

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORIGINAL APPLICATION NO. – 99/2018

DATED : 15TH DAY OF OCTOBER, 2018

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT (S) : Commodore (Retd) P. K. Banerjee
S/O Late Wg Cdr Prabhat Kumar Banerjee
R/O-12/A, Tarak Dutta Road
Kolkata – 700 019

Versus

RESPONDENT (S) : (1) The Union of India, service through
The Defence Secretary, Ministry of Defence
South Block, New Delhi – 110 011

(2) The Chief of the Naval Staff
IHQ of MoD (Navy), South Block
DHQ, PO, New Delhi – 110011

(3) Admiral (Retired) Sureesh Mehta
R/O 164, Compal D Bandodkar Marg
Opposite Kala Academy
Panjim, GOA – 403 001

(4) Vice Admiral (Retd) Satish Soni
C/o IHQ of MoD (Navy)
R/O Other details Not Known

(5) Rear Admiral (Retd) RM Purandare
C/o IHQ of MoD (Navy)
R/O Other details Not Known

Counsel for the applicant (s) : IN PERSON

Counsel for the Respondent (s) : Mr. Satyendra Agrawal

ORDER

PER DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

1. This case has been filed Under Section 14 of Armed Forces Tribunal Act, 2007.
2. The applicant, retired from Indian Navy filed O.A. - 392/2014 in AFT, Principal Bench, New Delhi for his non-promotion in the rank of Rear Admiral in Promotion Boards - PB 01/2012 and PP 01/2013 alleging malafide moderation of Numerical Gradings in his Annual Confidential Reports by the Chief of Naval Staff. The O.A. No. 392/2014 was dismissed, against which the applicant approached The Hon'ble Supreme Court by filing S.L.P. which was dismissed and a Review Petition filed by the applicant was also dismissed.
3. By filing this O.A., the applicant has sought the following reliefs : -
 - (a) The Hon'ble AFT be pleased to declare the document "PARB Guiding Principles Revised - 01 May 2007" unconstitutional and, therefore, null and void.
 - (b) In all the ACRs of the applicant where the Chief of the Naval Staff has moderated the Numerical Gradings, the moderated gradings and Reporting of the CNS be declared *non est* and the Numerical Gradings and Reporting given by the last Reporting Officer be taken as the final Numerical Gradings and the Applicant be re-considered with those Numerical Gradings for the promotion to the rank of Rear Admiral, and if found eligible be re-instated in Service with full seniority of PB 01/2012 and back pay.

(c) Any other relief which the Hon'ble Tribunal finds fit and reasonable be granted to the Applicant to do total justice to the applicant.

4. The Respondent Nos. 1 & 2 have challenged the maintainability of this O.A. stating that this application has been filed for the same cause of action which was raised and decided earlier.

5. Heard the applicant appearing in person, and Mr. Satyendra Agrawal, Ld. Counsel appearing on behalf of Respondent Nos. 1 and 2.

6. The contention of the applicant is that the issues raised and decided in the earlier O.A. No. – 392/2014 and Civil Appeal No. 1943/2018 @ Diary No. 36081 of 2017 were different from the issues raised in the present O.A. applicant.

7. Per contra, Ld. Counsel for the Respondents submits that principles of res-judicata as envinced in Section 11 of the Code of Civil Procedure is applicable in this case.

8. In the cited case of State of Karnataka & others – vs – All India Manufactures Organization and others MANU/SC/2206/2006 the doctrine of res-judicata has been discussed in Para 32, as under :-

Res Judicata

“32. Res judicata is a doctrine based on the larger public interest and is founded on two grounds : one being the maxim nemo debet bis vexari pro una et eadem causa (P. Ramantha Aiyer, Advanced Law Lexicon (Vol. 3 3rd Edn., 2005) at p. 3170.) (“No one ought to be twice vexed for one and the same cause”) and second, public policy that there ought to be an end to the same litigation (Mulla, Code of Civil Procedure (Vol. 1, 5th Edn.,

1995) at P. 94. It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter "the CPC") is not the foundation of the principle of *res judicata*, but merely statutory recognition thereof and hence, the Section is not to be considered exhaustive of the general principle of law. (see, *Klipada De v. Dwijapada Das* MANU/PR/0007/1929). The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to re-agitate the matter again and again. Section 11 of the CPC recognizes this principle and forbids a court from trying any suit or issue, which is *res judicata*, recognizing both 'cause of action estoppel' and 'issue estoppel'. There are two issues that we need to consider, one, whether the doctrine of *res judicata*, as a matter of principle, can be applied to Public Litigations and second, whether the issues and finds in **Somashekar Reddy** (supra) constitute *res judicata* for the present litigation.

Explanation VI to Section 11 States :

Explanation VI. – Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under so litigating."

9. Section 11 of the CPC provides that only those matters that were "directly and substantially in issue" in the previous proceeding will constitute *res-judicata* in the subsequent proceedings.

10. Explanation IV of the Section 11 CPC says : -

Explanation IV – Any matter which might and ought to have been made ground for defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

11. It is also observed in the case of All India Manufacturers Organisation and others (supra) that a Constitutional Bench of Hon'ble Supreme Court in *Direct Recruit, Class II Engineers Officers' Association v. State of Maharashtra* MANU/SC/0291/1990, it was held : -

“An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming into the legitimate purviews of the original action both in respect of the matters of claim and defence. Thus, the principles of constructive res-judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure applied to writ case”.

12. Similar views were expressed in case of Ramadhar Shrivastava – vs – Bhagwandas MANU/SC/1635/2005 and others MANU/SC/0694/1994.

13. In the S.L.P. filed by appellant against the judgment & others passed by the Armed Forces Tribunal, Principal Bench in O.A. No. 392 of 2014, it has been observed that “The AFT after hearing the matter finally agreed with the submission of the appellant in so far as it pertained to the adverse remarks for the period 10.12.2007 to 28.11.2008, and expunged the said adverse remarks. However, a partial relief only to the aforesaid extent is granted by the AFT and the other reliefs which were sought in respect of numerical grading given to the appellant for the subsequent period have been declined with the observations that adverse remarks for the aforesaid period had no bearing on the numerical grading given for the period thereafter and it did not have any adverse effect while considering his case for next higher rank.”

14. In the Hon’ble Supreme Court the aforesaid findings of the AFT in O.A. No. - 392/2014 regarding numerical gradings was extensively argued and discussed. Therefore, the subject matter of numerical gradings was substantially and directly a issue in the previous litigation. This issue was raised and decided.

15. The applicant in the O.A. has also prayed to declare the document "PARB Guiding Principle Revised 01 May 2007" unconstitutional and, therefore, void. This AFT has no jurisdiction to strike down the rules, provisions and policies as unconstitutional. The Constitutional Courts in India are the High Courts and Supreme Court to decide the validity of rules, provisions or policies. That apart, this issue i.e., Constitutional Validity of "PARB Guiding Principles Revised 01 May 2007", which could have been raised before the Hon'ble Supreme Court was not raised. Therefore, this issue is also barred by the principles of constructive res-judicata.

16. In result, we find that this O.A. (O.A. No. – 99/2018) is not maintainable being barred by res-judicata.

17. Accordingly, this O.A. (O.A. No. 99/2018) is dismissed but without costs.

18. A plain copy of this order, duly countersigned by the Tribunal Officer, be furnished to both the sides after observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)