

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 798/2000

New Delhi, this the 21st day of the May, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Anant Ram Singh, 271/2 R.K. Puram
New Delhi.

(By Advocate: Shri H.C. Sharma)

... Applicant

V E R S U S

1. UOI through Director,
Directorate of Statistics &
Intelligence, Central Excise &
Customs, Ministry of Finance
DLF Central Greater Kailash-II,
New Delhi.
2. Secretary,
Union Ministry of Finance
North Block, New Delhi.
3. Shri Surendra Pratap Yadav
Ad-hoc Hamal
Directorate of Statistics &
Intelligence, Central Excise &
Customs, DLF Central Greater Kailash-II,
New Delhi.

... Respondents

(By Advocate: Shri K.C.D. Gangwani)

ORDER

By KULDIP SINGH, Member (J):

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:-

(a) To quash the impugned order 24.6.99 with consequential relief to the applicant.

(b) To direct respondents to engage the applicant in preference to his juniors and outsiders.

2. The applicant alleges that he has aggrieved by the

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impugned order dated 24.6.1999 whereby the respondents have appointed Shri Surendra Pratap Yadav as ad hoc Hamal w.e.f. 20.5.1999 (FN) and thereby they have neglected the claim of the applicant who is senior and is working w.e.f. 20.5.96.

3. He further claims that he had earlier filed an OA 1204/99 claiming regularisation as against one of the Group "D" posts. The said OA was disposed of on 29.1.2000 directing the respondents to consider the applicant at the time of filling up the concerned Group "D" posts on regular basis in the event the applicant makes an application for the same.

4. The applicant filed a Review Petition (hereinafter referred as RP) also where it is stated that since the applicant had not impleaded any person who had been given ad hoc appointment and junior to him so RA was dismissed.

5. The applicant now alleges that this observation of the Bench gives new cause of action to the applicant and the present OA is presented as those points were not considered as the same were not the subject matter in OA 1204/99 and, therefore, were not determined by this Bench on merits.

6. It is further pleaded that during the pendency of the OA the services of the applicant was terminated by verbal orders in November, 1999 and thereafter an MA 2604/99 was filed for stay of the verbal termination order on which an order was passed that "in case the juniors of

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the applicant have been re-engaged the applicant should also be provided with the job". As such the applicant claims that so long as junior is engaged, the senior cannot be shunted out on the principal of "first come last go" and it is prayed that till regular appointments are made against vacant group 'D' posts the applicant has legal right to be engaged in preference to juniors and outsiders.

7. The OA is being contested by the respondents. The respondents say that the OA is barred by principles of res judicata and is not maintainable inasmuch as any observation in any judgment does not give a fresh cause of action. It was also submitted that the observation of the court does not confer any enforceable legal right.

8. With regard to the allegation of the applicant that he is working since 20.5.96, the same is not denied but it is stated that under the Scheme the applicant is not entitled to be considered for regular appointment as he does not fulfil the pre-requisite recruitment so as to claim right for considered for regular vacancy.

9. It is also pleaded that the Hon'ble High Court had upheld the order passed by the Tribunal and as such the OA is barred by the principles of res judicata.

10. I have heard the learned counsel for the parties and gone through the records of the case.

11. The main opposition to the OA is in the form of preliminary objection that the present OA is bared by the

principles of res judicata. The respondents have also pleaded that since the applicant had earlier filed an OA 1204/99 wherein the applicant had sought the following directions:-

(a) to direct the respondents to consider the applicant for regularisation against Group "D" post in preference to his juniors and freshers;

(b) grant temporary status as per rules.

12. Now again the applicant is seeking direction to the effect that the order dated 24.6.99 vide which Shri Surender Pratap Yadav was appointed as ad hoc Hamal be quashed and the respondents be directed to engage the applicant in preference to juniors and outsiders. Counsel for the applicant has also submitted that in the earlier OA also the applicant had challenged the appointment of respondent No.3 that Shri Surendra Pratap Yadav so now the applicant cannot file a fresh OA to challenge the appointment of Shri Surender Pratap Yadav.

13. Though while deciding the RP court had observed that Shri Surendra Pratap Yadav had not been made a party and plea regarding his appointment that he has not impleaded the said Shri Yadav in the OA nor the applicant had sought a relief against respondent No.3 Shri Surendra Pratap Yadav so the RP was dismissed.

14. The counsel for the respondents also submitted that this observation of the court while deciding the RP does give a fresh cause of action to the applicant for filing fresh OA since on these grounds again the OA will be hit by

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the principles of res judicata as enshrined under Section 11 read with order 2 Rule 2 CPC.

15. However, the counsel for the applicant referred to an order dated 2.12.99 passed in the OA whereby the interim relief was granted in case the juniors of the applicant have been re-engaged the applicant should be provided with the job so on that basis and since this order was not shown to the court when the earlier OA was disposed of so the counsel for the applicant stated that at least he has a right to be re-engaged in preference to his juniors and outsiders.

16. To my mind all these pleas as taken by the applicant in the present OA are concerned are hit by the principles of res judicata particularly the provision of section 11 and order 2 Rule 2 CPC which provides that when a person omits to seek a particular relief which was available to him at the time of earlier litigation he cannot claim the same by the subsequent litigation and in the present OA the applicant has made his ground based on the observation of the court while rejecting his RP when the court observed that since Shri Surendra Pratap Yadav had not been made a party so the applicant could not seek for any relief against him. But this make it clear that in the earlier OA the applicant could have easily challenged the appointment of Sh. Surendera Pratap Yadav and since he had omitted to do so so now he cannot challenge the same and as far as his re-engagement as a casual labourer is concerned, I reiterate that if and when any work of casual nature is available with the respondents the applicant

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shall be considered for being re-engaged in preference to juniors and outsiders as per rules and instructions on the subject.

17. The OA stands disposed of with the above directions. No costs.


(Kuldip Singh)
Member (J)

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