
(2019) 03 MP CK 0052
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5039 Of 2019

Vinod Dialani

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Code of Civil Procedure, 1908 — Section 11, Order 2 Rule 2
Administrative Tribunals Act, 1985 — Section 20(2)(b), 21, 21(1)(a), 21(1)(b), 21(2), 21(3)

Citation : (2019) 03 MP CK 0052

Hon'ble Judges : S.C.Sharma, J;Virender Singh, J

Bench : Division Bench

Advocate : PJ Mehta, Milind Phadke

Judgement

1. The petitioner before this Court has preferred an original application before the Central Administrative Tribunal, Jabalpur for counting of his past services from 26/07/1999 to 13/05/2007.

2. The petitioner's contention was that he was a civilian employee serving Intelligence Bureau and he was appointed in Intelligence Bureau on 27/09/1999. Thereafter left his services of Intelligence Bureau and joined as Manager (IT) in Allahabad Bank on 14/02/2004 and again thereafter while working in Allahabad Bank, he applied for the post of Programmer in Central Board of Secondary Education (CBSE), for which Allahabad Bank issued NOC conditionally, wherein it was mentioned that the Allahabd Bank will have no objection to his candidature subject to the NOC which he will receive from the Intelligence Bureau. He was later on selected as Programmer in CBSE and joined the Intelligence Bureau back on 07/03/2007. His lien was extended with Allahabad Bank up to 07/03/2007 and he was granted notional increments also. The present petitioner ultimately resigned his job from Intelligence Bureau and got relieved on 11/05/2007 and made a request for transfer of his past services rendered with Intelligence Bureau for the purposes of computing pensionary benefits. The request was

rejected on 05/03/2008. The petitioner thereafter preferred an original application before the Principal Seat of the Central Administrative Tribunal, New Delhi i.e. O.A. No.2809/2011 and the Principal Seat by detailed order dated 09/08/2011 has dismissed the original application on the ground of limitation. The order passed by the Central Administrative Tribunal was never subjected to judicial scrutiny by filing a writ petition and became final. The petitioner again preferred a second original application now before the Jabalpur Bench and the Jabalpur Bench has dismissed the same vide order dated 15/11/2018. The relevant paragraphs (paragraph Nos. 3 to 9) of the order passed by the Central Administrative Tribunal, Jabalpur reads as under:-

"2. Earlier the applicant had approached Principal Bench of this Tribunal against the very same grievance by filing Original Application No.2809 of 2011, which was dismissed by passing a detailed order dated 09.08.2011 (Annexure A-23) in limine. The contents of the said order read thus:

"At the admission stage, we heard Shri Padma Kumar S, learned counsel for the Applicant.

(2). The facts of the case, as brought out by the counsel for Applicant would disclose that the Applicant joined as civilian employee in the Intelligence Bureau (IB) on 26.7.1999 and on selection as Manager (IT) in Allahabad Bank, he joined the post on 14.2.2004 and retained his lien of two years in his parent department of IB. On 21.12.2005, while working in Allahabad Bench, he applied for the post of Programmer in the Central Board of Secondary Education (CBSE) for which Allahabad Bench issued him No Objection Certificate conditionally, wherein it was mentioned that the Allahabad Bank had no objection to his candidature subject to the NOC, he has to get from IB. It is the case of the Applicant that he was selected as Programmer in CBSE and he joined back in the IB in his substantive post on 07.03.2007 and his lien with the Allahabad Bench was extended upto 07.03.2007 and notional increments were granted as on 04.04.2007. At this stage, it must be noted that the Applicant was aware of his selection in CBSE for the post of Programmer. It is further stated by Shri Padma Kumar S. that the Applicant was asked by the CBSE to join on or before 18.4.2007, for which the Applicant submitted his technical resignation application in the IB on 04.04.2007 with a request to relive him from 17.4.2007. As no relieving order was given to the Applicant, he sought extension of joining time from CBSC on 27.4.2007 through IB. He further requested Competent Authority of IB vide his letter dated 30.04.2007 to relieve him to join CBSE and to accept his technical resignation. Vide letter dated 09.05.2007, IB intimated him that his technical resignation could not be accepted but IB had no objection if he would resign without holding any lien on the substantive post of ACIO-II in the IB. The Applicant resigned from the post and got himself relieved on 11.05.2007. However, he requested for transfer of his past service that he rendered in the IB to CBSE for the purposes of pensionary benefits vide his letter dated 28.08.2007. The Competent Authority in IB informed the Applicant vide their letter dated

05.03.2008 that the past services of the Applicant would not be transferred to CBSE. On 10.04.2008, Applicant received IB letter dated 05.03.2008 rejecting his request for transfer of past service in IB. He submitted further representation to the IB on 11.06.2010 on the same ground which was rejected by the IB vide their letter dated 16.07.2010. In the meantime, as he was aggrieved by the above decision of the IB, he approached the Tribunal in OA No.1625/2011 which was dismissed as withdrawn with liberty to file fresh OA on the same cause of action wherein all rules and instructions which may entitle an employee in the case of resignation to count his past services would also be placed on record. Accordingly, the Applicant is before the Tribunal for the second time in the present OA

(3). The Applicant has again come with this OA with a prayer to quash and set aside orders dated 16.07.2010 (Annexure-A1), dated 12.10.2007 and 5.03.2008 (Annexure- A2). His further prayer is to direct Respondent No.2 to inform and transfer the past services for the period he worked under IB to the Respondent No.3 i.e. CBSE who should take into account the above past services for the Applicants pension purpose.

(4). At this stage, we would like to take up the issue of limitation as the decisions of Respondent-IB was that of October, 2007 and the Applicant has approached the Tribunal first in OA No.1625/2011 and now in the instant OA on 25.07.2011. It is seen that the Applicant first visited the Tribunal after about 3 and half years since his request to the IB for counting his past services for pensionary purpose in CBSE was rejected vide order dated 12.10.2007 (Page-27). The cause of action arose on 12.10.2007. It is trite law that frequent representations do not extend the period of limitation. Though Shri Padma Kumar S, learned counsel for the Applicant, argued that the Applicant s further representation was considered and was rejected by the Respondents on 5.03.2008 and 25.08.2010, the same would not extend limitation, terminus a qua for which, started on rejection of his first representation. A seven Judge Bench of the Hon'ble Apex Court considered the issue in S. S. Rathore versus State of Madhya Pradesh [AIR 1990 SC 10] and held that repeated unsuccessful representation not provided by law does not extend the period of limitation and laid the law as follows:-

"21. It is appropriate to notice the provision regarding limitation under S. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub- section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58".

(5). Further, Section 21 (1) (b) of the Administrative Tribunals Act, 1985 mandates the Tribunal and permits to allow the Applications in case where a representation mentioned in Clause- (b) of sub section 2 of Section 20 has been

made and a period of six months had expired thereafter without such final order having been made. In the present case, not only the representation was made but the same was rejected more than 3 = years back. Therefore, on the basis of the statutory provisions this Tribunal is mandated not to take up the application like the instant OA for consideration. The Hon ble Supreme Court in a recent judgment in the matter of D.C.S. Negi Versus Union of India & Ors. decided on 07.03.2011 in SLP (C) No.7956/2011(CC No.3709/2011) has very clearly delineated the powers of the Tribunal in respect of limitation. It is noted that Section 21 of the Administrative Tribunals Act unambiguously mandates the period within which Government employee has to agitate before the Tribunal for consideration and adjudication. Only if there is cause of action which needs to be taken up by relaxing and condoning the delay the same can be considered under Section 21. The present case is not a fit case for condonation of delay nor any application seeking condonation of delay has been filed. Moreover, the Applicant has not shown sufficient cause as to why and how the delay should be condoned. In this regard, we may refer to the law laid by Hon'ble Apex Court in a recent decision in the matter of D. C. S. Negi (supra), where it has been held as follows:- "A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (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)".

(6). Considering the above facts of the case and for the reasons given above, we find that the cause of action in the instant OA arose long back. It would not be judicially appropriate for us to issue notice to the Respondents for taking up the matter for determination as the Tribunal would be over stepping its powers prescribed under the statute.

(7). Resultantly, finding no merits in the case, we dismiss the OA in limine. No costs".

3. On perusal of the above order of the Principal Bench we find that the Competent Authority in Intelligence Bureau (for brevity 'IB') had duly informed the applicant as early as in the year 2008 vide their letter dated 05.03.2008 that his past services would not be transferred to Central Board of Secondary Education (for brevity 'CBSE'). Then the applicant filed aforementioned OA No.2809/2011 with the prayer to direct Respondent No.2 to transfer the past services for the period he worked under IB to CBSE. The Principal Bench after considering his case, dismissed the said Original Application in limine on the ground that the cause of action arose long back.

4. The aforesaid order has since attained finality. This present Original Application has been filed by the same applicant (Vinod Dialani) claiming following reliefs:

"(8). Relief sought: This Hon'ble Tribunal may graciously be pleased: (8.1) to call the relevant records of the case from the respondents as respondents are not covered under RTI Act Also;

(8.2) To command the respondent no.2 to forward forfeited service of applicant from 26.9.1999 to 13.5.2007 or at least services from 31.12.2003 to 13.5.2007 so that applicant who is pre-2004 entrant in government service will continue to be member of old pension scheme in CBSE.

(8.3) to allow this application with costs; and

(8.4) to pass such other orders as may be deemed appropriate to grant relief to the applicant".

5. On perusal of the relief sought for by the applicant in the present Original Application as well as in his previous Original Application No.2809/2011, we find that the reliefs claimed by the applicant in both the OAs are identical in as much as in both the Original Application the grievance of the applicant is against non-consideration of his previous service in IB for the purposes of pension.

6. A Constitution Bench of Hon'ble Supreme Court in the matters of Gurubux Singh Vs. Bhooralal, AIR 1964 SC 1810 has held that even if a party does not pray for the relief in the earlier writ petition, which he ought to have claimed in the earlier petition, he cannot file a successive writ petition claiming that relief, as it would be barred by the principle of constructive res judicata enshrined in Explanation IV to Section 11 and Order II Rule 2 C.P.C. as has been explained, in unambiguous and crystal clear language by the Hon'ble Supreme Court in M/s. D. Cawasji & Co. Vs. State of Mysore, (1975) 1 SCC 636; Commissioner of Income Tax Vs. T.P. Kumaran, (1996) 10 SCC 561; Union of India and others Vs. Punnilal & Ors., (1996) 11 SCC 112; Deva Ram & Anr. Vs. Ishwar Chand & Anr., (1995) 6 SCC 733; and M/s. Bengal Waterproof Limited Vs. M/s. Bombay Waterproof Manufacturing Company & Anr, (1997) 1 SCC 99.

7. In the matters of Kunjan Nair Sivaraman Nair Vs. Narayanan Nair & Ors., (2004) 3 SCC 277, their lordships have explained the scope of Order II, Rule 2 C.P.C. observing as under:-

"The doctrine of res judicata differs from the principle underlying Order 2, Rule 2 in that the former places emphasis on the plaintiff's duty to exhaust all available grounds in support of his claim, while the latter requires the plaintiff to claim all reliefs emanating from the same cause of action. Order II concerns framing of a suit and requires that the plaintiff shall include whole of his claim in the framing of the suit. Sub-rule (1), inter alia, provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the very same cause of action. If he relinquishes any claim to bring the suit within the

jurisdiction of any Court, he will not be entitled to that relief in any subsequent suit. Further sub-rule (3) provides that the person entitled to more than one reliefs in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for such relief he shall not be afterwards be permitted to sue for relief so omitted."

8. Thus, the law of res judicata/constructive res judicata provides for finality of the proceedings. Section 11 C.P.C. contains the rule of conclusiveness of the judgment. The section does not affect the jurisdiction of the Court but operates as a bar to the trial of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a Court, competent to try the subsequent suit in which such issue has been raised. It also provides that a litigant must claim the whole relief and once he abandons the relief which he ought to have claimed he cannot bring an independent proceeding for the same. In the instant case we find that both in the present Original Application as well as in the earlier Original Application No.2809/2011, which was finally decided by the Principal Bench of the Tribunal, the grievance of the applicant was against the rejection of his request for transfer of past services rendered by him in IB for the purposes of pension. 9. Thus, in view of the settled law enunciated by the Hon'ble Supreme Court on the principle of constructive res judicata, as discussed hereinabove, we are of the considered view that the present Original Application is hit by the principle of constructive res judicata and same is accordingly dismissed. No costs."

3. Undisputedly, the petitioner was not granted any relief in the first round of litigation in the first original application preferred by him before the Central Administrative Tribunal and, therefore, this Court is of the considered opinion that in the light of the judgment delivered in the case of Kunjan Nair Sivaraman Nair vs. Narayanan Nair & Ors., (2004) 3 SCC 277, the Central Administrative Tribunal was justified in dismissing the second original application by applying the principle of constructive res judicata. This Court does not find any reason to interfere with the order passed by the Central Administrative Tribunal. The admission is declined.