

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

No.476/96

Date of order: 18.2.1998

B.B.Dave

: Applicant

Vs.

Union of India through the Secretary, Department of Posts, Lak Bhawan,
Sansad Marg, New Delhi-110 001.

...Respondent.

Mr.U.D.Sharma - Counsel for applicant

Mr.M.Rafiq - Counsel for respondent

CORAM:

Hon'ble Mr.Gopal Irishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member

PER HON'BLE MR.GOPAL IRISHNA, VICE CHAIRMAN.

Applicant Shri B.B.Dave has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying therein mainly for a direction to the respondent to treat the review done by Shri C.J.Mathew, Chief Post Master General, of the ACE for the period 1.4.1993 to 31.3.1994 as invalid and to have the said ACE reviewed by Shri AVB Menon, former Chief Post Master General for the period 1.4.93 to 16.1.1994.

2. We have heard the learned counsel for the parties and have carefully perused the records.

3. The facts giving rise to this application are that the applicant after qualifying the Civil Services Examination held by the Union Public Service Commission for appointment in the Junior Time Scale of the Indian Postal Service Group 'A'. was appointed to the Junior Time Scale of the Indian Postal Service vide order dated 11.12.1986. He was promoted to the Senior Time Scale w.e.f. 25.8.1990 by order dated 16.10.1990. By an order dated 1.11.90, 16 officers of the Senior Time Scale of Indian Postal Service had been promoted to the Junior Administrative Grade in the Indian Postal Service Group 'A' scale Rs.3700-150-5000. The applicant's name finds place at Sl.No.12 therein. The applicant has been promoted vide the said order to the Junior Administrative Grade of the Indian Postal Service Gr.'A' but he was superseded by 4 persons junior to him. The contention of the applicant is that though he was assessed as 'outstanding' for the periods 18.6.90 to 31.3.91, 1.4.91 to 2.12.91 and from 1.4.92 to 31.3.93, he was assessed as 'good' (which was below the Bench Mark) for the period 1.4.93 to 31.3.94 both by the Reporting Officer as well as the Reviewing Officer. The applicant came to know that his report for the period from 1.4.93 to 31.3.94 had been reviewed by Shri C.J.Mathew, Chief Post Master General, Maharashtra Circle, who had not completed the prescribed period of 3 months as the Reviewing

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Authority. Thus the ACF for the aforesaid period was not reviewed by the competent Reviewing Authority. This downgraded assessment as 'good' resulted in his overall assessment being brought down from 'outstanding' to 'very good' and his having been superseded by his 4 juniors. The applicant further states that the DPC was also not aware of the fact that the ACF for 1993-94 was reviewed by an officer who was not competent to review the same, otherwise the DPC would have ignored the said ACF or would have called for its review by a competent Reviewing Authority and the applicant would not have been superseded by his juniors and would have been placed properly at Sl. No.3 in the order of promotion dated 2.11.95. It is urged on behalf of the applicant that great prejudice and injustice have been caused to the applicant. It is, therefore, prayed that the review done by Shri C.J.Mathew, Chief Post Master General, of the ACF for the period 1.4.93 to 31.3.94 be treated as invalid and the said ACF be reviewed by Shri A.V.P.Menon, former Chief Post Master General for the said period.

3. On the other hand the respondent has stated that the applicant has raised this issue in the earlier O.A and the same was examined by this Tribunal and as such the present O.A is barred by the principles of res judicata.

4. It is borne out from the record that the applicant had earlier filed O.A No.378/96 in which he had prayed that the order dated 14.5.96 by which his representation against supersession in promotion from Senior Time Scale to Junior Administrative Grade of the Indian Postal Service was rejected may be quashed and that the Union of India may be directed to ignore the adverse remarks in the ACF of the applicant for the year 1993-94 and to consider the down graded remarks as 'outstanding'. He had further prayed that his case for promotion may be reviewed so that he should be placed at Sl.No.3 in the order dated 2.11.95 by which he alongwith certain others was granted promotion to the Junior Administrative Grade, scale Rs.3700-5000. It was further prayed therein that the consequential benefits may also be granted to him.

5. The learned counsel for the applicant states that he has prayed in this O.A that the ACF for the period 1.4.93 to 31.3.94 should be got reviewed by Shri A.V.P.Menon, former Chief Post Master General and since no such prayer was made in the earlier O.A, the present O.A is not hit by the bar of constructive res judicata. However, the fact remains that the applicant had made a specific prayer in the earlier O.A for a direction to the respondents to ignore the adverse remarks in the ACF of the applicant for the aforesaid year on the ground that the same was not reviewed by a competent Reviewing Authority. Reliance

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has been placed by the applicant on AIR 1976 SC 1645, Lonankutty Vs. Thomman & Anr, in which it was observed as follows:

"This contention is well founded and must be accepted. By Section 11. Code of Civil Procedure, in so far as relevant, no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties and has been heard and finally decided. Explanation I to the section provides that the expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto. The only other aspect of the rule of res judicata which on the facts before us must be borne in mind is that it is not enough to constitute a matter res judicata that it was in issue in the former suit. It is further necessary that it must have been in issue directly and substantially. And a matter cannot be said to have been "directly and substantially" in issue in a suit unless it was alleged by one party and denied or admitted, either expressly or by necessary implication, by the other."

6. The applicant's ACF for the period in question is sought to be reviewed by Shri A.V.B. Menon basically on the ground that the same was not reviewed by a competent Reviewing Authority. The applicant did raise a grievance in the earlier O.A that he had not completed a period of 3 months under the Reviewing Authority. This issue was considered by the Tribunal while deciding the earlier O.A by order dated 18.7.96, we are of the view that the applicant's plea regarding the ACF for the aforesaid period having been reviewed by an incompetent authority was duly considered by the Tribunal and the Tribunal had already given a verdict on this issue by stating that in view of the judgment of the Hon'ble Supreme Court in Mutan Arvind case reported in (1996) 33 ATC 228, it should not go into the issue. We place reliance on (1986) 1 SCC 100, Forward Construction Co. & Ors. Vs. Prabhat Mandal (Regd), Andheri & Ors, wherein their lordships of Hon'ble the Supreme Court laid down in para 20 as follows:

"20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the

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actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force."

7. The learned counsel for the applicant also stated that the applicant could not have raised the plea that the ACF should be got reviewed by a competent Reviewing Authority in the earlier O.A as the same would have been inconsistent with the other pleas raised in the said O.A that the ACF should have been ignored, in view of the provisions contained in Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. The pleas raised in the earlier O.A were in fact consequential to each other and they were all examined and dealt with in the order dated 18.7.96. We find that no glaring injustice has been caused to the applicant as alleged by the learned counsel for the applicant. The authority reported in 1987 (2) SLR 85, S.Mahadevan Vs. The Commissioner & Secretary Agriculture Department, Madras & Ors, does not therefore help the applicant.

9. In view of the decision of Hon'ble the Supreme Court reported in (1986) 1 SCC 100 cited supra, we are of the view that the present O.A is hit by the bar of res judicata contained in Explanation IV of Section 11 of the Code of Civil Procedure. The application is, therefore, dismissed with no order as to costs.

(O.P.Sharma)

Administrative Member.

(Gopal Krishna)

Vice Chairman.