

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 813/98

Date of Decision : 3rd May 2002

Manik Ram & Ors.

Applicant

Shri G.S.Walia

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri Suresh Kumarwith Shri
S.C.Dhawan

Advocate for the
Respondents

CORAM :

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

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.813/98

Dated this the 3rd day of May 2002.

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

Hon'ble Shri S.L.Jain, Member (J)

1. Manik Ram
2. Mohd.Yusuf
3. K.N.Sharma
4. A.K.Raina
5. Suresh Saxena
6. G.R.Soni
7. P.K.Chaturvedi
8. S.Q.Husain
9. S.C.Pathak

...Applicants

C/o G.S.Walia,
Industrial Traders Building
Opp.Maha State Co-op Bank,
Nagindas Master Road,
Fort, Mumbai.

By Advocate Shri G.S.Walia

vs.

1. Union of India through
General Manager,
Central Railway,
Headquarters Office,
C.S.T., Mumbai.
2. General Manager,
Central Railway,
Headquarters Office,
C.S.T., Mumbai.

...Respondents

By Advocate Shri Suresh Kumar with
Shri S.C.Dhawan

SCW

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

The applicants are seeking relief to quash and set aside order dated 23.5.1997 with the direction to the respondents to implement order dated 8.8.1996, 19.5.1995 and 24.4.1997.

2. The objection which is raised by the respondents resisting the claim of the applicants is that the Applicants No.4 and 9 have filed OA.NO.884/88 before this Tribunal which was decided vide order dated 18.10.1991. Thereafter, the applicants preferred SLP before the Apex Court of the land which was also dismissed. The respondents have placed on record the order passed in OA.NO.884/88. The operative part is contained in para 4 of the said order which is extracted below :-

"4. Thus, in this case a short question for consideration after so much of the detailed fact is as to whether the apprentices who after completion of their training were appointed on a particular date will be senior to those who were on that date on a lower pay scale but were subsequently promoted, w.e.f. earlier date with higher pay from that date itself. A decision was taken in the year 1983 that the promotion will be made w.e.f. 1.1.1984. The applicants were appointed after this decision. Now the decision of the Railway Board having been taken that the promotion will date back w.e.f. 1.1.1984 in case the delay was caused only in implementation and this implementation was done after issuance of the other circular dated 16.11.1984, when decision for resturcturing or promoting the person on a particular date having been taken prior to the appointment of the applicants who in the meantime were serving as apprentices. Obviously the respondents will be deemed to have appointed the applicants except their actual posting took place later on. Although the deemed appointment having taken place from 1.1.1984 which decision was taken before the applicants were actually in the service, the respondents, would be deemed to be senior to the applicants. As such the applicants are not entitled for any relief claimed in the application. The application is disposed of with the above terms. Parties to bear their own costs."

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3. Perusal of the same makes it clear that the question for consideration before the Tribunal was that the applicants, i.e. A.K.Raina and Pathak who were appointed after a decision was taken by the respondents in the year 1983 that the promotions will be made w.e.f. 1.1.1984 in respect of promotees, while the applicants were direct recruits, the implementation of circular dated 16.11.1984 when decision for restructuring and promoting the applicants prior to the date of appointment of the applicant who in the meantime was serving as obviously, the respondents deemed to have appointed the applicants except their posting to place later on. Although, the deemed appointment have not been taken place from 1.1.1984 which decision was taken before the applicants were actually appointed in service. The respondents deemed to be senior to the applicants. Further perusal of the said order makes it clear that the relevant Circular, i.e. 16.11.1984 and para 302 of Indian Railway Establishment Manual were also subject of consideration by the Tribunal.

4. The learned counsel for the respondents relied on 1999 (3) SCC 365 - U.H.Jadhav & Ors. vs. Union of India & Ors. which lays down the proposition that interests protected by clarifying that benefit of continuous officiation for the purpose of seniority accruing to them by virtue of an earlier judgement in their favour, which had since become final, shall remain unaffected, irrespective of observations made above it in the

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judgement under appeal. To say in clear words that judgement which has become final, the benefit derived from the said judgement remains unaffected and any subsequent decision is of no consequences.

5. The learned counsel for the respondents further relied on 1999 (1) SCC 243 - Durg Rajnandgaon Grameen Bank vs. Suresh Kumar Shukla & Ors. which lays down the proposition that if a Writ petition seeking the same relief was dismissed on merits and the order of the High Court becomes final, subsequent Civil Suit based on same facts is barred by principle of res judicata. In view of the said judgement, subsequent OA. by the applicants No.4 & 9 of OA.NO.884/88 is barred on principle of res-judicata.

6. The learned counsel for the respondents relied on 2000 (2) SCC 552 - Maharashtra Vikrikar Karamchari Sangathan vs. State of Maharashtra & Anr. along with Civil Appeal No.6316/97 for the proposition that principle of res-judicata does apply to the present case. On perusal of the said authority, we are of the considered opinion that though seniority list was different in the said case, but contestant party were the same and the issues involved was same, the proposition was held applicable. The present case is also on better footing than that of case relied on by the learned counsel for the respondents. In the present case, the seniority list is the same, Applicants No.4 and 9 were contesting party in earlier OA.NO.884/88 but rest of the applicants were not the contesting party. The rest of the applicants now are raising their grievance. So in the present case, principles of res-judicata do apply in case of Applicants No.4 and 9 but in case of rest of the applicants, principles of res-judicata does not apply.

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7. 1999 (2) A.L.SLJ 102 - Baij Nath Sharma vs. Hon'ble Rajasthan High Court at Jodhpur & Anr. lays down the proposition that in case of withdrawal with permission to file again if cause arises, second petition dismissed on plea of res judicata, is not correct. The said authority does not help any of the parties as the earlier OA.NO.884/88 was not allowed to be withdrawn but in fact it was decided not only by the Tribunal but even SLP against the order of the Tribunal was dismissed.

8. 1997 SCC (L&S) 918 - S.Jamaldeen & Ors. vs. High Court of Madras & Ors. lays down the proposition that principles of res judicata does not apply, if in the earlier case validity of statutory provisions was in issue whereas in the later case validity of seniority based on that provision and on other provisions was in issue, besides, all affected persons were not parties in the earlier OAs. To be specific, principle laid down is that where the matter directly and substantially in issue is the same, then principles of res judicata does apply and when the matter is not as such, principles of res judicata do not apply.

9. 1978 Allahabad L.J. 385 - Kanti Prasad & Ors. vs. The Appellate Officer, New Delhi & Ors. relied on by the counsel for the applicants lays down the proposition that if law is altered by competent authority since the earlier decision, earlier decision will not act as res judicata in subsequent proceeding. The reason being a decision on an issue of law will not be res judicata in a subsequent proceeding between the same parties when the law has since the earlier decision been altered by a competent authority. In the present case, there is no question of alteration of law by the competent authority.

Pls. see

10. Perusal of the above referred decision makes it clear that where the parties are same, the question involved is directly and substantially the same, the decision has attained a finality, then the said decision creates a bar in view of principles of res judicata to consider again the same question between the same parties which was directly and substantially in issue in an earlier litigation which has attained its finality.

11. The next defence of the respondents is that the applicants have not arrayed any of the promotees as respondents who are likely to be affected by the decision of this Tribunal. As such, the case of the respondents does suffer from the defect of non-joinder of the necessary parties. The learned counsel for the respondents relied on 2000 SCC (L&S) 845 - State of Bihar & Ors. vs. Kameshwar Prasad Singh & Anr. along with other Civil Appeal No.3006/2000 and 3007/2000 and argued that in a writ petition claiming seniority on promotion, in absence of persons likely to be affected by the relief prayed for, the writ petition should normally be dismissed unless there existed specific reasons for non-impleading of the affected persons. In the present case, the applicants are well aware since 1988 that who are the persons to be affected by the decision of this Tribunal if their OA. is allowed. As such, being aware of the persons likely to be affected, the non impleading of the said persons results in dismissal of the OA.

12. The learned counsel for the applicants argued that the claim of the applicants does not suffer from delay and laches. He has relied on 1982 (1) SLR 258 - Ex-Capt. Gurnam Singh vs. The State of Punjab & Ors. which lays down the proposition that if plea of delay and laches is not raised, and the facts and circumstances of the case are so peculiar, then principles of delay and laches could not be applied. In the same authority, the plea of principle of res judicata is also considered and it has been held that if there is no issue raised in earlier petition which involved in the present petition, the fact that the petitioner could raise objection regarding his seniority earlier, Order 2 Rule 2 CPC does not bar the subsequent writ petition based on principle of res judicata. The said principle is based on the Order 2 Rule 2 CPC.

13. The learned counsel for the respondents relied on 1992 SCC (L&S) 965 - M.B. Hiregoudar vs. State of Karnataka & Ors. which lays down the proposition that seniority which had stabilised during the course of time cannot be disturbed after a long lapse of time in absence of any challenge during the intervening period. He further argued that in the present case, seniority position was stabilised since 18.10.1991 and thereafter by dismissal of SLP by the Apex Court, the said seniority position continued till 25.9.1995 when only Applicant No.1 represented against the said matter and hence the seniority which has stabilised for more than 5 years cannot now be challenged.

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14. The learned counsel for the applicant relied on 1987 (5) ATC 31 - Yashbir Singh & Ors. vs. Union of India & Ors. and argued that general rule of reckoning seniority from the date of appointment to promotion post and not to the original post, Rule 302 of the Manual would apply in absence of any specific statutory rule or direction to the contrary.

15. The learned counsel for the applicant relied on 1997 SCC (L&S) 83 - Kuttiyappan vs. Union of India & Ors. decided on 26.8.1996 which lays down the proposition that in case of direct recruits and promotees, process of selection for promotion starting earlier than the process of selection for direct recruitment but the direct recruits joining the posts before those selected for promotion could start working in the posts after completing the training, in such circumstances, the rejection of the claim of the promotees to seniority over the direct recruits was held to be correct considering Rule 306 and 302 of IREM.

16. 1993 SCC (L&S) 874 - Chief Engineer & Secretary, Engineering Department, U.T., Chandigarh vs. Kamlesh Baboo & Ors. lays down the proposition that seniority could be fixed from actual date of promotion though DPC under statutory rules was required to consider promotion "as on first day of January" after completion of prescribed length of service. The criteria laid down is its the date of promotion or the first day of January promotions are to be considered considering Punjab Service of Engineers, Class I (Building and Road Branch) Rules, 1960.

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17. 1998 (2) S.C.SLJ 132 - Davinder Bathla & Ors. vs. Union of India & Ors. does not help the applicant for the reason that the proposition laid down was in respect of a case where absorption was the subject matter in dispute and it has been held that it is the date of absorption from which the seniority is to be fixed.

18. 1996 SCC (L&S) 340 - State of Rajasthan vs. Fateh Chand Soni lays down the proposition for determination of inter se seniority - Direct recruits to the service promoted to the senior scale, subsequently further promoted to Selection Grade, in such circumstance persons selected and appointed to the Selection Scale in an earlier selection held senior to a person who although senior to him in the Senior Scale was appointed to the Selection Scale as a result of a subsequent selection.

19. 1990 SCC (L&S) 127 - Union of India & Ors. vs. K.K.Vadera & Ors. lays down the proposition that effective date for seniority in case of promotion is promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or of creation of the post.

20. 1991 SCC (L&S) 1070 - State of Bihar & Ors. vs. Akhouri Sachindra Nath & Ors. along with Civil Appeal No.233/78 lays down the proposition that in case of direct recruits and promotees, retrospective promotion should not date back to a period when the promotees were not born in the cadre so as to adversely affect direct recruits already in the cadre. Seniority to be reckoned on the basis of length of service.

21. The learned counsel for the applicant relied on 1996 (1) SC SLJ 378 - Smt. Anuradha Mukherjee & Ors. vs. Union of India & Ors. decided on 12.3.1996 which deals with Restructuring of cadres and seniority in view thereof.

22. The learned counsel for the applicant relied on 1999 (2) SLR 234 - Soumi Chakraborty vs. University of Calcutta & Ors. and argued that if a field is covered by law then no administrative decision can be taken which interferes with the law. The administrative decision to the extent it is contrary to law shall have no effect. Suffice to state that it is not only the administrative decision of the respondents while restructuring the cadre but the said administrative decision got the sanctity of the earlier order of the Tribunal which has been upheld by the Apex Court. As such, the said decision is of no assistance to the applicant.

The discussion made in Para 14 to Para 22 of this order is of no avail to the applicants in view of principle of res-judicata is applicable in the present case in respect of Applicants No. 4 & 9 and in respect of other applicants, OA. suffers from delay and laches and non joinder of necessary parties.

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23. The learned counsel for the applicant relied on 2001 (1) SCC 748 - Government of Andhra Pradesh & Ors. vs. A.P.Jaiswal & Ors. which lays down the proposition that finding given in the earlier case that the retrospective regularisation of qualified Andhra Officers was valid - held conclusive; what was left open therein and was only the question of applying the effects of the said finding. Hence, a Coordinate Bench of the Administrative Tribunal erred in reopening the question of retrospective regularisation and taking a divergent view. There is necessity to follow the rules of precedents emphasised.

24. The learned counsel for the applicant relied on 1999 (3) A.I.SLJ 173 - Mitrangshu Roy Choudhary & Ors. vs. Union of India & Ors. which deals with bonafide mistake. It is not a case where there is a bonafide mistake. Hence, the authority relied on does not help the applicant.

25. On the basis of aforesaid discussion, we arrive to the conclusion that case of Applicants No.4 and 9 is covered by principles of res-judicata while the case of other applicants suffer from delay and laches as well as non-joinder of necessary parties. This leads us to further examining the case whether a joint application of such applicants is maintainable. Rule 4 (5) deals with joint application which is extracted below :-

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"Notwithstanding anything contained in sub-rules (1) to (3), the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter."

On perusal of the same, the applicants can file the joint application, if permitted by the Tribunal and before such permission is granted, the Tribunal will be satisfied having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter. The applicants never filed an application under Rule 4 (5) of CAT (Procedure) Rules, 1987. On the other hand, in OA. itself in para 8 (f) which deals with prayer, such prayer is made. It is worth mentioning that Rules are made for being followed. If a procedure is prescribed under the rules, the said procedure must be followed and no new procedure can be involved by abrogating or supplementing the provisions contained in CAT (Procedure) Rules, 1987. As stated above, case of Applicants No.4 and 9 is entirely covered by principles of res-judicata while case of other applicants is not covered by the said principles. The fact was well known to the applicants. Inspite of it, they filed the joint application. In such circumstances, all the applicants cannot be said to have a common interest. The application need not to be considered on merits but as it is an old case, we have proceeded to decide the case on merits but it shall not be treated as precedent.

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26. The learned counsel for the applicant argued that after the representation of the Applicant No.1, the respondents passed the order amending the seniority list on 25.9.1995 and even thereafter promoted the persons and the said order was kept in abeyance. The learned counsel for the applicant argued that they are not challenging the earlier decisions but they are challenging only keeping the decision in abeyance. We must not forget that a decision which proceeded over-looking the earlier decision of the Tribunal up-held by the Apex Court, acting contrary to it subsequent action ignoring the same is being taken, the basis of which is to commit an illegality. Such an action cannot be upheld. If such an action is upheld, it would mean to grant a premium to the illegality committed by the respondents which cannot be permitted by any provisions of law.

27. The writ of mandamus sought by the applicant cannot be granted for the reason that to ask the respondents to implement the impugned order dated 19.5.1997 would mean to commit an error of ignoring the decision of the Apex Court.

28. The judgement relied on by the learned counsel for the applicant 2001 (1) A.I.SLJ 322 Jai Singh Rathore vs. Union of India & Anr. deals with Section 19 (4) of the Administrative Tribunals Act, 1985 and it was no application other than that mentioned.

SLJ

29. In the result, OA. deserves to be dismissed and is dismissed accordingly. No order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

B.N.BAHADUR
(B.N.BAHADUR)

MEMBER (A)

mrj.