Unreportable

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 1639-41 of 2006

DATE OF HEARING: 23.10.2007
DATE OF DECISION: 31.10.2007

IN THE MATTER OF:
Shri A.K. Bhattacharya & others. ..... Petitioners.

Thru. Mr.Arun Bhardwaj, Advocate.

- Versus -

The Government of NCT of Delhi ..... Respondents.
and another.

Thru. Ms.Avnish Ahlawat, Advocate.

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR.JUSTICE VIPIN SANGHI

1. *Whether Reporters of Local papers may be allowed to see the Judgment?*
2. *To be referred to the Reporter or not?*
3. *Whether the judgment should be reported in the Digest?*

A.K. SIKRI, J.

1. *Whether the Tribunal is right in dismissing the O.A. filed by the petitioner herein on the ground of res judicata is the question which needs determination in this case.*

2. *The petitioners are promotee officers who were promoted to Grade-II of Delhi Administration Subordinate Services on ad hoc basis w.e.f. 3.5.1984. They were governed by*

Delhi Administration Subordinate Service Rules (DASS Rules). On 19.5.1989 amendment was made in Rule 26 of DASS Rules whereby it was decided to merge the Executive and Ministerial cadres of the services on the basis of seniority. The post held by an officer as on 4.12.1980 was stated to be the relevant criteria. As per the petitioners, because of the said amendment they were losing benefit of their services in Grade II for a number of years as their ad hoc service was not to be counted for promotion. Therefore, they challenged the vires of Rule before the Central Administrative Tribunal (Tribunal for short) in OA Nos.1407/92 and 1714/92. Vide orders dated 21.12.1992 these OAs were dismissed by the Tribunal. The petitioners preferred SLP against it, which was also dismissed. The Tribunal in its detailed judgment dated 21.12.1992 running into 35 pages considered all the submissions of the petitioners herein but did not find any merit in the same. Prayers made in the said OAs were as under:

> (i) "The applicant has prayed for quashing of :-
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> (a) New Rule 26 of the Delhi Administration Subordinate Service Rules as promulgated in 1989 vide notification dated 19th May, 1989.
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> (b) Regularization orders dated 14th November, 19th November, 19th November and 26th November 1990 granting assumed dates of promotion in Grade II;
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> (C) Final seniority list of Grade II Officers as on 12th July, 1985 as circulated by circular dated 28th February, 1992.

(ii) Declaring the services rendered by the applicant in Grade II (Executive) from 1983/1984 onwards as regular and determination of seniority of the applicant in the said Grade II (Executive) separately from the employees of Grade II (Ministerial) at least for the period up to July, 1985 and preparing the integrated seniority list separately up to July, 1985."

3. The aforesaid prayers were, therefore, specifically rejected. Not only were the vires of the Rules upheld, the Tribunal also held that the petitioners were not entitled to count ad hoc service in Grade-II. Relevant portion in this behalf as contained in the said judgment reads as under:

"Therefore, an amendment rule had to cater for the principle of determination of seniority for the period prior to 12th July, 1985. This being inescapable, we do not see any good ground for quashing the amendment rule of 1989. Further, it is neither uncommon nor illegal that when a senior is left out wrongly on correction or finalization of a seniority list and a junior to promoted the date is to be adjusted according to the date of appointment of the junior. So, while the principle of length of service was treated as determining feature of seniority, the Learned Counsel for the respondent said that the clause regarding nomination was also incorporated if for any very valid reasons a person having occurred higher merits in the select list was nominated/appointed later and the date of nomination/appointment of their immediate junior was to be assumed as the date of nomination/appointment. On amalgamation of two cadres and as correction of seniority lists consequential effects on promotion also had to be taken care of and the cases of left/out seniors had to be protected. We, therefore, see no good ground to quash rule 26 as in the Delhi

Administration Subordinate Service (First Amendment) Rule, 1989. The preamble to these amendments were made to take care of various judgments of the Apex Court/High Court and the Tribunal.

The applicants who were promoted on ad hoc basis should continue to remain in Grade-II undisturbed and earn increments also, as agreed to by the respondents, and await regularization in turn according to merged seniority lists. This much protection of the interest of the officers would also be consistent with the observation of the Apex Court in the case of Banarasi Das & Ors. (supra). With this observation, the O.As are dismissed with no order as to costs. The interim orders get vacated."

4. Also, with the dismissal of SLP by the Apex Court, the judgment of the Tribunal attained finality. However, incidentally vires of the said amended Rule 26 of the DASS Rules were challenged directly as well before the Supreme Court in a petition filed under Article 32 of the Constitution of India, by certain other employees who were similarly situated as the petitioners herein. The Supreme Court decided the said writ petition vide judgment dated 3.2.1997 which culminated in the same result, namely, upholding the amended Rule 26 and thereby dismissing the Writ Petition No.525/90. We may also note that the applications filed by some other employees before the Tribunal were also dismissed and SLPs were preferred thereagainst which were also dismissed along with the said writ petition by another judgment dated 3.2.1997. However, in the said judgment the Supreme Court had noted the stand of the Delhi Administration to the effect that seniority shall be determined on the basis of total length of service in the cadre. Taking cue from this statement the

petitioners filed another OA No.1595/2001 which was dismissed by the Tribunal on 3.7.2001 as barred by res judicata. The petitioners preferred Writ Petition No.5110/2001 which was disposed of with the direction to the Tribunal for fresh adjudication. After hearing the OA, the Tribunal again dismissed the petition vide orders dated 21.3.2003. The petitioners again approached this Court and filed Writ Petition No.5432/2003 assailing the said order. The said writ petition was dismissed as withdrawn vide order dated 22.9.2003 giving liberty to the petitioners to move appropriate OA before the Tribunal. The petitioners filed Review Application which was again dismissed by the Tribunal vide order dated 15.7.2004. Thus, maintaining that OA was rightly dismissed as barred by res judicata. Aggrieved by this order, present petition has been filed.

5. It is clear from the factual matrix noted above that vires of amended Rule 26 was upheld by the Tribunal on earlier occasion when challenge was made through petitioners. SLP thereagainst was also dismissed by the Supreme Court. Even in the judgment on which the petitioners had relied to file the fresh OA, the Supreme Court had dismissed the writ petition and appeals, upholding the validity of Rule 26, as amended. Once the amendment to the Rule has been upheld, seniority has to be determined in accordance therewith. That is what has been precisely done by the respondents. Though having failed in their attempt to challenge the validity of the Rule and fully conscious of the consequence of amended Rule 26, the petitioners want to take the benefit that would only amount to circumventing the

Rule. The judgment dated 21.12.1992 passed in OA No.1407/92 rejecting the same prayers of the petitioners on earlier occasion which attained finality would clearly bar further remedy agitating the same issue on the application of Principles of Res Judicata. A statement by the Delhi Administration and observation thereupon by the Supreme Court would not give fresh cause of action to the petitioners.

6. In the case of **Union of India & Ors. v. Southern Railway Employees Cooperative Stores Workmen Union & Ors.,** (1998) 5 SCC 530, the Supreme Court in somewhat similar circumstances applied the principle of res judicata. That was a case where CAT decided the issue in favour of 172 workers by holding that the employees of Railway Employees Co-operative Stores were regular Railway servants. Appeal against the order of Tribunal was dismissed by Supreme Court. Review Petition was also dismissed by Supreme Court. It was held that the order of Tribunal as confirmed by Supreme Court is final and binding between the parties. Benefit of judgment cannot be denied to all the workmen on the ground that contrary view has been taken by another bench of CAT in a similar case. The Apex Court observed as under:

> "In our view, the order of the Tribunal as confirmed by this Court is final and binding between the parties to the present litigation. It is true as submitted by learned counsel for the Union of India that in similar matter arising out of the order of the Central Administrative Tribunal, Hyderabad Bench, this Court has taken the view that such workmen cannot be treated as direct employees of the Railways. This decision cannot be of any avail in present proceedings. The appellants cannot attempt to whittle down the effect of the order of the Tribunal in the present proceedings which got confirmed by this Court. On the principle of

res judicata it will be binding between the parties especially when the review proceedings have been dismissed by this Court."

The objective behind the rule of res judicata is to accord finality to the lis between the parties and preclude a party to reagitate the same issue all over again after it is finally determined between the same parties in the earlier proceedings. As Lord Halsbury puts this: "the doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation". *{Halsbury's Laws of England, 3rd Ed., Vol. 15, para 357, p.185}*

This principle is quoted with approval by the Supreme Court in the case of **State of Haryana v. State of Punjab & Anr.,** *(2004) 12 SCC 673. Again in* **K.K. Modi v. K.N. Modi & Ors.,** *AIR 1998 SC 1297, the Supreme Court explained the principle in the following terms :-*

> *"43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p.344) explains the phrase "abuse of the process of the court" thus:*
> *This term connotes that the process of the court must be used bona fide and properly and must not be abused. 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.... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.*
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> *44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and*

contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

7. *It is a trite law that to find out the ratio of the judgment the same is to be read in its entirety and the ratio is to be the principle of law laid down by the Court in the particular judgment. The Supreme Court in its judgment dated 3.2.1997 had upheld the validity of same amended Rule 26 and had dismissed the petition and appeals, preferred by similarly situated persons, as the petitioners herein, without giving any relief to them. We fail to understand as to how, in such a case the petitioners can re-agitate the same all over again relying upon same purported statement of the respondents. The courts have gone to the extent of holding that even an erroneous decision would operate as res judicata. Following observations of the Division Bench of this Court in* **Aizaz Alam v. Union of India,** *2006 (130) DLT 63 (D.B), are apt :-*

> "It is fairly well settled that even an erroneous decision would operate as res judicata between parties. The previous decision was, in the opinion of the petitioners, or on their understanding of the legal position contrary to any settled principle of law or decision of the Supreme Court would not, therefore, make any material difference so long as that decision had been allowed to attain finality and so long as that decision had remained undisputed in appeal filed by the opposite party."

8. Thus, from any angle the matter is to be looked into, we are of the opinion that second petition filed by the petitioners and consequently the Review Application were rightly rejected on the Principles of Res Judicata.

9. This petition is devoid of any merit and is dismissed leaving the parties to bear their own costs.

(A.K. SIKRI)
JUDGE

October 31, 2007.
skk

(VIPIN SANGHI)
JUDGE