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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH:JODHPUR

Original Application No. 331/2002

Date of the order: 9.1.2003

Ram Singh Meeena S/o Shri Ugma Ram Meena, aged about 39 years, r/o House No 19, Vidhya Park, Aair Force Area Jodhpur, Presently working on the post of Sectional Officer(Horticulture) in the office of the Central Public Works Department (CPWD) Circuit House Road, JOHDPUR.

rep by Mr. : S.K. Malik

: Counsel for the applicant.

1. Union of India through the Secretary, Ministry of Urban Development ,Nirman Bhawan, New Delhi.
2. Secretary, Department of Personnel and Training
New Delhi.
3. Director General of Works Central Public Works Department
Nirman Bhawan, New Delhi.
4. Shri Tej Pal Singh, Assistant Director, Electric
(Co-ord) Central Public Works Department,
I.P.Bhawan, New Delhi.



CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.P. Nagrath, Administrative Member.

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: O R D E R :

PER MR. JUSTICE G. L. GUPTA:

The applicant who is a member of Scheduled Tribe community, while working as Sectional Officer, Horticulture had filed Original Application No. 66/2002, seeking a direction to the respondents to give promotion to him to the post of Assistant Director, Horticulture, against the quota reserved for Scheduled Tribe. The said application was dismissed vide order dated 16.12.2002. This is the second Original Application for the same relief.

2. The case for the applicant is that he had made representation on 14.12.1998, stating therein that there were 70 posts of Assistant Director, Horticulture against which only 2 members of the S.T. community were working and the applicant being eligible for the post should be given promotion against S.T. quota but his representation was not replied. The applicant made more representations but without effect. Ultimately, he filed Original Application No. 66/2002, which was dismissed on 16.12.2002. In the order dated 16.12.2002, the Tribunal observed that the applicant had not challenged the rules/instructions providing for extended zone of consideration upto 5 times of the number of vacancies. The applicant therefore now challenges the rule/instructions issued by the DOP&T making the extended zone of consideration upto 5 times of the vacancies being violative of Articles 335 and 16 (4) (A) of the Constitution of India. It is prayed that the respondents' orders dated 16.11.2001 and 22.01.2002 be quashed, and the respondents be directed to consider the case of the applicant for promotion to the post of Assistant Director Horticulture w.e.f. 22.01.2002. It is



also prayed that the rule/instructions providing for the zone of consideration of 5 times in respect of SC/ST category be declared as illegal.

3. As already stated the applicant had filed earlier Original Application No. 66/2002 seeking similar reliefs, which was dismissed. In that Original Application the vires of the instructions/rules providing 5 times of the zone of consideration for the SC/ST categories was not challenged. This Tribunal after considering the rival contentions advanced on behalf of the parties, held that the law laid down by the Hon'ble Supreme Court was that there should be separate zone of consideration for SCs & STs candidates. It was further observed that the extant rules provided for separate zone of consideration in case adequate number of SC/ST candidates are not available within the normal zone of consideration. The extended zone was 5 times of the number of vacancies at a given point of time.



4. It is not disputed that the applicant could not be considered for promotion because his name did not come within the extended zone of consideration. When the matter has been considered on merits in the earlier O.A. it is not understood how fresh O.A. can be filed for the same relief. The O.A. is obviously barred by the principle of resjudicata.

5. The applicant has tried to file this fresh Original Application on the ground that the zone of consideration prescribed for SCs/STs by the Government is violative of the provisions of the Constitution of India.

6. During the course of the arguments, Mr. Malik was not in a position to state as to how the provision of extended zone of consideration is violative of the provisions of the Constitution of India. This fact has to be kept in view that the provision of extended zone of consideration is for the benefit of the members of the reserved category.

7. Apart from that in the earlier Original Application the applicant did not choose to challenge the order of the respondents dated 16.11.2001 on this ground. This applicant cannot be permitted to assail the action of the respondents on the new ground, when he did not take that ground in the earlier Original Application. It has to be inferred that the applicant had given up the ground available to him.

8. In the case of N. Annappa vs. State of Karnataka and another (1999 SCC (L&S) 988), relied on by the learned counsel for the applicant, it is noticed, the Tribunal had rejected the first application of the applicant therein keeping open all the contentions raised in the said application. In the order of the Tribunal rejecting the earlier application it had been observed as follows:-

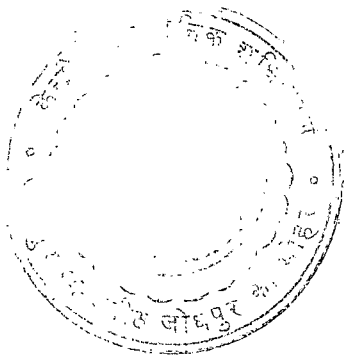
"We dismiss the application keeping open all the contentions raised."

It is in these circumstances, the Apex Court held that subsequent application was not barred by the principle of resjudicata.




The fact situation in the instant case is totally different. In the order dated 16.12.2002, it was nowhere stated that the contentions raised in Original Application No. 66/2002 were kept open. As already stated, the matter was decided on all the points raised by the applicant.


9. So also the ratio of the case of M/s Rolls Print and Company (Pvt.) Ltd. vs. B.M. Singh and son (AIR 1977 Calcutta 303), is of no help to the applicant. The fact situation in that case was that the plaintiff had filed a suit for ejectment of tenant on the grounds of personal use and occupation of plaintiff and default in payment of rent. The same was dismissed for want of prosecution without going into merits. A subsequent comprehensive suit was filed on several grounds including those stated in the previous suit. It was held that the suit was not barred by the principle of resjudicata.




It is noticed that after the dismissal of the previous suit, the plaintiff had again determined the tenancy by notice. Observing that the cause of action was continuing the suit was entertained. The instant case, is not of that type. As already stated in the earlier Original Application all the points raised by the applicant had been considered.

10. In our opinion this Original Application filed on the same cause of action and for the same relief cannot be entertained, being barred by the principle of resjudicata.

11. Consequently, the Original Application is dismissed in limine.


(A.P. NAGRATH)

Administrative Member


(G.L. GUPTA)

Vice Chairman