

Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 22 MAR 1989

APPLICATION NO (\*) 695 / 88(F)

W.P. NO (\$) \_\_\_\_\_

Applicant (s)

Respondent (s)

Shri V.V. Nanjangud

V/s

The General Manager, Telecom, Karnataka Circle,  
Bangalore

To

1. Shri V.V. Nanjangud  
'Krishna Kunj'  
G.K. Murthy Artist Building  
Near Dr Taverere Nursing Home  
Dharwad - 8
2. Shri P.A. Kulkarni  
Advocate  
No. 48, 57th 'A' Cross  
IV Block, Rajajinagar  
Bangalore - 560 010
3. The General Manager  
Telecommunications  
Karnataka Circle  
Maruthi Complex  
Gandhinagar  
Bangalore - 560 009
4. Shri M. Vasudeva Rao  
Central Govt. Srng Counsel  
High Court Building  
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~BY~~/~~INTERIM~~~~ORDER~~  
passed by this Tribunal in the above said application(\*) on 21-3-89

Issued  
K. M. S. Rao  
22-3-89

O/c  
Deputy Registrar  
(JUDICIAL)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THE 21ST DAY OF MARCH, 1989

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY .. VICE CHAIRMAN

THE HON'BLE MR. L.H.A.REGO .. MEMBER(A)

APPLICATION NO.695 OF 1988

Sri V.V.Nanjand  
Retd.Sr.Section Supervisor  
'Krishna Kunj'  
G.K.Murthy Artist Building  
near Dr.Tavargere Nursing Home,  
DHARWAD-8.

.. Applicant

(By Sri P.A.Kulkarni, Advocate for the applicant)

-vs.-

1. Union of India  
by the General Manager  
(Telecommunications),  
Deptt.of Telecommunications,  
Karnataka Circle,Maruti Complex,  
Bangalore.

.. Respondent

Sri  
(M.Vasudeva Rao, Addl.Standing Counsel for Central  
Government - for respondent).

This application coming on for  
hearing this day, the HON'BLE MR. L.H.A.REGO,  
MEMBER(A), made the following:

ORDER

Initially, the applicant herein, had sought  
for alternate reliefs. Later, on 23-5-1988, he  
sought permission of this Tribunal, to delete the

prayer



prayer at para 7(a) of his application and to add a prayer, to quash Letter dated 15-3-1988(Ann.E) addressed to him, by the respondent, who had informed him, that the entire relief as prayed for by him, in his earlier Application No.173/86(T) [corresponding to Writ Petition No.3865/79] and granted by this Tribunal, by its decision rendered on 30-9-1986, was extended to him. This permission was granted by this Tribunal on 23-5-1988. The applicant has also prayed that this Tribunal direct the respondent to:

- (i) hold that he was promoted to the Lower Selection Grade(LSG) cadre, with effect from 6-5-1963 and consequently, his pay be fixed in that cadre as on that date, with consequential monetary benefit;
- (ii) reckon his date of confirmation in that cadre, as on 1-3-1964, instead of on 1-3-1970, and
- (iii) entitle him for promotion to the next cadre of Higher Selection Grade(HSG), with effect from 11-10-1977 instead of from 7-12-1982 and fix his pay therein accordingly, with resultant monetary benefit.

2. The facts of this case are briefly as under: The applicant entered service in the Department of Telecommunications, Karnataka Circle, Bangalore, as a Timescale Clerk, in the Engineering Unit, on 24-11-1952 and was confirmed in that post on 1-3-1957. He was promoted to the LSG cadre on 25-5-1966 and confirmed therein, with effect from 1-3-1970. He

secured further promotion to the HSG cadre on 7.12.1982 and sought voluntary retirement from service, with effect from September 1986.

3. Prior to 1967, the clerical cadre in the 2 units viz., the Engineering Unit and the Telecom Revenue Accounts(TRA) Unit, were distinct and accordingly, gradation lists for this cadre, were maintained separately in respect of these two units. In 1967, a policy decision was taken by the Department of Telecommunications, to amalgamate these two units into one. Consequently, a Common Gradation List(CGL) was drawn up, for the clerical cadre, after these two units were merged.

4. The applicant had earlier filed a Writ Petition bearing No.3865/79, in the High Court of Judicature, Karnataka, Bangalore, which came to be transferred to this Tribunal, on enactment of the Administrative Tribunals Act, 1985 and was registered anew, as Application No.173 of 1986(T). He had prayed therein, that the impugned order dated 28-10-1978, passed by the respondent (stating that there was no change in his seniority in the CGL, drawn up as on 1-1-1978, in respect of the clerical cadre, after merger of the above two units) be quashed. He had further prayed in that application, that the General Manager, Telecommunications, Karnataka Circle, Bangalore, and the Director General, Posts and Telegraphs, New Delhi, be directed, to assign seniority to him, on the basis of



his entry into the Department on 24-11-1952 and his confirmation on 1-3-1957, in the post of Timescale Clerk and to give him consequential benefit of promotion and confirmation, in the LSG cadre, as also in the next higher cadre of HSG, on that basis.

5. The applicant refers to the Memo dated 18-7-1986(Ann.A), filed by him, before this Tribunal, by way of clarification and as a supplement to the reliefs sought by him, in the earlier Application. He states, that he was required to do so, as the respondent-department, had filed a Memo dated 1-7-1986(Ann.B), seeking dismissal of his application on the ground, that his prayer was fully met.

6. This Tribunal taking duly into account both the aforesaid memoranda, passed the following order, in Application No.173/86(T) on 30-9-1986 (also vide Annexure-C):

"The contents of the memoranda filed by the counsel for both the sides are not ad idem. Taking broadly the contents of both the memoranda we consider it fit and proper to dispose of the application in terms of the prayer contained in paragraph 17(i) and (ii) of the application initially filed as a writ-petition in the High Court of Karnataka. The application/W.P. is disposed of accordingly."

*dd*

7. The applicant asserts, that consequently, he was entitled to relief, as prayed for in the said application and as clarified in his aforesaid Memorandum dated 18-7-1986. As the respondent did not grant him relief accordingly, he states, he was constrained to issue a legal notice to him, on 10-2-1988 (Ann.D), to grant him relief as above. The respondent however, by his impugned letter dated 15-3-1988(Ann.E), informed the applicant, that the decision of this Tribunal, dated 30-9-1986, in Application No.173/86(T), was duly complied with.

8. Aggrieved, the applicant has come before us, through his present application.

9. The applicant has in Annexure-F, furnished certain service details of the employees, who he states, were junior to him, in the Department of Telecommunications, in the cadre of Time-scale Clerks, to enable the Tribunal, to give a proper decision on the present application.

10. The respondent has filed his reply, countering the application.

11. Shri P.A.Kulkarni, learned Counsel for the applicant, submitted, that if the total length of service rendered by the applicant, was reckoned from the date of his entry, in the Department of Telecommunication,



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for the purpose of seniority and promotion to the higher cadres viz., LSG and HSG, on the principle enunciated by the Supreme Court, in 1972(2)SCR 994: AIR 1972 SC 670(UNION OF INDIA & ORS. -vs.- M.RAVIVERMA & ORS.), rightful seniority would be restored to him, in the respective cadres. He referred to the instructions issued by the Directorate of Posts and Telegraphs in their Letter dated 7-8-1978, in this behalf, pursuant to the above decision of the Supreme Court. He cited the example of one Sri H.C. Balasubramanian, who he averred, was even junior to R-3 to R-5, in the earlier Application No.173/1986(T), who was promoted earlier than he, to the respective cadres viz., on 6-5-1963, to the cadre of LSG and on 11-10-1987, to that of HSG, which dates he asserted, should have been rightfully assigned to his client.

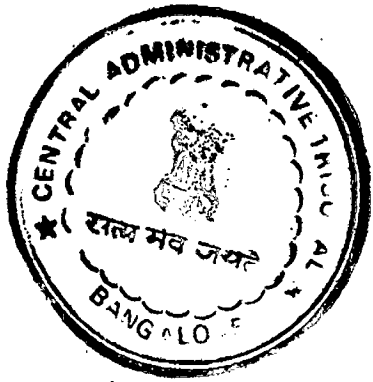
12. Shri Kulkarni contended, that even otherwise, his client was entitled to notional fixation of his promotion, to the above respective cadres, on the above basis, with reference to his juniors and to monetary benefit, from the date he actually officiated in these cadres, on promotion, in accordance with the relevant Fundamental Rules, relating to stepping up of pay, in relation to his juniors.

13. Shri M. Vasudeva Rao, learned Counsel for the respondent, refuting the above contentions, at the outset, raised a preliminary objection, that

  
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the application suffered from an infirmity, on account of non-joinder of necessary party, citing reference to Shri A.C. Balasubramanian, over whom the applicant was claiming seniority.

14. Apart from the above infirmity, Shri Rao clarified, that Shri Balasubramanian was senior to the applicant, by virtue of the fact, that he was confirmed in the LSG cadre, prior to merger of the ministerial cadre in the two units, viz., Engineering and TRA Units, in the Department of Telecommunication. In the CGLs published subsequent to 1967, he stated, that Shri Balasubramanian was ranked senior to the applicant throughout. The comparative dates of their promotion, to the cadre of LSG and confirmation therein, were as under, as pointed out by Shri Rao.



S.No.	Name of persons	Date of	
		Promotion to the LSG cadre.	Confirmation in the LSG cadre.
(1)	(2)	(3)	(4)
(i)	Shri V.V. Nanjangud - the Applicant.	25-5-1966	1-3-1970
(ii)	Shri A.C. Balasubramanian.	6-5-1963	1-3-1964

15. Shri Rao further elucidated, that the applicant was promoted to and confirmed, in the respective *LA* cadres

cadres, according to his turn, in accordance with the relevant rules prevalent at the time and that no injustice was caused to the applicant, on this account.

16. As regards the ruling of the Supreme Court in RAVIVERMA's case, relied upon by the applicant (para 11 above), Shri Rao submitted, that it was applicable, only to those who were appointed to a grade prior to 22-12-1959 and continued therein upto 4-1-1972 i.e., the date on which the Supreme Court rendered its judgment, in the above case. The applicant he said, was promoted to the LSG cadre on 25-5-1966 and therefore, the applicant could not invoke the benefit of the said decision of the Supreme Court.

17. As for the prayer of the applicant to quash Letter dated 15-3-1988(Ann.E) of R-1, Shri Rao contended, that it was ill-founded, as the said communication was not an order of R-1 but only a reply, to the notice served by the applicant, on him.

18. In the end, Shri Rao urged, that the application be dismissed as meritless.

19. We have considered carefully the rival pleadings and examined the relevant record placed before us and in particular, the case relating to Application No.173/1986(T), on which the Tribunal

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passed

passed orders on 30-9-1980(Ann.'C', also vide para 6 above).

20. The order passed by this Tribunal, on 30-9-1986, in Application No.173 of 1986(T)/Ann.C - also vide para 6 above, to which one of us viz., Shri L.H.A.REGO. was a party<sup>7</sup> is clear. It took notice of both memoranda, namely the one filed by R-1 on 1-7-1986(Ann.B) and the other, by the applicant, on 18-7-1986(Ann.A), but not having found them ad idem, it observed, that it deemed ~~it~~ fit and proper, to dispose of the said application, in terms of the prayer, spelt out in paras 17(i) and (ii) of the application. Nowhere, did this Tribunal direct categorically, that the relief be granted to the applicant, in terms of his aforesaid Memo dated 18-7-1986 said to have been filed by him, as a clarification and supplement to his original prayer. No dates too, were mentioned in its order, with reference to those indicated by the applicant in the said memo. All that this order implied was, that the seniority of the applicant, over R3 to R5 in that application, was upheld, as prayed for by the applicant and that his promotion in the cadres of LSG and HSG, be regulated on that basis, in accordance with the rules. This has what has precisely been done, by R-1 and R-2, in that application, as is evident from the impugned letter dated 15-3-1988(Ann.E to the present application),



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addressed

addressed by the respondent to the applicant. It is seen therefrom, that the applicant has been assigned seniority over R3 to R5, in Application No.173 of 1986(T) as prayed for by him, and his promotion to LSG and HSG cadres regulated on that basis. The respondent, therefore, informed the applicant, that the relief as granted by this Tribunal, in the said Application, was fully met. We see no reason to infer from the foregoing, that the respondent failed to comply, with the order dated 30-9-1986 of this Tribunal, in that Application, in letter and in spirit.

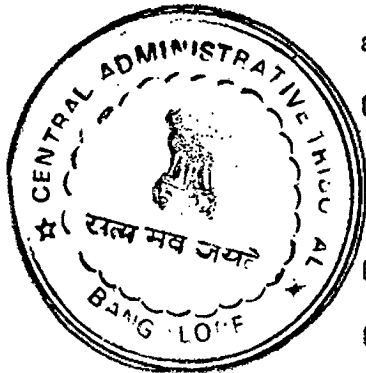
21. Besides, we cannot be oblivious, to the sequence of conduct of the applicant, in this case. If he was genuinely in doubt about the clarity of the Order dated 30-9-1986, passed by this Tribunal in the said Application No.173 of 1986(T), nothing prevented him, from praying promptly, for a recall of that order for elucidation. On the other hand, if he was convinced, that the order was explicit but was not faithfully complied with, by the respondent, within reasonable lapse of time, nothing prevented him, from filing promptly, a contempt petition, to enforce that order. The applicant has not taken recourse to either of these means, but on the contrary, filed the present application anew and that also, far too belatedly on 21-4-1988 i.e., after a lapse of nearly two years and seven months from

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the date viz., 30-9-1986, when this Tribunal rendered its decision in the earlier Application No.173 of 1986(T).

22. The prayer in the present application, is virtually a repetition of that, in Application No.173 of 1986(T) and it is therefore, apparent, that the applicant is rearguing a matter, which was directly and substantially in issue, in the latter application and concluded therein and consequently is hit by the bar of res judicata, according to Section 11(c) of the Civil Procedure Code.



23. According to the dicta of the Supreme Court in 1985(1) SCALE, 173 (JASWANT SINGH & ANR. -vs.- CUSTODIAN OF EVACUEE PROPERTY, NEW DELHI), if the defence of res judicata is to succeed, it is imperative to show, that not only was the cause of action the same, but also, that the plaintiff had an opportunity of securing relief (which he is now seeking far too belatedly), in the earlier proceedings. The Supreme Court further observed therein, that the real test is, as to whether the claim in the subsequent suit or proceedings, is in fact, founded upon the same cause of action, which was the foundation of the former suit or proceeding.

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24. From what we have discussed in paras 26 and 27 above, it is evident, that the present application does not fulfil the above dicta of the Supreme Court, for the reasons stated by us, in para 22 supra.

25. It is also apposite, to refer in this connection, to the ruling of the Supreme Court in AIR 1961 S.C. 1457 (DARYAO & ORS. -vs.- STATE OF U.P.& ORS.), wherein it observed as under:

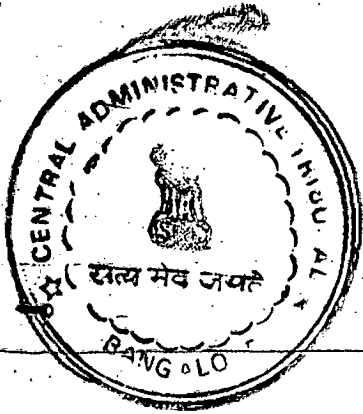
"The binding character of judgments pronounced by Courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. On general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Art.32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or revised by adopting a procedure prescribed by the Constitution."

26. The application before us, is clearly hit by the bar of res judicata in the light of the above ruling of the Supreme Court.

27. It is also seen, that the present application suffers from the infirmity, of non-joinder of proper and necessary party viz., Shri A.C. Balasubramanian, over whom the applicant, is now seeking to claim seniority.

28. Notwithstanding the above, the application is primarily hit by the bar of res judicata as pointed out by us above, on which ground alone, it founders and fails.

29. In the premise aforesaid, we dismiss this application as meritless, with no order however, as to costs.



Sd/-

(K.S.PUTTASWAMY)  
VICE CHAIRMAN.

Sd/-

(L.H.A.REGO)  
MEMBER(A)

21.3.1989

TRUE COPY

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DEPUTY REGISTRAR (JULY 1988)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THE 21ST DAY OF MARCH, 1989

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Sri V.V.Nanjangud  
Retd.Sr.Section Supervisor  
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DHARWAD-8. .. Applicant

(By Sri P.A.Kulkarni, Advocate for the applicant)

-vs.-


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2. The facts of this case are briefly as under: The applicant entered service in the Department of Telecommunications, Karnataka Circle, Bangalore, as a Timescale Clerk, in the Engineering Unit, on 24-11-1952 and was confirmed in that post on 1-3-1957. He was promoted to the LSG cadre on 25-5-1966 and confirmed therein, with effect from 1-3-1970. He

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8. Aggrieved, the applicant has come before us, through his present application.

9. The applicant has in Annexure-F, furnished certain service details of the employees, who he states, were junior to him, in the Department of Telecommunications, in the cadre of Time-scale Clerks, to enable the Tribunal, to give a proper decision on the present application.

10. The respondent has filed his reply, countering the application.

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12. Shri Kulkarni contended, that even otherwise, his client was entitled to notional fixation of his promotion, to the above respective cadres, on the above basis, with reference to his juniors and to monetary benefit, from the date he actually officiated in these cadres, on promotion, in accordance with the relevant Fundamental Rules, relating to stepping up of pay, in relation to his juniors.

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S.No.)	Name of persons	Date of	
		Promotion to the LSG cadre.	Confirmation in the LSG cadre.
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(i)	Shri V.V. Nanjangud -the Applicant.	25-5-1966	1-3-1970
(ii)	Shri A.C. Balasubramanian.	6-5-1963	1-3-1964

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17. As for the prayer of the applicant to quash Letter dated 15-3-1988(Ann.E) of R-1, Shri Rao contended, that it was ill-founded, as the said communication was not an order of R-1 but only a reply, to the notice served by the applicant, on him.

18. In the end, Shri Rao urged, that the application be dismissed as meritless.

19. We have considered carefully the rival pleadings and examined the relevant record placed before us and in particular, the case relating to Application No.173/1986(T), on which the Tribunal

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- passed orders on 30-9-1980(Ann.'C', also vide para 6 above).

20. The order passed by this Tribunal, on 30-9-1986, in Application No.173 of 1986(T)/Ann.C - also vide para 6 above, to which one of us viz., Shri L.H.A.REGO, was a party<sup>7</sup> is clear. It took notice of both memoranda, namely the one filed by R-1 on 1-7-1986(Ann.B) and the other, by the applicant, on 18-7-1986(Ann.A), but not having found them ad idem, it observed, that it deemed ~~it~~ fit and proper, to dispose of the said application, in terms of the prayer, spelt out in paras 17(i) and (ii) of the application. Nowhere, did this Tribunal direct categorically, that the relief be granted to the applicant, in terms of his aforesaid Memo dated 18-7-1986 said to have been filed by him, as a clarification and supplement to his original prayer. No dates too, were mentioned in its order, with reference to those indicated by the applicant in the said memo. All that this order implied was, that the seniority of the applicant, over R3 to R5 in that application, was upheld, as prayed for by the applicant and that his promotion in the cadres of LSG and HSG, be regulated on that basis, in accordance with the rules. This has what has precisely been done, by R-1 and R-2, in that application, as is evident from the impugned letter dated 15-3-1988(Ann.E to the present application),

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addressed

addressed by the respondent to the applicant. It is seen therefrom, that the applicant has been assigned seniority over R3 to R5, in Application No.173 of 1986(T) as prayed for by him, and his promotion to LSG and HSG cadres regulated on that basis. The respondent, therefore, informed the applicant, that the relief as granted by this Tribunal, in the said Application, was fully met. We see no reason to infer from the foregoing, that the respondent failed to comply, with the order dated 30-9-1986 of this Tribunal, in that Application, in letter and in spirit.

21. Besides, we cannot be oblivious, to the sequence of conduct of the applicant, in this case. If he was genuinely in doubt about the clarity of the Order dated 30-9-1986, passed by this Tribunal in the said Application No.173 of 1986(T), nothing prevented him, from praying promptly, for a recall of that order for elucidation. On the other hand, if he was convinced, that the order was explicit but was not faithfully complied with, by the respondent, within reasonable lapse of time, nothing prevented him, from filing promptly, a contempt petition, to enforce that order. The applicant has not taken recourse to either of these means, but on the contrary, filed the present application anew and that also, far too belatedly on 21-4-1988 i.e., after a lapse of nearly two years and seven months from

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the date viz., 30-9-1986, when this Tribunal rendered its decision in the earlier Application No.173 of 1986(T).

22. The prayer in the present application, is virtually a repetition of that, in Application No.173 of 1986(T) and it is therefore, apparent, that the applicant is reagitating a matter, which was directly and substantially in issue, in the latter application and concluded therein and consequently is hit by the bar of res judicata, according to Section 11(c) of the Civil Procedure Code.

23. According to the dicta of the Supreme Court in 1985(1) SCALE, 173(JASWANT SINGH & ANR. -vs.- CUSTODIAN OF EVACUEE PROPERTY, NEW DELHI), if the defence of res judicata is to succeed, it is imperative to show, that not only was the cause of action the same, but also, that the plaintiff had an opportunity of securing relief(which he is now seeking far too belatedly), in the earlier proceedings. The Supreme Court further observed therein, that the real test is, as to whether the claim in the subsequent suit or proceedings, is in fact, founded upon the same cause of action, which was the foundation of the former suit or proceeding.

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24. From what we have discussed in paras 26 and 27 above, it is evident, that the present application does not fulfil the above dicta of the Supreme Court, for the reasons stated by us, in para 22 supra.

25. It is also apposite, to refer in this connection, to the ruling of the Supreme Court in AIR 1961 S.C. 1457 (DARYAO & ORS. -vs.- STATE OF U.P.& ORS.), wherein it observed as under:


"The binding character of judgments pronounced by Courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis. On general considerations of public policy there seems to be no reason why the rule of res judicata should be treated as inadmissible or irrelevant in dealing with petitions filed under Art.32 of the Constitution. It is true that the general rule can be invoked only in cases where a dispute between the parties has been referred to a court of competent jurisdiction, there has been a contest between the parties before the court, a fair opportunity has been given to both of them to prove their case and at the end the court has pronounced its judgment or decision. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or revised by adopting a procedure prescribed by the Constitution."

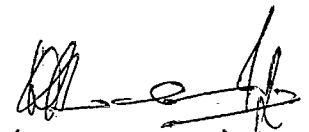
26. The application before us, is clearly hit by the bar of res judicata in the light of the above ruling of the Supreme Court.

27. It is also seen, that the present application suffers from the infirmity, of non-joinder of proper and necessary party viz., Shri A.C.Balasubramanian, over whom the applicant, is now seeking to claim seniority.

28. Notwithstanding the above, the application is primarily hit by the bar of res judicata as pointed out by us above, on which ground alone, it founders and fails.

29. In the premise aforesaid, we dismiss this application as meritless, with no order however, as to costs.

  
(K.S. PUTTASWAMY) 21/3/89  
VICE CHAIRMAN.

  
(L.H.A. REGO) 21.3.1989  
MEMBER(A)

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