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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.2281/90

Date of decision: 10.08.1993.

Shri Dinesh Kumar Sharma & Others

...Petitioners

Versus

Union of India through the
Ministry of Health & Family
Welfare, Government of India,
New Delhi & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioners

Petitioner No.1 in person.

For the respondents

Mrs. Raj Kumari Chopra,
Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

When this case was called out at 2.00 p.m., as it was listed as No.1 in the Cause List, the petitioner submitted that his counsel is busy in the High Court and that he would call his counsel. We, therefore, passed over the matter and took up the case at serial No.2. After we completed that case, we called out case No.1 again which was earlier passed over. The petitioner, who was back in the Court submitted that his counsel is not available today and the case may be adjourned for a day. When the case had come up on 15.7.93 for final hearing Shri B.S. Charya, learned counsel for the petitioner had submitted that this case was to be argued by Mrs. Shyamla Pappu, learned Senior Counsel and she would not be available for the next two weeks. To accommodate the request of the learned counsel for the petitioners we ordered the case to remain on Board for hearing not before 9.8.93. Since the matter had been adjourned already for two weeks at the request of the

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learned counsel for the petitioner and Shri Charya, inspite of one pass over is not available, we are not inclined to grant any further adjournment. In the circumstances, we asked the petitioner if he would like to argue his case; this he did.

2. We have heard the petitioner in person and the learned counsel for the respondents. In this Application filed by S/Shri Dinesh Kumar, Yogesh Kumar, Devinder Kumar and Madan Lal, the petitioners have prayed for the following reliefs:-

- "a) to quash the selection/promotion/appointment of respondent No.4 & 5 made against the post of Technical Assistant while holding that the proceedings of selection held on 2.1.1990 are wholly illegal, invalid, incompetent, improper, malafide, motivated and biased. The proceedings were wholly irregular and no action could be taken thereon. Respondent Nos. 4 & 5 are liable to be reverted and respondents 1-3 should undertake fresh process of appointment/promotion to the grade of Technical Assistant.
- b) hold that proceedings of departmental promotion committee held on 2.1.1990 and promotion/appointment of respondents 4 & 5 against the post of Technical Asstt. are illegal, invalid, improper, malafide, arbitrary and discriminatory;"

The petitioners had earlier agitated these issues in the petitions filed by them. The first OA was filed by Shri Madan Lal, petitioner No.4 in the present OA and the judgement in the said case was delivered on 8.8.1988. The petitioner in the said case had challenged the amended recruitment rules notified in 1987 and claimed that promotion to the newly created posts of Technical Assistant should be made in accordance with the amended rules of 1972

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notified in 1972. The Tribunal had in its judgement held that "No person has a vested right to promotion. When the promotion is governed by Rules framed under the proviso to Article 309 of the Constitution, merely because some persons who were qualified under the then existing Rules do not qualify for promotion under the amended Rules, the amended Rules cannot be struck down." The Tribunal further observed:-

"4. Learned counsel for the applicant Shri B.S. Charya, contends that if the Rule is ultra vires, just as an Industrial Tribunal, this Tribunal can also make a fresh contract of employment for the parties and direct the Respondents to make appointments ignoring the Rules. We are afraid we cannot do so. Even an Industrial Tribunal cannot ignore the Statutory Rules; much less can it direct any authority to make appointments ignoring the standing orders or the Statutory Rules. Only in an area not covered by the standing order, Statutory Rules or an award for ensuring industrial peace and harmonious relations between the employer and the employee, an Industrial Tribunal may adjust the contractual obligations of the parties; but certainly it cannot give any direction contrary to the Statutory Rules or standing orders. This Tribunal too cannot direct the Respondents to ignore the Statutory Rules and make appointments in derogation thereof."

3. The next round of litigation was through OA-4/90. This OA was filed by S/Shri Yogesh Kumar, Madan Lal and Devinder Kumar Sharma. In this case they challenged the constitutional validity of the Central Indian Pharmacopoeia Laboratory, Ghaziabad (Technical Assistant) Recruitment Rules and had prayed for the following reliefs:-

- i) The recruitment rules of 1987 be quashed, as violative of Article 14 of the Constitution of

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India.

- ii) Advertisement Notice dated 5.3.1983 be quashed and the respondents be directed to fill up the posts of Technical Assistant by promotion. It was further prayed that action of the respondents in changing the rules in detriment to the rights and interests of the applicants was in flagrant disregard of the principles laid down by the Hon'ble Supreme Court.
- iii) Passed any order to protect the rights of the petitioners and to forbid the respondents for acting arbitrarily in the matter of promotion for appointment against the posts of Technical Assistant by showing any special favour in the manner as mentioned in the foregoing paragraphs.

In paragraph 4(x) the petitioner had submitted that "Apart from Shri Subhash Dutt the respondents have also made up their mind to post one Shri Satya Parkash Sharma as Technical Assistant. He has been extended assurance for extraneous consideration and by way of special favour even though he do not fulfil requisite condition of eligibility. When OA-4/90 had come up on 16.1.1990 the Tribunal had observed:-

"We have considered the above contentions and in view of the fact that appointments have since been made, as pointed out by the learned counsel for the respondents, the order passed on 2.1.1990 is vacated."

Thus, even when OA-4/90 was being agitated the main grievance of the petitioner was the appointment of Shri Subhash Dutt and Shri Satya Parkash Sharma who were not impleaded in OA-4/90 but have now been impleaded as respondents No.4 and 5 in the present OA. A CCP No.47/90 was also filed by the petitioner in OA-4/90 which was disposed of on 23.8.1990. The O.A. was finally decided vide judgement dated 9.7.1990. In the operative part of the

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order it was held that:-

"In the facts and circumstances of the material before us we are of the view that the rule of res judicata bars the trial of the issues involved in this case as they stand already decided in OA-1232/88 vide judgement of the Tribunal dated 8.8.1988."

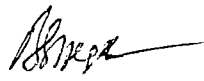
The issues agitated in the present O.A. as is apparent from the above narration are no different. The petitioner who appeared in person submitted that this case is distinguishable from the earlier OAs decided by the Tribunal inasmuch as he is not challenging the vires of the recruitment rules. The only grievance now being agitated is the appointment of respondents No.4 and 5 against the posts of Technical Assistant. While there is no challenge to the rules of 1987, he asserted that he is challenging the appointment of respondents No.4 and 5. The main ground for the challenge adduced by him is that the new posts were sanctioned in 1986 and, therefore, they should have been filled up in accordance with the recruitment rules which were then prevailing viz. 1972 amended recruitment rules. As observed earlier by us this aspect is already covered in the judgement of the Tribunal rendered in OA-1232/88 decided on 8.8.1988. In view of the above facts and circumstances of the case, we are of the opinion that the petitioner cannot be allowed to agitate the same issues by couching the same grievance in different language. The dispute is the same, the issues of law and of fact are the same and the relief prayed for is broadly identical. The petitioners are the same and so are the respondents. Such a case is barred by Section 11 of Code of Civil Procedure which provides that:-

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties


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under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court."

4. In view of the above facts and circumstances of the case, we are of the opinion that the issues raised in this case already stand concluded directly and substantially in OAs No.1232/88 and 4/90 vide judgements rendered on 8.8.1988 and 9.7.1990 respectively. In the circumstances, we do not see any good reason to go through the exercise once again. The O.A. is accordingly dismissed. No costs.


(B.S. HEGDE)
MEMBER(J)

San.


(I.K. RASGOTRA)
MEMBER(A)