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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No. 223/1997

Date of order: 22.9.1997

B.S.Shah at present employed on the post of Senior Draftsman, Estimator in the office of Divisional Railway Manager, Western Railway, Jaipur.

.. Applicant

Versus

1. The Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Chairman, Railway Board, Rail Bhawan, New Delhi.
3. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri B.S.Shah has prayed that the order dated 9.4.1997 (Ann.A1) proposing to hold selection for the post of Senior Draftsman and all proceedings consequent thereto may be quashed and the respondents may be directed to fill up the post of Senior Draftsman/Draftsman 'A' scale Rs. 1400-2300 on the basis of seniority-cum-suitability with all consequential benefits to the applicant.

2. The applicant's case in brief is that the post of Sr. Draftsman/Draftsman 'A' to which selection is proposed to be held in Jaipur Division vide notification dated 9.4.1997 (Ann.A1) is a non-selection post and, therefore, the respondents are not entitled to hold selection for filling up the said post. The applicant had also filed an earlier OA, No. 222/1992, and the Tribunal had disposed of the said OA vide order dated 26.8.1992 (Ann.A6). We have asked the learned counsel

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for the applicant on an earlier date to produce before us a copy of the earlier OA filed by the applicant to enable to see what reliefs had been claimed in the said OA. A copy of the earlier OA was produced by the learned counsel for the applicant before us today. The substantive relief claimed by the applicant therein was as follows:

"(i) The Hon'ble Tribunal may graciously be pleased to call for entire record relating to this case and be further pleased to quash and set aside the notification dated 29.6.92 for conducting written test in the matter of selection on the post of Sr. Draftsman and be further pleased to direct the respondents to treat the post of non-selection nature and to fill up the same by way of seniority cum suitability."

Thus, in the present OA, the substantive relief claimed by the applicant is the same as claimed in the earlier OA, No. 222/1992.

3. The learned counsel for the applicant stated during his arguments that whereas in the earlier OA the notification dated 29.6.1992 for holding selection for the post of Sr. Draftsman/Draftsman 'A' was challenged, in the present OA notification dated 9.4.1997 proposing to hold fresh selection for the same post has been challenged. He, therefore, stated that the relief claimed in the present OA is not the same as claimed in the earlier OA. Where there is a legal question involved, no resjudicata can be applicable. He has relied upon the Railway Board's circular/instructions/order placed on record of the present OA as Ann.A4 to urge that the post in question is a non-selection post and, therefore, the action of the respondents in holding the selection is unwarranted.

4. We have heard the learned counsel for the applicant and have gone through the material before us.

5. We find that the claim of the applicant in the present OA that the post in question be treated as a non-selection post is the same as it was in the earlier OA filed by the applicant to which reference has been made above. The only difference is that when the earlier OA was

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filed, the notification issued for filling up of the post was of 1992 whereas the notification issued now which has been challenged in the present OA is of 1997. The date of notification for holding the selection does not make any difference to the issue or the principle which was agitated in the earlier OA and which has been agitated in the present OA. While disposing of the earlier OA, the Tribunal had passed the following order:

"None present on behalf of the parties.

We have heard earlier this case on 13.8.92. Directions were given to the learned counsel for the applicant to produce any other circular if available with him. We have gone through the record also today and we do not find any force in the O.A. and the circular, referred to by the applicant, has not been filed. Annexure A-4 is applicable only to the Board's office and he has not shown any circular that these instructions apply to subordinate office in which he is working. The O.A. is accordingly dismissed."

6. In the earlier OA the applicant had filed the order, 'instructions, circular relating to recruitment etc. on the post as Ann.A1 dated 1.11.1991 and the same order, 'instructions, circular has also been filed in the present OA as Ann.A4. The Tribunal is deemed to have considered these instructions while disposing of the earlier OA, by order dated 26.8.1992 (Ann.A6). In the circumstances, we are of the view that the relief claimed in the present OA is the same as claimed in the earlier OA which has already been adjudicated upon and has been rejected. Since the applicant's own claim made in his earlier OA has already been adjudicated upon by the Tribunal, the question of applying the Tribunal's judgment at Ann.A3, delivered in the case of some other applicant, does not arise. The applicant did not seek any review of the order passed by the Tribunal as at Ann.A6, if he felt that the order passed was not in accordance with the provisions of the rules. In the circumstances, the OA is dismissed at the stage of admission.


(Ratan Prakash)
Judicial Member


(O.P.Sharma)
Administrative Member