

**Central Administrative Tribunal
Principal Bench**

TA No.24/2012

New Delhi, this the 6th day of December, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Subhash Chand Jain,
S/o Late Shri V.C. Jain,
R/o 29, Srinagar Colony,
Delhi-110052.

...Applicant

(By Advocate : Shri S.K. Gupta)

Versus

1. The Commissioner,
North Delhi Municipal Corporation,
Erstwhile Municipal Corporation of Delhi,
Dr. S.P.M. Civic Centre,
J.L. Nehru Marg,
New Delhi-110002.
2. The Commissioner,
East Delhi Municipal Corporation,
Erstwhile Municipal Corporation of Delhi,
415, Udhog Bhawan,
Parparganj,
Delhi.
3. The Director (Local Bodies),
Govt. of NCT of Delhi,
Urban Development Department,
Level-9, Delhi Secretariat,
New Delhi-110002.

...Respondents

(By Advocate : Shri Satyendra Kumar for Shri
R.V.Sinha for R-1.
Shri R.K. Shukla for R-2.)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant herein filed Suit No. 459/1993 before the Court of Senior Civil Judge, Delhi, for recovery of a sum of Rs.97,081/-, against the respondents herein. His plea was that initially he was employed as Typist/Stenographer in the year 1974 in the North Delhi Municipal Corporation (for short, Corporation), and thereafter was promoted on ad hoc basis, as Senior Stenographer on 07.12.1988, and through an order dated 01.01.1989 he was promoted to that post on regular basis. He pleaded that respondents did not pay the difference of the pay for the post of Senior Stenographer, till the date of the Suit. Mention was also made to Writ Petition No.2966/1989, filed in the Hon'ble High Court of Delhi, challenging an order dated 13.02.1989, through which, he was reverted to his original position.

2. The respondents filed a written statement opposing the Suit. It was stated that the applicant was not promoted at all, and when himself and another Stenographer were posted to work with the Chairman of

the Municipal Corporation, the Mayor took exception to the inefficiency and ignorance of the applicant and that in turn warranted the issuance of order dated 13.02.1989. It is also stated that Hon'ble High Court dismissed the Writ Petition by recording its findings to the effect that the applicant is not competent to work as Senior Stenographer at all.

3. The applicant filed a replication to the written statement and stated that the Suit is in fact filed for execution of the orders passed by the Hon'ble High Court, from time to time in the Writ Petition and other ancillary proceedings.

4. The Trial Court dismissed the Suit through its judgment dated 27.07.2007. Aggrieved by that, the applicant filed RCA No.02/2009 before the Central District Court, Tis Hazari, Delhi, under Section 96 of CPC.

5. The Municipal Corporation of Delhi came within the purview of the Central Administrative Tribunal, in the year 2011. In that view of the matter, the appeal that was

pending before the Tis Hazari Court came to be transferred here and re-numbered as TA No.24/2012.

6. Shri S.K. Gupta, learned counsel for applicant submits that the Trial Court fell in error, in taking the view that the Suit is barred by principle of *res judicata*. He contends that the order dated 13.02.1989, which was challenged before the High Court of Delhi was not one of reversion at all, and by taking the same as an order of reversion, and the judgment of High Court as the one which upheld the order of reversion, the Trial Court applied the principle of *res judicata*. He submits that there was sufficient oral and documentary evidence on the file to demonstrate that the applicant was promoted to the post of Senior Stenographer; and that the corresponding salary was denied to him.

7. Shri R.K. Shukla, learned counsel for the respondents on the other hand submits that the applicant failed to prove before the Trial Court, that he was promoted to the post of Senior Stenographer, and the Trial Court has taken the correct view of the matter

by referring to the judgment of Hon'ble High Court in WP(C) No.2966/1989.

8. The Suit filed by the applicant was for recovery of a sum of Rs.97,081/-. It was on the basis, that he was promoted to the post of Senior Stenographer and the corresponding salary was not paid to him. The respondents opposed it by filing the written statement.

9. On the basis of the pleadings before it, the Trial Court framed the following issues for consideration :-

- “1. Whether the suit is barred by principle of res judicata in view of annexure D-2 and D-3 in the W.S. filed by defendant? OPD
2. Whether the plaintiff is liable to be prosecuted under section 340 Cr.P.C.? OPD
3. Whether the plaintiff is entitled to the decree for recovery as asked for the plaint? OPP
4. Whether the defendant is liable to be proceeded under Section 340 Cr.P.C.? OPP

10. The applicant examined PWs 1 and 2 and filed 59 exhibits. DW 1 was examined and documents were also filed on behalf of the respondents. The Trial court has undertaken extensive discussion on issue No.1, namely, whether the suit is barred by the principle of *res judicata*. This became relevant in view of the fact that the very controversy as to whether the applicant was entitled to hold the post of Senior Stenographer was dealt with by the Hon'ble High Court of Delhi in WP(C) No.2966/1989, and his grievance that he has wrongly been reverted, was negated. The record also discloses that the order passed by the Hon'ble High Court was upheld by the Hon'ble Supreme Court. In view of its finding, on issue no.1, the Trial Court, did not discuss the other issues in detail, and rightly so.

11. For all practical purposes, the TA is a first appeal under Section 96 of CPC and needs to be dealt with accordingly.

12. The point that arises for consideration is whether principle of *res judicata* has arisen for consideration in this Suit at all.

13. The very basis of the claim of the applicant herein, in the Suit was that he was promoted as Senior Stenographer. Therefore, it was essential for the applicant to prove that he was initially promoted to the post of Senior Stenographer on ad hoc basis and thereafter on regular basis. For this purpose, the only way was to place the relevant orders before the Trial Court as documentary evidence, particularly, when the respondents denied the plea. Though voluminous documentary evidence was placed before the Trial Court, the order of promotion was not filed at all. The result was that the applicant failed to prove the basic facts. It was the applicant himself, who made reference to the adjudication before the Delhi High Court. That was very much about his right to work as Senior Stenographer. The High Court dealt with same in detail and held against the applicant. Naturally, the finding operates as *res judicata* . If according to the applicant, there is no occasion to apply that principle in the Suit, he was

supposed to raise objection for the very framing of the issue. Having permitted the framing of the issue to become final, he cannot raise objection to it, when the finding has gone against him. He cannot ignore the result of the Writ Petition and the SLP much less he can secure the relief of different nature in this Suit.

14. We do not find any factual or legal error in the decree passed by the Trial Court. The T.A. is, accordingly, dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(L. Narasimha Reddy)
Chairman

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