

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 351/97

CORAM Friday, this the 1st day of October, 1999.

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.K. Kannan, S/o Neelakantan,
Section Officer (Accounts),
Defence Accounts Department,
(At present on deputation as Jr.Accounts Officer,
Administration of Union Territory of Lakshadweep,
Kavarathi) - Residing at Ekkaparambu,
Kuzhimanna P.O., Malappuram District.

...Applicant

By Advocate Mr M.R. Rajendran Nair.

Vs.

1. The Controller of Defence Accounts,
(Southern Command), Pune.
2. The Controller of General Defence Accounts,
R.K. Puram, New Delhi.
3. The Controller of Defence Accounts, Bangalore.

...Respondents

By Advocate Mr S. Radhakrishnan.

The application having been heard on 1.10.99,
the Tribunal on the same day delivered the
following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks to declare that he is entitled
to be promoted as Assistant Accounts Officer with effect
from 19.11.1993 and to direct the respondents to consider
his claim for promotion and pass orders within a
reasonable time and to quash A10 and A12.

2. Applicant says that his promotion as Assistant
Accounts Officer with effect from 19.11.93 on completion
of three years service as Section Officer (Accounts)
was denied to him on the basis of the adverse entries
contained in the Annual Confidential Report (A2).

According to him, he was on leave from 28.4.93 to 29.4.93, 17.5.93 to 15.6.93, 16.6.93 to 31.7.93 and 7.8.93 to 26.11.93 and leave from 17..5.93 to 15.6.93 was pre-sanctioned and for the remaining period it was post sanctioned. He approached this Bench of the Tribunal by filing O.A.206/96 for a declaration that he is entitled to be promoted as Assistant Accounts Officer and also to direct the respondents to consider and pass appropriate orders on his representation for expunging the adverse remarks contained in the ACR. This Bench of the Tribunal directed the respondents to consider his representation and pass orders thereon. In pursuance of the same, A10 order was issued. Aggrieved by the same, he preferred an appeal and the appeal was dismissed as per A12 order.

3. Respondents resist the O.A. by contending that this O.A. is barred by res judicata, that it is barred by limitation and that the O.A. is not maintainable in law or on facts.

4. The plea of res judicata is based on the footing of A9 order passed by this Bench of the Tribunal in O.A. 206/96 filed by the applicant. The order to attract res judicata, the matter should have been heard and finally decided. From a reading of A9, it cannot be said that the issue involved herein was heard and finally decided by this Bench of the Tribunal. That being so, the plea of res judicata cannot be accepted.

5. As far as the other plea that the O.A. is barred by limitation also cannot be accepted for the reason that the ground on which bar of limitation is raised by the




respondents is that O.A. 206/96 was not filed within the period. We are not sitting in appeal against the order passed in O.A. 206/96. If the claim of the applicant was barred by the time O.A. 206/96 was filed and the respondents were aggrieved by the order therein, they should have taken up the matter before the higher forum. It is not open for them now to say that this O.A. is barred by limitation on the ground that O.A. 206/96 was filed within the time prescribed.

6. There was originally only one prayer in this O.A. and that is for a declaration that the applicant is entitled to be promoted as Assistant Accounts Officer with effect from 19.11.93. Subsequently, the prayer portion was amended by including the second prayer to quash A10 and A12.

7. It is at this juncture relevant to note that in para 18 of the O.A. it is averred thus:

"Applicant reserves his right to challenge adverse remarks in separate proceedings."

A10 and A12 relate to adverse remarks made in the Confidential Report of the applicant. The applicant is now taking dual stand that he has reserved his right to challenge A10 and A12 in separate proceedings and wants to get A10 and A12 quashed. Both cannot go together. That apart, for the purpose of quashing A10 and A12, no ground is stated. There is no whisper with regard to A10 and A12 in the O.A. as to how they are unsustainable in law. A mere relief sought is not enough. The opposite party should be in a position to know on what grounds A10 and A12 are sought to be quashed. They cannot be taken by surprise. Learned



counsel appearing for the applicant submitted that quashing of A10 and A12 can be considered even in the absence of any ground being stated since only a question of law is involved. Whether it is only a question of law alone or it is a question of law and fact cannot be considered for want of pleading. It cannot be assumed that only a question of law is involved. It can well be a mixed question of law and fact. It is well settled that a plea which is not raised, cannot be entertained.

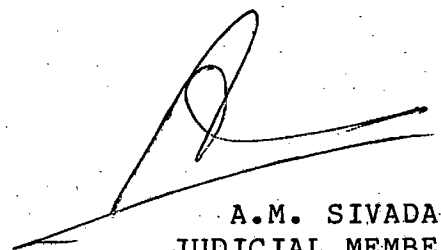
8. Since with regard to quashing of A10 and A12, the applicant has taken contradictory stands and no ground is stated, A10 and A12 cannot be quashed. If A10 and A12 cannot be quashed, the applicant is not entitled to the first relief also sought. The applicant was not considered fit for promotion because of the adverse entry in the ACR.

9. Accordingly, the O.A. is dismissed. No costs.

Dated the 1st of October, 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THE ORDER

1. Annexure A2: True copy of the letter No.AN/CON/9/CR/VOL. IX, dated 13.9.94 issued by Accounts Officer (Administrative), Office of the JCDA, PAO (ORS), Artillery, Lekha Nagar, Nasik - 422 009.

2. Annexure A9: True copy of the order dated 16.2.1996 in O.A. No. 206 of 1996 issued by this Tribunal.

3. Annexure A10: True copy of the Order No.AN/II/13444 dated 22.04.1996 issued by the 3rd respondent.

4. Annexure A12: True copy of the Order No.AN/I/11502/Nagpur dated 9.9.96 issued by the Assistant Accounts Officer, Office of the 1st respondent.