

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH

OA No.3149/2002

New Delhi, this the 3rd day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri R.K. Upadhyaya, Member(A)

Anita Kumari,
W/o Shri Vijay Pal Singh,
R/o RZ B-2/36, Vijay Enclave,
Dabri-Palam Road,
New Delhi-110045

.. Applicant

(By Advocate: Shri Shyam Babu)

versus

1. Chief Secretary,
Government of NCT, Delhi
Players Building, I.P. Estate,
New Delhi

2. Director of Education,
Directorate of Education,
Old Directorate,
New Delhi

3. Chairman,
Delhi Subordinate Service,
Selection Board, UTCS Bhavan,
Behind Karkardooma Court,
Institutional Area, Vishwas Nagar,
Shahdara, Delhi-110032

.. Respondents

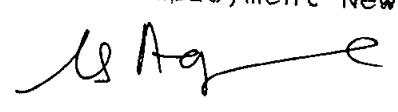
(By Advocate: Shri S.K. Gupta, proxy for Shri Vijay
Pandita, for respondents 1 & 3
Shri George Paracken, for respondent 2)

ORDER

Justice V.S. Aggarwal

Applicant (Anita Kumari) had earlier filed OA No. 2426/1999. It was decided on 9.10.2001. She had challenged her non-selection for the post of Librarian in the Directorate of Education, Delhi.

2. This controversy arose because the respondents had advertised certain posts of Librarian in the Directorate of Education in the Employment News of 12-18th March,



1999. The applicant had passed her Matric in 1985-86 and thereafter had a diploma in the Library Science from the State Board of Technical Education (Haryana) in 1989. She completed her Graduation from Delhi University in 1994 and had applied for the post. She had taken the examination. In the earlier application, she had asserted that she had belief that she was within the first 15 candidates in the merit list. This Tribunal had disposed of the said application and held:-

"9. In the facts and circumstances of this particular case, therefore, which shall not be treated as a precedent, the O.A. succeeds and is allowed to the extent that if applicant has otherwise qualified in the selections held, respondents shall appoint her as Librarian in Directorate of Education within two months from the date of receipt of a copy of this order, subject to her completing the pre-appointment formalities. No costs."

3. In pursuance of the order that was passed by this Tribunal, the impugned order had been passed dated 27.11.2001. It reads:-

"Hon'ble Central Administrative Tribunal on 9th October, 2001, in OA No.2426/1999 in the case Smt. Anita Kumari Vs. Government of NCT of Delhi and Others has given following directions:-

"In the facts and circumstances of this particular case, therefore, which shall not be treated as a precedent, the O.A. succeeds and is allowed to the extent that if applicant has otherwise qualified in the selections

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held, respondents shall appoint her as Librarian in Directorate of education within two months from the date of receipt of a copy of this order, subject to her completing the pre-appointment formalities."

In compliance of the above, Secretary, Delhi Subordinate Services Selection Board was requested to make available the details indicating the place secured by Smt. Anita Kumari irrespective of the issue of educational qualification which has been quashed by Hon'ble Tribunal.

Secretary, Delhi Subordinate Services Selection Board vide his D.O. No.23(5)/II/Exam./IC.1999/17740 dated 23.11.2001 has informed as following:

"Smt. Anita Kumari has secured 531st position as per the gradation list. We had recommended the candidature of only such of the General Category candidates who had secured 42 rank and above."

Thus, Smt. Anita Kumari has not qualified in the selection held.

Accordingly in terms of order of the Hon'ble CAT, she is not entitled for appointment to the post of Librarian.

Sd/-
(Gyanendra Srivastava)
Director of Education"

By virtue of the present application, the applicant seeks a direction to issue the appointment letter to her for the post of Librarian in the Directorate of Education. According to her, in the earlier application referred to above, there was no plea raised by the respondents that she had secured 531st position in the examination on merits. This is altogether a new plea which had not been raised in the reply that was filed in the earlier

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application and, therefore, the respondents are not permitted to rake up such a controversy. The applicant, according to her, was admittedly (from the earlier pleadings) in the first 15 candidates and, therefore, she is entitled to the relief.

4. Needless to state that in the reply filed, the application has been contested.

5. During the course of submissions, the learned counsel for the applicant had vehemently urged, as already reproduced above, that when the applicant had earlier filed the application, the respondents had never raised the plea that the applicant did not make a mark on the merits and that she was at 531st position of the merit list. Now they are debarred from raising such a plea. The learned counsel in this regard presses the principle of constructive res judicata.

6. The principle referred to is well settled. Explanation IV to Section 11 of the Code of Civil Procedure reads as under:-

"Section 11. Res judicata Explanation IV - Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

7. This explanation referred to leaves no doubt that this is based on the principles of natural justice. Even

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if strict provisions of Code of Civil Procedure are not applicable to the proceedings before this Tribunal, still we find no reason to make a departure from it in the facts of the present case. If a plea could have been raised in defence by the respondents and they did not do so, in that event, the principle of constructive res judicata would apply and the respondents would be debarred from raising such a plea.

8. However, it cannot be ignored that pleas which could have been raised should be relevant to the question in controversy that is before the court at that time. If a plea is irrelevant, in that event, it need not be agitated. At that time, the controversy was if the applicant was eligible or not. This Tribunal had recorded that rejection of the candidature of the applicant after the selection was held on basis of the clarification was arbitrary and violative of Articles 14 and 16 of the Constitution. Therefore, the question as to whether the applicant had made a mark on the merits was irrelevant.

9. Be that as it may, even if for the sake of argument, the controversy is looked into, the plea must fail. When the earlier application referred to had been filed, the applicant had pleaded:-

"The respondent no. 3 conducted the examination etc. for the post. The applicant qualified the same and according to

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her reasonable belief, she was within first 15 candidates in the merit list by the respondent no. 3 in the UR category."

In the reply filed to this particular paragraph, the respondents had denied the same and had recorded:-

"4g. In reply to para 4g it is submitted that the contents of which are denied. The applicant was not selected, was not found eligible."

It is obvious from the aforesaid that the plea raised that the applicant according to her belief was in the first 15 candidates in the merit list had been positively denied. Now she cannot be heard to state that this plea was not raised and, therefore, the principle of constructive res judicata would apply.

10. There is another way of looking at the matter. We have already reproduced above the order of this Tribunal disposing of the earlier application. The Tribunal made it clear in the order "that if the applicant is otherwise qualified in the selection held, the respondents shall appoint her." This clearly show that this Tribunal did not decide this controversy and left it open. We are informed that the applicant was only at 531st position of the merit list and, therefore, when only 42 persons had been selected, she cannot claim that she has a right to be so appointed.

11. No other argument had been raised.

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12. For these reasons, the application being without merit must fail and is dismissed. No costs.

R.K. Upadhyaya

(R.K. UPADHYAYA)
MEMBER (A)

/sns/

V.S. Aggarwal

(V.S. AGGARWAL)
CHAIRMAN