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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~
NEW BOMBAY BENCH

O.A. No.

570/88

~~1988~~

~~XXXXXX~~

DATE OF DECISION 24.11.1988

Shri Rafatullah Khan,

Petitioner

Shri D.V.Gangal

Advocate for the Petitioner(s)

Versus

Union of India & Anr.

Respondent

- Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member(J),

The Hon'ble Mr. P.S.Chaudhuri, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.570/88.

Shri Rafatullah Khan,
C/o.M.M.Khan,
Qtr. No. C-1,
Telecom Staff Qtrs.
Nandura Road,
Khamgaon - 444 303.

... Applicant.

V/s.

1. Union of India through
Secretary,
Ministry of Communication,
New Delhi.
2. The General Manager,
Telecommunication,
Maharashtra Circle,
Bombay-400 001.

... Respondents.

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

Oral Judgment:

[Per Shri M.B.Mujumdar, Member(J)]

Dated: 24.11.1988

The applicant Mr.Rafatullah Khan had filed Regular Civil Suit No.340/85 in the Court of the Civil Judge, Senior Division, Khamgaon praying, (1) for a declaration that the termination of his service was illegal and void and he continue in service, (2) for a declaration that his juniors had been employed and the plaintiff has been deprived of his right as a senior, and (3) for directing the respondents to reinstate him with continuity and with full back wages.

2. The suit was transferred to this Tribunal under section 29 of the Administrative Tribunals Act, and it was numbered as Tr. Application No.503/86.

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3. The respondents had resisted the suit by filing their written statement to the suit that was pending in the Civil Court itself.

4. On 8.1.1988 after hearing the arguments of Mr.M.P.Phanse, the learned advocate for the applicant and Mr.S.R.Atre (for Mr.P.M.Pradhan) for the respondents, the suit was dismissed by this Tribunal, with no order as to costs.

5. On 11.3.1988 the applicant had filed Review Petition No.8/88 for reviewing the judgment and order in Tr. Application No.503/86. After hearing Mr.Gangal for the applicant that review petition was rejected summarily on 3.6.1988.

6. By way of second ground the applicant has filed the present application for the same reliefs.

7. In para 11 of the application the applicant has made the following prayers:- (1) Hold and declare that the removal of the applicant from service on the ground of abandonment of service is illegal, (2) Hold and declare that the termination of services of the applicant is in contravention of the provisions of Industrial Disputes Act, and (3) Hold and declare that the removal of the applicant is in contravention of the departmental circulars issued in this behalf.

8. It may be pointed out that the applicant had been working with the Posts and Telegraphs department, Khamgaon as a Casual Labourer since April, 1982. According to the contentions of the respondents in the previous suit, i.e. the Transferred Application No.503/86, he had remained

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absent from duties w.e.f. 26.4.1985. After hearing the advocates for both the sides we have held in the judgment in Tr.Application No.503/8⁶ delivered on 8.1.1988 that the applicant himself had been responsible for the loss of his casual job as he himself had been absenting unauthorisedly, even after he had been given employment in April,1985. Hence it was held that the applicant was unable to establish his claim for employment. It is in view of these findings that the suit was dismissed. (see para 6 of the judgment in Tr. Application No.503/86) The Review Petition filed by the applicant against that judgment was rejected summarily after hearing the learned advocate for the applicant. Hence the point to be decided now is whether the present application is barred by the principles of res#judicata or not.

9. After hearing Mr.Gangal at length, we have no hesitation in holding that the present application is barred by the principles of res#judicata.

10. It was not disputed by Mr.Gangal that the subject matter of the previous Transferred Application and the present application, as well as the reliefs claimed are substantially the same. However, Mr.Gangal submitted before us that the termination of the services of the applicant was in violation of some of the sub-sections of Section 25 of the Industrial Disputes Act. He further submitted that the plea of abandonment of service by the applicant was not at all at issue in the previous case and hence the present application cannot be said to have been barred by the principles of res#judicata. But a perusal of the judgment in the previous case shows that

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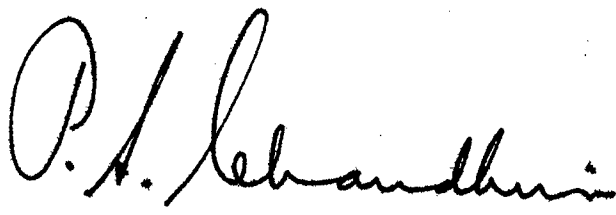
the Tribunal had dismissed the suit on the ground that the applicant himself was responsible for the loss of his job as he himself had been absenting unauthorisedly and that he had failed to establish his claim for employment. We fail to understand as to how the applicant can get rid of these findings in this case. These findings cannot be re-agitated in this case again. If the applicant himself had absented unauthorisedly and lost his job we do not understand how the question of violation of some clauses of section 25 of the Industrial Disputes Act will come into play in this case.

11. Secondly, Mr. Gangal submitted that the plea of abandonment was not at all at issue in the previous case. But this plea was positively taken by the respondents in that case and we have accepted ~~it~~ as it can be seen from para 6 of the judgment. Hence it is not possible to hold that the plea of abandonment was not in issue in the previous case.

12. Then Mr. Gangal submitted that the applicant is claiming a different title to his service in this case. From his argument we find that what he is trying to do in this case is to raise some additional grounds which were probably not taken in the previous case. But it is to meet such argument that explanation ^{IV} is inserted in Section 11 of the C.P.C. According to that explanation, 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. This is commonly called as the principle of "Constructive Res-judicata." If the applicant had not raised some grounds which he could have raised for his reinstatement in the previous suit, still the judgment will come in his way in filing this fresh application.

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13. We therefore, find no substance in the present application. It is our considered view that the present application is barred by the principles of res judicata in view of the judgment in Tr.Application No.503/86. Hence, we reject the present application summarily with no order as to costs.



(P.S. CHAUDHURI)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J).