

प्र० श. श. (प्रश्निवार) अधिकारी विवरण की विधि व इसके अन्तर्गत चिः प्राप्ति

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Original Application No. 277,278 & 286 of 2007.

23rd May, 2008.

CORAM:

Hon'ble Mr. B.V. Rao, Member [J]

Hon'ble Mr. R.R.Bhandari, Member [A]

Bhagwan Singh S/o Shri Prathvi Singh aged 22 years, Clerk, in the office of Assistant Material Manager, North Western Railway, Abu Road, District Sirohi, Resident of 5/2 F, Railway Colony, Abu Road, District Sirohi.

...Applicants.

Versus

- 1- Union of India through the General Manager, North Western Railway, Jaipur.
- 2- Deputy Chief Material Manager, North Western Railway, Ajmer.
- 3- Assistant Material Manager, North Western Railway, Abu Road, District Sirohi.

.....Respondents.

Connected with OA Nos. 278 and 286/2007.

Vijay Shanker S/o Shri Bher Ji, aged 49 years, Clerk, in the Office of Assistant Material Manager, North Western Railway, Abu Road, District Sirohi, Resident of Railway Colony, Abu Road, District Sirohi.

.....Applicant of OA 278/07.

versus

- 1- Union of India through the General Manager, North Western Railway, Jaipur.
- 2- Deputy Chief Material Manager, North Western Railway, Ajmer.
- 3- Assistant Material Manager, North Western Railway, Abu Road,

COMPARED
CHECKED



District Sirohi.

I-9
....Respondents.

Narendra Kumar S/o Shri. Budha Ram aged 47 years, Clerk in the office of Assistant Material Manager, North Western Railway, Abu Road, District Sirohi, Resident of Near Hanuman Mandir, Gandhi Nagar, Abu Road, District Sirohi.

....Applicant of OA 286/07.

Versus

- 1- Union of India through the General Manager, North Western Railway, Jaipur.
- 2- Deputy Chief Material Manager, North Western Railway, Ajmer.
- 3- Assistant Material Manager, North Western Railway, Abu Road, District Sirohi.

....Respondents.

By Mr. Vijay Mehta, Advocate, for applicants.

By Mr. Salil Trivedi, Advocate, for respondents.

ORDER

[PER B.V.RAO, MEMBER (J)]



The brief matrix of the case according to the applicants are that they were appointed on the post of Khalasi on compassionate grounds vide order dated 8th March, 2003 and thereafter, they were provisionally promoted in accordance with the prevailing rules and departmental instructions to the post of Clerk vide order dated 22nd October, 2003; a copy of the promotion order is attached as Annex.A/3. Applicants further states that they appeared in Type Test

thrice but, they were declared failed vide orders dated 9th December, 2004, 16th April, 2005 and 14th December, 2005. Thereafter, they were reverted to Group 'D' post vide order dated 26th December, 2005 (Annex.A/2). Being aggrieved with the order dated 26th December, 2005, the applicants approached this Tribunal by filing OA No. 1/2006. It is further submitted that this Tribunal disposed of the OA Nos. 1 and 2 of 2006 vide order / judgement dated 4th July, 2007 with a direction to the applicants to make a comprehensive representation within a period of fifteen days and in turn, the competent authority shall consider the same and pass appropriate orders by taking into account the order passed by the Hon'ble High Court of Rajasthan in D.B.Civil Writ Petition No. 5208 of 2003 on 14th of January, 2004. Accordingly, the applicants submitted their representation dated 18th July, 2007 to the respondent No. 2 and the same was rejected by the competent authority vide order dated 18th October, 2007 (Annex.A/13) without considering the findings given by the Hon'ble High Court of Rajasthan in a similar case and also without considering the contentions raised by the applicants in their representation. Hence, the applicants approached this Tribunal to ventilate their grievances.



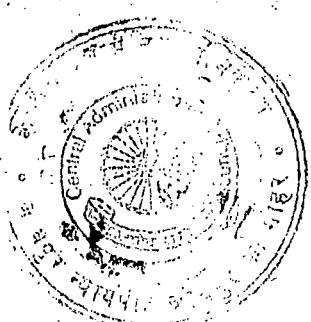
2. Respondents contested the matter by filing reply stating that the O.As are absolutely barred by the principles of res judicata since this Tribunal has already declined to interfere with the order of reversion and it was also observed that the decision taken by the authority shall be binding on the applicants. They further contends that as per the direction of this Tribunal in OA No. 1 and OA No. 2 of 2006, the

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applicants have submitted comprehensive representation and the same was rejected by the competent authority keeping in view the order passed by the Hon'ble High Court of Rajasthan in D.B.C. Writ Petition No. 5208 of 2003 decided on 4th July, 2004 and they further contends that the reversion order passed by the competent authority is just and proper and the competent authority rightly rejected the representation(s) of the applicants in accordance with the findings of the Hon'ble High Court and communicate the same to the applicants and in view of the specific findings of this Hon'ble Tribunal, the applicants cannot challenge the reversion order once again before this Tribunal which is barred by the principles of res judicata and the applicants are not entitled to claim any relief much less the relief prayed in the O.As and the same are liable to be dismissed with costs.

3. Heard Mr. Vijay Mehta, learned counsel for applicants as also Mr. Salil Trivedi, appearing on behalf of the respondents.

4. Mr. Vijay Mehta, learned counsel for the applicants has reiterated the facts of the case and he mainly stated before us that the respondent authorities have not properly dealt with the representation of the applicants and they also failed to keep the observation in mind while rejecting the same. He further argued that since the respondent authorities have not acted properly while disposing the representations of the applicants, they once again challenged the same before this Tribunal and therefore prays to allow the OAs by granting the relief(s) prayed therein.



5. Per contra, Mr. Salil Trivedi, learned counsel for the respondents has vehemently argued and opposed the submissions and contentions raised by the learned counsel for the applicants. He mainly contends that the OAs are barred by the principles of res judicata and in view of the specific findings of this Tribunal, the applicants cannot challenge the order of reversion before this Tribunal and he further prayed to dismiss these applications with costs.

6. We have gone through the pleadings and material available on record and considered the rival submissions of the parties.

7. After careful consideration of the submissions of both the parties, the only issue before us is, whether the reversion order passed by the competent authority is justified and the order dated 18.10.2007 rejecting the claim of the applicants is in accordance with law ? We have gone through the judgement of the Hon'ble High Court of Rajasthan in D.B.C. Writ Petition No. 5208/2003 - ***Chandra Kala Bairwa Versus Union of India and Ors.***, wherein, the Hon'ble High Court held as follows:-



"By considering the contentions and facts and circumstances of the case particularly keeping in view the fact that the respondent was appointed on compassionate ground on death of her father, while in service and by the respondent's action she is sought to be reverted to a post lower than to one to which she was employed, we deem it just and proper to dispose off this petition with the direction that the respondent shall hold the type-test for the purpose of finding the eligibility of the petitioner to continue on the post as she has been appointed on compassionate ground by the respondents. If the petitioner passes the type-test, she would be continued on the original post, failing which she may be reverted

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back to Class IV as per the orders passed by the respondents on 4.8.2002 and until actual reversion of the petitioner, no recovery shall be made from her."

After a plain reading of the judgement cited above is a person m not in general. While disposing of the Writ Petition, the High Court has given the findings basing on the facts and circumstances of that particular case and hence, the ratio of the judgement is not applicable in general or to the present case on hand.

8. We have also gone through the judgement and order passed in OAs No. 1 and 2 of 2006 wherein, this Tribunal has specifically observed in Para 5 as under :-



"5. Admittedly, in this case, three opportunities have been given to the applicants in a period of two years and both the applicants have failed in all the three attempts. Hence no interference is called from this Tribunal with regard to the action of the respondents".

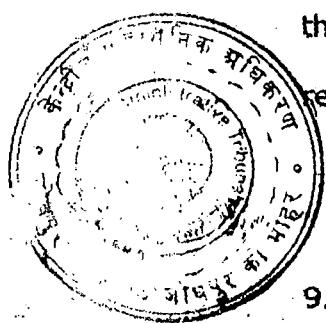
Similarly, this Tribunal has observed at Para 7 of operative part of the aforesaid judgement in the three lines as follows :

"7. However, we make it clear that the decision taken by the competent authority shall be binding on the applicants. OAs are ordered in the above terms."

After going through the above judgement and after perusal of the pleadings of both the parties, it is an admitted fact that the applicants have been given three attempts in a period of two years

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but, they have failed in all the three attempts. We also observed that this Tribunal has directed the competent authority i.e. the respondents to dispose of the representation(s) in view of the findings given by the Hon'ble High Court in D.B.C. Writ Petition No. 5208/2003 decided on 14th January, 2004 and we also find that the respondent - authorities dismissed / rejected the representation(s) of the applicants in accordance with the prevalent rules and we do not find any irregularity or illegality in the order passed by the respondent - authority and in view of the findings given by the Bench stating that the decision taken by the competent authority shall be binding on the applicants and thereafter, the applicants challenged the reversion order is within the parameters of the principles of res judicata and we also concur with the contentions raised by the learned counsel for the respondents with regard to the issue of res judicata.



9. The learned counsel Mr. Trivedi, relied on a Supreme Court decision in **Pondicherry Khadi & Village Industries Board Vs. P. Kulothangan and Another**, reported in 2003 AIR SCW 5725, on perusal of the same, we also find that the same is squarely applicable to the present case on hand.

10. For the foregoing reasons and discussions made above, we are of the opinion that the O.A. is hit by the principles of res judicata and accordingly, the same is dismissed with no orders as to cost.

Sd/-
[R.R.Bhandari]
Member (A)

CERTIFIED TRUE COPY
Dated 26.5.2008

Sd/-
[B.V.Rao]
Member (J)

मन्त्रालय अधिकारी (नियन्त्र.)
Section Officer (Judi.)
केंद्रीय राजाधिकार अधिकार
Central Administrative Tribunal
जोधपुर न्यायालय, जोधपुर
Jodhpur Bench, Jodhpur.

Part II and III destroyed
in my presence on 13/2/14
under the supervision of
section officer () as per
order dated 19/8/2014

Section officer (record)

Yours and very

Rajesh
Mehta / 2K