

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2132 of 2009
(Arising out of SLP (C) No. 15011 of 2006)

N.A. Khan

...Appellant

VERSUS

Union of India & Ors.

..Respondent(s)

ORDER

1. Leave granted.
2. By this appeal, which has been filed by way of a Special Leave Petition, the appellant has challenged rejection of his writ petition and Review Petition filed before the High Court of Delhi at New Delhi, by which the High Court had dismissed his writ petition on the ground that the principles of Resjudicata stood against him.
3. The brief facts of the present appeal are that the appellant initially was an Income Tax Officer and a representation was made by him for promotion to Group 'A' post, which was rejected by the concerned authorities and such rejection was communicated to

him by a letter dated 26th of February, 1992. The grounds for rejection shown by the appellant were that although remarks of the Reporting Officer for the Assessment years 1986-87 to 1989-90 were 'Outstanding' and for the year 1990-91 was 'Good', but these remarks were toned down by the Reviewing Officer by giving remarks as 'Good' for the year 1986-87, 'Very Good' for the year 1987-88 and 1988-89, 'Good' for the year 1989-90 and 'Average' for the assessment year 1990-91. This was challenged by the appellant before the Central Administrative Tribunal (in short, 'CAT') by way of an original application, which was disposed of by the Tribunal in the following manner :-

"The Original Application is partly allowed and is disposed of with a direction to convene a Review DPC to consider the applicant's case, taking into account the observations made above. This shall be done by the respondents within a period of three months from the date of receipt of a copy of this order. If applicant is selected for promotion to the post of Assistant Commissioner of Income Tax, he shall be entitled to consequential benefits in accordance with law. O.A. is partly allowed."

4. Subsequent to the aforesaid order passed by the Tribunal, the appellant was informed that the Review Departmental Promotion Committee (in short, 'DPC') was convened. By a communication dated 25th of June, 1999, the appellant was informed that his prayer for promotion had been rejected by the Review DPC by *interalia* making the following findings :-

“.....the review DPC has, however, not recommended inclusion of your name in the panel for the year 1990-91 or 1991-92 for want of sufficient number of vacancies. The recommendations of the Review DPC has been accepted by the competent authority.”

5. This was challenged by the appellant by way of a Contempt Petition before the CAT, which was rejected and the order passed in the Contempt Petition was thereafter challenged before the High Court and the High Court, while dismissing the writ petition, made the following observations :-

“It would not be open for this Court to interfere at this stage as there is categorical finding by the Tribunal that the observations have been complied with and the petitioner was properly assessed by the DPC. The present petition is, therefore, dismissed, leaving it open to the petitioner to seek any further clarification or modification of the order made by the Tribunal

on 27th January, 2000 which is impugned in this writ petition.”

6. Pursuant to the aforesaid order passed by the High Court, the appellant again moved an application before the CAT for clarification and modification of the order of the Tribunal. This application was disposed of by the Tribunal in the following manner:-

“However, the DPC was still of the view that the applicant could not find place in the list of candidates who were promoted as the DPC had found and assessed the applicant as ‘good’ and since officer with better grading were included in the select list, so the Committee did not include the name of the applicant for the relevant years for want of sufficient number of vacancies. So in these circumstances, we find that when the DPC was fully apprised of all the relevant facts as are being mentioned in the MA also, so we find that there is no need to modify our previous order.”

Feeling aggrieved, a writ petition was filed by the appellant before the Delhi High Court, which was also dismissed and a Review application in respect of the same was also rejected by the High Court. These are the two orders which are now under challenge before us.

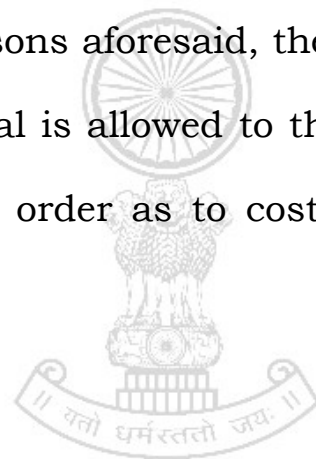
7. Having heard Mr. Manish Pitale, learned counsel for the appellant and Mr. P.V. Shetty, learned Senior Counsel

for the respondents and after considering the materials on record including the impugned orders passed by the High Court, we dispose of this appeal in the following manner :-

The only question on which the High Court dismissed the appeal was the question of Resjudicata. Considering the materials on record and applying the principles of Resjudicata in the facts and circumstances of the present case, we are of the view that the principles relating to Resjudicata cannot arise at all. It is an admitted position that the Review DPC had passed an order without going into the question whether sufficient vacant seats were available at the relevant point of time i.e. in the year 1991-92 when the appellant was found suitable for being considered for promotion. We are informed and in fact, we find from the aforesaid order itself that five members/candidates have already been promoted superseding the claim of the appellant. If vacant seats were made available in the year 1991-92 and the appellant was suitable for promotion, then the question of declining his claim for promotion ought not to have arisen.

8. We are therefore of the view that the impugned orders cannot be sustained. Let the matter be sent back to the concerned Review DPC to ascertain whether the appellant herein was suitable for promotion in the year 1991-92 and if it is found so, the appellant should be promoted notionally. Since the appellant has already retired in the meantime, the appellant should be paid the amount payable to him on the basis of said notional promotion.

9. For the reasons aforesaid, the impugned orders are set aside. The appeal is allowed to the extent indicated above. There will be no order as to costs. Interim order, if any, stands vacated.



.....J.
[Tarun Chatterjee]

New Delhi;
March 31, 2009.

JUDGMENT

.....J.
[V.S. Sirpurkar]