

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.837/88

Shri Mahendrakumar Madaria,
C/o M.R.Borkar,
Advocate,
124,Abhyankar Nagar,
Nagpur-440-010

.. Applicant

V/s

1. Director,
Forest Survey of India,
25,Subhash Road,
Dehra Dun.

2. Jt.Director,
Forest Survey of India,
Central Zone,
Bungalow No.1,
Seminery Hills,
Nagpur -440-006.

.. Respondents

Coram: Hon'ble Member(J) Shri M.B.Mujumdar
Hon'ble Member(A) Shri P.S.Chaudhuri

Appearances:

Shri M.R.Borkar
Advocate for the
Applicant.

ORAL JUDGMENT
(Per M.B.Mujumdar, Member(J))

Date: 18-1-1989.

We have heard Shri M.R.Borkar, learned advocate for the applicant and we find that the application is barred by limitation and also by the principles of res-judicata.

2. The relevant facts for the purpose of this judgment are these: In March,1966 the applicant was appointed as Deputy Forest Ranger. On 27-4-1979 he was promoted as Junior Technical Assistant against the departmental promotees quota. In 1980 a seniority list of Junior Technical Assistants was published. In that list the applicant was shown at Sr. No.47. In the column entitled 'Date of seniority in the post/grade' the date 27-4-1979 was shown against his name.

The applicant challenged that seniority list by filing writ petition No.2430/81 in the Nagpur Bench of the Bombay High Court. According to him he should have been given seniority from 1971. That Writ Petition was rejected by the High Court on 2-6-1982 after issuing notices to the respondents.

3. In February, 1988 the applicant and six others filed O.A.133/88 in this Bench of this Tribunal. We had issued notices to the respondents in that case. They were the same as in the present case. The respondents had filed the affidavit of Shri J.B.Lal, IFS, Director of Forest, Survey of India. After hearing the advocates for both the sides at length we ^{held} ~~had~~ that the application was barred by limitation. We also compared the prayers made by the applicants in Writ Petition No.2430/81 and in O.A. 133/88 and held that the prayers were practically the same. Hence we rejected that application viz.O.A.133/88, summarily by our judgment delivered on 10-8-1988.

4. Now, the present applicant, who was also an applicant in O.A. 133/88, has filed this application on 4-11-1988. His prayer in this application is for directing the respondents to grant seniority in the seniority list on the basis of his selection on 14-10-1977.

5. The applicant has based the above prayer on the affidavit filed by Shri J.B.Lal in O.A.133/88. In para 10 of the affidavit, Shri J.B.Lal had stated that the DPC which had met on 14-10-1977 had recommended the promotion of the applicant as Junior Technical Assistant on an ad-hoc basis but he could not be promoted because of the pendency of the departmental enquiry against him on the charge of submitting false TA bill.

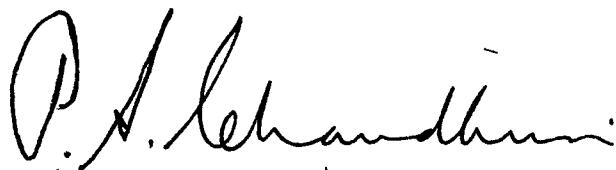
6. Shri M.R.Borkar, the learned advocate for the applicant submitted that the applicant was not aware till he read the affidavit of Shri J.B.Lal that he was selected by the DPC in its meeting held on 14-10-1977. However, thereafter on 10-8-1988 he made a representation for giving him seniority on the basis of the recommendations of the DPC held on 14-10-1977. The respondents rejected that representation by pointing out that in view of the decision of the Tribunal in O.A.133/88 dtd. 10-1988 it was not possible to make any change in the placement of the applicant in the seniority list. Thereafter the applicant has filed this application on 4-11-1988.

7. We are of the view that the fact that the applicant came to know when he read the affidavit of 10-8-1988 that he was recommended by the DPC in its meeting held on 14-10-1977 will not give the applicant a fresh cause of action for filing a fresh application under Section 19 of the Administrative Tribunals Act. As already pointed out the applicant had challenged the seniority list prepared in 1980 by filing Writ Petition No. 2430/81. In that case his contention was that he should be given seniority from 1971. But while considering the prayer for quashing the seniority and giving him proper placement the High Court must be deemed to have considered that the applicant could not be given seniority from any subsequent date also. Similarly the applicants in O.A. 133/88 had made the same prayers. The applicant was one of the applicants in that case. The applicant could have contended in that application that though he could not be given seniority from 1971 he should be given seniority from ^a subsequent date prior to 27-4-1979. He had not made such a prayer in that case. Though he might not be aware that he was recommended by the DPC

in its meeting held on 14-10-1977 he must be aware that some others were promoted though he was due for promotion even on that date. Still he had not challenged his non-promotion. We are therefore of the view that the present application is barred by principles of constructive res-judicata.

8. Moreover the cause of action for the applicant so far as the prayer in this application is concerned arose on in the year 1977. The Principal Bench of this Tribunal in V.K.Mehra vs. Secretary, Ministry of Information and Broadcasting, New Delhi ATR 1986 CAT 203, has held that the Administrative Tribunals Act does not vest any power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1-11-1982. The Principal Bench has further held that as regards an application relating to a grievance arising out of an order passed prior to 1-11-1982 the Tribunal will have no jurisdiction, power or authority to entertain the same. The same view is taken by different Benches of the Tribunals also. Hence we hold that the present application is barred by limitation also.

9. In result we reject this application summarily under Section 19(3) of the Administrative Tribunals Act, 1985.



(P.S.CHAUDHURI)
Member(A)


(M.B. MUJUMDAR)
Member(J)