

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 388/95

Transfer Application No: -

DATE OF DECISION: 20-2-96

R.S.Deodhar Petitioner

Shri M.S.Ramamurthy Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

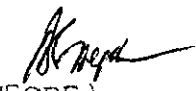
Shri V.S.Masurkar. Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri P.P.Srivastava, Member(A).

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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

Original Application No.388/95.

R.S.Deodhar. ... Applicant.  
(By Advocate Sh.M.S.Ramamurthy)  
V/s.

Union of India & Ors. ... Respondents.  
(By Advocate Shri V.S.Masurkar).

Coram: Hon'ble Shri B.S.Hegde, Member(J),  
Hon'ble Shri P.P.Srivastava, Member(A).

O R D E R

(Per Shri B.S.Hegde, Member(J)) Dt. 20/2/96

Heard Shri M.S.Ramamurthy, the learned counsel for the applicant and Shri V.S.Masurkar, the learned counsel for the respondents and perused the records.

2. This application is filed for the purpose of claiming benefits similar to the ones granted in favour of the ~~applicants~~ Shri Pathak, Shri Borkar, Shri Deshpande and Shri Patankar who were promoted on the basis of December 1977 selection who were applicants in Transferred Application No.180 of 1987 vide its order dt. 14.2.1992. In this O.A. the applicant is seeking promotion and induction to I.A.S. from the date the applicants referred to above were promoted on the basis of 1977 selection and the applicant should be given all the consequential benefits.

3. It may be recalled that the Tribunal by its order dt. 16.9.1987 in M.P. 326/87 filed by the applicant, after considering the same request for intervention in T.A. No.180/87 <sup>which</sup> was originally

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Writ Petition No.253/79 was granted. It was further stated that it was <sup>not</sup> necessary for the applicant to file any separate affidavit or documents, that he would be heard and the matter came up for hearing and final disposal. The applicant was not heard at the time of the final hearing of the O.A. The Tribunal disposed of the Transferred Application vide its order dt. 14.2.1992 and passed the following order which reads as under :

"The intervenor Shri Ramchandra Deodhar who himself did not file any petition or application and was superseded has not made any case for grant of any relief to him. However so far as applicability of pay rules or pensionary benefits are concerned he may approach the Government and there appears to be no reason if he is entitled to any relief Government would not do so."

4. Against this order, the applicant filed Review Petition No.121/92, the same was rejected on 31.8.1992. It is true that in fact the applicant has not filed any application to the competent authority for granting the same relief as was given to the applicants in Tr. Application No.180/87. Against the said rejection order passed by the Tribunal he filed an S.L.P. in the Supreme Court of India which came to be rejected by order dt. 18.4.1994. The S.L.P. was dismissed at the time of admission after condoning the delay in filing the S.L.P.

5. The learned counsel for the applicant stressed that though the applicant was allowed

to intervene during the pendency of the Transferred Application he was not given an opportunity to defend himself before the decision was rendered by the Tribunal. As against this the learned counsel for the Respondents urged that since the applicant retired in the year 1982 the O.A. filed in 1995 and his seeking relief from 1973 to 1977 onwards, whereby the Tribunal does not have any jurisdiction to go into the matter prior to its existence i.e. 1985. Besides, that the learned counsel for the respondents also urged that the decision has been rendered by the competent Courts of Law whereby it is not open to re-agitate the matter once again because principles of constructive res-judicata would apply.

6. In the light of the above, prima facie, the applicant is seeking the same relief as was urged before the Tribunal, as well as, the Supreme Court. The Apex Court as far back in 1962 in Darya's case held that the Rules of res-judicata apply to the fundamental rights guaranteed by Article 32. The basis on which the said rule is founded on

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consideration of public policy. It is in the interest of public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over the same kind of litigation. If these two principles form the foundation of the ground, rule of res-judicata they cannot be treated as irrelevant or inadmissible even in dealing with Fundamental Rights in petition under Article 32. Where a petition under Article 226 is dismissed on merits, it operates res-judicata and bars a fresh petition under Article 226 even where it is passed without hearing the other party. The Rule of res-judicata also applies in regard to public interest litigation in view of Section 11 of the C.P.C. Further where there has been a decision on the merits Rule of constructive res-judicata would be applicable to bar a second application founded on the same cause of action or as regards the reliefs which were asked for, but not granted in the previous proceedings under Article 226.

7. In the light of the above, in our view, it is not possible to maintain a second application for the same relief merely on the basis that the applicant was <sup>not</sup> given an opportunity to defend himself. In the instant case, though the applicant has prayed for the very same relief before the competent courts of law, the same was rejected, whereby it is not open for

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him to re-agitate the matter once again. Accordingly, after hearing both the parties, we dismiss the OA at the admission stage itself with no orders as to costs.



(P.P. SRIVASTAVA)  
MEMBER (A)



(B.S. HEGDE)  
MEMBER (J)

B.