CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 27/2/04

1. OA No.565/2002.

Sitaram Pareek S/o Sh. J. N. Pareek, by caste Pareek, aged about 60 years, R/o House No.C-23, Krishna Puri, (Rakri) presently working as Supervisor in the office of the Rly. mail Service, Jaipur-6.

2. OA No.566/2002.

P. N. Yadav S/o Shri Sunder Lal by caste Yadav R/o Bar Ki Dhani, near Kanakpura Railway Station, aged about 60 years, presently working as a Supervisor in the office of the Railway Mail Service, JP Division, Jaipur-6.

3. OA No.567/2002.

D. D. Singh S/o Shri Om Prakash by caste Rajput, aged about 60 years, resident of N. J. Ayeer Bhawan (RMS) Bhawan Hasanpura Near P.W.D. Office, presently working as a HSG Supervisor in the office of the Railway Mail Service Gandhi Nagar, Jaipur-15.

4. OA No. 497/2003.

Raja Ram Gupta S/o Shri Ram Chandra Gupta, by cast Gupta aged about 58 years resident of 26, Padha Rani Marg, Purohitpara, Brahampuri, Jaipur presently working as Supervisor O/o Railway Mail Service JP Dn. Jaipur-6.

5. OA No. 498/2003

Roop Singh S/o Shri Keshri Singh by cast Rajput aged about 59 years resident of B-44, Singhbhoomi Colony, Khatipura, Jaipur presently working as Supervisor HSG-II, Jaipur RMS, Jaipur-6.

6. OA No. 500/2003.

M. C. Mahaveer S/o Shri Gyasi Lal Mahaveer by cast Mahaveer, aged about 57 years, resident of P.No.8, Rana Pratap Nagar, Jhotwara, Jaipur-12, presently working in the office of CBSO Jaipur C/o HRO RMS JP Dn. Jaipur-1.

7. OA No.505/2003.

Ghan Shyam Sharma, S/o Shri Dev Karan Sharma by cast sharma aged about 59 years R/o Near Govt. Hostal, Jobner Road, Phulera presently working as Sub-Record Office, Phulera.

8. OA No.506/2003.

R. C. Mathur S/o Shri Mohan Lal by cast Mathur aged about 58 years, R/o Ward No.15, Sikar presently working as S.A. (BCR) in the office of the Railway Mail Service, 'JP' Dn. Jaipur.

9. OA No.603/2003.

S. P. Garg S/o Shri Kanhiya Lal by cast Garg, aged about 58 years, resident of Indira Colony, Sawaimadhopur presently working as Head sorting (HSG-III), Railway Mail Service, Sawaimadhopur.

... applicants.

v e r s u s

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

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

3. Sernior Superintendent, Railway Mail Service, Opp. Radio Station, Mirja Ismail Road, Jaipur-1.

4. Head Record Office, Railway Mail Service, Opp. Radio Station, Mirja Ismail Road, Jaipur-1.

... 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. J. K. Kaushik, Judicial Member.
Hon'ble Mr. A. K. Bhandari, 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 v. R.Swaminathan, Civil Appeal No.8658/96, decided on 12.9.97, 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 No.1 to 3 have been issued notice vide letter dated 6.9.99 and also the order of their refixation indicating that the recovery has been made from the DCRG vide Ann.A/1 & A/1A in their respective OAs. As regards other applicants, orders 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 judgement of this Bench of the Tribunal. 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 anxiously 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 v. Union of India & Ors., OA 54/2002, decided on 22.10.2002 and he has submitted that this judgement 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 (Ann.R/5 in OA 565/2002) 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 towards Ann.R/6 to the said OA, wherein Hyderabad Bench of 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. 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 summissions 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 adhoc 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 Swaminatnan, the benefit of stepping up of pay given to the applicant vide order dated 25.7.94, can be taken back ?
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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 the Tribunal 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 attaches to every lis between the parties, parties are also governed by the principle of resjudicata 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.

(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/3). 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 the Full 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 anything contrary 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. We hasten to add that as per the statement of law the doctrine of resjudicata very much applies 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 case of Ashok Kumar Srivastav v. National Insurance Co. Ltd. & Ors., AIR 1998 SC 2046. Para 11 & 12 are relevant which are extracted as under :

> "11. It is well neigh 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 of impairment of a fundamental right. A Constitution Bench of 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 consideration of public policy and it is in the interest of public at large that a finality should attach to the binding decision pronounced 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 reiterated by another Constitution Bench of this Court in, Amalgamated Coalfields Ltd. v. Janapada Sabha, 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 applies 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 preposition of 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.

12. The upshoot of the aforesaid discussion is that all the OAs have ample substance and merit acceptance. The same stand allowed. The impugned notices/orders (Ann.A/1 & Ann.A/1A in OAs 565, 566 & 567/2002) and the impugned orders at Ann.A/1 in rest of the OAs are hereby quashed. The respondents are directed to refund the amount already recovered from the applicants. 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.

(A.K.BHANDARI)
MEMBER (A)

(J.K.KAUSHIK)
MEMBER (J)