

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 154 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

BABULAL YADAV & ORS.

-vs-

UNION OF INDIA & ORS.

For applicants : Mr. J.K. Biswas, counsel
Mr. S.K. Mitra, counsel

For respondents : Mr. C. Samaddar, counsel

Heard on : 2.8.1996

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Order on : 29.8.1996

O. R. D. E. R

A.K. Chatterjee, VC

These 19 applicants were appointed as unapproved Substitutes in the post of Safaiwala, now known as Sanitary Cleaner, and Hospital Attendants under the Chief Works Manager, Eastern Railway, Kanchrapara Workshop on diverse dates between July and September, 1981 and worked on casual basis till 31.7.83 and thereafter regularised in their respective posts with effect from 1.8.83 and are still working as such, which are posts in Gr-D category carrying a scale of pay of Rs.750/- - Rs.940/-. A Notification was issued on 25.5.95 for recruitment to fill up 25% of vacancies in Skilled Gr. III post and the applicants being eligible applied for the same, but their names were not included in the panel of candidates published on 23.9.95, who ^{were} ~~were~~ called to appear in a written examination on 21.10.95 and on enquiry, they came to learn that their names were not empanelled as they were recruited exclusively for the Medical Department and as such

not eligible to take the written test for selection to the post of Skilled Artisan as specifically stated in the Notification of 25.5.95. Despite applicants' representation that ^{previously} similarly placed candidates, as the applicants, were allowed by this Tribunal in O.A. 660 of 1990 to appear in a test for selection to fill up 25% vacancies in the skilled category, the respondents had refused to allow them to appear in the examination. Hence, this application has been filed in which the applicants contend that the Railway Board's letter dt.24.2.79, under which the recruitment is purported to be made contains no restriction to exclude employees of Medical Department. It was also stated that at no point of time, they were exclusively appointed by the Medical Department.

2. The respondents contend that the applicants being staff of Medical Department of the Railway, they have their separate avenue of promotion as Dressers and Laboratory Attendants as laid down in Rule 182 of the Indian Railways Establishment ^{Manual} Code-Vol.I, (1989 ^{Edn.}) and not eligible to fill up vacancies in the Engineering Department according to Rule 159 of the same Code. Regarding the previous O.A. i.e. 660/90, it was stated that it does not allow the staff of the Medical Department to appear in the test for selection to future vacancies of Skilled Artisan. It was further contended that the Board's letter dt.24.2.79 has no manner of application to the applicants.

3. We have heard the Id.Counsel for both the parties and perused the application and the reply together with the annexures thereto. The trump card for the applicants seems to be the order passed by this Tribunal on 18.12.91 in O.A.660/90, which has been made an annexure to the application. A perusal of the judgment reveals that the applicants of that case were exactly similarly situated as the present applicants and they wanted a direction from

this Tribunal to appear in a test for selection to the post of Skilled Artisans. This contention was sought to be resisted also on the ground that the test was being held for filling up certain vacancies from serving Semi-skilled/unskilled workers of different Shops and Offices under the Chief Works Manager and as such, those applicants, who were working not in Shops and Offices but in the Hospitals, were not eligible for the same and that the staff in the Medical Department ^{had have} in their own avenue of promotion. Thus, the stand taken by the respondents in that case was also similar to that taken in the present case. However, the 1d. Counsel for the respondents has contended that the rule position as embodied in the Indian Railways Establishment Code - Vol-I, ^{Manual (1959 Edtn)} Rules 182 and 159 in particular, leaves no manner of doubt and the avenues of promotion for employees in the two Departments are quite separate and the judgment in the earlier case did not take note of the said rules. It was urged that in such circumstances, the previous judgment should be considered as par incurium having no binding force. We have considered this argument carefully but find ourselves unable to share this contention. It is an acknowledged principle that in legal matters, some degree of certainty is as valuable a part of justice as perfection, as a lack of it can only result in repeated litigation leading to confusion and disorder. It is sufficient for invoking the rule of stare decisis that a certain decision was arrived at on the argument advanced before it, no matter on what reason the decision rests or what is the basis of the decision. In the case before us, the contention raised by the 1d. Counsel for the respondents is exactly the same as in the previous case with the only difference that supposed avenues of promotion for the staff of Medical Department as indicated in Rule 182 does not appear from the judgment to have been stated. However, whether the particular

rule was mentioned or not, the broad fact remains that the contents of the rule were very much placed in the previous case and on consideration of the same, a decision was pronounced. In such circumstances, we find no reason why the judgment should be regarded as *par incurium*. Here, we cannot help commenting that of late it has become a sort of fashion that the party against whom a judgment is pronounced to keep quiet or even to accept the judgment without assailing it before a superior forum or even before the same forum by an appropriate review application and then on a later occasion to condemn the judgment as *par incurium* relegating himself to the position of a super and sole judge. Here in this particular case, the previous judgment was even complied with by the Railways, which with its mighty resources did not even consider it necessary to raise its little finger. We are by no means disposed to hold that the judgment has no binding force. After the hearing was concluded and the matter was ~~initially~~ fixed for delivery of judgment on 20.8.96, the *ld. Counsel* for the respondents had cited a decision of the Supreme Court in *State of U.P. & Ors. vs. Harish Chandra & Ors.*, 1996(2) S.C. S.L.J 15. We have gone through this ruling but we do not find it to be relevant in any way in the case before us. In that appeal, certain direction given by a Learned Single Judge of Allahabad High Court was under challenge and it was, *inter alia*, urged on behalf of the respondents that the Hon'ble Supreme Court ought not to interfere because against the judgment of the Single Judge, a Special Appeal lay before Division Bench, which was not availed of by the appellant. The *ld. Judges* of the Supreme Court held that in view of the patent error committed by the High Court, it was not appropriate to dismiss the appeal merely on the ground that the appellant could have approached the Division Bench of the High Court because in the larger interest of all concerned, it was appropriate in the facts and

circumstances of that case to invoke jurisdiction under Art.136 of the Constitution. This cannot be regarded, by any stretch of imagination, as an authority for the proposition that it is open to a party to canvass grounds which were already adjudicated in a previous case, specially when the decision arrived at was according to law. We would also like to point out in this connection the provision of Rule 117 of the Indian Railways Establishment Manual - Vol.I (1989 Edition), which lays down that the posts indicated regarding normal channels of promotions are only illustrative and not exhaustive and should not be taken to exclude classes not specifically mentioned. Therefore, even if the applicants were recruited exclusively for the Medical Department, it cannot be successfully urged that they are ineligible to appear in the test for recruitment to fill up Skilled Grade-III vacancies, if they are otherwise eligible.

4. It appears that when the application was moved, an order was made by this Tribunal on 1.2.96 allowing the applicants to appear in ^{the} selection test, but the results were to be withheld until further order. The interim order should be vacated and the candidature of the applicants should be considered along with others, who had taken the same test and selection process completed and appointment made in due course.

5. The application is accordingly disposed of with a direction upon the respondents to consider the suitability of the applicants along with other candidates on the basis of the result of the test and the selection process should be completed and appointment be made in due course.

6. No order is made as to costs.

M.S. Mukherjee
29/8/96
(M.S. Mukherjee)
Member(A)

A.K. Chatterjee
29/8/96
(A.K. Chatterjee)
Vice-Chairman