

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CA No.3423/2001

New Delhi, this the 28th day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Shankar Prasad, Member(A)

Kedar Nath Chhabra
H-14, vikaspuri
New Delhi

.. Applicant

(Dr. D.C. Vohra, Advocate)

versus

Govt. of NCT of Delhi, through

1. Chief Secretary
IP Estate, New Delhi
2. Secretary (Education)
IP Estate, New Delhi
3. Director of Education
Old Secretariat, Delhi

.. Respondents

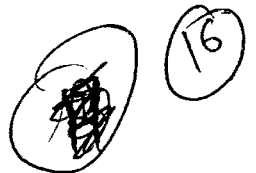
(Shri Mohit Madan, proxy for Mrs. Avnish Ahlawat,
Advocate)

ORDER

Shri Shankar Prasad

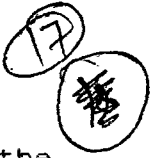
Applicant has preferred this application for issue of a direction to the respondents to issue a formal order of appointment as PGT (History) and for fixation of notional seniority from the date of appointment of similarly placed juniors. Applicant has further stated that he had earlier filed an OA No.600/98 which was dismissed as being time barred on 8.11.2000 and that a fresh cause of action has arisen with the judgement dated 19.4.2001 of Principal Bench of the Tribunal in OA No.2048/99 (Dr. Ms. Satish Sharma) which is a judgement in rem.

2. The brief facts of the case are that applicant's name was included in the panel of PGT(Male teachers) in the year 1984 and that as per the policy adopted by the Delhi Administration and as per the notice inviting



applications, he has to be appointed and no fresh recruitment can take place till the panel is exhausted. Applicant has specifically drawn our attention to DP&AR OM of 1982, which says that in case of open market/limited departmental examinations, appointments should be made from the panel till the panel is exhausted. In the case Ishwar Singh Khatri & Ors. Vs. UOI (TA 462/85) the Tribunal held that without exhausting the existing panel respondents cannot resort to fresh selection. The Union of India preferred SLP No.1900/87 in which the Supreme Court upheld the order of the Tribunal. Relying on the aforesaid decision in Ishwar Singh Khatri's case, the DB in Nirmal Kumari's case reiterated the earlier decision. There were some more cases including OA 2729 and 2730/92 in which the Principal Bench held that the law having been declared in Nirmal Kumari's case that the life of the panel is not limited and that appointments should be made in accordance with the said panel until it is exhausted and that the administration is expected to accord appointments to everyone whose name is included in the panel. Applicant had earlier preferred OA 600/98 which had been dismissed on the ground of limitation. This Tribunal subsequently in OA 2048/99 allowed appointment from a panel of PGT (female) prepared in 1983 and 1984. He has further argued that following this decision in Satish Sharma's case, a fresh cause of action has arisen. He has further argued that following K.C.Sharma's case the application could not be held to be barred by limitation.

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3. Respondents on the other hand have contended that the panel made was prepared much in excess of the requirement. It has been indicated in the judgement in Ishwar Singh's case that the court wanted to ascertain the actual number of vacancies that existed as on the preparation of the panel of selected candidates and as the desired information was not forthcoming, the court concluded that the selection board prepared the panel containing 1492 candidates against the then available vacancies. In Nirmal Kumari's case the post had been kept vacant for that applicant. The issue relating to appointment from the said panel had been considered in the case of Krishna Bhatia in OA 1794/94 and the Tribunal relying on the judgement mentioned therein came to the conclusion that as appointment had taken place from subsequent panels, the panel of 1984 had been scrapped and the panel had lost its validity. The Tribunal had further held that life of panel was only one year extendible by further six months. Respondents have further argued that the earlier OA filed by the applicant was rejected both the grounds of merit and limitation. Applicant had filed CWP 355/2001 against the aforesaid decision which was also rejected by the Delhi High Court. He had further preferred a SLP in Supreme Court, which was dismissed as withdrawn. The application is therefore barred by resjudicata. The argument that the case of Satish Sharma (supra) has given a fresh cause of action has no bearing as K.C.Sharma's case involved challenge to the notification. They have further stated that the application is barred by limitation.

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4. We have heard the learned counsel for both the parties and have gone through the documents.

5. The first question that needs determination by this Tribunal is as to whether the present application is hit by the principles of resjudicata.

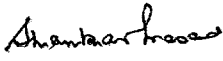
6. A perusal of the judgement in OA 2048/99 (supra) indicates that the DB of the Tribunal considered the decisions in the cases of Nirmal Kumari, Urmil Sharma and Smt. Ram Ratti on the one hand and the decisions in the cases of Smt. Krishna Bhatia and K.N.Chaabra on the other hand. They allowed the said OA for the reasons given in the earlier set of decisions. All these earlier cases have been decided prior to the filing of earlier OA by the applicant.


7. Applicant had filed the earlier OA on the same set of facts and against the very respondents. Section 11 of CPC contains provisions relating to resjudicata. Explanation (iv) of the said section incorporates the doctrine of constructive resjudicata. A perusal of the decision in OA 600/98 indicates that the matter has been decided both on merits as well as on the point of limitation. The CWP No.355/2001 filed by the applicant against the decision of the Tribunal has been dismissed by the High Court vide its order dated 20.2.2001. SLP 13028/2001 was preferred and the same was dismissed as withdrawn.

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8. In view of the above position, we hold that the the present application is barred by the principle of resjudicata. The application is accordingly dismissed. There will be no order as to costs.


(Shankar Prasad)
Member (A)


(V.S. Aggarwal)
Chairman

/gtv/