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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 377 1995
T.A. No.

DATE OF DECISION 21.11.1995

Parmanand and others Petitioner

Mr. Shiv Kumar Advocate for the Petitioner (s)

Versus

Union of India and others Respondent

Mr. Manish Bhandari Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. GOPAL KRISHNA, VICE CHAIRMAN

The Hon'ble Mr. O.P.SHARMA, MEMBER (ADMINISTRATIVE)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Ye.
2. To be referred to the Reporter or not ? Ye.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.
4. Whether it needs to be circulated to other Benches of the Tribunal ? No.

(O.P.SHARMA)
MEMBER (A)

Gopal Krishna
(GOPAL KRISHNA)
VICE CHAIRMAN

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R.

OA 377/95

Date of order:
21.11.1995

Parmanand and others

: Applicants

versus

Union of India and others

: Respondents

Mr. Shiv Kumar, counsel for the applicants

Mr. Manish Bhandari, counsel for the respondents

CORAM:

HON'BLE SHRI GOPAL KRISHNA, VICE CHAIRMAN
HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)

O R D E R

(PER HON'BLE SHRI GOPAL KRISHNA, VICE CHAIRMAN)

The applicants Parmanand, Bhawani Shankar and Daulat Ram in this application under Section 19 of the Administrative Tribunal's Act, 1985, have impugned the order dated 15.6.1995 at Annexure A-1 absorbing ineligible Cleaners on the post of Diesel Assistant by extending one time exception and have sought a direction to the respondents to absorb them in the post of Diesel Assistant Scale 950-1500 with all consequential benefits.

2. We have heard the learned counsel for the applicants and the learned counsel for the respondents and have gone through the records carefully.

3. During the course of arguments, a preliminary objection was raised on behalf of the respondents that the applicants had earlier preferred an Original

Application No.278/1995 praying therein that the respondents may be directed to absorb them in the aforesaid post carrying the same scale of pay as also for a direction to include their names for sending them for training and for test and since the earlier OA was dismissed on 14.8.1995 as having been withdrawn without granting any permission to the applicants to file a fresh OA, the present OA filed on 22.8.1995 is not maintainable in respect of the same subjectmatter and cause of action.

4. The applicants have contended in the OA that they are fully eligible for absorption in the post of Diesel Assistant on the running side and their non-absorption is arbitrary and illegal being violative of the Circular of the Railway Board. On having exercised their option for the post of Diesel Assistant, their non-absorption is against fair-play. It is also stated in the relief clause that the absorption of ineligible Cleaners in the said post by giving them one time exception vide Annexure A-1 dated 15.6.1995 as against the claim of the applicants is illegal and the applicants have therefore prayed for quashing the order at Annexure A-1 dated 15.6.1995. The main burden of the OA is the non-absorption of the applicants in the post of Diesel Assistant and in the garb of seeking absorption in the aforesaid post Scale 950-1500, the applicants have now challenged the validity of the order dated 15.6.1995
Chennai (Annexure A-1).

(1)

5. We are of the view that the relief claimed in the earlier OA by these applicants is substantially the same as claimed in the present OA and since the earlier OA was withdrawn without permission to institute a fresh OA in respect of the same subject matter and the same cause of action, this subsequent OA is not maintainable. It is pertinent to note that the relief sought in the earlier OA was also with reference to Annexure A-1 dated 15.6.1995. In these circumstances, we hold that the present OA is not maintainable before us in respect of the same subject matter since the earlier OA has been withdrawn without permission to file a fresh OA. We are fortified in our view by an authority reported in AIR 1987 SC 88, Sarguja Transport Service, Petitioner v. State Transport Appellate Tribunal, Gwalior and others, Respondents, wherein it was laid down at page 91-92 as follows:-

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art.226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying R.1 of O.XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art.226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may

C. may not bar other remedies like a suit or a petition

(12)

under Art.32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art.226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject matter since the earlier writ petition had been withdrawn without permission to file a fresh petition."

6. In the result this OA is hereby dismissed as being not maintainable. No order as to costs.

(O.P.SHARMA)
MEMBER (A)

(GOPAL KRISHNA)
VICE CHAIRMAN