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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

R.A.NO.329/2001 IN
O.A.NO.1913/2001

Tuesday, this the 5th day of November, 2002

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Mrs. Susamma Thankachen,
D.D.A.Janta Flat No.424,
Group-I, Pocket C,
Hastal, Uttam Nagar,
New Delhi-110059

...Applicant

(By Advocate: Shri S.M.Arif)

Versus :

1. The Secretary,
Health and Family Welfare Department,
Delhi Secretariat,
Delhi Sachivalaya, 9th Floor,
Near Indira Gandhi Stadium, I.T.O.Complex,
New Delhi.
2. Medical Superintendent,
Lok Nayak Hospital,
Delhi Gate, New Delhi.
3. Director - Administration
Lok Nayak Hospital
Delhi Gate, New Delhi
4. Secretary
Delhi Subordinate Services
Selection Board
(DSSSB), 3rd Floor, UTCS Building
Behind Karkardooma Court Complex
Vishwas Nagar, Shahdara
Delhi-32

...Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (ORAL)

Shri Justice V.S.Aggarwal:

The applicant had applied for the post of Technical Assistant Group III in the Health and Family Welfare Department, Govt. of National Capital Territory of Delhi. It was in response to an advertisement published by the Delhi Subordinate Services Selection Board. The applicant appeared for the requisite interview and stated to have been selected. She was



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offered a letter of appointment in the Lok Nayak Hospital, New Delhi. The applicant submitted a letter of acceptance. However, the selection was cancelled on the ground that she did not possess the requisite qualification and experience.

2. The applicant had preferred an application in this Tribunal impugning the rejection of her claim. The said application came up for consideration before this Tribunal and the same was withdrawn on 14.9.2002.

3. The representation of the applicant is stated to have been decided after passing of the above-said order dated 14.9.2002 and thereupon the applicant filed a fresh application claiming the same relief as before.

4. On 9.8.2001, this Tribunal had dismissed the said application holding:-

"2.... It is immaterial what grounds prompted the applicant to withdraw her OA. Aforesaid order passed in her earlier OA has the effect of dismissal of her challenge to the decision of the respondents holding her ineligible for appointment. Applicant, in the circumstances, will not be entitled to re-agitate very same issues in the present OA as the said claim is clearly barred by the principles analogous to res judicata."

5. Learned counsel for applicant in the present Review Application contends that the earlier order withdrawing the application cannot operate as res judicata because (a) there was no decision on merits and (b) the representation was rejected after passing of the

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earlier order whereby the application was withdrawn and this gives a fresh cause to the applicant.

6. On careful consideration of the matter, we are of the considered opinion that in the peculiar facts, the present Review Application must be held to be devoid of any merit.

7. So far as the contention that the earlier decision, by virtue of which the application was withdrawn, will not operate as res judicata, we do not dispute the legal position that if there is no decision on merits, it will not operate as res judicata. We are conscious of the fact that a Code of Civil Procedure does not apply to the proceedings before this Tribunal. But since we have a trapping of Court, the basic principles remain the same.

8. What is the position herein? The applicant had withdrawn the earlier application. No permission had been taken from this Tribunal on any score. Order 23 of the Code of Civil Procedure whereby the claim is abandoned would debar filing of an another application on the same plea.

9. Not only that a repeated application on the same contention and pleas prompts us to conclude that even an earlier decision is not res judicata, the procedure of the Tribunal/Court cannot be allowed to be abused. Therefore, it must be taken that the applicant had abandoned her claim.

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10. Coming back to the second contention once again the position remains the same. This Tribunal had ^{not} considered this fact that the representation had been rejected after withdrawal of the first application. However, keeping in view the fact that the relief claimed was the same and no right was reserved, the application was dismissed, we find that there is no error apparent on the face of the record and, therefore, on that count also, the plea must fail.

11. Resultantly, the Review Application is dismissed.



(S.A.T. Rizvi)
Member (A)



(V.S. Aggarwal)
Chairman

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