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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on 18.01.2018

+ W.P. (C) 576/2005

M. B. USGAONKAR

..... Appellant

Through: Mr. Sachin Datta, Sr. Adv.
Mr. Vikas Tiwari, Adv.

versus

UOI & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (ORAL)

1. The present writ petition assails an order dated 02.09.2004 rendered by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'CAT'), in OA No. 2089/2003, titled as "*M. B. Usgaonkar vs. UOI & Ors.*", dismissing the same on the ground that the petitioner ought to have raised the pleas raised in the present proceedings, in the earlier round of proceedings instituted on his behalf.

2. Upon a reading of the said impugned order dated 02.09.2004, it appears that the CAT was impressed by the submissions made on behalf of the Union of India that the application was barred by the principle of constructive *res judicata* because the relief that was being claimed was also claimed in an earlier OA instituted on behalf of

petitioner being OA No.874/1994. It was therefore, predicated on a finding that when a particular relief prayed for earlier had not been adjudicated by the Tribunal at the instance of the petitioners, the only conclusion that can be drawn is that the same had been refused. Resultantly, OA No.2089/2003 came to be dismissed as being barred by principle of constructive *res judicata* without going into the substantive issues raised therein.

3. Mr. Sachin Datta, learned senior counsel appearing on behalf of the petitioner invites our attention to a Letter of Representation dated 23.11.2000 addressed to the Secretary, Ministry of Defence whereby it had been pointed out that the half pay leave salary of the petitioner had been wrongly calculated by deducting from his entitlement, pension which was deductible and was in fact deducted from his re-employment pay. It was, therefore, urged that the petitioner would be entitled to cash equivalent to half pay leave for 644 days in this behalf.

4. On a specific query, it emerges that in the earlier round of litigation between the parties, the issue revolved around the fixation of salary and that the issue raised in the Letter of Representation dated 23.11.2000 was in the aftermath of the fixation of the petitioner's salary. It is, therefore, evident that there was no occasion earlier for the petitioner to agitate his claim in relation to the payment of half pay salary. Even otherwise, we observe from a perusal of the order dated 11.11.1994 passed by the CAT in OA No. 874/1994 that the issue of half pay leave had not been raised in that proceedings.

5. We must also observe that it has been candidly admitted by

learned counsel appearing on behalf of Union of India that the issue of half pay leave had not been raised in the earlier round of litigation between the parties and became a subject matter of OA No. 2089/2003 for the first time.

6. In view of the foregoing, in our considered view, the CAT fell into error in rejecting the OA No. 2089/2003 on the solitary ground of it being barred by the principle of constructive *res judicata*, without examining the substantive issues raised therein.

7. We, therefore, have no hesitation in setting aside the impugned order dated 02.09.2004 and remitting the matter back to the CAT for hearing on the substantive prayers made in the OA No.2089/2003 which are reproduced hereinunder:-

- “(a) Quash and set aside (i) Rule 39 of the Rules, as well as the O.Ms dated 30.10.82 and 6.4.93/8.4.93/13.4.94 issued by Respondent No.1, in so far as they permit deduction of (a) DA and (b) pension of the retiring Government servant from the cash equivalent of his half pay leave,
- (b) Consequent to grant of relief (a) hereinabove, to restrain the respondent of the deducting, of the pension of the applicant while computing the cash equivalent of half pay leave due to him even while it already stood deducted while fixing his re-employment pay and
- (c) Quash and set aside the impugned letter dated 25.5.01.”

8. List before the concerned bench, CAT in the first instance on 05.02.2018, for further proceedings, in accordance with law.

9. Parties are directed to appear before the CAT on the said date.

10. Needless to state that in view of the circumstance that the proceedings instituted on behalf of the petitioner had been pending since 2003, it is hoped and expected that the CAT shall determine OA No.2089/2003 as expeditiously as possible and preferably within a period of 6 months from the date on which it is first listed before the Bench.

11. The present writ petition is accordingly disposed off.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

JANUARY 18, 2018

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