

110

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No. 592 of 1996.

Date: September 27, 1996.

Between:

P. Seshagiri Rao Applicant.

And :

1. The Union of India represented by
its Secretary, Ministry of Railways
(Railway Board), New Delhi 110001.
2. The Union of India, represented by
its Secretary to Government, Depart-
ment of Personnel and Administrative
Reforms, Ministry of Home Affairs,
New Delhi 110001.
3. Chairman, Railway Board, Rail Bhavan,
New Delhi 110001.
4. V.K. Agarwal.
5. M.R. Bhaskaran, 63, S.N. Marg,
Civil Line, Allahabad 211001.
General Manager, Railway
Electrification, Allahabad.
6. V.K. Agnihotri, No. 23 'Kaveri' Haddows Road,
Nungambakkam, Madras 600034.
General Manager, Southern Railway,
Park Town, Madras 600003.
7. A.P. Murugesan, Room No. 3,
Judges Court Officer Rest House,
Eastern Railway, Calcutta
General Manager, Eastern Railway,
Fairlie Place, Calcutta 700001.
8. S. Dharni, 8 Sunset Avenue, Post
Chittaranjan, Dist. Burdwan 713331.
General Manager, Chittaranjan Locomotive
Works, Chittaranjan.

Respondents.

Counsel for the Applicant: Shri L. Narasimha Reddy.

Counsel for the Respondents: Shri K.T.S. Tulsi, Senior Counsel
with Shri Vikas Pahwa and
Shri V. Rajeswara Rao, Standing
Counsel for Respondents 1 to 3.

Respondents 4 to 8 served.

CORAM:

HON'BLE SHRI JUSTICE M.G. CHAUDHARI, VICE-CHAIRMAN. *hcr*

HON'BLE H. RAJENDRA PRASAD, MEMBER (A).

O.A.592 of 1996.

DATE: SEPTEMBER 1996.

JUDGMENT.

(PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN)

-:-

The applicant P.Seshagiri Rao is presently working as Additional General Manager, South Central Railway at Secunderabad. By this application he seeks a direction to the Respondents 1 to 3 (Railways) to appoint him to the post of General Manager and equivalent in the Indian Railways with effect from the date of appointment of the 4th Respondent for such vacancy from October, 1995 and a declaration to the effect that he is senior to respondents 4 to 8 in the post of General Manager and equivalent.

2. The background facts giving rise to the above claim briefly stated are as follows:

3. The applicant was selected and appointed in the T.T. & C. Department of Indian Railways in 1962. He joined the service on 9-7-1962. He was assigned DITS (date of increment on time scale) as 9-7-1962 as per the then relevant provisions and that was also shown in the classified List of Gazetted Establishment of the year, 1993. In accordance with the "Scheme for appointment to the posts of General Managers and equivalent in the Indian Railways" which came into force on 16-7-1986 (amended on 16.7.1986, 30.1.1987 and 26-2-1988) he was considered for empanelment for the year 1994-95 he having fulfilled the eligibility criteria prescribed under the Scheme and was placed at

hm

Sl.No.27 in the panel. Applicant had a serious grievance about ^{his} placement in the panel as in preparing the panel his DITS was taken from 12-11-1962 instead of 9-7-1962 and had to miss the appointment for that year because of lower position in the panel. As his representations against the same did not yield desired results he had approached this Tribunal in O.A.67/96 which was disposed of by Order dated 26-4-1996.

4. The applicant has brought the present action on the basis of the aforesaid order interpreting it as having declared his DITS as 9-7-1962 for all purposes. Hence he contends that as it has been declared by the competent Court of Law that his DITS should be reckoned as 9-7-1962 which is earlier to the dates of DITS of Respondents 4 to 8 respectively, he is entitled to the reliefs claimed with consequential benefits including monetary benefits. He avers that his representation to the respondents seeking the same relief submitted on 3.5.1996 has received no response and as he apprehends that the respondents might sit silent over the matter and later on take the plea that he would not have two years residuary service ^{left} ~~kept~~ and might deny the appointment on that ground he has approached the Tribunal for relief as set out earlier. The O.A., was presented on 17-5-1996.

5. The application is resisted by the Official Respondents (Respondents 1 to 3). They maintain that the respondent No.4 is senior to the applicant and that on

hull

true interpretation of the Order in earlier O.A., applicant is not entitled to the reliefs claimed and the O.A., is therefore liable to be dismissed.

6. The learned counsel for the applicant, Shri L. Narasimha Reddy, inter alia submitted that the reliefs sought are in the nature of consequential reliefs to the previous order and therefore the applicant is entitled to the same, that in ^{any} event the reliefs now sought are not inconsistent with the reliefs granted in earlier O.A., that the reliefs presently claimed have a ^{nucleus} ~~nucleus~~ in fact with the previous order as these flow from the declaration of DITS of applicant as 9-7-1962 which makes him senior to respondents 4 to 8 entitling him to be appointed against 1994-95 selection from the same date on which respondent No.4 was appointed and therefore applicant is entitled to be granted the reliefs as logical consequence of previous order. The learned counsel sought to rely on the following ^{rulings} ~~rules~~ in support of his submissions that since the reliefs sought are consequential to previous order these can be legally claimed. These decisions are:

- 1) A.I.R. 1970 S.C.2092. (UNION OF INDIA V. VASANT JAYARAM KARNIK & OTHERS.)
- 2) A.I.R. 1994 S.C.2687 (HANS RAJ SHARMA V. UNION OF INDIA AND OTHERS)
- 3) 1993 Supp(2)SCC 407 (V.KAMESHWARI (SMT) Vs.UNION OF INDIA & OTHERS)
- 4) (1995) 4 SCC 470 ^{and} (NARAYAN YESHWANT GORE Vs. UNION OF INDIA & OTHERS)
- 5) O.A.184/95 dated 23.8.96 (M.P.KAMAL RAJ vs. UNION OF of Bombay Bench of Central INDIA & ANOTHER). Administrative Tribunal.

hnd

Learned counsel also submitted that although the validity of Para 2.1.1 of the Letter of Railway Board dated 8-7-1987 was not challenged in the earlier O.A., and was not struck down but as it was read down in the earlier order respondents cannot take recourse to the said provision to deny the relief presently claimed. Submits the learned counsel that as the said rule was found arbitrary (in the previous O.A.) it cannot be acted upon by the respondents and in the circumstances even though it was not challenged that does not preclude the applicant from claiming consequential benefit seeking equal treatment in law nor a plea can be taken by the respondents that it is still open to them to act in accordance with that rule because it has not been challenged. In this connection the learned counsel cited the decision in UNION OF INDIA Vs. VASANT JAYARAM KARNIK AND OTHERS (A.I.R.1970 S.C. 2092).

7. Shri Tulsi, the learned senior counsel appearing for the Official respondents submitted that the O.A. is not maintainable as it is barred by the principle of res judicata contained in Section 11 of the Civil Procedure Code or analogous thereto and alternatively by constructive res judicata notwithstanding the provisions of Sec. 22 of the Administrative Tribunals Act, 1985. The learned counsel submitted that since the objection goes to the root of jurisdiction that is sufficient to non-suit the applicant without examining the merits of his case. Elaborating the submission Shri Tulsi submitted that

hull

715

the matters in issue in the previous O.A., and the present O.A., are materially and substantially the same, the nature of reliefs sought is the same and the present application is not based on any fresh cause of action to entitle the applicant to move the Tribunal second time hence the application should be held as barred by res judicata and dismissed. The learned counsel further submitted that the judgment of the Tribunal in the earlier O.A., cannot be taken by the applicant as affording him a fresh cause of action for the present application. Shri Tulsi argued that as the relief indeed was moulded by the court in the earlier O.A. because the 1994-95 panel had lapsed there cannot arise any question of any consequential relief being open to be asked now which is precisely the attempt being made by the applicant. According to Shri Tulsi the applicant appears to be wanting to amend the earlier O.A., under the guise of seeking a consequential relief. He laid emphasis on the fact that in the earlier O.A., the applicant did not challenge the policy behind Para 2.1.1 nor its validity and had confined the ^{relief} ~~declaration~~ sought to ¹⁹⁹⁴⁻⁹⁵ ~~1995-96~~ selection and he cannot now ask for relief relating to the same 1994-95 panel which is no longer in existence. Thus the present O.A., runs counter to the earlier decision. On the point of res judicata Shri Tulsi referred to the following decisions:

1. A.I.R. 1994 S.C. 152 (SULOCHANA AMMA V. NARAYANAN NAIR.)
2. A.I.R. 1991 S.C. 1134 (NITYANANDA KAR & ANOTHER Vs. STATE OF ORISSA & OTHERS.)

3. 1991. (16)ATC. 613 (E.SUBBIAH v. SECRETARY,
(Madras Bench of CAT) CENTRAL BOARD OF EXCISE AND
CUSTOMS, NEW DELHI & OTHERS)

Shri Tulsi submitted that the O.A., is thus liable to be
dismissed.

8. The facts involved are not in dispute. The entire
case of the applicant rests on the interpretation placed by
him upon the order in the previous O.A. That is also
closely connected with the question of res judicata. Hence
following points arise for our determination:

POINTS.

1. Whether the reliefs claimed in the instant
O.A., are in the nature of consequential
reliefs to the Order in O.A. 67 of 1996?
2. Whether the present application is barred
by principles of res judicata/constructive
res judicata or principles analogous thereto?
3. What order?

Our answer on Point No.1 is in the negative and on Point
No.2 in the affirmative. Consequently we hold on Point
No.3 that the O.A., is liable to be dismissed. Our
reasons for the aforesaid findings are as follows:

lull

R E A S O N S .

9. The case of the applicant in the previous O.A., i.e., O.A.67/96 was that the respondents had not correctly reckoned his seniority in the T.T. & C Department and it should be reckoned from 9-7-1962 which is the date of his increment on Time Scale (DITS). It was his averment that he ought to have figured at Sl.No.14 in the select list of eligible candidates to be forwarded for approval to the Appointments Committee of the Cabinet but due to erroneous and arbitrary assignment of seniority position to him in the integrated seniority list drawn he would find his name at Sl.No.27. With this case he had contended that a vacancy in the rank of General Manager was due to occur on 31-1-1996 and he would suffer irreparable loss if the select list prepared in December, 1994 was not recast. Thus the relief interalia sought was to direct the respondents to reckon his seniority from 9-7-1962 with consequential directions and to direct the Respondent No.1 to assign correct ranking on that basis in the eligibility list with attendant benefits. That claim was resisted by the respondents. Although it was held in the judgment that the rationale behind reversing the earlier principle of assigning seniority by circular dated 8-7-1987 was not explained and the said amendment appeared to be wholly illogical, unreasonable and vexatious and offended all canons of justice equity and good conscience as also the basic rule of seniority and was

full

arbitrary yet relief was not eventually granted with reference to 1994-95 panel which had lapsed and it was moulded in an endeavour to remove the injustice suffered by the applicant so that he could be considered for 1995-96 panel.

10. Thus issues now raised relating to placement in 1994-95 panel by altering the position assigned in the eligibility list relevant to that selection were directly and substantially in controversy in the former O.A., between the same parties and were heard and finally decided by this Court. Bar of res judicata thus clearly arises.

11. It is not possible to accede to the argument of the learned counsel for the applicant that the relief sought is consequential in nature to the previous order. When relief was granted only with regard to consideration for 1995-96 panel and the direction to reckon the DITS as 9-7-1962 was made only for that limited purpose that cannot be read as permitting reopening of the panel of 1994-95 even on that basis and the relief sought in respect of earlier year after the panel for that year had lapsed cannot be described as consequential. There cannot arise any doubt about this position as it has been clearly observed in the earlier order as follows:

"We are advisedly holding as above as the 1994-95 panel which gave rise to the grievance of the applicant has lapsed

hull

but the cause of injustice suffered by the applicant still persists and can be removed in 1995-96 selection process. We however make it clear that we have not disturbed the rule of preparation of the integrated seniority list of officers eligible from different services. All that we hold is that in carrying out that exercise the DITS of the applicant shall be taken as 9--7--1962".

✓ In the light~~est~~ of this finding following order was passed:

"As and when the appointment of eligible officers to the post of General Manager/ equivalent is considered during the currency of the panel for 1995-96 including the vacancy as on 31-1-1996, which is stated by both the parties not to have been so far filled, the selection Committee shall consider the date of entry of the applicant in the time scale as 9-7-1962 and reckon his seniority with reference to that date treating him within the age limit as on 1-7-1995"

12. Shri L.Narasimha Reddy has also raised an important question as to whether having regard to Sec.22 of the Administrative Tribunals Act there is ^{any} scope to apply the doctrine of Res judicata/constructive res judicata contained in Sec.11 of the Code of Civil Procedure to a proceeding arising under the Act. He argued that it has no application.

hbl

1

.

- (2) *** *** *** ***

- (a) to (i) *** *** *** "

(Now C.P.C. 1976)

✓

✓

In our view neither the provisions of the Act nor the Rules contain anything contrary to Section 11 of the C.P.C. Sec.27 of the Act lays down (in so far as material for present purpose) that subject to the other provisions of the Act and the Rules, the Order of a Tribunal finally disposing of an application shall be final and such order shall be executed in the same manner in which final order in the nature referred to in Clause (a) of sub-section(2) of Section 20 ... in respect of the grievance to which the application relates would have been executed. The order thus assumes finality subject to the provision for review contained in Rule 17 of the Central Administrative Tribunals(Procedure)Rules,1987 and appeal to the Supreme Court. The specimen of application to be filed under Sec.19 prescribed in Appendix A to the C.A.T.(Procedure)Rules provides (to the extent material for present purpose) in para 17 that the applicant shall declare that he had not previously filed any application in respect of which the application has been made nor it is pending. This provision implies that where an application has already been decided or is pending in respect of the same subject matter the second application would not be permissible to be filed relating to that subject matter. That shows that the underlying scheme is that the order passed in the O.A., operates as final and would bind the parties thereto.

hull

14. Thus

Can an order passed in an O.A., and
has achieved finality loses its binding
nature so that by another O.A., same
subject matter can be reagitated having
regard to above mentioned provisions?

is the question required to be answered. Our answer
is an emphatic 'no'. If finality is not attached to
an order finally passed after adjudication of questions
involved that would lead to disastrous consequences
rendering the entire gamut of administration of justice
farcical. No order will be capable of execution nor
obeyed and no party will ever know ^{the} his rights available
to him. Such unwholesome result destructive of Rule of Law
could never have been intended by the legislature while
enacting Sec.22 and allied provisions mentioned above
in the ~~Central~~ Administrative Tribunals Act and the
Rules. The binding nature of the decision therefore
precludes reagitation of ^{same} ~~some~~ questions all over again.
That precisely is the principle of res judicata whether
it is drawn from Sec.11 of C.P.C., or followed as ^{an} ele-
mentary principle of administration of justice or is devised
by the Tribunal as a sound rule to be applied as a principle
of ~~natural~~ justice within the meaning of Sec.22 of the Act.
The principle of natural justice cannot be stretched ^{to} ~~to~~ negatively to
an absurd ^{length} ~~extent~~ so as to override the basic tenets of
administration of justice. It would depend upon the

hell

123

: 14 :

nature of the previous case and subsequently filed case as to whether the subsequent action is barred by res judicata or constructive res judicata. That makes no difference in the present case. Res judicata is the Rule under which a final judgment rendered by a Court of competent jurisdiction on the merits is conclusive as to the rights of the parties and as to ^{them} ~~whether~~ constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. That is squarely attracted in this case as all the ingredients to constitute the bar are satisfied. Giving a go-bye to the principle would also result in destroying the law of precedent.

15. Apart from the above considerations in our view, Sec.11 of the Code of Civil Procedure is a substantive provision containing a valuable principle of law though it forms part of Procedural law and to that extent Sec.22 of the Act which merely excludes the applicability of the procedural rules contained in the Code except ^{to} those matters which are enumerated in that section itself cannot be construed as excluding applicability of Sec.11 of the Civil Procedure Code or principle enshrined in Or.2, Rule 2 of the Code.

hmr

16. It is necessary to mention that Shri L.Narasimha Reddy made a submission that the respondents cannot raise the ground of res judicata at the stage of arguments as this has not been raised in their counter. Shri Tulsi however submitted that it is pure question of law going to the root of jurisdiction and can be raised at the stage of hearing even if it does not form part of pleadings of the Respondents. In our opinion the bar of res judicata relates to the very foundation of the proceeding and has a nexus with its maintainability and the jurisdiction of the court to entertain and deal with the application hence it can be raised even at the stage of hearing. Indeed the objection was raised as a preliminary objection at the beginning of the hearing by Shri Tulsi. We ^{have} are however dealt with it after examining the question as to whether the application is in the nature of seeking consequential relief. Hence we cannot accept the submission of the learned counsel for the applicant.

17. We draw support to our above view from the decision of the Supreme Court in NITYANANADA KAR's case (supra) cited by Shri Tulsi and the decision of Madras Bench of Central Administrative Tribunal in E.SUBBAIAH's case (supra) to hold that the sound principle of res judicata is applicable under service Jurisprudence also. The argument of Sri L.Narasimha Reddy on the point must

hull

therefore be rejected and is rejected. In taking the above view we have borne in mind the principles indicated in the rulings cited by counsel. We do not think it necessary to discuss all those cases in detail.

18. In the light of the foregoing discussion we hold that the relief claimed in the instant application cannot be construed as consequential to the Order in the earlier O.A., and answer Point No.1 in the negative. We further hold that the present O.A., is barred by res judicata and is liable to be dismissed on that ground. We answer Point No.2 in the affirmative. In answer to Point No.3 we hold that the O.A., is liable to be dismissed. We however make it abundantly clear that notwithstanding the dismissal of the instant O.A., on legal ground the Order dated 26-4-1996 in O.A.67/96 shall for all intents and purposes remain undisturbed subject however to the SLP which is stated to have been filed in the Supreme Court on behalf of the respondents against the said Order.

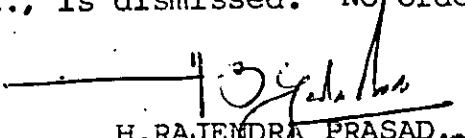
19. In the result following Order is passed.

O R D E R.

Subject to the observation that the Order dated 26-4-1996 in O.A.67/96 remains undisturbed the O.A., is dismissed. No order as to costs.

Date: 27-9-1996.

Pronounced in open Court.


H. RAJENDRA PRASAD,
MEMBER (A)


M.G. CHAUDHARI, J
VICE-CHAIRMAN

(125)

O.A.592/96.

To

1. The Secretary, Ministry of Railways,
Railway Board, Union of India, New Delhi-1.
2. The ~~The~~ Secretary, to Govt., Department of
Personnel and Administrative Reforms,
Ministry of Home Affairs, Union of India,
New Delhi-1.
3. The Chairman, Railway Board, Railbhavan
New Delhi-1.
4. One copy to Mr.L.Narasimha Reddy, Advocate, CAT.Hyd.
5. One copy to Mr. K.T.S.Tulsi, Senior Counsel
6. One copy to Mr.V.Rajeswar Rao, Addl.CGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.
9. Copy to All Reporters as per standard list of CAT.Hyd.

pvm.

7
16

हैदराबाद न्यायपीठ
HYDERABAD BENCH