

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

O.A. 465/99

Date: 10 NW 2000

Between:

Dr. V.K. Mehrotra

.. Applicant

A N D

1. Union of India
through
The Secretary,
Ministry of Home Affairs,
Govt. of India,
New Delhi.
 2. The Director General,
Bureau of Police Research &
Development, Block No.11,
C.G.O. Complex, Lodhi Road,
New Delhi.
 3. The Secretary,
Union of Public Service Commission,
Shah Jahan Road,
New Delhi.
 4. Dr.M S Rao,
Director,
Central Forensic Science Laboratory,
30, Gorachand Road,
Calcutta - 700 014.
 5. Dr.R.S.Verma,
Director,
Central Forensic Science Laboratory,
Plot No.2, Sector 36A, Dakshin Marg,
Chandigarh - 160 036.
- .. Respondents

Counsel for the applicant : Mr. S.Ramakrishna Rao

Counsel for the Respondents: Mr. B.N.Sharma, Sr.CGSC

Coram:

Hon. Shri R. Rangarajan, Member (A)

Hon. Shri B.S.Jai Parameshwar, Member (J)



O.A. 465/99

O R D E R

Date:

(Per Hon.Shri B.S.Jai Parameshwar, Member(J)

Heard Mr. S. Ramakrishna Rao, learned counsel for the applicant and Mr. B.N.Sharma, learned standing counsel for the respondents.

2. The point that requires our consideration is whether the present application is barred by the principle of res-judicata in view of the order in OA 59/90 decided on 11-1-95 and in view of the order in OA 619/90 decided on 1-8-95.

3. The applicant has filed this OA for the following reliefs :

"(a) to set aside the impugned order No.3-7-89-Adm.I(Vo.I) dated 9-12-1998 rejecting the claim of the applicant for promotion to the post of Deputy Director, Central Forensic Science Laboratory w.e.f. 23-2-1990 when his juniors were promoted superseding the applicant for the above promotion, due to the erroneous consideration of the application of executive instructions of 1989 for the vacancies existed during the years 1986 and 1988, by mis-interpreting the DPC guidelines, declaring the same as arbitrary, illegal, un-warranted, misconceived and in violation of Articles 14 & 16 of the Constitution of India.

(b) direct the respondents to consider the case of the applicant for promotion to the cadre of the Deputy Director on par with his juniors who were promoted w.e.f. 23-2-1990 denying illegally the said benefit without considering the case of the applicant on its merits and by flouting the procedure for selection as laid down under the rules, duly directing the respondents to constitute review D.P.C. for promoting the applicant with retrospective effect with all the consequential benefits declaring the denial of promotion to the applicant on fictitious grounds as arbitrary, illegal, unwarranted and in violation of Articles 14 and 16 of the Constitution of India; with all consequential benefits. "

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4. The main grievance of the applicant is that when the DPC met for the year 1990 it was to consider the vacancies, which arose for the years 1986 and 1988 and that the DPC should have been constituted in accordance with the rules 1974 where promotion to the post of Deputy Director was supposed to be done on selection basis. Cent percent of the posts were on promotion and that for the selection-cum-seniority and selection-cum-merit were only the method under the selection criteria.

5. Earlier the applicant had approached the Chandigarh Bench of this Tribunal in OA 59/90 decided on 11--1-95 claiming seniority over Dr.J.K. Sinha, who was respondent no.7 in the said application. He had also challenged the seniority list of Asstt. Directors issued in the year 1989 in which Dr. J.K.Sinha, respondent No.7, was shown senior to the applicant. The Chandigarh Bench of this Tribunal considered the said question of applicant's seniority over Dr.J.K.Sinha and formed an opinion that the respondents had earlier prepared the seniority list in the year 1981 itself showing the respondent No.7 as senior to applicant and that the applicant had not challenged the said seniority and therefore the applicant cannot challenge the seniority of Dr.J.K.Sinha over him in the seniority list published in the year 1989. The seniority list of 1981 & 7-4-81, was Annexure A-I.



In that seniority the applicant was shown at Sr.No.4 and Dr. J.K.Sinha was shown at Sr.No.2 as can be seen from the order of the Tribunal. In para-5 of the order the Tribunal noted the submission of the learned counsel for the respondents that the posts of Deputy Director then filled was 19 and as per the recruitment rules of 1974 they were to be filled and that only 8 eligible candidates in the cadre of Asstt.Directors were in position. Further they submitted ^{that} ~~respondent~~ respondent No.7 Dr.J.K.Sinha belonged to the discipline of Ballistics. Considering the submission of the respondents the application of the applicant was dismissed. Thus the claim of the applicant for seniority over Dr.J.K.Sinha, the respondent No.7 was negatived.

6. In OA 619/90 decided on 1-8-95 the applicant challenged the order dt. 11-4-90 issued by the respondent no.2 i.e. Director General, Bureau of Police Research and Development to place the entire record of the DPC by which respondents No.4 to 7 were promoted to the posts of Dy.Directors and sought consequential direction to direct the respondent to promote ~~the~~ the applicant retrospectively as Dy. Director from the date his juniors were promoted. The Tribunal after considering the impugned order noticed that the officiating promotions of Dr.J.K.Sinha, Dr.B.Bhattachary, Dr, T.R.Baggi, Dr.M.S.Rao and Dr.R.S.Verma were made subject to outcome of OA 59/90



and that the said application ~~having~~ been dismissed by the applicant there is no illegality or infirmity in the impugned order dt. 11-4-90 as also the impugned order dt. 30-4-90 (Annexure R/2) and further observed that the applicant in the said background was not entitled to get any relief in the instant OA and the prayer of the applicant to direct the respondents not to fill up the two posts of Director by promotion from amongst the Deputy Director in accordance with the amended rules also cannot be ~~xxxxxx~~ claimed but also because no grounds whatsoever have been made out to claim the said relief. Thus the Tribunal dismissed the said application.

7. Now the applicant attempts to make out a case that while filling up the post of Deputy Directors they should have ~~xxxx~~ followed the rules of 1974 and that they have followed the amended rules to fill up those posts for the year 1986 and 88.


8. At the time of admitting the application ^{the} we had observed that respondents are at liberty to take the plea of res-judicata. Accordingly the respondents in the reply have specifically pleaded res-judicata as also the plea of limitation.

99 Learned counsel for the applicant in support of his contention that for service rules principle of res-judicata is not applicable attempted to rely upon

the decision of the Hon. Supreme Court in the case of Surendra Narain Singh and others vs. State of Bihar and others, reported in 1998 SEC(L&S) 1317 (para 22).

10. As against this the respondents relied upon the decision of the Hon. Supreme Court in the case of Maharashtra Vikrikar Karmachari Sangathan vs. State of Maharashtra reported in (2000)2SCC 552 and the order of this Tribunal in the case of P. Seshagiri Rao vs. U.O.I. reported in (1997)35 ATC 276.

11. The attempt made by the learned counsel for the applicant ^{to} contend that the principle of res-judicata is not applicable in that he is challenging the method of filling up the post of Deputy Director earlier by following the amended rules instead of the rules 1974. Admittedly the promotions were affected in the year 1990. Even while challenging the impugned order dt. 11-4-90 and also 30-4-90 in OA 619/90 the applicant had nowhere contended that posts filled up by the DPC in 1990 were of the posts of the year 1986 and 1988 and that they were expected to follow the rules 1974. In fact while making a submission in ^{OA} 59/90 the respondents themselves had submitted that the posts of Deputy Directors ^{would} be filled in accordance with the rules 1974.



12. During the year ¹⁹⁸⁶ there was only one post of Deputy Director. The said post was vacant from 1986 to 1988. In the year 1988 the respondent No.2 created 18 posts of Deputy Directors of different discipline.
13. The applicant was then working as Asstt. Director (Physics) under the respondent No.2.
14. In OA 59/90 the applicant challenged the seniority list issued in 7-4-1981, re-circulated in 1989 claiming seniority over Dr. J.K.Sinha. He had obtained an interim order from the Tribunal not to fill up the post of Deputy Directors. The respondents therein had made an application for vacating the interim order and during the course of that order the respondents submitted that presently there were 19 posts of Deputy Directors to be filled up and that only 8 officials are ^{within} ~~under~~ the zone of consideration and in all probability the case of the applicant would be considered. Relying upon the submission made by the respondents the Tribunal vacated the interim order.
15. The DPC met on 23-2-90 and considered the case of the applicant along with others. However, the case of the applicant was not recommended. On the basis of the recommendations of the DPC held on 23-2-90 the order of promotion dt. 11.4.90 was issued.

The applicant challenged the order of promotion dt. 11-4-90 in which Dr. J.K.^Sinha who was apparently held to be senior to the applicant and three others who happened to be juniors to the applicant were promoted.

16. In the said OA the applicant challenged the DPC proceedings. On going through the order in OA 619/90 it is clear that the applicant wanted to call for the DPC proceedings held on 23-2-90.

17. Now the applicant attempts to make out a case that in the year 1989 ^{the} DO PT had issued instructions as regards the benchmark for considering promotion and that instructions were prospective in nature and that the DPC considered the instructions of 1989 to fill up the post of Deputy Director of the years 1986 and 1988. This is the crux of the matter.

18. It is now to be seen whether he was not aware of the ~~DO~~ position the DPC followed the 1989 instruction or not is to be considered in order to apply the principles of res-judicata. It is to be noted that the applicant had challenged the promotion order dt. 11-4-90 which was issued on the basis of the DPC dt. 23-2-90. In page 2 of the rejoinder the applicant has stated as under :

"I was promoted to the post of Director in January, 1996 and having come to know in the last stages of disposal of the OA 619 that due to the application of the bench mark

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instructions of 1989 for filling up the vacancies of 1988 with retrospective effect, I was denied promotion by the respondents and I submitted a representation in January, 1996 to respondent No.2, seeking justice against the above, for which the respondent had issued the orders declining the same through their order dt. 9-12-1998. "

From this it is clear that the applicant was aware of the defect ^{or otherwise} in the DPC held on 23-2-90 even before the OA 619/90 was decided on 1-8-95.

19. In the face of the above admission made by the applicant in the rejoinder if that was so he should have filed an application seeking permission to raise the additional grounds¹ to challenge the order of promotion dt. 11-4-90 or atleast he should have filed an application for review on the ground that the Tribunal while deciding the OA 619/90 had failed to consider a new ground which would go to the root of the DPC. He has not done so. It is on this ground respondents submitted that the application is barred by constructive res-judicata.

20. In the case of P.Seshagiri Rao vs.U.O.I. & Ors.(1997)35 ATC 276, this Bench of the Tribunal considered whether principles of Res-Judicata would be applicable in the service matter. In para 13, 14 and 15 this Bench has observed as follows :



"13. A careful reading of the section shows that the Tribunal may not be bound by the procedure laid down in the Code but it does not preclude the Tribunal altogether from having due regard to its provisions when it is to be guided by the principles of natural justice. A tribunal is not prevented from taking aid of principles contained in the Code if these are not inconsistent or incompatible with the express provisions contained in the Act or rules made thereunder. In our view neither the provisions of the Act nor the rules contain anything contrary to Section 11 of the CPC, Section 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 Section 19 prescribed in Appendix 'A' to the CAT (Procedure) Rules provides (to the extent material for present purpose) in Para 17 that the applicant shall declare that he had not 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 OA operates as final and would bind the parties thereto.

14. Thus, can an order passed in an OA, and has achieved finality lose its binding nature so that by another OA, same subject-matter can be re-agitated 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 rights available to him. Such unwholesome result destructive of rule of law could never have been intended by the legislature while enacting Section 22 and allied provisions mentioned above in the Administrative Tribunal Act and the rules. The binding nature of the decision therefore precludes re-agitation of same question all over again. That precisely is the principle of res judicata whether it is drawn from Section 11 of CPC or followed

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as an elementary principle of administration of justice within the meaning of Section 22 of the Act. The principle of natural justice cannot be stretched negatively to an absurd length so as to override the basic tenets of administration of justice. It would depend upon the 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 right of the parties and as to them 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-by to the principle would also result in ~~destroying~~ destroying the law of precedent.

15. Apart from the above consideration in our view, Section 11 of the Code of Civil Procedure is a substantive ~~in~~ provision containing a valuable principle of law though it forms part procedural law and to the extent Section 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 Section 11 of the Civil Procedure Code or principle enshrined in Or.2 Rule 2 of the Code. "

21. As already observed the applicant was aware of the defects in the DPC held on 23-2-90. If at all it can be considered ^{or} it should be ~~be~~ treated as a defect ^{then} he should have raised in the OA 619/90. Similar question came up for consideration in a different context in the case of Maharashtra Vikrikar Karmachari Sangathan vs. State of Maharashtra & Ors. (2000) 2 SCC 552. In para 22 the Hon. Supreme Court observed as below :

"22. It was then contended on behalf of the appellants that neither the Recruitment Rules of 1971 nor the Seniority Rules of 1982 provided for carrying forward the vacancies falling in either category. In the absence of such rules which specifically provide for carrying forward the vacancies falling in either category, no such carry-forward rule could be implied either in the Recruitment Rules or in the Seniority Rules. This contention need not detain us any longer because such a

contention was available to the appellants in the earlier proceedings, namely, Transfer Application No.822 of 1991, and the same was not put in issue. That not having been done, it must follow that such a contention is barred by the principles of constructive res judicata. Neither the contesting respondents nor the appellants ever raised this contention at any stage of the proceedings in Transfer Petition No.822 of 1991. It would, therefore, be too late to raise such a contention when the seniority list has been finalised pursuant to the judgment of MAT, Bombay Bench in Transfer Petition No.822 of 1991. The reliance placed on behalf of the appellants on the decision of this Court in Narender Chadha v. Union of India therefore, does not advance the case of the appellants. "

22. The Hon. Supreme Court in the case cited above has considered whether the point which could have been raised can be raised in a subsequent OA and held that they cannot do so and it is barred by constructive res-judicata. In this case, from the rejoinder it is clear that the applicant was aware of the application of the instructions issued in 1989 or otherwise when the DPC met on 23-2-90. He had challenged the DPC proceedings but he had not taken the particular ground. When he came to know of it during the pendency of the OA he should have raised it by obtaining permission of the Tribunal. He has not done so. That means the applicant having become known the defect in the DPC allowed the OA to be decided.

23. The decision relied upon by the applicant in the case of Surendra Narain Singh and Others v. State of Bihar and Others (1998 SCC (L&S) 1317) is not applicable and it does not lay down any general principles. The facts and circumstances differ from the facts and circumstances available in this case.



24. Having failed to bring to the notice of the Tribunal in OA 619/90 the applicant attempted to rake up the issue in the year 1996 by submitting a representation. The copy of the representation is not available in the OA. However the respondent authorities by the impugned order dt. 9-12-98 explained him the rule position. They have stated that instructions issued by the DOP have to be followed and they have not violated any rules. The DPC has not committed any irregularity in preparing the panel of Deputy Directors.

25. It is on the basis of the DPC held on 23-2-90 the applicant wants to claim certain consequential reliefs in this OA. As already observed the applicant had challenged the order of promotion dt. 11-4-90 in OA 619/90 unsuccessfully. Thus we are not in a position to give any decision in this OA in view of the principles of res-judicata/constructive res-judicata.

26. The applicant may, if so advised, submit an application for review of the order dt. 1-8-95 passed in OA 619/90 on the file of the Chandigarh Bench of this Tribunal regarding the contentions of the applicant that DPC met on 23-2-90 had followed the instructions issued in the year 1989 for filling up the post of Dy. Director which arose in 1986 and 1988 when the rules of 1974 should have been strictly followed.




The instructions which came later after the occurrence of the vacancies should not have been taken note of.


If such a review is filed by the applicant before the appropriate bench, that Bench may decide the matter in accordance with the law.

27. The filling up the post of Chief Forensic Scientist of the department for which it is stated the DPC is going to be held will pend till 30.11.2000.

28. With the above observation the OA is disposed of with no order as to costs.


(B.S. JAI PARAMESHWAR)
Member (J)
10.11.2000

MD/SD


(R. RANGARAJAN)
Member (A)


13.11.2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:HYDER

COPY TO:-

1ST AND 2ND COURT

1. HDHND

TYPED BY CHECKED BY
COMPARED BY APPROVED BY

2. HERN:MEMBER:(ADMN)

3. HBSJP:MEMBER:(JUDL)

THE HON'BLE MR JUSTICE OH:NASIR
VICE-CHAMAN

4. D.R. (ADMN)

THE HON'BLE MR R.RANGARAJAN:MEMBER:
(ADMN)

5. SPARE

THE HON'BLE MR.BS.JAI PARAMESHWAR:
MEMBER(JUDL)

6. ADVOCATE

7. STANDING COUNSEL

DATE OF ORDER 10/11/2000

MA/RA/CP.NO.

IN

CA.NO. 465/99

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

B.P. CLOSED

R.A. CLOSED

~~DISPOSED OF WITH DIRECTIONS~~

DISMISSED

DISMISSED AS WITHDRAWN

ORDER / REJECTED

NO ORDER AS TO COSTS

