

67

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

TUESDAY THE Eleventh DAY OF April
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

: PRESENT :

THE HON'BLE MR. BN. JAYA SIMHA : VICE CHAIRMAN

AND

THE HON'BLE MR. D. SURYA RAO : MEMBER (JUDL.)

The Hon'ble Mr. D.K. Chakravorty Member (Admin)
And
ORIGINAL APPLICATION NO. 168 OF 1989

BETWEEN:-

K. Appa Rao ✓

...Applicants

AND

And

1. The Union of India, represented by
its Secretary, Government of India,
Ministry of Home Affairs, Department
of Personnel and Training, New Delhi. ✓

2. The Secretary to Government of India,
Ministry of Agriculture and Cooperation,
Government of India, Knshi Bhavan,
New Delhi. ✓

Ministry of Environment and Forests
Government of India, Paryavaran
Bhavan, CGO Complex, Phase II,
Lodhi Road-3, New Delhi. ✓

3. The State of Andhra Pradesh,
represented by its Ex-Officio
Secretary to Government, Energy,
Forests, Environment Science and
Technology Department, A.P. Government
Secretariat, Hyderabad. ✓

...Respondents

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The applicant herein is an officer in the Indian Forest Service of Andhra Pradesh cadre. He was dismissed from service by an order dated 2.5.1979. He made a representation to the President of India, which was rejected on 28-6-1980. Thereafter, he filed W.P.No. 3667/80 before the High Court of Andhra Pradesh questioning the order of dismissal. Various legal and other contentions were raised by him therein. The High Court by its Judgment dismissed the same. The matter was taken to the Supreme Court by way of an SLP, which also dismissed the applicant's case on 11.1.1985. The applicant states that he received a carbon copy of the order dated 11.1.1985 only on 2x5x1988x 11.2.1988. Thereafter, on 2.5.1988, he made an application to the State Government for permission to move the Tribunal. On 6.2.1989, the State Government replied stating that no permission is required for moving the Tribunal. Thereafter, he has filed the present application, which has come up for admission. We have heard Shri K. Nagaraj Advocate for the applicant, Sri. Chandramoni Srawan (Counsel for the State Govt) and Sri. Parameswara Pillai for Sri. P. Ramamurthy, Royal for the Central Govt. (Advocate)

2. Two questions arise for determination: (1) Whether the application is barred by res judicata?, and (2) Whether the application is barred on the ground of limitation?

3. It is contended by Shri K. Nagaraj, learned counsel for the applicant, that certain grounds are now raised in

this application which were never raised in the High Court in W.P.No. 3667/80 and therefore, it is open to the applicant to file an independent application raising these fresh grounds not adjudicated by the High Court. ^{In regard to maintainability of the application} He relies on a decision of the Patna Bench of this Tribunal reported in I(1988) ATLT(CAT) (Short Notes) 37 (AKHILENDRA NATH TRIVEDI & OTHERS v. UNION OF INDIA & OTHERS, wherein it was held as follows:

that in our view, there is no reason to proceed on the assumption that there is complete conflict between the present writ petition and the judgement of Hon'ble High Court. In fact, the very basis of the order passed by the Hon'ble Supreme Court in Annexure 12 was that the Central Government had allowed partial relief to the petitioners on their "presentations" which were obviously done after the decision by the High Court. In the "altered circumstances", therefore, the extent and nature of reliefs claimed by the petitioners had undergone a sea-change and, according to the order passed by their Lordships of Supreme Court, It was open to the petitioners to move the Hon'ble High Court again under Art. 226 of the Constitution. Admittedly, the previous order passed by the High Court had not been touched by the Supreme Court. Therefore, the resultant position on the basis of which the present writ petition can be considered by us in this Tribunal is as follows :

(i) points of fact or law on which a finding has already been recorded by the Hon'ble High Court in CWJC 1535 of 1979 cannot be reopened in the present proceeding; in other words, res judicata will operate in regard to these;

(ii) points on which no such findings were recorded, irrespective of whether they were raised in the earlier petition or not, may be considered and decided in the present proceeding; and

(iii) other points of fact or law arising out of "altered circumstances", must be considered and decided in the present proceeding.

The learned counsel for the respondents Shri Parameswara Rao contends that the applicant is barred on the principle of constructive res judicata. It is contended that all ^{the} ~~any~~ ^{now raised have already been} ~~any~~ ^{and} ~~any~~ of the ^{now raised} ~~any~~ ^{and} ~~any~~ pleas raised in W.P.No. 3667/80 have been adjudicated by the High Court ⁱⁿ ~~detailed~~ ^{and} ~~any~~. In any event, it is contended that even if one or more of the pleas were not raised at the

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hearing of the writ petition in the High Court, ^{they were pleas} which ought and could to/have been raised at that stage, and since he did not raise the said pleas, he is barred by the principle of constructive res judicata ^{from doing so now}

We ~~will~~ agree with the contention of Shri Parameswara Rao and hold that ~~is~~ it is not open to the applicant to file the present petition once again seeking the quashing of the impugned order of dismissal, even if the grounds now raised are not raised before the High Court. The decision of the Patna Bench of this Tribunal cited supra has no application to the present case. Patna Bench has specifically laid down that it is open to an employee to file a fresh petition on "other points of fact or law arising out of altered circumstances." It is now shown to us what are the altered circumstances which would enable the applicant to file the present application. Admittedly, all the grounds now sought to be raised were available to the applicant in ~~the~~ year 1980 itself when he had filed the writ petition before the High Court, and hence the question of any altered circumstances enabling the applicant to file the present application does not arise. The altered circumstances, according to the learned counsel for the applicant, is the constitution of this Tribunal. This, in our view, cannot be the cause of action. We find no merit in this contention.

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5. Assuming that the applicant could file a separate and independent application, in regard to the grounds not raised by him in the writ petition, the next question is whether the applicant is ~~not barred~~^{wilful} by limitation?

Admittedly, all the grounds now sought to be raised were available to the applicant in the year 1984 as stated supra consequent to the rejection of his memorandum by the President. Section 21 of the AT Act provides for limitation for filing of applications. Section 21⁽²⁾ of the AT Act stipulates that in regard to grievance in respect of which an application is made^a had arisen by reason of any order at any time during the period of 3 years ~~pre~~ immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal such became exercisable, then^a/an application shall not be admitted unless it has been made within a period of six months from the date of constitution of the Tribunal. The Tribunal was constituted on 1.11.1985. The applicant's grievance is^w regard to an official order passed on 28.6.1980 issued by the President of India rejecting his petition. Thus, the grievance has arisen by an order dated 28.6.1980 which is long prior to 3 years preceding the constitution of this Tribunal.

Q In the circumstances, Section 21(2) bars the presentation of this application. The fact that the

648

4. One copy to Mr. A.V.L. Narasimha Rao, Advocate
H.No. 2-1-566/B/1, Nallakunta, Hyderabad-500044.

5. One copy to Mr. P. Ramakrishna Raju, Sr. C.A.S.C
Hyderabad. ✓

6. One copy to the Hon'ble Mr. D.R. Chakravorty;
Member (A) C.A.T. Hyderabad. ✓

7. One copy to Mr. M.P. Chandramouli, Spl. C.P. for State of A.P.
Hyderabad.

8. One spare copy. ✓

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applicant had filed an application before the Supreme Court against the order of the High Court, ^{that} and a certified copy of the order rejecting his application by the Supreme Court was communicated to him ^{only} in 1988, ^{and that} thereafter he approached the State Government for permission to file the present application, and that he waited till 1989 when his request was ^{rejecte^d} replied by the State Government, cannot save limitation.

7. For the reasons ^{mentioned above} aforesaid, we find that the application is not maintainable. The Application is accordingly dismissed. There will be no order as to costs.

D. Surya Rao

(D. SURYA RAO)
MEMBER (J)

D. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)

Dated the 11th April, 1989

Dictated in open Court.

dms.

To

1. The Secretary, Ministry of Home Affairs, Department of personnel and Training, Union of India, New Delhi.
2. The Secretary, Ministry of Agriculture and Cooperation, Government of India, Krishi Bhawan, New Delhi, and Ministry of Environment and forests, Government of India, Parivartan Bhawan, CGO Complex, Phase II, Lodi Road - 3, New Delhi.
3. The Ex-Officio Secretary, Energy, forests, Environment Science and Technology Department, Government of A.P. Secretariat, Hyderabad.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

HON'BLE MR. B.N. JAYA, CHIEF JUDGE : (C.J.)

AND

HON'BLE MR. D. SURYARAO : (M) (JUDG.)

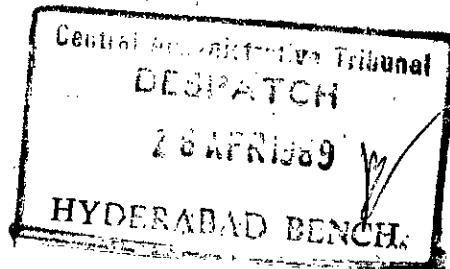
HON'BLE MR. D.K. CHAKRAVORTY : (M) (ADMIN.)

DATED : 11.4.89

ORDER/JUDGMENT

F.A./D.A. NO. 168 OF 1989
(U.P.)

Dismissing at the
admission stage, without
costs ✓



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