

ORIGINAL APPLICATION NO:897.99 .

Shri P.G.Joshi Applicant.

VERSUS

_____ - _____ Advocate for the
Respondents.

- (i) To be referred to the Reporter or not?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal?
- (iii) Library?

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:897/99.
DATED THE 22ND DAY OF OCTOBER,99.

CORAM; HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.
HON'BLE SHRI D.S.BAWEJA, MEMBER(A).

Shri P.G.Joshi,
Working as
Chief Law Assistant, under
Metropolitan Transport Project,
Western Railway,
Churchgate,
Mumbai - 400 020.
By Advocate Shri G.S.Walia

... Applicant

v/s.

1. Union of India, through
General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.
2. Chief Personnel Officer,
Western Railway,
Churchgate,
Mumbai - 400 020.
3. Smt.A.F.Thomas.
4. Shri K.K.Dubey
5. Shri N.Vasant Kumar.
6. Shri H.I.George
7. Bhavarlal Meena
8. Badal K Rajvanshi

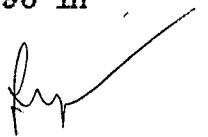
... Respondents.

(ORDER) (ORAL)

Per Shri R.G.Vaidyanatha, Vice Chairman.

This is an application filed by the applicant challenging the Impugned order dated 30/9/99. We have heard the learned counsel for applicant regarding admission.

2. It is seen that one Mr.Surendra Kumar Tigunayat filed a previous OA 596/96 challenging the promotion of applicant and others and for quashing the selection panel dated 12/6/96 in



which the applicant and others had been empanelled for promotion in the post of regular appointment. The applicant was respondent No.3 in the previous application. The applicant had even engaged an advocate in the previous OA and filed written statement.

3. After hearing both the sides in the earlier case, to which one of us was a party (R.G.Vaidyanatha) by order dated 10/3/98 held that the preparation of panel was not correct since seniority marks had been taken into consideration which was not permissible in view of the judgement of Supreme Court in case (M.Ramjayaram v/s. General Manager, South Central Railway and others) reported at 1996(1) SC SLJ 536 and gave a direction to administration that the panel dated 12/6/96 should be revised and a fresh panel should be prepared after excluding seniority marks and on the basis of the revised panel applicant in that case is entitled to be promoted.

4. It appears the administration on the basis of previous judgement, prepared a revised panel excluding the seniority marks and issued a fresh and final panel on 30/9/99. In this new panel, the applicant's name does not find place and that is why the applicant has approached this Tribunal.

5. At this stage, we posed a question as to how this OA is maintainable in view of the judgement in the previous case. The learned counsel argued that the question of res judicata does not arise since the previous applicant is not made a party respondent in the present case. Thus, it was argued that question of res judicata will not arise since the contentions between the applicants and respondents were not considered in



the previous OA. Further submission is that the present OA is filed on the subsequent cause of action namely impugned order dated 30/9/99. He also relied on two decisions of Apex Court reported in AIR 1996 SC 378 and 1994(4) SC - 149.

6. In our view the above two decisions are not applicable to facts of the present case. We cannot go into the correctness of the earlier panel and even want directions regarding fresh interview and other things in respect of preparation of the previous panel. If the applicant's case is accepted and the OA is allowed, it will be reversing or reviewing our previous judgement in OA-596/96. The question of subsequent cause of action does not arise because the Impugned order dated 30/9/99 is in pursuance of judgement given in previous OA. The question of validity of previous panel cannot now be re-opened at the instance of the applicant who was admittedly a party respondent in the previous OA. He could have taken these contentions in the previous OA since he was interested in sustaining the panel.

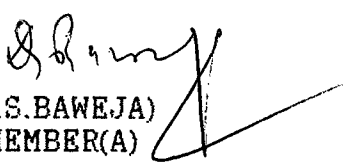
Even if strictly section 11 of CPC is not attracted, still the principles underlining that section is attracted to this case.

7. The Principle is that all persons must take defences open to them in one case and the dispute shall be settled once and for all. The Principle is to avoid multiplicity of litigations.

8. The judgement in OA-596/96 cannot be reviewed at the instance of applicant who was a party respondent in the previous OA; but a new party can persuade us to take a different view or refer the question to a larger bench. But such a question does

not arise since the applicant was respondent No.3 in the previous case and he was bound to defend his case by taking all defences open to him to sustain the previous panel. The Tribunal, after hearing both sides, has passed an order that revised panel should be prepared by the administration by excluding the seniority marks and accordingly fresh panel is prepared and applicant cannot be allowed to challenge it since he was a party to previous case. Therefore, we hold that the present OA is not maintainable and is liable to be rejected at Admission Stage.

10. In the result, the OA is rejected at the admission stage.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.