

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

16

O.A.No.1411/1997

Date of Decision: 10- 8 -1998

Shri D. N. Gupta

.. APPLICANT

(By Advocate Shri E. X. Joseph with Ms. Jasmine Ahmed)

versus

Union of India & Ors.

.. RESPONDENTS

(By Advocate Shri K. C. D. Gangwani & S. S. Rana)

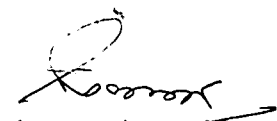
CORAM:

THE HON'BLE SHRI T. N. Bhat, Member (J)

THE HON'BLE SHRI S. P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES ✓

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER  
BENCHES OF THE TRIBUNAL?

  
(S.P. Biswas)  
Member(A)

Cases referred:

1. N. K. Bhaskaran V. UOI & Ors. 1990 (13) ATC 675
2. L. B. Shivdasani V. UOI 1987 (4) ATC 402
3. Sulochana Amma V. Narayananan Nair, AIR 1994 SC 154
4. P. K. Vijayan V. Kamalakshi Amma AIR 1994 SC 2145

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1411/1997

New Delhi, this 10th day of August, 1998

Hon'ble Shri T.N. Bhat, Member (J)  
Hon'ble Shri S.P. Biswas, Member (A)

Shri D.N. Gupta  
House No.41, Gali No.6  
Onkar Nagar B, Trinagar, Delhi-110 035 .. Applicant

(By Shri E.X. Joseph, with Ms. Jasmine  
Ahmed, Advocates)

versus

Union of India, through

1. Secretary  
Ministry of Health & Family Welfare  
Nirman Bhavan, New Delhi

2. Director General of Health Services  
Nirman Bhavan, New Delhi

3. Medical Superintendent  
Dr. RML Hospital, New Delhi

4. Shri Ram Vir Singh  
Dr. RML Hospital, New Delhi

.. Respondents

(By Shri K.C.D. Gangwani, Advocate for official  
respondents and Shri S.S.Rana, Advocate for R-4)

ORDER

Hon'ble Shri S.P. Biswas

The applicant is before us in the third round of litigation claiming the same relief on similar grounds that were advanced by him in his earlier OA No.1951/94 decided on 23.4.96 and also in the RA No.126/96 rejected on 25.12.96. Reliefs claimed in the earlier OA related to quashing of the DPC proceedings dated 20.5.93 and the appointment of Shri Ram Vir Singh as Medico Social Service Officer (MSSO for short) in the grade of Rs.2000-3500 in Dr. RML Hospital in terms of order dated 10/11.2.94. The reliefs claimed in the present OA are as under:

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(i) Striking down as unconstitutional the provision in para 2.3.1 of DoPT's OM dated 10.3.89 allowing Bench Mark for selection; and

(ii) striking down the office order dated 10/11.2.94 promoting Shri Ram Vir Singh (R-4).

Evidently, the only additional ground brought about in this OA relates to challenging the constitutional validity of DoPT's OM dated 10.3.89.

2. After hearing the parties at length and going through the records of the case, applicant's earlier OA (1951/94) was dismissed by an order dated 23.4.96 with the conclusion that there is no illegality, patent material irregularity in the constitution of the DPC or its procedure, or proved malafides vitiating the selection. Not only this, the RA, as aforesaid, was rejected but also the SLP No.4387/97 was dismissed on merits by the Hon'ble Supreme Court on 8.5.97. The present OA has been filed on 4.6.1997.

3. The applicant has approached this Tribunal on the presumption that where the court leaves the matters in issue open for consideration and for a decision in the matter in another proceedings in future on the ground that it was not necessary to go into the same in the proceedings before it and gives an opportunity to one of the parties to agitate the matter in a fresh

proceedings, the doctrine of resjudicata will not apply.

The applicant would claim that the orders of the Tribunal in OA 1951/94 in para 38 leaves the matter open when it states that "since the OM itself has not been impugned before us, we do not consider it necessary to express any opinion on the same". In other words, the Tribunal in its aforesaid earlier order did not reach a final decision and therefore applicant's reagitating the issue cannot be held as hit by resjudicata in terms of the decision of the Tribunal in the case of **N.K. Bhaskaran Vs. UOI & Ors. 1990(13) ATC 675.** To add strength to his arguments, learned counsel for the applicant also relied upon the decision of the Tribunal in the case of **L.B. Shivdasani Vs. UOI 1987 (4) ATC 402.** The counsel further submitted that in matters of public policy and constitutional validity of law, there is no resjudicata and could be agitated at any time and hence there is no question of approbation or reprobation.

4. Respondents have strongly contested the claim of the applicant and have submitted that in this OA the applicant has challenged those very instructions on which he had placed reliance earlier unsuccessfully. He cannot, therefore, be allowed to approbate and reprobate. Following the judgement of the Hon'ble Supreme Court in the SLP filed in the case of **S.C. Gopala Krishnan Nair Vs. UOI (OA 146/90),** it was decided by the respondents to define promotion to the post filled through selection with the bench mark only as "GOOD" for selection-cum-seniority, changes were effected accordingly in the OM dated 10.3.89 vide subsequent OM dated 27.3.97 and the applicant has not challenged the

second OM in the present OA. Respondents would further submit that even under the revised instructions in OM of 27.3.97, R-4 could only be promoted to the post of MSSO instead of the applicant herein because his (applicant's) overall grading was assessed as "Good" by the DPC and R-4 is senior to the applicant:

5. It would be appropriate to mention the brief facts of the present case, before we examine the rival contentions. The post of MSSO in the Dr. RML Hospital fell vacant on 4.2.93. As per the provisions of Recruitment Rules, the post was required to be filled in by the method of promotion on selection basis failing which by direct recruitment. Persons working in the grade of Medico Social Worker, Psychiatric Social Worker and Extension Educator with eight years regular service in the respective grade are eligible for promotion to the said post. Two candidates namely the applicant and R-4 were eligible for consideration for promotion to that post, according to the R/Rules. When the post fell vacant, DPC meeting was held on 20.9.93, which recommended the name of R-4 for promotion taking all rules and regulations into consideration and keeping in view the instructions contained in OM dated 10.3.89. DPC's recommendation was accepted by the appointing authority and R-4 was promoted to the post of MSSO vide order dated 10/11.2.94.

6. We find none of the contentions of the applicant holds good. This is because the Tribunal in its decision in OA 1951/94 came to the final decision when it had stated in para 37 that "as there is no

illegality, patent material irregularity in the constitution of the DPC or its procedure, or proved malafides vitiating the selection, we find ourselves unable to interfere in this matter". The Tribunal did not give him liberty to reagitate the matter in a fresh proceedings nor did the Tribunal leave the matter open for consideration and a decision in a subsequent proceeding in future. In other words, the court had exercised its judicious mind and, after arguments and consideration, came to the aforesaid conclusion. The present application is therefore barred by principles of constructive resjudicata.

7. The other citations advanced by the learned counsel for the applicant have to be interpreted only to applicant's disadvantage. For constructive resjudicata to be applicable, parties to the suit should be the same and the matters in issue should also be the same. In the case of Mervyn Coutinho cited by the learned counsel, the parties were direct recruits and promotee Appraisers belonging to the cadre of Bombay Customs House and the issues raised were with regard to seniority between direct recruit and promotee cadres of Bombay Custom House, whereas in the case of Shivdasani (supra) the parties are promotees and direct recruit Appraisers belonging to all the three Custom Houses and the issue raised was in regard to determination of seniority or eligibility for consideration for promotion on all-India basis. Under these circumstances, the Tribunal in that case cited held that the case would not be hit by constructive resjudicata. In the present OA, not only the parties are the same but the issues raised

are also identical. The cases cited by the learned counsel for the applicant do not therefore render any help to the applicant.

8. We do not find that the Tribunal in OA 1951/94 had left the matter open. That apart, the Hon'ble Supreme Court has dismissed the case subsequently in SLP No.4387/97 on 5.8.97 on merits.

9. We find that Section 11 of CPC aims to prevent multiplicity of the proceedings and accords finality to an issue which directly and substantially had arisen in the former suit between the same parties or their privies, decided and became final, so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the court is saved. It is based on public policy, as well as private justice. In other words, the order on an issue which had arisen directly and substantially between the parties and decided finally by the competent court/Tribunal will operate as resjudicata in a subsequent suit or proceedings (See *Sulochana Amma V. Narayanan Nair*, AIR 1994 SC 154). While considering a similar issue, the apex court in yet another case in *P. K. Vijayan V. Kamalakshi Amma* AIR 1994 SC 2145 has held as under:

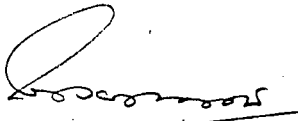
"It is a sheer abuse of the process of the Court to raise at each successive stages different pleas to protract the proceedings or to drive the party to multiplicity of proceedings. It would be fair and just that the parties to raise all available relevant pleas in the suits or the proceedings when the action is initiated and the omission thereof does constitute constructive resjudicata to

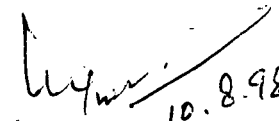
prevent raising of the same at a later point of time thereby it must be deemed that they are waived".

The facts and circumstances of the present case conform to the situation decided by the apex court in P.K.Vijayan's (supra) case.

10. The applicant herein should have taken the liberty of challenging the constitutional validity of OM dated 10.3.89 in the earlier OA. That was not done. The law laid down by the apex court in the SLP No.4387/97 as well as P.K.Vijayan's case will be applicable on all fours in the facts and circumstances of the present case. Under Article 141 of the Constitution, this Tribunal is bound by the principles of law enunciated by the Hon'ble Supreme Court.

11. In the result, the OA fails and is accordingly dismissed. There shall be no order as to costs.

  
(S.P. Biswas),  
Member (A)

  
(T.N. Bhat)  
Member (J)

/gtv/