

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 403/93

T.A. No.

199

DATE OF DECISION 8.9.1993.

Shri G.M. Saini

Petitioner

Shri J.P. Verghese

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Smt. Raj Kumari Chopra,
for Respondent No.2

Advocate for the Respondent(s)

Ms. Maninder Kaur, for
Respondent No.4**CORAM**

The Hon'ble Mr. J.P. Sharma, Member (Judl.)

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT (Oral)

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

The applicant in this O.A. has the grievance that the respondents, U.P.S.C., has erred in clubbing two posts together of Assistant Labour Commissioner contrary to the O.M. dated 29.7.1991. The relief claimed by the applicant is to quash the offer of appointment being issued in favour of Shri Rajinder Dhar and Anil Chand Saxena forthwith, restraining the respondents from appointing those two persons against the clubbed posts. A notice was issued

to the respondents, who have opposed the grant of the relief prayed for. This reply has been filed by Respondent No.4. Smt. Raj Kumari Chopra, Advocate, appeared for respondent No.2 and opposed the admission and maintainability of this application by way of oral submissions on the ground of res judicata and limitation.

2. We have heard the learned counsel for the applicant at length as well as Smt. Raj Kumari Chopra, learned counsel for respondent No.2, and Mrs. Maninder Kaur, learned Counsel for Respondent No.4. Since the burden lay on respondent No.2 to establish the bar of res judicata applicable to the present application, we refer to the judgement in a bunch of Original Applications^{of} which the leading case is OA-1837/90 decided by the Principal Bench on 13.11.1992. Shri G.M. Saini along with three others, was also a party in that O.A. The relief pressed in those cases as referred to in the aforesaid judgement is as follows:-

- (i) to declare the recruitment rules as set out in Annexure-I to the application as ultra vires and illegal as they are favouring one class of persons without having any nexus between the eligibility criterion and duties assigned and also discriminatory and violative of Articles 14 and 16 of the Constitution; and

- (ii) to restrain them from confining the recruitment rules to the said post only to a particular class of people holding Master's Degree in Social Work and direct them to recruit the candidates to the post in the same lines as the same Ministry is recruiting Labour Commissioners as indicated in the recruitment rules at Annex.III.

3. After discussion of the case on merits and the arguments of the parties advanced in these cases, the Division Bench dismissed the applications and also vacated the interim order dated 10.9.1990 by which the declaration of the result for the appointment to the post of Assistant Labour Commissioner was stayed.

4. It will be necessary to deal with certain facts and relevant dates in this regard. A requisition was made by respondent No.4 to the U.P.S.C. for filling up one post of Assistant Labour Commissioner in June, 1989 for which an advertisement was issued, a copy of which is annexed along with the application in February, 1990 inviting applications by 24.3.1990. Before this selection process could end, respondent No.4 made another requisition for one other post in June, 1990. The learned counsel pointed out that obviously the applicant was unaware whether the advertisement which was initially issued for

one post of Labour Commissioner, is for two posts.

In view of this, the applicant did not apply for the post.

5. The contention of the learned counsel is that in the earlier application, this was not the issue, "The clubbing of two posts together in the advertisement of 24.2.1990". He further stated that this issue was not substantially and directly in issue.

6. The learned counsel for the applicant also argued that in the earlier case, the fact that there was another post of Assistant Labour Commissioner, was not within the knowledge of the applicants of that case and so, they did not make any grievance for that post. It is also stated that the result was declared after the stay was vacated in November, 1992 and after that the cause of action has arisen to the applicants.

7. We have considered these aspects in the broader parameter of res judicata/constructive res judicata. The simple legal phrase means that "lis which has once been adjudicated, cannot be subject to another judicial review. The applicants in the earlier O.A. have assailed the selection of Assistant Labour Commissioner for one post on certain grounds also assailing the recruitment rules and, inter alia,

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consideration of certain analogous persons as referred to in the above quoted reliefs mentioned in the earlier judgement. We find that the reasoning given by the Division Bench earlier for one post, will equally apply with full force to any number of posts in the same grade and cadre and mere clubbing of the posts will not by itself distinguish the grounds and attack to the selection assailed in the earlier application. In view of these, we find that the present application is not maintainable on the principles of res judicata/constructive res judicata.

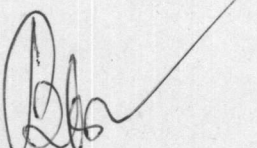
8. It is also an open fact that while requisitions are preferred by the departments to the U.P.S.C., the same is never restricted to one post and the number of posts may vary according to the subsequent requisitions. If any change is made to any of these posts, it cannot be said that an aggrieved person was unaware that the posts are likely to increase.

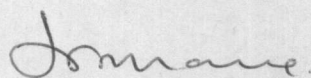
9. Thirdly, we also find in this case that the clubbing of the posts is the sole prerogative of the Administration and it cannot be said that it has given a fresh cause of action for assailing selection to any of these posts. Obviously, the relief claimed in this application is also to quash both the selections one of

which has already been ordered to be declared by the earlier judgement in which the applicant was a party.

10. In view of these facts and circumstances, the present application is dismissed as not maintainable.

No costs.


(B.K. Singh)
Member(A)


(J.P. Sharma) 8/4/96
Member(J)