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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

OA 2196 of 1990

Date of decision 21st January, 1991

Shri Jokhu Ram

....

Applicant

versus

Union of India through the Controller of
Stores, General Stores Department,
Northern Railway, Shakurbasti, Delhi

Respondent

CORAM: Hon'ble Mr. B.S.Sekhon, Vice Chairman.
Hon'ble Mr. P.C.Jain, Administrative Member.

For the applicant - Mr. R.L.Sethi, Advocate
For the respondents - Mr. O.N.Moolri, Advocate.

B.S.SEKHON:

The instant Application is directed against the order dated 19th September, 1990 (Annexure A-1). By virtue of the impugned order, applicant was reverted from the post of Junior Packer Scale Rs. 800-1150 to that of Senior Khalasi. Applicant, who is a member of Scheduled Caste, was promoted to the post of Junior Packer on provisional basis vide order No. 291 dated 8-12-86 (Annexure A-2). It was made clear in Annexure A-2 that the promotion of the applicant is provisional, on ad hoc basis and that the same will not confer upon him any right for such promotion in future over and above his senior qualified staff or to continue in the arrangements. It is common-ground that such of the Khalasis as indicate their willingness, are appointed as Junior Packers as and when vacancies become available. Stating that his officiation to the post of Junior Packer is continuous, uninterrupted and without break, applicant has added that he is entitled to the various concessions and privileges extended by the Govt. to the SC/ST staff from

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time to time, his work and conduct were very good and that he has been arbitrarily ordered to be reverted without any rhyme or reason. It has been further pleaded that vacancies in the cadre of Junior Packers are still available, junior to him namely, S/Shri Ghumanā Ram, Chiman Ram and Bhor Lal are still officiating on the posts of Junior Packers; the post at reserved point for Scheduled Tribe had to be given to him and he is entitled to be deemed as regular employee as he has officiated for more than three years against long term vacancy. With the aforesaid averments, applicant has prayed for quashing the impugned order and for being allowed continuity of officiation as Junior Packer.

2. Respondents have resisted the Application on preliminary objection as also on merits. The preliminary objections raised are that the Application is barred by res judicata and is not entartainable as the applicant had filed OA 403 of 1990 on the same facts, which has been disposed of vide judgment dated 18.5.90. The other preliminary objection is that the Application is not maintainable as being pre-mature as the same has been filed without exhausting the departmental remedies.

On merits, the respondents say that provisional promotion of the applicant to the post of Junior Packer was made on purely ad hoc basis subject to selection and replacement by senior staff; such promotion does not give any right to the applicant which has already been held in the judgment dated 18.5.90 as also by the Full Bench Judgment rendered in Jetha Nand and others vs. Union of India, 1989(2) SLJ (CAT)657.

The respondents have further averred that applicant has failed to come on the panel declared on 6-4-90 and 23-8-90, Annexures R-1 and R-2 respectively, he cannot now be permitted to make a

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grievance of it; applicant being junior was not called for suitability test, there was no vacancy in the cadre of Junior Packer available on 26-10-90. In regard to Serv-Shri Ghuman Ram, Chiman Ram and Bhor Lal, it has been stated that the former two are ST candidates and have been placed and are continuing due to the roster position and Bhor Lal is senior to the applicant in the seniority list of Sr. Khelasis. Respondents have also refuted the claim of the applicant to continue in the post adding that he has no tangible legal or moral claim to continue in the post of Junior Packer.

3. We have given our earnest consideration to the arguments addressed by the learned counsel for the parties and pleadings and the documents on record as also the authorities cited at the Bar.

4. It would be both appropriate and feasible to deal with the preliminary objections pertaining to the bar of res judicata. The learned counsel for the respondents stressed that the applicant had filed OA 403/90 based on the same grounds and claiming substantially the reliefs which have been claimed in the present Application. The learned counsel added that the aforesaid Application was rejected vide order Annexure R-3 and that in view thereof, this Application is barred by the principle of res judicata. It is true that previous Application being OA 403/90 was dismissed vide judgment dated 16th May, 1990 (Annexure R-3). A perusal of the aforesaid judgment reveals that the applicant had prayed that his appointment to the post of Junior Packer be deemed as regular as he had officiated in the said post on ad hoc basis continuously for a period of three years commencing from 10.11.86. Another relief claimed by the applicant was that if necessary, he may be subjected to suitability test and if declared suitable, should be regularised from the date of his initial appointment on 10-11-1986. In the instant Application, the applicant has

claimed the following reliefs vide paragraph 8:-

"Taking into consideration the applicant's ad hoc officiation which is continuous, uninterrupted and without break, exceeds three years against a long term vacancy, his juniors are still working and that he is entitled to reservation under 40 point roster, the impugned order of reversion should be quashed and applicant allowed continuity of officiation as Junior Packer whereto he is continuing without any break since 10.11.86."

It would appear from the foregoing that apart from claiming continuity on the basis of his ad hoc continuous, ^{un}interrupted officiation exceeding three years, applicant has also impugned the order of his reversion, Annexure A-1. The applicant could not and had not assailed the order of his reversion as the same was made several months even after the decision in OA 403/90 was rendered. Applicant is, therefore, not precluded from assailing the impugned order, Annexure A-1. We may, however, hasten to add that on the basis of the principle of res judicata, applicant cannot be permitted to re-agitate the grounds and issues which have been concluded by the judgment Annexure A-3, provided that the same has attained finality. Applicant has neither filed any Review Petition against the aforesaid judgment, nor has filed any S.L.P. in the Supreme Court against the said judgment. In view thereof, the judgment has become final and is binding on the parties. A perusal of paragraph 6 of the judgment reveals that the plea of the applicant for being deemed regular for the post of Junior Packer was declined for the reasons set out in the judgment. While turning down his claim in this behalf, reliance was also placed on the decision of the Full Bench in Jetha Nand (*supra*). It was also held that on the basis of Jetha Nand (*supra*), a Railway employee holding a promotional post on ad hoc basis can be reverted to his original post, if he has not qualified

in the selection test. The applicant's claim for deeming him as regular on the basis that he had officiated on ad hoc basis on the post of Junior Packer for the period commencing from 10-11-86, thus stands adjudicated upon. The applicant cannot now be permitted to re-agitate the same question in view of the principles of res judicata. As held in Jetha Nand (supra) and also vide Annexure R-3, applicant's reversion to the post of Sr. Khalasi from that of Junior Packer cannot be faulted with. During the course of arguments, the learned counsel for the applicant relied upon the decision of Union of India v. A. Jaganandam & others¹. Since Jetha Nand (supra) still holds the field and in view of the bar created by the principles of res judicata, we are unable to sustain the submission of the learned counsel for the applicant that the applicant should be deemed as regular on the post of Junior Packer on the mere basis of his having officiated on the said post for the period commencing from 10-11-86.

5. As regards the plea about the continuance of his juniors, respondents have satisfactorily explained. The explanation being that Sarv-Shri Ghumman Ram and Chiman Ram being members of the Scheduled Tribe, have been appointed by operating the roster and Sh. Bhor Lal is senior to the applicant. ~~xx~~ There is thus no infraction of Article 14 & 16 of the Constitution. Applicant is also not able to establish as to how he is entitled to continuance on the basis of 40 point roster.

6. In the premises, the Application is held to be devoid of merit. Consequently, the same is hereby rejected at the admission stage. No order as to costs.

*1 SLJ 1990(1) CAT p. 531.

(L.C. 21/1/91)
(P.C. JAIN)
AM

B. S. Sekhon
(B.S. SEKHON)
VC
18-1-91

Pronounced by me in the open court
to-day the 21st January, 1991.

(L.C. 21/1/91)
(P.C. Jain)
Member (A)