in the perspective of a criminal case filed against him. In the Trial Court, the petitioner was convicted and punishment was inflicted upon him. On appeal preferred by the petitioner, the Delhi High Court set aside the Trial Court's judgment dated 13.9.74 along with the orders of conviction and sentence and the petitioner was acquitted. We have also noted that the petitioner's order of dismissal from service was withdrawn by the authorities and he was placed under suspension for several times, which were also set aside by the orders of the Calcutta High Court passed in different writ applications preferred by the petitioner. We have also noted that after being acquitted by the Delhi High Court in the above criminal case, the petitioner approached the respondent authorities claiming by filing a representation dt.1.9.80(Annexure A/11) all service benefits including promotion to the post of Assistant Iron & Steel Controller-Gr.I, to which he was already selected by the D.P.C. and for further promotion to the higher post of Deputy Iron & Steel Controller with effect from 1.9.69. In the said representation, the petitioner made a grievance of his supersession by his junior Shri S.B. Basu to the post of Assistant Iron & Steel Controller - Grade-I with effect from 1.9.64. The respondent authorities only informed him by their letter dt.16.10.80(Annexure A/12) that the Statexxxx had preferred an appeal before the Supreme Court against the Delhi High Court's judgment and order of acquittal and that as such he could not be given any promotion during the pendency of the aforesaid appeal. At this juncture, the petitioner moved the Hon'ble High Court, Calcutta in C.R. No.10028-W/80 on 1.10.80 as his above representation dt.1.9.80 was still pending with the

Government. The writ petition stood transferred to this Tribunal and was numbered as T.A. No. 937 of 1986. Admittedly, in the reply furnished in the aforesaid T.A. 937/86, the present respondents took the same plea that as the appeal was pending before the Supreme Court, nothing could be done.

14. In the above undisputed context of facts, it is to be decided whether the order passed by the Tribunal on 29.6.89(vide Annexure R/1) would stand as a bar u/s.11 or under Order 23, Rule 1(3) of the Code to the petitioner's filing the instant application after the Supreme Court judgment dt.4.4.90 was passed confirming the judgment and order of acquittal passed by the Delhi High Court and dismissing the appeal preferred by the State, ~~xxxxxx& India~~. We have quoted the order passed by the Tribunal on 29.6.89. We have noted some anomaly in the above order. Be that as it may, it is undisputed that the petitioner did not proceed with the T.A. 937/86. It has been stated in para-7 of the instant O.A. that as the appeal preferred by the State ~~xxx~~ against the order of acquittal passed by the Delhi High Court was pending, the petitioner was advised by his Lawyer not to proceed with the same. It cannot be gainsaid that in view of the pendency of the appeal preferred by the State against the order of acquittal passed by the Delhi High Court, the Tribunal could not proceed with the final adjudication of the matter involved in T.A. No. 937/86 concerning the petitioner's claim for promotion, supersession etc. It cannot be said that in view of the pendency of the appeal before the Supreme Court, the petitioner had a cause of action to proceed with T.A. No. 937/86. The issues involved in the aforesaid T.A. 937/86 could not be adjudicated by the Tribunal as the appeal before the Supreme Court was pending and everything depended on the final outcome of the appeal before the Supreme Court, which was disposed of in favour of the petitioner only on 4.4.90 i.e. long after the

order was passed by this Tribunal in T.A. No. 937/86. There cannot be any dispute over the principle of res judicata and the bar under Order 23, Rule 1(3) of the Code as laid down by the Supreme Court in the aforesaid judgment. But in the facts and circumstances of the case, we are of the view that there was no final adjudication of the matter involved in T.A. No. 937/86 as per order dt. 29.6.89. Legally, there was no scope for the Tribunal to enter into adjudication of the matter involved therein during the pendency of the appeal before the Supreme Court, which was the main bar on the part of the respondents to give any relief to the petitioner as communicated to him under their letter dt. 16.10.80 as per Annexure A/12. In that view of the matter, there was also no scope for the petitioner to pray for leave to file a fresh application after withdrawing the T.A. 937/86 with liberty to sue afresh. There was no formal defect in the application for which it would fail, nor the Tribunal came to a finding whether there were any sufficient grounds to allow the petitioner to institute a fresh application for the subject-matter or part of the claim concerned after withdrawing his T.A. No. 937 of 1986. The order was passed on the verbal submission of the Ld. Counsel appearing for the petitioner in the aforesaid T.A. as noted in the order dt. 29.6.89. No formal application for unconditional withdrawal or with liberty to sue afresh was filed on behalf of the petitioner concerned. This aspect of the matter cannot be overlooked by us when the petitioner has moved this Tribunal for getting justice. It is on record that the petitioner has been untiringly pursuing his case and grievance for relief with the respondents for decades. Had it been a case that the petitioner on his own volition did not proceed with the T.A. 937/86 without any just cause or reason, we could come to a conclusion that his first application being dismissed for non-prosecution his second application would be barred

under law. But it is on record that the petitioner could not proceed with the aforesaid T.A. in view of the pendency of the appeal before the Supreme Court, which was taken as an objection on the part of the respondents in their reply. Under the circumstances, we are of the view that although apparently it is easy to invoke the bar u/s.11 or under Order 23, Rule 1(3) of the Code in the matter of adjudication of the present case, but after going through the entire stream of events as noted above, we are of the view that such bar does not apply to the present case for the reasons given above. In the aforesaid judgment of the Supreme Court, the facts were quite different in nature. In the present case, we are of the view that as the Tribunal could not finally adjudicated T.A. No. 937/86 in view of the pendency of the ~~Government's~~ appeal before the Supreme Court, the dismissal of the T.A. for non-prosecution or on withdrawal without leave could make little difference and would be of no legal consequence so as to attract the provision of Sec. 11 and Order 23, Rule 1(3) of the Code. The Ld. Counsel appearing for the respondents has strenuously submitted that the instant application is barred by res judicata. But we are unable to accept such contention in view of the reasons given above. The application is not also barred under Order 23, Rule 1(3) of the Code.

15. The facts and circumstances of the case decided by the Supreme Court, reported in 1998 S.C.C.(I&S) 712(supra) are also materially different from the present one. In the aforesaid case, the respondent-petitioner, after the disposal of his writ application by the High Court accepted a promotion offered by the Himachal Pradesh State Electricity Board, appellant there and filed a fresh petition before the Tribunal reopening the matter, which was the subject-matter of his original writ petition. On that factual matrix, the Supreme Court held that the respondent-petitioner could not have re-agitated the claim by filing a fresh application before the Tribunal challenging the very same cause of action, which arose

on 11.8.82, against which he did file a writ petition and withdrew the same on 12.9.85.

16. It is also noted from the Annexures made to the instant O.A. and not disputed by the respondents that after the disposal of the Supreme Court appeal in his favour dt.4.4.90, the petitioner made a representation to the respondent authorities on 16.4.90 to consider his case in view of the Supreme Court judgment. As per Annexure A/15 dt.29.11.90, the petitioner was informed by the respondent authorities that his representations regarding promotional dues etc. were being looked into. By another letter dt.25.1.91 (Annexure A/16), the petitioner was informed in response to his representation dt.16.1.91 that his matter was referred to the D.C.I.S., Calcutta for processing and the final progress/position will be intimated in due course. It is shocking to find that although the criminal appeal before the Supreme Court was filed by the State, the respondent authorities directed the petitioner by their letter dt.28.2.91(Vide Annexure A/16A) to furnish a certified copy of the Supreme Court judgment along with a declaration that no other case was pending against him in any court of law. The petitioner complied with that requisition under his letter dt. 7.3.91 as per Annexure A/17. Nothing was admittedly done by the respondents in the matter of redressing the grievance of the petitioner after the Supreme Court judgment went to his favour, although for the past few years, the petitioner was being told that nothing could be done by the respondents as the State appeal against the Delhi High Court judgment of acquittal was pending in the Supreme Court. The application of the petitioner, in our view, is a document of consistent torture, injustice, persecution and humiliation suffered by the petitioner at the hands of the respondent authorities, who while playing the role of his employer turned to be his determined tormentor. Even after the disposal of the Supreme Court

appeal, they did not care to remedy the grievance of the petitioner and to give him his legitimate dues. We may recall here the observations made by the Hon'ble Delhi High Court in the judgment dated 13.9.74 acquitting the petitioner that in a conflict between the Director of Industries and the Iron & Steel Controller, the appellant(the present petitioner) appeared to have been made the scapegoat. The way the petitioner has been treated by the respondent authorities after the final disposal of the appeal preferred by the State before the Supreme Court is reprehensible. In view of the judgment of the Supreme Court dated 4.4.90, there was no bar or reasonable excuse on the part of the respondent authorities to deny the service benefits along with all consequential reliefs including his legitimate promotion to the higher post. The petitioner has retired on superannuation with effect from 31.10.80. He has, however, prayed for notional promotion to the post of Assistant Iron & Steel Controller - Gr.I with effect from the date his juniors Shri S.B. Basu and two others named in the petition were promoted to the said post. He has also prayed for giving him further promotion to the post of Deputy Iron & Steel Controller(now Joint Development Commissioner for Iron & Steel) with effect from 1.9.69 on the basis of the recommendation made by the U.P.S.C. against the vacancy on that date in direct recruitment quota. The petitioner has prayed for all arrears of pay in the post of Assistant Iron & Steel Controller (Grade-I) with effect from 1.9.64 i.e. the date from which his next junior Sri S.B. Basu was granted promotion to the said post along with arrears of pay in the post of Deputy Iron & Steel Controller with effect from 1.9.69. He has further prayed for revised pensionery benefits along with other consequential retiral benefits with interest @ 18% per annum on such amount of arrears as well as arrears of revised pensionery benefits with effect from 30.8.80

according to rules. We have found from the materials on record that the respondent authorities have acted malafide and in a most capricious manner in denying the benefits due to the petitioner from the due date/dates after the matter was set at rest by the Hon'ble Supreme Court and the judgement dated 4.4.1990. In view of the peculiar facts and circumstances of the case, we are of the view that the respondents must be saddled with exemplary costs.

17. In view of the foregoing, we allow this application with cost assessed at Rs 5000/- (Rupees five thousand) to be paid by the respondents to the petitioner within 4 weeks from the date of communication of this order with the following directions:-

(i) We direct the respondent authorities to give the ~~deemed~~ petitioner ~~notional~~ promotion with retrospective effect in the post of Assistant Iron & Steel Controller, Gr.I w.e.f. the date on which the applicant's next junior, Shri S.B.Basu, Assistant Iron & Steel Controller, Gr.II was given promotion with all consequential benefits including fixation of pay and arrears of salary ; .

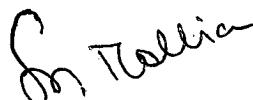
(ii) The respondent authorities shall also give him notional appointment in the post of Deputy ~~Iron & Steel Controller~~ Iron & Steel Controller (now Joint Development Commissioner for Iron & Steel) w.e.f. 1.9.69 on the basis of the recommendation made by the UPSC against the vacancy created on that date in direct recruitment quota. His pay in the said post shall be fixed notionally and annual increment in the said post till his superannuation should also be given on notional basis. For the purpose of determining his pension and retiral benefits his pay on the date of superannuation shall be fixed in the aforesaid manner and all arrears towards his

terminal benefits on recalculation including DCRG etc. shall be given ~~within a period of one year~~. All such directions must be complied with and the financial benefits should be released to the petitioner within 6 months from the date of communication of this order.

In view of the peculiar facts and circumstances of the case as noted in the body of our judgement, we do not think it expedient to pass any order on interest.



(S. Dasgupta)
Member(A)



(S.N. Mallick)
Vice-Chairman.