

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 349 /1996

Date of Decision: 21.2.97

A.J. Sheikh

Petitioner/s

Shri Y.R. Singh

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri S.C. Dhawan, CGSC.

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

ssp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, GULESTAN BUILDING NO. 6
PRESOT ROAD, FORT, MUMBAI 400001.

O.A. 349/96

Dated this 21st day of February 1997.

CORAM : Hon'ble Shri B.S. Hegde, Member (J).

A.J. Shaikh
(R/o 240, Modikhana
Sholapur
c/o Shri Y.R. Singh
Advocate
Gulestan Building No.6
3rd Floor, Prescot Road
Fort, Bombay 400 001.

(By Advocate Shri Y.R.
Singh) Applicant

v/s

1. The Union of India
Through: The General
Manager, Central Rly.,
Bombay V.T.
2. The Divisional Rly.
Manager, Office of the
D.R.M. (P. Branch)
Central Railway
Sholapur.
3. The F.A. & C.A.O.
Central Railway
c/o F.A. & C.A.O.'s
Office, Central Rly.,
Bombay V.T.

(By Advocate Shri S.C.
Dhawan, CGSC). Respondents

ORDER

I Per: Shri B.S. Hegde, Member (J) I

Heard Shri Y.R. Singh for the applicant and
Shri S.C. Dhawan for the Respondents. The applicant is
challenging the impugned order dated 4-6-1991 and says
that the same is null and void and requires to be
quashed and direct the Respondents to step up the pay
of the applicant on par with his junior with all
subsequent consequential benefits etc. In this connection,

Hegde

In this connection, the learned counsel for the applicant has enclosed a copy of the O.A. 451/94 filed by him which has been disposed of by the Tribunal vide order dated 6th December 1995 wherein the same impugned order of the Respondents has been dealt with stating that in September 1987, the applicant was transferred from Sholapur to Wadi wherefrom he made an appeal for stepping up of his pay with reference to his junior. That representation was rejected by order dated 4-6-1991. The applicant retired as back as 10-6-1991. On the other hand, the Respondents vehemently opposed the entertainment of this O.A. mainly on the ground of limitation as well as the applicant's claim is barred by principle of Resjudicata and he cannot be allowed to file any fresh application on the same relief which he could have asked but he did not claim intentionally. On these two grounds, the application is required to be dismissed. Though the impugned order has been passed as back as 1991, the applicant is challenging the same in 1996 after lapse of 5 years. As per Section 21 of the A.T. Act, the application is required to be filed within one year which is not the case here and he has not filed any M.P. for condonation of delay. In support of his contention, Shri Dhawan draws my attention to the decision of the Apex Court in Commissioner of Incometax, Bombay v/s T.P. Kumaran JT 1996 (8) S.C. 98 wherein the Apex Court has held that "the Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive res judicata under Section 11, Explanation IV, CPC which envisages that any matter which might and ought to have been made ground of defence or attack

in a former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Hence when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. He did not set and therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2, Rule 2, CPC prohibits the petitioner to seek the remedy separately. Appeal allowed." He also relies upon the decision of the Tribunal in Sabita Majumdar & Ors. v/s Union of India ATJ 1996(2) Page 82 wherein it is held that "Tribunal's previous decision relating to petitioner's prayers atleast on ground of limitation had been finally affirmed by the Hon'ble Supreme Court by dismissing the SLP filed by the petitioners themselves. Under the circumstances, whatever case they may have got on merits, the matter is res-judicata so far as the issue of limitation is concerned and the petitioners cannot approach any court to seek directions/relief on the same cause of action. Similarly, their argument for claiming the benefits of other judgements is of no avail as long as their right to approach any court on the same issue remains extinguished." Therefore, the learned counsel for the Respondents submits that the subject matter of stepping up of pay has been covered by the earlier decision of this Court in OA 451/94 and his representation in this respect has already been rejected; therefore, the question of re-opening the matter once again does not arise. Therefore, the

W.R.

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principle of res-judicata squarely applies to the facts of this case.

2. In the facts and circumstances of the case, I do not see any merit in the O.A. and the same is dismissed at the admission stage itself. No order as to costs.


(B.S. Hegde)
Member (J)

ssp.