CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 16.4.2004

1. OA No.467/2003.

Basir Mohd. S/o Kadar Bux by cast Muslim, aged about 58 years, resident of 110, Subhash Colony, Shastri Nagar, Jaipur presently working as Supervisor (LSG) Jaipur RMS.

2. OA No. 468/2003.

Narottam Singh S/o Shri Lal Singh by cast Rajput, aged about 59 years, resident of 360, Uniara Pao-Ka Rasta, Jaipur-1, presently working as SA (BCR) in the office of the Railway Mail Service 'JP' Dn. Jaipur.

3. OA No.469/2003.

B. S. Sinsinwa S/o Shri Gyasi Ramji by cast Jat, aged about 59 years, resident of PL-C-22, Krishnapuri, Hatwara Road, Jaipur presently working as Head Parcel Branch in the office of the R.M.S. Jp. Dn. Jaipur.

4. OA No. 486/2003.

R. N. Vijay S/o Shri Mohan Lal by cast Vijay aged about 55 years, resident of 21, Govind Nagar, Jaipur, presently working as SA (BCR) in the office of the Speed Post, Jaipur-6.

5. OA No.487/2003.

J. P. Sharma S/o Shri Prabhu Lal Sharma by cast Sharma, aged about 59 years, resident of P. No.8, Rana Pratap Nagar, Jhotwara, Jaipur-12, presently working as Supervisor in the office of the Railway Mail Service Jaipur-6.

6. OA No. 488/2003.

R. S. Shekhawat S/o Shri Peer Dam Singh by cast Rajput, aged about 59 years, resident of P. No. 31,, Gordhanwari, Khatipura Road, Jhotwara, Jaipur-12, presently working as a BCR HSG-II in the office of the Railway Mail Service, Jaipur.

7. OA No.521/2003.

Ishwar Lal S/o Shri Harsi Lal by cast Barwa, aged about 56 years, resident of 127, Ayadonpura 80, Feet Road, Mahesh Nagar, Jaipur working as BCR (SA) O/o SSPM Jp Dn. Jaipur.

8. OA No.532/2003.

R. P. Shukla S/o Shri Fatha Chand by cast Shukla aged about 56 years, resident of Moholla-Shukyawas C/oH.P.O. P.M.S. JP Dn. Jaipur, presently working as Mail Agent, Jaipur office of the Head Record Officer Jp Dn. Jaipur-1.

... applicants.

v e r s u s

1. Union of India throught he Secretary to the Govt. of India Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.

2. Chief Postmaster General, Rajasthan Circle, Jaipur-7.

3. Senior Supdt. Railway Mail Service 'JP' Dn. Jaipur.

4. Head Record Officer, Railway Mail Service 'JP' Dn. Jaipur.

... Respondents.

Mr. P. N. Jatti counsel for the applicants in all the OAs.
Mr. N. C. Goyal counsel for the respondents in all the OAs.

CORAM

Hon'ble Mr. [illegible], Judicial Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.
Hon'ble Mr. M. K. Misra, Administrative Member.

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

Applicants, named above, have filed their individual OAs u/s 19 of the Administrative Tribunals Act, 1985. The facts and circumstances and the question of law involved are similar in all these cases, thus they are being decided by this common order.

2. A question of seminal significance is involved in these cases which causes a sensation in the mind of the Court. The basic question involved in these cases is that when certain benefits have been extended to the employees i.e. litigants on the basis of a judgement of a Court of law and the same has attained finality, can the effect of the said judgement be nullified in pursuance with a subsequent judgement of the Supreme Court laying down a contrary principle of law.

3. As far as the factual aspect of these cases is concerned, the indubitable facts are that all the applicants filed their individual OAs for stepping up of their pay at par with one Shri M. P. Tyagi, who was junior to them in the same cadre and was getting more pay than the applicants. The OAs came to be allowed in their favour and they were allowed the benefit of stepping up of the pay at par with their next junior Shri M.P. Tyagi. Number of other

similarly situated persons also enjoyed similar benefits. No Special Appeal was preferred against the judgement passed in the OA filed by the applicants. In some cases Review Applications were filed after the judgement in R. Swaminathan's case referred to in para 4 below, and the same came to be rejected.

4. Subsequently, the Supreme Court in the case of Union of India vs. R. Swaminathan, Civil Appeal No.8658/96, decided on 12.09.97, wherein their Lordship held that the pay of an employee can be stepped up only if junior and senior officials belong to the same cadre and the posts to which they had been promoted is in the same cadre, and the anomaly became due to direct application of FR 22(c), which is now FR 22(I) (a) (i), and if the higher pay was received by the junior on account of local officiating promotion that does not entitled a senior to get his pay stepped up to make it at par with the pay of his junior. Thereafter, in pursuance of the judgement of the Supreme Court applicants were issued notice vide letter dated 6.9.99 and also the order of their refixation and the recovery dated 11.09.2003 at Annexure A-1 in their respective OAs. These order have been passed for making the recovery as well as refixing their pay by withdrawing the benefit of the stepping up of pay granted to them in pursuance with the judgements of this Bench of the Tribunal in cases filed by them. the cut of date for the recovery has been fixed as 12.9.97 i.e. the judgement of the Apex Court in R. Swaminathan's case (supra).

5. We have heard the learned counsel for the parties at a considerable length and have anxciously considered the pleadings and the records of these cases.

6. The learned counsel for the applicants has submitted that this Bench of the Tribunal has already adjudicated upon the identical matter in the case of Ved Prakash vs. Union of India & Ors., OA 54/2002, decided on 22.10.2003 and also another judgement dt. 27.2.2004 in OA No. 565/2002 Sita Ram Pareek & Ors. vs. Union of India & Ors., where one of us (Mr. J. K. Kaushik) was a party and he has submitted that these judgements squarely covers on all fours, the controversy involved in the instant case.

7. On the contrary, the learned counsel for the respondents has strenuously opposed the contentions made on behalf of the applicants and has submitted that the action of the respondents is in order and does not call for any interference by this Bench of the

Tribunal. Our attention was drawn to the very judgement passed in R. Swaminathan's case and it was submitted that the applicants cannot be allowed to enjoy the benefit of stepping up in view of the principle of law subsequently laid down by the Apex Court. Our attention was also drawn to another case, wherein Hyderabad Benchof this Tribunal has decided the case of P. Venkata Rao & Anr. v. The Director General Department of Telecommunications & Ors., 2002 (1) ATJ 215, relying upon the decision in case of Shri Ved Prakash (supra) and the department has gone for the writ petition against the same before Andhra Pradesh High Court and the operation of the judgement has been stayed. The learned counsel for the respondents has also cited following three more judgements in support of the defence on behalf of respondents.

> (i) State of Maharastra va. Digambar (1995) 4 SCC 683.
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> (ii) State of Karnataka and Others vs. G. Happa & Ors. 2002 SCC (L&S) 597.
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> (iii) Bhanwar Lal vs. Union of India, OA No. 520/2002 passed on dt. 5.12.2003 by Jaipur Bench of CAT."

He has submitted these judgements were not brought to the notice of this Bench while passing orders cited above by the learned counsel for the applicant. In this view of the matter, no relief can be granted to the applicants and the OAs deserve to be dismissed with exorbitant costs.

8. We have considered the rival submissions made on behalf of both the parties. As far as facts of the case are concerned, they are not in dispute. It is admitted position of both the sides that all the applicants enjoyed the benefit of stepping up of the pay at par with Shri M. P. Tyagi as per the orders passed in their respective cases by this Bench of the Tribunal, against which no appeal was preferred. It is also true that the stepping up of pay was allowed on account of higher pay which was admissible to Shri M. P. Tyagi due to his ad hoc officiation on promotional post. To cut short the controversy, we would like to refer certain significant paras of the judgement in Ved Prakash's case (supra)- Paras 7 to 12 are extracted as under :

> "7. The question for consideration is whether on the basis of the Apex Court's judgement in the case of Swaminathan, the benefit of stepping up of pay given to the applicant vide order dated 25.7.94, can be taken take ?
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> 8. The answer to this question finds place in a Full Bench

decision of this Tribunal in the case of P. Venkata Rao and another v. The Director General Department of Telecommunications and others (2002 (1) ATJ 215). A Division Bench of the Hyderabad Bench of this Tribunal had referred the following question to the Full Bench :

> "When an employee who had received certain benefits in view of filing an original application in theTribunal and either no appeal is preferred or appeal preferred has been rejected by the Supreme Court, whether the benefits accrued to the applicant can be annulled by a later decision of the Supreme Court in a similar case."

The Full Bench answered the question in the negative. It was observed at Para 14 of the report as under :

> "Aforesaid decision of the Supreme Court in the case of R. Swaminathan (supra) can apply only prospectively. The same cannot be made applicable to unsettle the settled issues which have become final between the parties. If parties are permitted to resile from settled issues which have become final between them, it would go against judicial discipline. Apart from the principle of finality which atache to every lis between the parties, parties are also governed by the principle of resjudicate as enshrined in Sec.11 of the Code of Civil Procedure. Though aforesaid provision may not strictly be applicable to the Tribunal, provision analogous to resjudicata will certainly apply. In the circumstances, we have not hesitation in holding that it is not open to the respondents to reopen settled issues and claim refund of the amounts paid over to the applicants under the judgement of the Tribunal which have become final between the parties."
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> (emphasis supplied).

9. In view of the Full Bench decision(supra), which is binding on us, it has to be held that the respondents cannot take away the benefit accrued to the applicant pursuant to the decision of this Tribunal dated 28.7.93 (Ann.A/2). It is an admitted position that the respondents had not challenged the decision of this Tribunal dated 28.7.93 before the Supreme Court and the decision had attained finality between the parties. It is not open to the respondents to re-open the settled issue and make recovery of the amount paid to the applicant in view of the judgement of this Tribunal.

10. In view of the clear decision of the Full Bench of this Tribunal cited supra it is not necessary for us to consider the matter in greater detail.

11. Consequently, we find merit in this OA and it is allowed. The recovery made vide order Ann.A/1 is not sustainable in law. The respondents are directed to refund the amount of Rs.24,423/- to the applicant within a period of one month from the date of communication of this order. The respondents are further directed to extend the pensionary benefits to the applicant treating Rs.7100/- as the last pay drawn by him,

within the aforesaid period. The remaining amount of the retiral benefits pursuant to this order be paid to the applicant within one month. If the payment as aforesaid is not made within one month of the communication of this order, the respondents shall be liable to pay interest at the rate of 10% per annum on the amount from the date of payment of the various items of retiral benefit to the date of payment of the amount under this order.

12. The applicant shall get cost Rs.2000/- from the respondents."

9. As far as the question of law is concerned, the aforesaid judgement is based on a judgement of theFull Bench of the Tribunal and we are bound to follow it in every respect. The only hesitation is to examine the impact of the stay order which is passed in an identical case by Andhra Pradesh High Court at Hyderabad.

10. As far as the stay and interim orders are concerned, they are passed in certain specific circumstances specially keeping in view the prima facie case, the balance of convenience and also the irrepairable injury and such orders do not decide the legal right of any of the parties and untill unless the judgement is reversed or nullified, the same holds good. We have not been shown anythng contry to this proposition. For that purpose, we may say that there is no stay as such against the judgement of this Tribunal in Ved Prakash's case (supra). Thus, the inescapable conclusion would be that the said judgement stands the scrutiny of the law at present and we would have no hesitation rather we are bound to follow the same.

11. Now we would examine the matter by taking into consideration the three judgements mentioned in Para 7 above, which are said to have not been shown at the time of judgement in cases cited on behalf of applicant. As far as the case of Digamber (supra) is concerned, the Supreme Court was examining its powers under Article 136 and 142. The cases which were filed before the High Courts were subsequent matters and are distinguishable on the facts of the cases before us. Thus the ratio laid down in that case has no application to the instant cases.

As regards the other cases i.e. G. Halappa and Banwar Lal, we are not persuaded as to in what manner, they support the contentions of the respondents. They are also distinguishable on facts. We have thus no reason to take a different view than the one taken by this Bench of the Tribunal.

12. We hasten to add that as per the statement of law the doctrine of resjudicate very much applied to the writ petitions under Article 226 and also the OAs filed before this Tribunal by implication since the Tribunal is also exercising the power under Article 226 of the Constitution of India. The principle of resjudicata has been lucidly explained by the Hon'ble Supreme Court in the cse of Ashok Kumar Srivastav v. National Insurance Co. Ltd. & Ors., AIR 1998 SC 3046. Para 11 & 12 are relevant which are extracted as under :

> "11. It is well heigh settled that a decision on an issue raised in a writ petition under Article 226 or Article 32 of the Constitution would also operate as res judicata between the same parties in subsequent judicial proceedings. The only exception is that the rule of res judicata would not operate to the detriment or impairment of a fundamental right. A Constitution Benchof this Court has considered the applicability of rule of res judicata in Writ proceedings under Article 32 of the Constitution in, Daryao v. State of U.P. (1962) 1 SCR 574 : (AIR 1961 SC 1457) and it was held that the basis on which the rule rests is founded on considerationof public policy and it is in the interest of public at large that a finality should attach to the binding decision pronouced by a Court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over in the same kind of litigation.
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> 12. This was reitereated by another Constitution Bench of this Court, in Amalgamated Coalfields Ltd. V. Janapada Sabna, Chhindwara, 1963 Suppl (1) SCR 172 : (AIR 1964 SC 1013). The following is the ratio : Therefore, there can be no doubt that the general principle of res judicata applied to writ petitions filed under Art. 32 or Art.226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Art.32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India."

Keeping in view the aforesaid prepositionof law and applying the same to the facts of the present case, we are of the considered opinion that the impugned orders in these OAs are hit by doctrine of resjudicata and the action of the respondents is not sustainable in law and, therefore, the OAs have force.

13. The upshoot of the aforesaid discussion is that all the OAs have ample substance and merit acceptance. The same stand allowed. The impugned orders dt. 11.09.2003 to the OA Nos. 467/03 to 469/03, 486/03 to 488/03, 521/03 and 522/03 are hereby quashed. The respondents are directed to refund the amount, if any, already recovered from the applicants in pursuance with the impugned orders. The applicants shall also be entitled to a cost, to be paid to them by the respondents, which is quantified as Rs.2000/- in each case.

This order shall be complied with within a period of three months from the date of receipt of a copy of this order.

(M.K. MISRA)
MEMBJER (A)

(J. K. KAUSHIK)
MEMBER (J)