



2023:DHC:8197-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 07.11.2023***+ **W.P.(C) 12662/2018****G.S.V.S PRABHAKARA RAO AND ANR. Petitioners****Through: Mr. Shankar Raju and Mr. Nilansh
Gaur, Advocates****versus****NATIONAL HIGHWAYS AUTHORITY OF INDIA ... Respondent****Through: Ms. Tanvi Dubey and Mr. Mekala
Ganesh Reddy, Advocates****CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T (oral)**

1. The present writ petition has been preferred by the petitioners seeking setting aside of the impugned order dated 17.05.2016 passed by the learned Tribunal in O.A. No.1633/2015 and to allow the OA filed by the Petitioners before the learned Tribunal with all consequential benefits.
2. The petitioners herein earlier filed OA Nos.3280/2011 and 3281/2011 before the learned Central Administrative Tribunal, Principal Bench praying for their absorption on the posts held by them from the date of their initial appointment, and various other reliefs. Both the OAs were allowed by the learned Tribunal vide judgment dated 06.03.2012 with the following directions:

“8. Both these Original Applications are allowed with a direction



to the respondents to consider the absorption of the applicants on the post of Manager (F&A) and, if in that consideration, they are given regular appointment, the respondents shall also consider them for the next higher post of DGM (F&A)."

3. The aforesaid judgment was challenged by the respondent before this Court vide W.P.(C) Nos.3923/2012 and 3924/2012 which were dismissed vide judgment dated 11.11.2004 maintaining the learned Tribunal's judgment dated 06.03.2012.

4. It is pertinent to mention here that earlier one G. Suresh who was also serving with the respondent organisation on deputation basis and on being denied absorption, he filed a writ petition before this Court. The said writ petition was transferred to learned Central Administrative Tribunal, Principal Bench and was registered as TA No.4/2007 which was allowed by learned Tribunal vide judgment dated 29.10.2007.

5. While allowing the aforesaid OAs filed by the petitioners, the learned Tribunal relied upon the judgment in G. Suresh's case. The judgment in favour of petitioners was not implemented resulting in initiation of contempt proceedings by the petitioners and two contempt petitions being CP Nos.149/2015 and 150/2015 arising out of OA Nos.3280/2011 & 3281/2011, respectively, came to be filed before learned Tribunal. During the pendency of the said contempt petition, the respondent passed orders dated 04.03.2015 and 19.03.2015 absorbing the petitioners as Manager (F) w.e.f. 17.07.2003 and 27.03.2003, and as DGM (F&A) w.e.f. 17.07.2007 and 23.03.2007, respectively. The contempt proceedings came to be disposed of alleged compliance of the judgment vide order dated 20.03.2015 with the following directions:

"4. In our considered view, the respondent has complied with the



aforesaid Order of this Tribunal and no contempt of the Court is subsisting in these matters. However, if the petitioners are still disputing about the dates of their absorption, they are at liberty to challenge the same in accordance with the rules and in separate original proceedings, if so advised. The present Contempt Petitions are, therefore, closed. Notice issued to the alleged contemnor is discharged. There shall be no order as to costs."

6. Learned counsel for respondent has opposed the present petition by submitting that the impugned order dated 17.05.2016 was rightly passed by the learned Tribunal and there is no perversity in the said order, hence, requires no interference from this Court.

7. Since the petitioners approached the learned Tribunal seeking absorption from the date of their initial appointments, i.e. from the year 2002 and 2003, respectively, therefore, the decision taken by the respondent absorbing the petitioner from the year 2015 gave rise to a fresh issue. Accordingly, the petitioners have rightly challenged the same before learned Central Administrative Tribunal. Since the fresh issues which have given rise to fresh cause of action, in our considered opinion, plea of *res judicata* is not applicable.

8. Moreover, in the Contempt Petition mentioned above, the learned Tribunal had itself granted liberty to the petitioners to approach learned Central Administrative Tribunal, however, both the OAs were wrongly dismissed on the plea of *res judicata*.

9. In view of above, we hereby set aside the order dated 17.05.2016 passed by learned Tribunal and remand the case to learned Tribunal to decide the same afresh on merits while considering the submissions made by the parties.



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10. Petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SHALINDER KAUR)
JUDGE

NOVEMBER 07, 2023/rk