

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL


15.02.2008


OA No. 11/2008

Mr. P.V. Calla, Counsel for applicant.

Heard learned counsel for the applicant.

For the reasons dictated separately, the OA is dismissed.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 15th day of February, 2008

ORIGINATION APPLICATION NO. 11/2008

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. J.P. SHUKLA, ADMINISTRATIVE MEMBER

Jagdish Prasad Yadav son of Shri Prabhati Lal Yadav, aged about 42 years,
resident of Dusdun Ki Dhani, Kaladera, Tehsil Chomu, District: Jaipur.

.....APPLICANT

(By Advocate: Mr P.V. Calla)

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chairman, Railway Board, Rail Bhawan, New Delhi.
3. The Chief Personnel Officer, Western Railway, Church Gate, Mumbai.
4. The Chairman, Railway Recruitment Board, 2010, Nehru Marg, Ajmer.
5. Shri Ishwar Singh son of Shri Poonam Singh, Pharmacist, through Chief Medical Superintendent, Railway Main Hospital, Dahod, Western Railway.
6. Shri Dalip Singh son of Shri Shree Ram, Pharmacist, through Chief Medical Superintendent, Railway Main Hospital, Dahod, Western Railway.

.....RESPONDENTS

(By Advocate: -----)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following relief:-

- “(i) the action of the respondents in as much as denying the appointment to the applicant on the post of Pharmacist vide Ann.

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A/1 and A/2 may kindly be quashed and set aside. Further by an *appropriate Writ, order or direction the appointment of respondents No. 5 and 6 may kindly be declared illegal. Official respondents may be directed to issue offer of appointment in favour of the applicant with all consequential benefits.*

- (ii) This OA may kindly be allowed with costs.
- (iii) Any other relief to which the applicant is found entitled, in the *facts and circumstances of the present case, may also be granted in favour of the applicant.*

2. At the outset, it may be stated that the applicant had originally filed OA No. 430/2002 for the same relief. The said OA was dismissed by the Tribunal by holding that the applicant has failed to substantiate his claim. The Tribunal had further held that the applicant also has failed to show that panel prepared in the year 1995 was made operative even after the year 2000 and one Shri Peer Chand Tanwar was junior to him.

3. After disposal of the aforesaid OA, the applicant again approached this Tribunal by filing OA No. 589/2003. In the second OA, the stand taken by the applicant was that he could not place relevant documents before the Tribunal in the earlier OA, as such, the matter may be reconsidered. This Tribunal observed that the second OA is not a remedy. In that eventuality, it was permissible for the applicant to have filed a Review Application as to under what circumstances he could not produce relevant documents in the earlier OA and thus making out a case for reviewing the order passed in OA No. 430/2002. This Tribunal further held second OA ^{is as barred} ~~is~~ on the principle of res-judicata.

4. The applicant aggrieved by the disposal of the second OA filed a DB Civil Writ Petition No. 1112/2004 before the Hon'ble High Court. The Hon'ble High Court dismissed the Writ Petition, filed by the applicant. At this stage, it will be useful to quote the relevant portion of the judgement rendered by the Hon'ble High Court:-

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"Before adverting to the plea as to whether the Tribunal was justified in rejecting the application on the basis of constructive res-judicata, we also deem it appropriate to record that the petitioner had raised a grievance in regard to the merit list which was prepared in the year 1995 and the application was filed in the year 2002 (Annex. A-4 bearing No. 430/2002) which was rejected on 24.12.2002 as the learned Member of the Tribunal held that the well settled legal position is that the selection does not confer an indefeasible right to any candidate to get appointment. The learned Member of the Tribunal, however, ignored the question of limitation completely missing that application was time barred by almost 7 years as the list was prepared in the year 1995 and grievance in regard to the same was raised for the first time in the year 2002 and having failed in this attempt, another round of litigation was started by filing fresh application in the year 2003 bearing Application No. 589/203 which was rejected by the members on the principle of constructive res judicata.

Shri P.V. Calla, learned counsel for the petitioner frankly conceded that he had challenged the order on the ground that the principle of res judicate is not applicable on the Tribunal and once it was noticed that the petitioner had earlier moved the court unsuccessfully in regard to the challenge of selection which also was time barred by more than 7 years, the second application could not have been possibly entertained by the Tribunal.

This Writ Petition under the circumstances is absolutely devoid of merit and the same is rejected."

5. The applicant has again filed this OA for the third time for the same relief. The contention raised by the applicant in this OA is that he has sought information under Right to Information Act and certain documents become available on 12.10.2007. According to the learned counsel for the applicant, Shri Ishwar Singh and Shri Dalip Singh, who admittedly belonged to OBC category were given appointment on 18.12.1996 and 20.12.1996 within the currency of the panel, which was to expire on 28.12.1996, ought to have been given appointment against General Category as the result of the aforesaid persons was declared in General Category and not against the OBC category. Learned counsel for the applicant further argued that in all 15 posts were meant for OBC whereas 14 candidates were given appointment and the applicant was only candidate

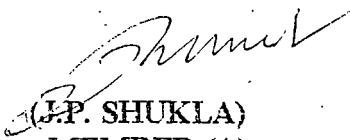
belonging to OBC category who has been denied appointment on the ground that appointment could not be given after the expiry of the panel i.e. after 28.12.1996. Learned counsel for the applicant further submits that even the appointment was given by the respondents after the expiry of the panel up to the year 2003.


6. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that filing of this OA for the same relief when the OA on this count has already been dismissed by the Tribunal on two occasions ~~and~~ amount to gross abuse of the process of the Tribunal, more particularly, when the judgement rendered by the Tribunal in second OA was also upheld by the Hon'ble High Court. Additionally the Hon'ble High Court has further held that "the petitioner had earlier moved the court unsuccessfully in regard to the challenge of selection which also was time barred by more than 7 years, the second application could not have been possibly entertained in the Tribunal." Thus we are of the firm view that the third OA is required to be dismissed being not maintainable and is grossest abuse of the process of Court without entering into the merit of the case. Even the Apex Court while considering the scope of ~~entering~~ ^{entertaining} the Review after the period of limitation has made the following observation in the case K. Ajit Babu vs. Union of India, 1998 (1) SLJ 85, which is in the following terms:-

"..... Besides that, the right of review is available if such application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case of all times to come. Public policy demands that there should be end to law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure, if filed within the period of limitation."

The principle laid down by the Apex Court in the aforesaid case is that the decision given by the Tribunal, unless reviewed or appealed against attains finality. If such a power to review is permitted after the period of limitation, no decision will be final. On the same principle, if the OA is entertained for the same cause of action when the judgement has not only attained finality but such decision was also confirmed by the Hon'ble High Court, then there will be no end and it will be against the public policy as observed by the Apex Court in the aforesaid case.

7. Accordingly, the OA is dismissed with no order as to costs.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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