

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA 3576/2013

the 21st day of September, 2015.

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K.Basu, Member (A)

Shri M.B.Usgaonkar
G-303/304
Devashri Bhavan
Porvorim, GOA
(By Advocate: Shri Sankalp Gauswami)

.... Applicant

VERSUS

1. Union of India
Through the Secretary
Department of Personnel & Training
Ministry of Personnel, Public Grievances & Pensions
North Block, New Delhi – 110 001
 2. Union of India
Through the Secretary,
Ministry of Defence, South Block
New Delhi – 110 001
 3. The Chairman
Rs. S.S.S.D.C.
A-Wing, Sena Bhawan
New Delhi
(By Advocate: Shri A.K.Singh)
- Respondents

Order (Oral)

By Hon'ble Mr.Justice Syed Rafat Alam, Chairman

In the instant case the applicant is aggrieved for non grant of the salary to him prescribed for Chairman as per FR(49) and, therefore, has prayed for the following reliefs :-

"A. Pass appropriate order/direction to the respondent to refix the pay of the Petitioner for the period 01.09.1992 to

21.02.1993 at the minimum pay scale prescribed for the post of Chairman, SSSDC in addition to the pay for performing duties of Member (Finance) as per provisions of FR 49(iv) and revise the pension of the Petitioner accordingly;

B. Pass a direction to the Respondent to pay the arrears of pension along with interest @ 12% from 01.09.1993 to the date of revision along with applicable DA/DP decided on the basis of rates of pension recommended by the Pay Commission.

C. Pass any other/further order (s) that this Hon'ble Court deems fit and proper in the interest of justice, equity, good conscience and fair play."

2. We have heard learned counsel for the applicant as well as respondents.

3. It appears that the applicant approached the Tribunal earlier for the same relief vide OA No.1471/1995 which was disposed of vide judgment dated 28.04.1997 wherein it has been held that though the petitioner/applicant may not be entitled for the scale of Rs.7300/- , he would be entitled to a compensation for discharging the duties of the higher post which carried the aforesaid scale and thus passed the following order :-

"12. For the reasons stated above, we are inclined to allow the relief sought by the petitioner to the extent that even though the petitioner may not be entitled to scale of Rs.7300/-, he would be entitled to a compensation for discharging the duties of the higher post which carried out the scale of 7300/-. The respondents shall calculate the payment due on the basis of the scale of Rs.7300/- after deducting the actual amount already paid to the petitioner, the remaining amount shall be paid to the petitioner as a compensation for the petitioner who had been discharging the duties of the post of Chairman, SSSDC. We make it clear that we do not intend to pass an order directing the respondents to grant the scale of Rs.7300/- rather he will be entitled only to a 'compensation' which shall be calculated by the respondents as stated above. We also make it clear that since the petitioner is not entitled to the scale of pay of Rs.7300/-, even though he is entitled to the payment only as 'compensation', the question of revision of pension on the basis of last pay drawn does not arise at all. These directions shall be complied with within two months from the date of receipt of a copy of this order".

4. The respondents preferred CW No.4227/97 before the Hon'ble High Court of Delhi which was dismissed vide order dated 15.09.1999. It further appears that the applicant thereafter filed an application for review of the aforesaid order in the year 2011 vide Review Application No.330/2010. In the absence of any explanation to justify the long delay in filing the review application, keeping in view the provisions contained in Rule 17(1) of the Central Administrative Tribunal (Procedure) Rules, 1987 the Tribunal rejected the Review Application. It has also been noted that the applicant did not challenge the aforesaid order in review before the Hon'ble High Court. He slept over the matter and after two years filed the present OA on 01.10.2013.

5. We are of the view that in the facts of the case, it is now not open to the applicant to re-agitate the matter under Section 19 of the Administrative Tribunals Act, 1985 regarding re-fixation of his pay/scale pertaining to the period 01.09.1992 to 21.02.1993 at par with the pay scale prescribed for the post of Chairman, SSDC on the ground that he performed the duties of Chairman in addition to the duty as Member (Finance). The Writ Petition No.4227/1997, preferred by the respondents, against the aforesaid order of the Tribunal, was also dismissed by Delhi High Court vide order dated 15.09.1999. The review application was also dismissed, which was admittedly not challenged before the Hon'ble High Court. It is well settled position that the second Application in respect of same relief without there being any fresh cause of action between the same parties cannot be maintained. In similar circumstances, the Apex Court in ***State of Tamil Nadu & Ors. Vs. Amala Annai Higher Secondary School*** [(2009) 9 SCC 386], held that the second petition at the instance of

Management without there being any fresh cause of action is an abuse of the process of court.

6. In the circumstances, the concluded issue cannot be reopened by entertaining the instant application which amounts to sheer abuse of the process of law and thus we have no hesitation in dismissing the Application.

7. In the result, the Application fails and is hereby dismissed.

(P.K.Basu)
Member (A)

(Syed Rafat Alam)
Chairman

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