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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. 2668/93

New Delhi this the 3rd day of June, 1994.

HON'BLE SHRI N.V. KRISHNAN, VICE CHAIRMAN (A)
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

1. Ms Nita Malhotra,
W/o Shri R.J. malhotra,
R/o BH-110 Shalimar Bagh
Delhi.
2. Ms Renu Khatri
W/o Shri R.N. Khatri
472 Teliwara,
Delhi.
3. Mrs Pinki Satija
W/o Shri Harish Satija
R/o 189, Gupta Colony,
Vijay Nagal,
Delhi-110009

...Applicants

By Advocate : Anis Suhrawardy.

VERSUS

1. Union Public Service Commission, through its
Chairman,
Dholpur House
NEW DELHI.
2. Department of Personnel & Training
Administrative Reforms & Public
Grievances and Pensions, through its
Secretary
Dept of Personnel & Training,
North Block, New Delhi.

By Advocate : R.N. Bagai

ORDER

HON'BLE SHRI N.V. KRISHNAN, VICE CHAIRMAN (A)

The applicants have filed this O.A.2668/93,
seeking the following reliefs :-

- (i) Quash and set-aside impugned Memorandum No.A-12021/1 B1-Admn-V dated 9th, September, 1993
(ANNEXURE A-3).
2. Direct regularisation of the applicants in the ex-cadre posts of the respondents No.1 as has been done in the case of the junior persons than the applicants, and also extend

the Circular dated 15.10.1992 qua the present applicants.

(iii) Restrain the respondents from imposing any conditions in the nature of the Special Qualifying Examination or otherwise in as much as regularisations of the applicants is concerned.

(iv) And pass such other and/or further orders as this Hon'ble Tribunal may deem fit and proper in the light of the facts and circumstances of the case.

2. When the matter came for admission, notice was directed to be issued to the Respondents. In addition, the respondents were directed to file a short reply on the interim relief claimed. In the meanwhile, it was directed that if the applicants failed in the qualifying Examination, their services should not be terminated. That interim order has been continuing till date.

3. The respondents filed a reply alleging that the applicants have suppressed material particulars, in as much as an earlier petition filed by them in the High Court of Delhi, which was received on transfer in this Tribunal and registered as T.A.1149/89, was dismissed by the judgement dated 16.11.92. It was also stated that a review application filed by the applicants was dismissed as infructuous as the respondents submitted that they were giving another chance to the applicants by way of their Qualifying Examination 1993 to be conducted by the Staff Selection Commission. It was contended that the prayer now made, is not maintainable in view of the judgement in TA 1149/89

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The respondents, therefore, prayed for vacating the interim Order and, dismissing the O.A.

4. The matter regarding continuance or otherwise, of the interim Order was heard on 16.5.1994.

5. The grievance of the applicants in relation to the **impugned Annexure A-3** Memorandum dated 09.9.1993 is twofold;

(i) They complain that they are being required to pass a qualifying examination though, their juniors have already been regularised by the Annexure A-2 order dated 15.10.92, without appearing in any examination.

(ii) Their further grievance is that the Annexure A-3 Memorandum holds out the threat that if the applicants failed in the qualifying examination, their services would be terminated forthwith.

6. We have heard the learned counsel for the applicants at great length after he was permitted to file a number of documents. He was at great pains to point out that as persons junior to the applicants, have been regularised by the Order dated 15.10.92 (**Annexure A-2**). The applicants cannot be treated differently. When it was pointed out to him that as seen from that Order, this was because of the directions of the Tribunal in O.As 65/87 and O.A. 1866/91 and the extension of the benefit of that order to persons who have filed other O.As which are still pending, the learned counsel submitted that the applicants only claim that the same benefit should be extended to them also. When the learned counsel

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was further questioned, as to whether he did not draw the attention of the Tribunal which decided TA T-1149/85 to this aspect, the learned counsel had to admit that there was a reference in Para 9 of that judgement to the judgement in O.A.65/87, which is one of the basis for the Annexure A-2 Order. The question then is what interim order, if any, can be passed.

7. We notice that the applicants, along with some others, had filed Civil Writ Petition No.1577/85 before the High Court of Delhi. On the formation of this Tribunal, this petition was received on transfer and registered as T.A.1149/85. This was disposed of by the judgement dated 16.09.1992. Copy of the judgement in this T.A. has been filed by respondents with their reply. The issue in that petition was whether the service of the petitioners, including the applicants, had to be regularised as L.D.C. This was considered in detail and it was noticed that as the applicants had failed in the qualifying examination, which was an opportunity given to them to consider them for regularisation, it was not open to them to claim regularisation as a right. The petitioners referred to the decision in O.A. 65/87 (Bhagwan Dass and Others Vs. U.P.S.C.) and claimed the benefit of that judgement. The Tribunal held that T.A.1149/85 was an entirely different case as the petitioners therein had already been given adequate time and opportunity to qualify in the examination with a view to regularising their services, which they could not do. Hence, the decision in O.A. 65/85 was not applied to the petitioners.

8. Thereafter, the petitioners, including the applicants, filed Special Leave Petition before the Supreme Court, challenging that judgement. A copy

of the Order of the Supreme Court has been filed with the rejoinder. The S.L.P. was dismissed on 18.12.92 as withdrawn, because the learned counsel for the petitioners in the SLP submitted that the petitioners had made a representation to the authorities concerned for consideration of their matters sympathetically.

9. It is also clear from the respondents' reply that Review Application No.360/92 filed by the applicants has also been dismissed as infructuous. *by the Tribunal*

10. It is thus clear that the judgement in T.A. 1149/85 has become final in all respects. A conscious decision was given therein by the Tribunal that the earlier judgement in O.A.65/87, cannot apply to the applicants therein.

11. Annexure A-2, Order dated 15.10.92, regularising a large number of persons as L.D.Cs, including many persons, stated to be juniors to the applicant, cannot be invoked in support of the claim ~~now, madent~~ in the O.A., because, firstly, that Order was passed in pursuance of certain judgements rendered by the Tribunal, including the judgement dated 14.12.1990 in O.A. 65/87 and secondly, the application of that judgement has specifically been excluded in the case of the applicants, by the judgement in T.A.1149/85. The present claims of the applicant, therefore, are barred by res-judicata.

12. In so far as the allegations made by the respondents that the applicants have played fraud by supressing the decision in T.A. 1149/85 and subsequent orders is concerned, we notice that the applicants have merely referred in paras 4(iv) and Para 4(v) of this O.A. that the applicants and other similarly

situated persons, preferred a Writ Petition before the High Court of Delhi and that this Writ stood transferred to this Tribunal. No mention is made about the judgement dt. 16.11.1992 dismissing that Transfer Application and the sequel to that judgement. We are constrained to conclude that the applicants have deliberately suppressed the relevant information, perhaps, with a view to misleading the Tribunal. On this ground alone, the Original Application is liable to be dismissed as contended by the learned counsel for the respondents. However, we refrain from taking such a decision as we have spent considerable time on the merits of the interim prayer sought.

13. In the light of the earlier judgements, we are of the view that the applicants can have no quarrel about the examination that has been notified by the impugned Annexure A-3 Order dated 9.9.1993 in which they have also participated. In any such examination, it is only natural to specify the consequences of not passing the examination. Therefore, the applicants cannot complain about the warning given that if they fail to qualify in the examination, their services would be terminated forthwith. At best, they can only challenge the result of the examination on proper grounds.

14. For the foregoing reasons, we are satisfied that there is no ground whatsoever to continue the interim order passed on 22.02.1993. Accordingly, that order stands vacated.

15. We are also of the view that in view of this decision, the O.A. itself has no legs to stand upon and that it too can be disposed of finally. Accordingly,

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we do not find any merit in the O.A. It is dismissed.

We make it clear that this will not stand in the way of the applicants from challenging the results of the Examination in which they have participated on appropriate grounds, which, in any case, shall not include the ground of discrimination based on the orders dated 15.10.1992 (Annexure A-2) of the respondents regularising the services of a large number of L.D.Cs, some of whom are claimed to be juniors to the applicant.

16. O.A. is disposed of as above.

Lakshmi Swaminathan
(Smt Lakshmi Swaminathan)
MEMBER (J)

03.06.1994

Per
3/6/94
(N.V. Krishnan)
VICE CHAIRMAN (A)

03.06.1994

sss