

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 28th day of March, 2002

O.A.925 OF 2001

Tulshiram Shidu Jagtap,
Ex-Mazdoor, T.No.1925,
Central Vehicle Depot,
Dehu Road, Tahsil Haveli,
District Pune.
R/o Bhekarai Nagar, Dhamal Vasti,
Baban Mugaji Dhamal Chawl,
Post Fursungi, Tahsil Haveli,
District Pune.
(By Advocate Shri J.M.Tanpure) - Applicant

Versus

1. Union of India
through the Commandant,
Ordnance Depot, Fort, Allahabad.
2. The Commandant,
AFV Depot,
Kirkee, Pune.
(By Advocate Shri R.R.Shetty for
Shri R.K.Shetty) - Respondents

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Member (A) -

When this case came up for hearing today, the learned counsel for the respondents stated that although the reply has not yet been filed, the matter can be disposed of on a legal point since he contended that this OA in his view is hit by principles of res judicata/constructive res judicata ^{and} the provisions of Order 2 Rule 2 of the Code of Civil Procedure. As

2. I have heard the learned counsel for the applicant Shri J.M.Tanpure, and also Shri R.R.Shetty for Shri R.K.Shetty, learned counsel for the respondents, only on this point. The arguments were made with reference to the judgment of this Tribunal in OA 850/93 (Shri T.S. Jagtap Vs. Union of India & others) decided on 13.10.1995 (Exhibit - A-4). The learned counsel for the applicant Shri Tanpure argued that the matter is not hit by principles of res judicata as what he is now arguing for his pension in terms of CPRO 58/72 (Copy at page 8) whereas

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B.N.B.

what was asked for in the earlier (OA 850/93) was for counting of his service for pensionary benefits rendered by him w.e.f. 13.3.1948 to 30.6.1969. Thus, he claimed that the principles contained in Section 11 of the Code of Civil Procedure do not go against the applicant's case. On the point of constructive res judicata also we will have to examine his case with reference to the same judgment i.e. in OA 850/93 (supra). Shri Shetty stated that the matter is indeed hit by the principles of constructive res judicata and the contents of Order 2 Rule 2 of CPC.

3. I have gone through the judgment made on 13.10.1995 by this Tribunal and find that even though on a technical view the matter may not be hit by principles of res judicata as set out in Section 11 of CPC, it was certainly incumbent upon the applicant to come up with all his pleas alternative or otherwise when he filed the earlier OA 850/93. His case is certainly hit by principles of constructive res judicata and the contents of Order 2 Rule 2 of the CPC. I am therefore not able to allow this OA, in view of this clear legal infirmity. It must however be mentioned that the administration itself is not bound by these principles and it will be open for the applicant to persuade the respondents that he is indeed eligible to the benefits he seeks on the particular merits and facts of his case. Since however the case fails on an important legal grounds, I am not giving any directions on this count.

4. The OA is therefore dismissed with no order as to costs.

B.N. Bahadur

(B.N. Bahadur),
Member (A)

dt 28/3/02
Order/Judgement despatched
to Applicant, dependent (s)
on 24/4/02

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 23/2002 IN O.A.No. 925/2001

Dated this Thursday, the 27th day of June, 2002.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Tulshiram Shidu Jagtap ... Applicant.

VERSUS

Union of India & Others ... Respondents.

TRIBUNAL'S ORDER ON CIRCULATION :

This is a Review Petition bearing No. 23/2002 filed with regard to the judgement made in O.A. No. 925/2001. It is filed by Original Applicant. A careful perusal of the Review Petition shows that the Applicant is aggrieved at the dismissal of the O.A. on the ground of its being hit by the principles of constructive res judicata. He states that Respondents were supposed to file Written Statement and thus, the Applicant's advocate was taken by surprise. This is hardly a point that can be argued in a Review Petition. The issue regarding res judicata/constructive res judicata is a purely legal issue and there is no reason why the Applicant's counsel, who has come to the Court fully knowing his case, should be taken by surprise or be "confused or puzzled".

2. Well, as the Applicant may be aggrieved by the order made in the O.A., the remedy does not lie in coming up in a Review Petition. It lies elsewhere. Since no errors apparent on the face of record have been made out in the O.A., the Review Petition deserves to be dismissed and is accordingly dismissed.

B. N. Bahadur

(B. N. BAHADUR)
MEMBER (A).