

2

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 102/95  
Transfer Application No.

Date of Decision : 10/4/1995

Periaswamy Pichan

Petitioner

Shri.D.V.Gangal

Advocate for the  
Petitioners

Versus

Union of India & Ors.

Respondents

Shri.V.S. Masurkar

Advocate for the  
respondents

C O R A M :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not ? *hi*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *hi*

*[Signature]*  
(M.S.Deshpande)  
Vice Chairman

J\*

3

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application  
No. 102/95

Periaswamy Pichan

.. Applicant

Vs.

Union of India & Ors.

.. Respondents

CORAM : 1.Hon'ble Shri Justice M.S.Deshpande, V.C  
2.Hon'ble Shri P.P. Srivastava, Member (A)

Appearances

1. Shri.D.V. Gangal  
Advocate  
for applicant
2. Shri.V.S.Masurkar  
Advocate  
for respondents

ORAL JUDGMENT

DATED : 10/04/1995

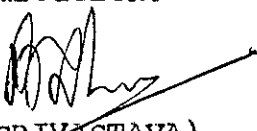
(Per Shri Justice M.S.Deshpande, Vice Chairman)

Heard Shri.D.V.Gangal, counsel for the applicant  
at length.

2. The applicant seeks a direction to the respondents to re-examine the applicant in medical category No.B-II or C-I and declare that withholding of information of right of appeal over medical unfitness in medical category B-I is illegal and to consider <sup>him</sup> in alternate fresh appointment in lower medical category without any backwages. The applicant had approached this Tribunal earlier by O.A. 187/87 contending that he was employed from 31.12.1981 upto 6.9.1985 and was sent for medical examination by the end of August 1985 for being tested in B-1 category and he was found not fit; he requested examination for B-2 category or other permissible categories, but the first respondent refused to do so and orally told him that he will not be engaged with effect from 6.9.1985. This was controverted by the respondents in that O.A and the respondents raised the plea of limitation against the application and that was upheld by the Tribunal by its judgment dated 28.8.1990.

4

Shri.Gangal contends that the earlier decision was not on merits and cannot prevent a fresh decision on merits despite the bar of limitation. We are not inclined to accept this contention because the consideration on merits <sup>would</sup> ~~should~~ be barred if <sup>the</sup> ~~plea~~ of limitation is upheld and the applicant cannot raise the same question which shall be deemed to have been constructively raised by the earlier petition. The same pleas which <sup>are</sup> ~~were~~ raised in the present case were substantially raised in the previous case and even if they had not been so raised, the decision that the relief was barred by limitation would operate as constructive res-judicata. We therefore see no merit in the contention raised by the learned counsel for the applicant. The O.A is dismissed as barred by limitation.

  
(P.P.SRIVASTAVA)  
MEMBER (A)

  
(M.S.DESHPANDE)  
VICE CHAIRMAN

J\*