

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

12

OA No.635 of 1990

Date of decision 31st July,1991

Gopal Singh and others Applicants
versus

Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi ... Respondents

Coram : Hon'ble Mr. B.S.Sekhon, Vice Chairman.
Hon'ble Mr. I.K.Rasgotra, Administrative Member.

For the applicants - Shri J.K.Bali, Advocate

For the respondents - Shri O.N.Moolri, Advocate.

B.S.SEKHON, VC:

Present is a joint Application. The same is directed against the order dated 15th March,1990(Annexure A-1). By virtue of the impugned order, the selection process conducted for the post of first Fireman Grade Rs.950-1500(RPS) initiated vide circular letter of even number dated 31st August,1988(Annexure A-2), has been cancelled. By virtue of Annexure A-2, the officials Incharge concerned were directed to spare 382 ad hoc first Firemen and Firemen-II including the applicants to appear in the written test for the post of first Fireman. Saying that they had qualified in the written test, applicants have averred that 377 employees including the applicants have been again called for the written test vide Divisional Personnel Officer Bikaner letter No.PLK(R)/755EM/Fireman/Selection/X dated 3-4-90(Annexure A-5).

2. The salient grounds on which applicants have impugned Annexure A-1 are that the same is violative of principles of

natural justice and is also liable to be quashed as the
 authorities concerned cannot act arbitrarily or unreasonably
 and the higher authorities cannot interfere with the exercise
 of selection process initiated by a Selection Board which are
 quasi-judicial in nature. With the aforesaid averments, applicants
 have prayed that Annexure A-1 be quashed and the respondents be
 directed to call them for interview and consider them for empanelment
 as Fireman-I.

3. Respondents have resisted the Application, Inter-alia, on
 the grounds that the Application is barred by the principles of
 res judicata; the same is not maintainable as applicants have not
 exhausted the departmental remedies. The selection has been
 cancelled vide orders of the competent authority due to technical
 irregularities. A number of employees had approached the
 Tribunal seeking cancellation of the said selection and the
 Railway Administration with due deference to their wishes and
 looking at the technical irregularities cancelled the selection
 and accordingly fresh selections have been ordered vide
 Annexure R-5. Respondents have also controverted the plea about
 the alleged violation of the principles of natural justice adding
 that the higher authorities are competent to hold fresh selections.

4. We have heard the arguments addressed by the learned
 counsel for the parties and have also considered the pleadings
 and the documents on record.

5. It may be stated at the very outset that there
 is little merit in the preliminary grounds raised by the
 respondents. There is no statutory remedy available to the
 applicants for assailing the impugned order. In view thereof,
 the question of seeking ^{departmental} remedy does not arise. Since
 the earlier OA viz. OA 1762/90 was dismissed on the ground of its

14

having been rendered infructuous, the plea of the Application being barred by limitation is clearly unsustainable. The principles of res judicata would be applicable only if the matter between the same parties has been decided on merits by a competent court. Such is not the case here. This plea is accordingly hereby negatived.

6. Turning to the merits, it may be stated that Annexure A-5(R-5) has been issued pursuant to the communication dated 26th March, 1990. The aforesaid communication had been impugned in OA 621 of 1990 titled 'Shri Ram Kumar and another vs. Union of India and others'. The ~~OA~~ OA has been disposed of vide our judgment dated 30th July, 1991. By virtue of the aforesaid judgment, the communication dated 26th March, 1990 has been quashed. The main grounds on which this ~~communication~~ communication has been quashed are that the vacancies of Fireman-I (previously designated as Fireman 'A') which arose prior to 1-1-86 were required to be filled up in accordance with the Recruitment Rules which were in force prior to 1-1-86 and the vacancies which had arisen subsequent to 1-1-86 were to be filled up according to the Recruitment Rules laid down in Railway Board's letter No. E(NG)¹-84-PM7-56 dated 3rd November, 1987. As per the operative portion of the decision in Ram Kumar (supra), the communication dated 26th March, 1991 was quashed with the observations that that order will not preclude the respondents from taking fresh steps to fill up the vacancies of Fireman-I which had arisen subsequent to 1-1-86 in accordance with the Recruitment Rules laid down in Annexure A-3 and from filling up the vacancies of Fireman 'A' which arose prior to 1-1-86 in accordance with the Recruitment Rules which were in force during the period anterior to 1-1-86. With the quashing of the communication dated 26th March, 1990, Annexure A-1 also falls down. In view of the foregoing, the question

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of holding fresh selection on the basis of Annexure A-5 does not arise. That being so, the questions of validity of the impugned order, Annexure A-1 in this case and of directing the respondents to call the applicants for interview and consider them for empanelment as Fireman-I do not survive, thereby rendering the instant Application infructuous.

7. In the premises, the Application is hereby rejected on the ground of its having been rendered infructuous, but in the circumstances, we make no order as to costs.

I. K. Rasgotra
(I.K.RASGOTRA)
AM 31/7/91

B. S. Sekhon
(B.S.SEKHON)
VC
31-7-91