

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

M.A. 3490/94
3013/94
2124/94 in

O.A. No. 327/93

New Delhi, this the 10th November, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

1. Shri Roop Chand
s/o Shri Brahm Singh,
R/o F-265, II, Sadh Nagar,
Palam Colony,
New Delhi.
2. Shri Samai Singh,
s/o Shri Mam Chand,
R/o Vill. Kundly Post Kundly Distt.
Sompot (Haryana).
3. Shri Virendra Kumar,
s/o Shri Kedar Prasad,
R/o Railway Colony,
Tughlakabad,
New Delhi.
4. Shri Vijay Kumar,
S/o Shri Nand Kishore Uppal,
R/o 13/11, Railway Colony,
Kishan Ganj,
Delhi.
5. Shri Megh Raj,
s/o Shri Lakh Ram,
R/o V & P Shahani
Distt. Ghaziabad (U.P.)
6. Shri Yad Ram
s/o Hari Chand,
R/o F-265 II,
Sadh Nagar Palam Colony,
New Delhi.
7. Daya Nand,
s/o Shri Kallan Singh,
r/o V & P Kundly,
Distt. Sompot (Haryana).
8. Shri Om Prakash,
s/o Shri Ratan Lal,
r/o T-30/26,
Minto Bridge,
Railway Colony,
New Delhi.

.... Applicant

By Advocate: Shri H.P. Chakraborty

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Versus

1. Union of India,
through the
Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
New Delhi.

... Respondents

By Advocate: Shri K.K. Patel

ORDER (ORAL)

Hon'ble Shri J.P. Sharma, Member(J)

The case of the applicants is that they applied for the post of Group 'D' in the scale of Rs.196-232 on the Notification issued by the Divisional Railway Manager, Northern Railway and qualified in the said selection obtaining certain rank in the declared select list at S.No. 7, 34 to 36, 40, 43, 52 and 56. The applicants were also sent for medical examination. However, before the applicants could be allowed to join, there was a direction that the selected candidates including the applicants will not be allowed to join. This result was declared on 10.12.85. It appears that the said selection due to certain enquiry conducted by the Railway Board by the Vigilance Branch on certain grave allegations regarding the irregularity in the said selection was quashed and it was directed that no appointment

be given. However, the contention of the learned counsel is that in giving the appointments the respondents have not gone according to Serial numbers declared in the merit list of the result announced by the notification dated 10.12.85. His contention is also that some aggrieved non appointees having been declared successful filed O.A.1059/86 Mishri Lal Vs. UOI which was filed before the Principal Bench and was disposed of by the judgement dated 10.5.89. The direction given in that judgement has been that the respondents should consider the position of the applicants in the merit list and if persons who had figured lower than the applicants in select list have already been appointed, the applicants also should be considered for appointment notwithstanding the cancellation of the panel. The respondents should offer them appointments after verifying that they fulfil the necessary qualifications and that they are not in any manner benefited by the alleged irregularities which led to the scrapping of the panel. The appointment will be subject to the availability of vacancies in 1985, but they will not be entitled to any back wages.

2. The applicants did not come at that time. However after this judgement Shri Vijay Kumar, Roop Chand, Samai Singh, Yad Ram and Om Prakash filed O.A.1823/89 before the Principal Bench. The benefit of the judgement of O.A.1059/86

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praying for the grant of the reliefs in the similar manner that if the petitioners are also having their position in the merit list higher than those who have been given appointment then they should also be treated in the similar manner and be given appointment on the basis of aforesaid selection though the panel has been scrapped. This case was decided by the Principal Bench on 13.9.91 and the application was dismissed as hit by laches and also that the applicants did not care to approach the Tribunal and even assuming that their names were in the select list and persons who figured in the list below them were appointed. The benefit cannot be given to them of the scrapped panel. Now after that judgement this application has been filed in February 1993. In this application besides those above named petitioners of O.A. 1823/89 Virendra Kumar, Megh Raj and Daya Nand also joined as co-applicants moved a Misc. Petition that they be allowed to file the present application jointly. That application has been allowed. The relief claimed by all these applicants is that the respondents be directed to consider the petitioners in order of merit of select list and release the appointment over and above persons below in merit maintaining their seniority as per merit.

3. On notice the respondents contested this case and filed the reply opposing the grant of relief prayed for. It is stated that the present application is barred by principles of res-judicata

as some of the applicants have earlier preferred O.A. 1823/89 which was dismissed by the Principal Bench by the order dated 13.9.91 and this application therefore is not maintainable.

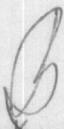
4. When this application was filed, by the order dated 11.2.93 the Principal Bench has granted an interim order in favour of the applicants that the applicants be considered for engagement as casual labourers if vacancy exists in preference to persons with lesser length of service and outsiders. This interim direction continues till today.

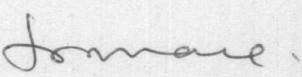
5. We heard the learned counsel Shri H.P. Chakravorty and Shri K.K. Patel at considerable length. The learned counsel for the applicant however stressed that the present application is not barred by the principles of res-judicata because of the fact that the respondents in the earlier O.A. 1823/89 misrepresented certain facts and also did not place before the Bench the actual and correct position regarding scrapping of the panel and the merit list declared of selection on 10.12.85. We find that this contention of the learned counsel has no basis. When a judgement is given in a particular case between the parties then the same parties or their representative in interest are completely barred for judicial review second time on the same issue which was decided in the earlier proceedings. The issue in the O.A. 1823/89 was whether the applicants who have higher or upper position in the scrapped panel dated 10.12.85 should be given appointment

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or not because the respondents have adopted the policy of pick and choose and those who were down below in the merit of the said panel of select list were given appointments. The Tribunal has considered this point elaborately and also referred to the decision of the earlier O.A. 1059/86 and also quoted the operative part of that order and then dismissed the O.A. In view of this fact the applicants cannot ^{approach} oppose second time for judicial review and the present application is barred by the principles of res-judicata and analogous.

6. During the course of hearing it also transpires that the applicants have also moved a C.C.P. for non compliance of the interim relief passed by the Bench on 11.2.93. The CCP has not yet been disposed of. We are therefore not considering that matter. However, since we are holding that the present application is not maintainable, the interim relief issued on 11.2.93 is vacated. The application therefore is dismissed as not maintainable. M.As. 3490, 3013 and 2124 of 1994 are also not pressed and also dismissed. Cost on parties.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)