

(39)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

O.A.No.10/92

Date of the order 23-1-1992

BETWEEN:

J.V.G.K.Sarma

.. Applicant.

A N D

1. Union of India rep. by  
the Director-General of  
Posts,  
New Delhi-110 001.
2. The Post Master-General,  
Vijayawada-520 002.
3. The Superintendent of POs,  
Machilipatnam-521 001. .. Respondents.

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Counsel for the Applicant .. Mr.C.Suryanarayana

Counsel for the Respondents .. Mr.NR.Devraj

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CORAM:

HON'BLE Mr.R.BALASUBRAMANIAN : MEMBER (Admn.)

HON'BLE Mr.T.CHANDRASEKHAR REDDY : MEMBER (Judl.)

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(This Judgement is delivered by Hon'ble Mr.T.Chandrasekhar-  
Reddy <sup>member(Judl)</sup> on 23.1.1992.)

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Mr.C.Suryanarayana, Advocate for the applicant and  
Mr.NR.Devraj, Advocate for the respondents are present.

2. This application is filed under section 19 of the  
Administrative Tribunals Act for relief to declare that  
the applicant is entitled to promotion as test category  
Group 'D' employee against the lone vacancy of 1988 <sup>and</sup> for  
certain other directions. The very same applicant had earlier  
filed OA 151/90. The office at the time of scrutinising of

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the papers in this OA had raised an objection on the maintainability of the present OA. The office objection seems to be that this OA is not maintainable in view of the Judgement in the earlier OA 151/90. In view of the said office note, raising objections about the maintainability of this OA, ~~we~~ thought it fit to hear both sides and so notice was given to Advocates of both sides and today both sides were heard with regard to the objection raised by the office.

3. During the course of hearing today we sent for the entire file in OA 151/90 and the Judgement in OA 151/90 and perused the <sup>same</sup> ~~case~~. We had gone through the pleadings in the present OA and other material. The parties in the OA 151/90 and in the present OA are one and the same. The pleadings in OA 151/90 would go to show that the applicant herein has asked the very same relief, he had asked for in this OA. As a matter of fact the prayer in OA 151/90 of the applicant was to direct the respondents to consider him for 1988 vacancy, said to have been clubbed in the Group 'D' recruitment examination scheduled to be held in February, 1990. In its Judgement dated 8.3.1991 in OA 151/90 this Tribunal has specifically observed that there is no vacancy available for the General candidate in the year 1988. As a matter of fact it is also specifically pleaded by the respondents herein in the said OA 151/90 that there was only one vacancy in the year 1988 that was filled up with an SC candidate. So as could be seen the plea of the applicant as raised in OA 151/90 had not been accepted by this Tribunal and his plea had been negatived. So in view of the finding in OA 151/90 by this Tribunal as per the Judgement dated 8.3.1991, the present OA is certainly hit by the principles of resjudicata.

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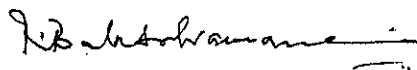
4. The learned counsel for the applicant Mr.C.Suryanarayana vehemently contended that the finding given in OA 151/90 by the Tribunal that there was no vacancy for the year 1988 was erroneous. With much respect to the learned counsel, we may state even if the said finding is erroneous as contended by the learned counsel, still the said finding operates as resjudicata and binds the parties as a wrong decision by a court having Jurisdiction is as binding a right one. He also maintained during the course of arguments today, that without the filling up the vacancy for the year 1988 by holding the examination that the department was not right in filling up of the vacancies of the year 1989 by holding examination. It is also his further contention now that without filling up of the vacancies of the year 1988, that the department was not right in filling up the vacancies that arose in the year 1989. But all these pleas Mr.C.Suryanarayana raises for the first time during the course of arguments only today. It was open for the applicant in OA 151/90 to raise the very same contentions before this Tribunal and invite a finding. As that had not been done it is a bar for the applicant to raise the said pleas now on the principles of constructive resjudicata.

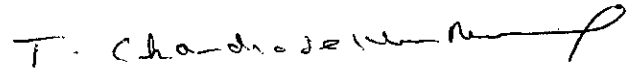
5. The learned counsel Mr.C.Suryanarayana then contended relying on 1987 All WC 808 (811)(DB) wherein it is observed that where any matter which shoots off from the earlier proceedings before Administrative Tribunal becomes a case with fresh cause of action, it would be cognizable by the Tribunal. Here also with much respect to the learned counsel, we may state that there is no fresh cause of action in this OA. As we could see the cause of action in the earlier OA 151/90 and the cause of

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action in the present OA is one and the same, <sup>also</sup> this 42  
OA is not at all maintainable. In view of the above  
position, we have no hesitation to uphold the office note.

Hence, we uphold the office note and reject this  
OA at the admission stage itself.

  
(R. BALASUBRAMANIAN)  
Member (A)

  
(T. CHANDRASEKHARA REDDY)  
Member (J)

Dated: 23 January, 1992

  
Deputy Registrar (J)

(Dictated in the open court)

To

1. The Director General of Posts, Union of India, New Delhi-1
2. The Post Master-General, Vijayawada -2
3. The Superintendent of Post Offices, Machilipatnam-1.
4. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, Addl.CGSC. CAT.Hyd.
6. One spare copy.
7. One copy to Section officer, Sentiny Section, CAT, Hyderabad.

pvm.

  
30/1/92

82/27.12/92 (u)  
TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. ✓

V.C.

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:  
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

DATED: 23 - 1 - 1992 ✓

~~ORDER/JUDGMENT:~~

~~R.S.A./G.A./M.A.No.~~

in

O.A.No. 10/92 ✓

T.A.No.

Admitted and interim directions  
issued.

Allowed

Disposed of with directions.

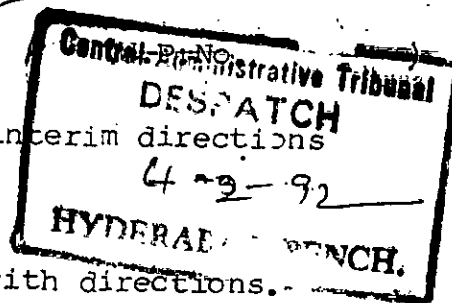
Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ <sup>O.A.</sup> Rejected ✓

No order as to costs.



30/1/92