

(2) (M)

Central Administrative Tribunal
Principal Bench

O.A. No. 1705/97

New Delhi, this the 2nd day of June, 1998

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

In the matter of:

Parma Nand s/o Ghisa Ram,
R/o D.D.A. Flat No. 1344/39,
Madangiri,
New Delhi.

....Applicant

(By Advocate: Shri Dalip Singh)

Versus

Union of India through

1. Secretary,
Govt. of India,
Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi.

2. Director General Works,
C.P.W.D., Nirman Bhawan,
New Delhi.

....Respondents

(By Advocate: Shri Rajeev Sharma)

ORDER

By Hon'ble Shri T.N. Bhat, Member (J):

The applicant appeared in the Combined Engineering Services Examination held by the Union Public Service Commission in 1988 in which he succeeded and the applicant was allocated to the Border Roads Organisation in terms of the appointment letter dated 10.2.1990. Since the applicant had appeared as a departmental candidate he seeks his allocation to C.P.W.D. which is the parent organisation to which he belonged. He accordingly made a representation on 28.2.1990 but no reply has been received by the applicant.

2. Relying upon the judgement of the Tribunal in O.A. 1565/91 filed by the applicant himself which judgement was later followed in the case of Rajinder Singh vs.U.O.I. &

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another (O.A. No. 1865/96) vide the judgement/order dated 12th May, 1997. The applicant assails the inaction of the respondents in not acceding to the request of the applicant for his allocation to the C.P.W.D. The applicant also places reliance on rule 15 of the Rules published by the Ministry of Railways (Railway Board) in the Official Gazette dated 24th Feb., 1990 which reads as follows:-

"15. Subject to other provisions contained in these rules, the successful candidates will be considered for appointment on the basis of the order of merit assigned to them by the Commission, and the preference expressed by them for various services/posts at the time of their application.

The departmental candidates will, however, be first considered for appointment to services/posts in their own department and only in the event of non-availability of vacancies therein or medical unfitness of such candidates for the services/posts under their own department. They shall be considered for allotment to the Services/Posts in other Ministries/Departments on the basis of preferences expressed by them."

3. The respondents have resisted the O.A. on the ground that the earlier O.A., being O.A. No. 1565/91, had been filed by the applicant against the order passed by the respondents in allocating him to the Director General Border Roads on the basis of the Combined Engineering Examination held in 1989 and that in Rajinder Singh's case (supra) the judgement of the Tribunal passed in the applicant's O.A. was followed and that the applicant could not seek benefit of the aforesaid two judgements for an examination which has been held even prior to the 1989 examination. It is further averred by the respondents that the rule 15 which had been framed in the year 1989 cannot be made applicable to any examination held earlier. The plea of limitation also has been taken by the respondents.

4. The applicant filed the rejoinder to the counter filed by the respondents in which he has stated that the facts of his earlier O.A. being identical to the facts of the instant case the applicant is entitled to the benefit of the earlier judgement in his O.A. which was later upheld by the Hon'ble Supreme Court.

5. We have heard the learned counsel for the parties and have given our careful consideration to the rival contentions made by the parties.

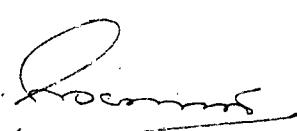
6. It appears that when the applicant appeared in the Combined Engineering Services Examination held in the year 1989 he was allocated to the Director General Border Roads vide letter dated 19.9.1991 and when he assailed this action of the respondents in his O.A. No. 1565/91 the Tribunal granted him the relief and directed the respondents to adjust the applicant against vacancy of one Shri Ravi Amrohi or adjust him against the next available vacancy in case Shri Amrohi was still in service. At the time of filing of this O.A. the applicant never took the plea that his allocation in the year 1988 which was earlier in point of time to the filing of the O.A. No. 1565/91 should also be held illegal and his allocation to the Border Roads Organisation in pursuance to the examination held in the year 1988 also should be quashed. Such an important plea not having been taken in OA 1565/91 the same must be deemed to have been dropped by the applicant. The applicant cannot now be heard to say that the benefit of the judgement in the aforesaid O.A. should be given to the applicant from a back date and in respect of an allotment which have been made before the filing of that O.A. The reliance of the applicant on the judgement of the Apex Court in K.C. Sharma & Ors. Vs. Union of India & Ors., reported in (1997) 6 S.C.C. 721, is misplaced. In that case the Tribunal had declared

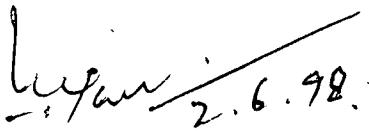
a Notification invalid and when similarly placed persons later claimed the benefit of that judgement the Tribunal had dismissed those applications on the ground of limitation.

It was in these circumstances that the Hon'ble Supreme Court held that the Tribunal had erred in dismissing the application on the ground of limitation and that the benefit of the judgement given in the earlier case should have been granted.

In the instant case, as already mentioned, the earlier judgement was in an O.A. filed by the applicant himself in which he had assailed his allotment to Director General Border Roads in pursuance to the examination held in 1989 but while doing so he had not taken any plea relating to his allotment to the same Organisation earlier in pursuance to the examination held in 1988, thus giving rise to a presumption that the applicant had abandoned this part of his claim. He cannot now seek the benefit of the judgement in his earlier O.A. filed in the year 1991. In our considered view such a claim raised now after a lapse of seven years is clearly barred by limitation as also the principle enunciated in Order 2 Rule 2 of the Code of Civil Procedure. It is true that the provisions contained in the Civil Procedure do not in terms apply to the proceedings under the Administrative Tribunals Act but the principle enunciated therein is very much attracted.

7. For the foregoing reasons, we find no merit in this O.A. which is accordingly dismissed, but without any order as to costs.


(S.P.BISWAS)
Member (A)


(T.N.BHAT)
Member (J)