

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.2427/2016

Order reserved on 04.10.2017
Order pronounced on 31.10.2017

HON'BLE MS. PRAVEEN MAHAJAN, MEMBER (A)

R.S. Verma, aged 67 years,
Assistant (Retd),
S/o Shri J.R. Verma,
H.No.RZ-64, B-Block,
Maksudabad Colony,
Najaf Garh,
New Delhi-110043.

...Applicant

(By advocate: Mr. Avijit Singh for Ms. S. Mukerjee)

VERSUS

Director General,
Sports Authority of India,
Khel Bhawan,
Near Scope Complex,
Lodhi Road,
New Delhi-110003.

...Respondent

(By advocate: Mr. Keshav Mohan & Mr. R.K. Awasthi)

:ORDER:

The current O.A. has been filed by the applicant seeking the following reliefs:-

"8.1 In view of the judgment of Ld. CAT dated 19.04.2016 passed in O.A. No.1307/2014 having attained finality, the applicant is to get seniority as UDC from 17.11.1986, as was done in the case of Sh. Rajinder Kumar who rose to the post of DD (Hindi) and whose services from 13.06.1986 were taken into consideration while promoting him as Dy. Director even though seniority was given from 01.04.1987 as Assistant Director.

8.2 The applicant is entitled to promotion as Assistant w.e.f. 12.11.1987, on which date his junior Shri S.K. Prashar was granted promotion as Assistant, since the effect of the latest judgment of CAT dated 19.04.2016, is to confirm the seniority of applicant being above that of Shri S.K. Prashar, applicant having

been deemed absorbed in SAI prior to Shri S.K. Prashar (01.04.1988).

8.3 The applicant is entitled to promotion as Assistant Director w.e.f. 20.02.1992, on which date his junior Shri S.K. Prashar was granted promotion as Assistant Director, since the effect of the latest judgment of CAT dated 19.04.2016, is to confirm the seniority of applicant being above that of Shri S.K. Prashar, applicant having been deemed absorbed w.e.f. 01.04.1987 prior to Shri S.K. Prashar (01.04.1988).

8.4 SAI be directed to grant MACP to the applicant in the pay scale of Assistant Director from the date it has been introduced by GOI and implemented in SAI, at par with other Assistant Director promoted/appointed w.e.f. 20.02.1992.

8.5 To adopt as last pay drawn, the starting point of the applicable pay of Assistant Director, for purposes of pension and to issue revised PPO as well as statement of arrears of pension and other benefits accordingly.

8.6 To correct the eligibility period for pensionary benefits from 01.04.1987 in relation to the applicant.

8.7 Interest be also paid on the arrears @18% p.a. since there is a finding of fault against the SAI in the judgment dated 19.04.2016 imposing cost of Rs.5000/-.

8.8 To allow the OA with costs.

8.9 To pass such other order(s) as this Hon'ble Tribunal deems fit and proper in facts and circumstances of the present case."

2. In reply to this, respondents submit that the DPC was convened way back in the year 1987 for promotion to the post of Assistant from the post of U.D.C. wherein the alleged junior officers of the applicant were promoted to the post of Assistant. It is also pointed out that against the grievances of the denial of promotion by the DPC held in the year 1987, the applicant made his first representation in the year 23.08.2001 i.e. after about 14 years, which was duly considered and rejected by the respondent vide order dated 23.08.2001. Thus, the present application filed by the applicant is highly time barred and, therefore, not

maintainable. The applicant, who superannuated on 28.02.2009, again represented regarding denial of promotion to the post of Assistant from the date his juniors were promoted, which was again decided and rejected by the respondent on 18.10.2011. Respondent has cited the case of **D.C.S. Negi Vs. Union of India**; SLP (C) No.7956/2011 decided on 03.07.2011 by the Hon'ble Supreme Court wherein it was held that "*a reading of the plain language of the above reproduced section (i.e. Section 21 of the Act) makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clause (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period.*" Since section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3). In the present case, the Tribunal entertained and decided the application without referring to the issue of limitation. Therefore, in view of the aforesaid law laid down by the Hon'ble Supreme Court of India, the present application is not maintainable and is liable to be dismissed.

3. It is also pointed out that the applicant has earlier filed an O.A. No.1307/2014 seeking the following reliefs from this Tribunal:

"(ii) Direct the respondents CRPF to accept/issue Technical Resignation for the deemed absorption of the applicant w.e.f. 01.04.1987 in view of the recoveries made by the CRPF vide order dated 03.09.2005 and remit the amount related to excess receipt on a/c of leave, salary and pension contribution to Sports Authority of India.

(iii) Consequently direct the respondents Sports Authority of India to calculate the revised Terminal Benefits w.e.f. 01.04.1987 and make payment to the applicant and the applicant may be entitled for all consequential benefits in view of the deemed absorption w.e.f. 01.04.1987 including arrears of pay, promotion and pensionary benefits with interest @ 12% p.a."

4. In the aforesaid OA, the applicant also sought revised terminal benefits w.e.f. 01.04.1987 with consequential benefits arrears of pay, promotion and pensionary benefits. At that point of time, the respondent, while treating the applicant as deemed absorbed in the service w.e.f. 01.04.1987 instead of 01.04.1988, handed over a cheque bearing no.015503 dated 16.03.2016 for Rs.13,699/- to the applicant towards the full and final settlement of all his claim. The respondents have pointed out that the applicant, in the said OA, had raised the issue with regard to benefit of promotion and seniority, which is again raised by him in the present application. The other claims of the applicant were not entertained by the Tribunal and the OA was disposed of on 19.04.2016 with a direction that in case any grievance survives, he may follow the due legal procedure prescribed for ventilating such grievances. The respondents submit that liberty was

granted to the applicant only with regard to the grant of pension and terminal benefits claimed by him in the aforesaid O.A. and not for re-agitating the issue of promotion and seniority, which stood rejected by this Tribunal. The present application being barred by limitation as well as principle of res-judicata is not maintainable.

5. Heard both the learned counsels and perused the record carefully.

6. It appears that the applicant has attempted to litigate the same issues, which were raised by him in the earlier round of litigation. In the OA No.1307/2014, the applicant had sought benefits of revised terminal benefits w.e.f. 01.04.1987, promotion and pensionary benefits etc. This issue was examined by the Tribunal and a cheque of Rs.13,699/- was handed over by the respondents to the applicant towards the full and final settlement of all his claims. The issues raised in the present OA are almost identical as raised in the earlier OA. The learned counsel for the respondents urged that the applicant should not be allowed to re-agitate, the issues, which he had omitted to raise earlier and that the principle of res judicata stood fully established in this case. I am in agreement with the learned counsel for the respondents that this case is hit by the principle of res judicata. It was open to the applicant to question, in the previous proceeding filed by him, that he was entitled for promotion to the post of Assistant

Director w.e.f. 20.02.1992, from the date his junior Shri S.K. Prashar was granted promotion to the post of Assistant Director or/and to state that he was entitled to promotion as Assistant w.e.f. 12.11.1987 i.e. the date on which junior Shri S.K. Prashar became Assistant.

7. The Apex Court in the case of **State of Karnataka Vs. All India Manufacturers Organization**; (2006) 4 SCC 683 held that principle behind the doctrine of res judicata is to prevent an abuse of the process of Court. In explaining the said principle, the Bench in All India Manufacturers Organization relied on the following formulation of Lord Justice Somervell in Greenhalgh Vs. Mallard-(1947) 2 All ER 255 (CA):

"I think that o the authorities to which I will refer it would be accurate to say that "res judicata for this purpose is not confined to the issues which the court is actually asked to decide but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."

Following these principles, a Constitution Bench of the Hon'ble Supreme Court in Direct Recruit Class II Engg. Officers' Assn. Vs. State of Maharashtra – (1990) 2 SCC 715 laid down the following principle:

".....an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence..... ."

8. The principle laid down by the Hon'ble Apex Court is that the Court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.

9. It would be relevant to mention here that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation, for agitating on issues which have become final between the parties.

10. Thus the attempt by the applicant to re-agitate the same issues which were considered by this Tribunal in OA No.1307/2014 (supra) and were not taken cognizance of expressly in the previous judgment is hit by the principles of res judicata.

11. Without going into the merits of the case, in view of the discussions above, I am of the opinion that the OA is not maintainable and is, accordingly, dismissed. No costs.

**(Praveen Mahajan)
Member (A)**

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