IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 6th day of October, 2010

Original Application No. 373/2010

CORAM:

HoN'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HoN'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

M.C.Sekra
s/o Shri Kedar Mal Sekara,
r/o 77/75, Agrawal Farm,
Mansarovar, Jaipur,
Presently working as Librarian,
Central School,
Beawar.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through Commissioner,
   Kendriya Vidyalaya Sangathan (Hqrs.),
   18- Institutional Area,
   Shaheed Jeet Singh Marg,
   New Delhi.

2. Deputy Commissioner,
   Kendriya Vidyalaya Sangathan (Hqrs.),
   18- Institutional Area,
   Shaheed Jeet Singh Marg,
   New Delhi.

3. The Assistant Commissioner,
   Kendriya Vidyalaya Sangathan,
   Regional Office,
   92, Gandhi Nagar Marg,
   Bajaj Nagar,
   Jaipur.

... Respondents

(By Advocate: .....)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

(i) By an appropriate order, impugned letter dated 10.08.2009 (Annexure A/1) be quash and set-aside and respondents be directed to grant relaxation from attending in-service course before due date to the applicant, as granted to other similarly situated persons and thereafter the benefit of senior scale be allowed to the applicant from due date i.e. 11.09.1998 by modifying the order dated 30.10.2001 (Annexure A/8) with all consequential benefits.

(ii) Any other order, directions or relief may be passed in favour of the applicant as deemed fit, just and proper for the mental harassment seeing the circumstances and facts of the case.

(iii) That the cost of the application may also be rewarded.

2. From the relief clause, it is evident that the applicant is seeking benefit of senior scale w.e.f. 11.09.1998 instead of 23.1.2001 which was granted to the applicant vide order dated 30.10.2001 (Ann.A/8). It may be stated here that the applicant has earlier filed OA No.484/2003 thereby one of the prayers made by the applicant was that respondents may be directed to allow the applicant senior scale of Rs. 6500-10500 w.e.f. 11.9.1998 instead of 23.6.2001 by modifying order dated 30.6.2001 qua the applicant besides another relief regarding grant of benefit of ACP scheme. At this stage, it will be useful to quote Para 1 of the judgment of this Tribunal in earlier OA which has been placed on record as Ann.A/10 and thus reads:-

"This OA has been filed to seek following reliefs:-

(i) That the respondents may be directed to allow the applicant senior scale Rs. 6500-10500 w.e.f. 11.9.1998

instead of 23.6.2001 by modifying order dated 30.10.2001 (Annexure A/6) quo applicant by quashing condition of in service training programme imposed by the respondents with all consequential benefits including arrears of pay and allowances etc.

(ii) That the respondents be further directed not to treat the applicant as teaching staff and allow benefit as allowed to employees other than teaching staff under ACP scheme.

(iii) Any other order/direction of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.

(iv) That the cost of this application may be awarded."

In operative portion of the judgment, the Tribunal has given the following finding:-

> "We have given careful consideration to the pleadings in this case and have come to the conclusion that on the basis of statutory rules, promulgated after Fifth Pay Commission, post of Librarian falls in the category of teaching staff. As per the decisions of Governors of KVS taken on 1.3.2001, ACP was adopted for the non-teaching employees w.e.f. 12.10.2000 but the benefit of the same could not be given to the applicant which is by all accounts drawing the benefit of teaching allowance and falls under the classification of teaching staff as per Appendix-9 of the Accounts Code for the Kendriya Vidyalayas. Therefore, the decision of the respondents in not granting the benefit of ACP Scheme is justified. Similarly, the denial of Sr. scale to the applicant till he participated in inservice training programme is also justified as per rules."

3. The matter was carried to the Hon'ble High Court. Hon'ble High Court vide judgment dated 18th January, 2008 has upheld the judgment of this Tribunal. At this stage, it will be useful to quote relevant portion of the judgment of the High Court, which thus reads:-

> "Learned counsel for the petitioner has submitted that he has moved an application showing reasons for not undergoing the training and sought exemption, a copy of which has been annexed with the petition, wherein he has simply conveyed to the respondents that because of domestic

problems he is not in a position to undergo the training. He has not made any request to the respondents for any relaxation. For appreciation, the order dated 12.8.1987 is extracted below and reads as under:

> "(iv) Every teacher would be required to participate in and inservice training programme of at least three weeks duration before he/she crosses an EB or is promoted to senior scale or selection scale, i.e. once in every six years; provided that where the arrangements for such training cannot be made, the appointing authority may exempt a category of teachers for a specific period of time."

The aforesaid instructions indicate that the employee has to participate in the inservice training programme of at least three weeks duration. Where such arrangements are not made, the appointing authority may exempt category of teachers of a specific period of time. It is not the case of the petitioner that respondents have not made arrangements for imparting such training. The plea of the learned counsel is that his case should have been considered for exemption and granted exemption from undergoing training. The petitioner has not sought any exemption of undergoing training. He has simply conveyed the circumstances which prevented him to undergo the training. The exemption cannot be granted unless it is sought for. On this score also, the Tribunal has rightly rejected his plea. We find no sustainable ground for interfering with the order of the Tribunal."

4. Now, the applicant has again filed a fresh OA whereby he has prayed for granting benefit of senior scale w.e.f. 11.9.1998 by granting relaxation from attending inservice course entirely on different ground which ground the applicant has not taken in the earlier OA.

5. The question which requires our consideration is whether the present OA claiming the same relief on different ground which ground the applicant could have taken in the earlier OA can be entertained on the principle of constructive res-judicata. As can be seen from the material placed on record, it is evident that the

Government has issued order dated 12.8.1987 prescribing that senior scale should be provided to the teachers including the applicant after 12 years and selection scale thereafter shall be provided after completion of another 12 years and to qualify it, they have to undergo a training programme of at least of three weeks duration. The applicant has completed 12 years' service on 11.9.1998. He was offered opportunity to undergo training which he did not avail on the ground of domestic problems. When he underwent training w.e.f. 2.6.2001 to 22.6.2001 his case was considered by the DPC which met on 29.10.2001 and the applicant was granted senior scale w.e.f. 23.6.2001. Earlier, the applicant has filed OA praying for quashing the condition of inservice training programme provided vide letter dated 12.8.1987. The stand taken by the respondents before the Tribunal was that they had made arrangements for imparting training for the teaching staff, still the applicant has not availed that opportunity. As can be seen from the portion as reproduced above, the Tribunal as well as the Hon'ble High Court has categorically held that that applicant is not entitled to the senior scale w.e.f. 11.9.1998. Not only that, the Hon'ble High Court has given a categorical finding that exemption can be given only in those cases where such arrangement for imparting training has not been made by the department and it is not a case of the applicant that the respondents have not made arrangements for imparting such training.

6. The consideration of the case by the respondents subsequently and rejection of the same vide order dated 10.8.2009

will not afford any fresh cause of action to the applicant to challenge the order and claiming the same relief. Law on this point is no-longer res-integra. At this stage, we wish to refer to the decision of Three Judge Bench in the case of State of U.P. vs. Nawab Hussain, 1977 SCC (L&S) 362. That was a case where the respondent before the Apex Court a Sub-inspector of Police was dismissed from service by the DIG. The respondent challenged dismissal in Writ Petition in the High Court on the ground that he was not afforded reasonable opportunity, but the petition was dismissed. He then filed a Suit and raised additional plea that since he was appointed by the IG of Police, the DIG was not competent to dismiss him. The appellant State contended, inter-alia, that the Suit was barred by constructive res-judicate by virtue of the decision in the writ petition. The trial court and the appellate court held that the suit was not barred, but dismissed it on the ground that the DIG was competent to dismiss the respondent. In second appeal, the High Court held that the suit was not barred and that the DIG was not competent to dismiss the respondent. Allowing the appeal, the Supreme Court held that principle of res-judicata is attracted in the instant case. The Supreme Court after relying its earlier judgment in the case of Devilal Modi vs. Sales Tax Officer, Ratlam, (1965) 1 SCR 686 held that on considerations of public policy to prevent multifariousness of legal proceedings between the same parties, the role of constructive res judicata postulates that if plea could have been taken by a party in a proceeding between him and his opponent he could not be permitted to take that plea against the same party

in a subsequent proceeding which is based on the same cause of action and that this rule applied also where the prior proceedings is a writ proceedings. It was further held that the High Court was wrong in concluding that principle of res-judicata was not applicable when the prior proceeding was a writ petition and that it was competent to respondent to raise additional plea in the subsequent suit, even though it was available to him in the writ petition filed by him but was not taken by him therein. At this stage, it will be useful to quote para -8 of the judgment, which thus reads:-

> "8. It is not in controversy before us that the respondent did not raise the plea, in the writ petition which had been filed in the High Court, that by virtue of clause (1) of Article 311 of the Constitution he could not be dismissed by the Deputy Inspector of Police as he had been appointed by the Inspector General of Police. It is also not in controversy that that was an important plea which was within the writ petition, but he contended himself by raising the other pleas that he was not afforded a reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide. It was therefore not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. that was clearly barred by the principle of constructive res juridicata, and the High Court erred in taking a contrary view." (emphasis supplied).

7. The ratio as laid down by the Apex court in the case of Nawab Hussain (supra) is squarely attracted in the facts and circumstances of this case. As can be seen from para-8 of the judgment, as reproduced above, the respondent before the Apex Court challenged the order of dismissal on the ground of violation of principle of natural justice. The plea that dismissal order has not been passed by the appointing authority though available to the respondent before the Apex Court in the writ petition but was not

taken by him. It has been categorically held that it is not permissible for the respondent to challenge his dismissal in subsequent suit on the other ground that he was ~~not~~ dismissed by the authority subordinate to which he was appointed. That was a case which was clearly barred by the principle of constructive res-juridicata. The ratio as laid down by the Apex Court in the case of Nawab Hussain (supra) is squarely applicable in the facts and circumstances of this case. The plea of exempting him for undergoing training was available to the applicant and could have taken in the earlier OA. Having not done so, it is not permissible for the applicant to file second OA claiming the same relief on different grounds which is clearly barred by the principle of res-judicata.

8. For the foregoing reasons, the OA being bereft of merit is dismissed at admission stage.

Anil Kumar

(ANIL KUMAR)
Admv. Member

(M.L.CHAUHAN)
Judl. Member

R/