

**Central Administrative Tribunal
Principal Bench**

OA No.1633/2015

New Delhi, this the 17th day of May, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

1. G.S.V.S. Prabhakara Rao S/o G.S.N. Murthy,
R/o 124, 3rd Cross, M.S.R. Layout,
Nagasundara, Bangalore-560073
[working as Dy. General Manager (F&A)].
 2. A. S. Divyendar S/o A.V. Sudarsanam,
R/o 64, Shri Govind Apartment,
Ambazhari Hill Top, Ram Nagar,
Nagpur
[working as Dy. General Manager (F&A)].
- ... Applicants

(By Advocate : Shri S. K. Gupta)

Versus

National Highways Authority of India,
G-5 & 6, Sector 10, Dwarka,
New Delhi-110075.

... Respondent

(By Advocate : Shri Ramesh Kumar)

O R D E R

Justice Permod Kohli, Chairman :

This is second round of litigation at the instance of the applicants. The applicant No.1 was working with the Cement Corporation of India (for short, CCI). He applied for the post of Accounts Officer advertised by the respondent organization to be

filled up on deputation basis for a period of two years. On selection, he came to be appointed as Accounts Officer and joined the post on 11.07.2001. In the year 2002, CCI requested the respondent to consider absorption of the applicant No.1 in NHAI. At that time CCI was declared a sick public sector undertaking and its employees were offered VRS. While serving as Accounts Officer with the respondent organization, the applicant was selected as Senior Accounts Officer through an open advertisement and on deputation basis. He joined NHAI in that capacity on 29.07.2002. Later, the applicant was selected as Manager (F&A) with the respondent organization again through an open advertisement and on deputation basis. He joined on 07.03.2003. The applicant opted for voluntary retirement under the scheme of his parent organisation, i.e., CCI, and on being relieved, applied for his absorption with the respondent, as was permissible under the rules of the respondent.

2. Similarly, the applicant No.2, who was working as Assistant Manager in Pyrites, Phosphates & Chemical Ltd. (in short, PPCL), applied for the post of Manager (Finance) advertised by the respondent, and came to be appointed as such. The applicant No.2 also sought voluntary separation from his parent organization, PPCL, which too was declared a sick PSU, as per their scheme and was

relieved from the parent organization w.e.f. 26.03.2003. He also requested the respondent-organisation for absorption.

3. These applicants had filed separate OA Nos.3280/2011 and 3281/2011 against the respondent before the Tribunal praying therein for their absorption on the posts held by them from the date of their initial appointment, and various other reliefs. Both these OAs were allowed by the Tribunal vide judgment dated 06.03.2012 with the following directions:

“8. Both these Original Applications are allowed with a direction to the respondents to consider the absorption of the applicants on the post of Manager (F&A) and, if in that consideration, they are given regular appointment, the respondents shall also consider them for the next higher post of DGM(F&A).”

Aforesaid judgment was challenged by the respondent before the Hon'ble High Court of Delhi in the writ petitions WP(C) No.3923/2012 and 3924/2012 which were dismissed vide judgment dated 11.11.2004 maintaining the Tribunal's judgment dated 06.03.2012.

4. It may be noted that earlier one G. Suresh who was also serving with the respondent organization on deputation basis, on being denied absorption, filed a writ petition before the Hon'ble High Court of Delhi. The said writ petition came to be transferred to this

Tribunal and registered as TA No.4/2007 and was allowed by this Tribunal vide judgment dated 29.10.2007. While allowing the aforementioned OAs filed by the applicants, this Tribunal relied upon the judgment in G. Suresh's case. The judgment in favour of the applicants was not implemented, resulting in initiation of contempt proceedings by the applicants, and two contempt petitions C.P. No.149/2015 and 150/2015 arising out of OA Nos.3281/2011 and 3280/2011 respectively, came to be filed before this Tribunal. During the pendency of these contempt petitions, the respondent passed the orders dated 04.03.2015 and 19.03.2015 absorbing the applicants as Manager (F) w.e.f. 17.07.2003 and 27.03.2003, and as DGM (F&A) w.e.f. 17.07.2007 and 23.03.2007 respectively. The contempt proceedings came to be disposed of on compliance of the judgment, vide order dated 20.03.2015 with the following observations:

"4. In our considered view, the respondent has complied with the aforesaid Order of this Tribunal and no contempt of the Court is subsisting in these matters. However, if the petitioners are still disputing about the dates of their absorption, they are at liberty to challenge the same in accordance with the rules and in separate original proceedings, if so advised. The present Contempt Petitions are, therefore, closed. Notice issued to the alleged contemnor is discharged. There shall be no order as to costs."

5. The applicants have now approached this Tribunal in the present OA in the second round seeking modification of orders dated 04.03.2015 and 19.03.2015 in regard to the dates giving effect to their absorption in the respondent organisation. The contention raised by Mr. S. K. Gupta, learned counsel appearing for the applicants, is that the applicants were required to be absorbed in the respondent organisation with effect from the dates of their initial appointment on deputation and not from the dates as indicated in the impugned absorption orders.

6. The contention of the applicants is, however, opposed and rebutted by the learned counsel for the respondents raising preliminary objection in regard to maintainability of the present OA. It is contended that the issue regarding absorption having been already decided by this Tribunal and upheld by the Hon'ble High Court, fresh proceedings are barred by the principle of *res judicata*.

7. We have heard the learned counsel for parties at length.

8. Mr. Gupta's contention is that the applicants are entitled to be absorbed with effect from the dates of their initial appointment on deputation basis with the respondent organisation as per their rules. Referring to the advertisements issued by the respondent inviting applications for deputation, it is mentioned that the

advertisements also indicated that the deputationists can be absorbed. It is further vehemently argued that in case of G. Suresh (supra) this Tribunal had directed his absorption and the respondent had accordingly absorbed him with effect from the date of his initial appointment with the respondent organisation.

9. We have carefully examined the record. In G. Suresh's case (supra), this Tribunal while allowing his TA issued the following directions:

“62. Resultantly, we are of the considered view that denial of permanent absorption to the applicant as DGM (F & A) in NHAI and alteration of his service conditions from deputationist/absorbee to an appointee on contract basis is not sustainable in law. T.A. is allowed. Impugned order dated 4.10.2002 is set aside. We direct respondents to give effect to their decision dated 7.8.2001 and pass an appropriate order to absorb the applicant as DGM (F & A) on permanent basis in NHAI w.e.f. 24.3.2001. In such an event, all the attendant benefits to the applicant being a permanent employee of NHAI and other consequential benefits would be admissible and shall be implemented within two months from the date of receipt of a copy of this order. No costs.”

From the reading of the aforesaid order, it is apparent that a specific direction was issued by this Tribunal to absorb the applicant (G. Suresh) as DGM (F&A) on permanent basis in NHAI w.e.f. 24.03.2001. It was in compliance of the aforesaid direction that G. Suresh was absorbed with effect from the said date in

implementation of the judgment of this Tribunal. Insofar as the case of the applicant is concerned, we have noticed the prayer made by the applicants in their earlier OA Nos.3280/2011 and 3281/2011. A specific prayer was made at (c) seeking their absorption from the date of initial appointment with all consequential benefits. The said prayer is quoted hereunder:

“c) direct the respondents to consider the applicant for his absorption to the post of Manager (F&A) from the date of his initial appointment as such with all consequential benefits.”

While allowing the aforesaid OAs, this Tribunal only directed the respondent to consider absorption of the applicants, and if in that consideration they were given regular appointment, the respondent would also consider them for next higher post of DGM (F&A). Despite specific prayer seeking absorption from the date of their initial appointment, this Tribunal did not issue any such direction. Further, the case of G. Suresh is entirely different. His initial appointment on deputation basis itself was to the post of DGM (F&A). He had filed the TA No.4/2007 on the ground that the respondent-organisation, instead of absorbing him, was attempting to convert his employment from deputation basis to contract basis. The Tribunal ordered his absorption from the date of his initial appointment, on deputation basis, as DGM (F&A). In the instant case

the applicants initially were selected to the post of Accounts Officer and thereafter after two selection processes, they were appointed as Dy.GM (F&A). Hence, for their absorption the date to be reckoned would be the date of their appointment as Dy.GM (F&A). The respondent implemented this judgment and appointed the applicants on absorption with effect from the dates indicated in the impugned absorption orders, and not from the dates of initial deputation of the applicants with the respondent organisation. Even when contempt proceedings were initiated by the applicants, they did raise the issue of their absorption from the dates of their initial engagement on deputation. This prayer of the applicants has been noticed in para 3 of the order dated 20.03.2015 passed in contempt proceedings. The same reads as under:

“3. Learned counsel for the petitioners has, however, submitted that the date of absorption of the petitioner should have been from 2002 and 2003 respectively and should not have been from 6.3.2012.”

The Tribunal was not convinced regarding non-compliance and thus the contempt proceedings were dropped. The Tribunal, however, made the following observations in para 4 of its order:

“...However, if the petitioners are still disputing about the dates of their absorption, they are at liberty to challenge the same in accordance with the rules and in separate original proceedings, if so advised....”

Mr. S. K. Gupta, learned counsel appearing for the applicants has emphasized this part of the order passed in the contempt proceedings to support his contention on the question of maintainability of the second OA. His submission is that while disposing of the contempt proceedings, the Tribunal had granted liberty to the applicants to seek redressal by way of fresh original proceedings. We have given our anxious thought to the aforesaid submission and the order passed by the Tribunal in the contempt proceedings. From the reading of the order passed in contempt proceedings, it is evident that the Tribunal was satisfied as regards the compliance of its directions, and on that basis the contempt proceedings came to be dropped. Observations allowing liberty to the applicants are conditional, viz., the liberty to challenge the orders was "in accordance with the rules". Such liberty could not be construed to create unfettered right to initiate fresh proceedings in respect of the same cause of action/relief which had been the subject matter of earlier OAs and not granted. The liberty was to seek redressal, if permissible under law. As noticed above, the applicants had specifically claimed the relief of absorption with effect from the dates of their initial deputation. The said relief was never granted by this Tribunal while allowing the OAs vide judgment dated 06.03.2012. Once the relief prayed for is not granted, it is deemed to

be denied, and thus the second OA is not maintainable being hit by the principles of *res judicata*. Even though, the Code of Civil Procedure is not applicable in terms, however, the principle envisaged under Section 11 of the Code is attracted to these proceedings. *Explanation-V* below Section 11, reads as under:

“*Explanation V.* – Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.”

The aforesaid principle is squarely applicable to the present case. The relief having been claimed and not allowed in the earlier *lis*, same relief cannot be claimed in the subsequent proceedings, that too by way of fresh Application, and is definitely barred by the principle of *res judicata*.

10. Learned counsel for the applicant has referred to two judgments of the Hon’ble Supreme Court in *Rajasthan State Road Transport Corporation and another v Bal Mukund Bairwa* [(2009) 4 SCC 299] and *P. V. George and others v State of Kerala and others* [2007 (2) SCALE 262]. Both these judgments are not relevant to this case. These judgments are on the question of doctrine of prospective overruling and are not even remotely connected with the controversy before us.

11. We are of the considered view that the present OA, for the same relief which had not been granted in the earlier OAs decided vide judgment dated 06.03.2012, is not maintainable.

12. This Application is without merit and is dismissed accordingly. No order as to costs.

(K. N. Shrivastava)
Member (A)

(Permod Kohli)
Chairman

/as/