

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 28.4.2003

OA 171/2003

Devendra Kumar Sutrakar s/o Late Shri Heera Lal Sutrakar r/o Indra Colony, Railway Station, Sambhar Distt., Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Department of Mines, Ministry of Mines, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India-4, Chourangi Lane, Calcutta.
3. Dy. Director General, Western Zone, GSI, Jhalana Doongari Office Complex, Jaipur.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER

For the Applicant ... Mr.N.K.Gautam

For the Respondents ... ---

O R D E R (ORAL)

Applicant Devendra Kumar Sutrakar son of Late Shri Heera Lal Sutrakar, who died while in service, has filed the present OA for the following reliefs :

- "i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to reconsider and to give appointment to the applicant on compassionate grounds on any suitable post by quashing letter dated 12.4.2001 (Ann.A/1) with all consequential benefits.
- ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case."

2. It appears that the applicant has also earlier filed OA 359/2001

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for the same relief. The said OA was dismissed as withdrawn vide order dated 17.9.2002. It will be useful to quote the said order in extenso, a copy of which has been placed on record as Ann.A/4 :

"Learned counsel for the applicant says that on going through the pleadings and the legal position his client wants to withdraw this OA and make a request for compassionate appointment of his sister who is still unmarried. He prays that he may be permitted to withdraw this OA and liberty may be given to his mother to make a fresh request to the respondents to give compassionate appointment to his unmarried sister.

Consequently, the application is dismissed as withdrawn. The applicant/his mother/his sister is at liberty to approach the respondents for appropriate relief."

3. From the perusal of the order, as quoted above, more particularly para-1, it is quite evident that the earlier OA was dismissed so far as the applicant is concerned and no liberty was granted by the Tribunal for filing a fresh application for compassionate appointment in respect of the applicant. However, liberty was granted to the mother of the applicant to make a fresh request to the respondents to give compassionate appointment to his unmarried sister and consequently the OA was dismissed as withdrawn.

4. I have heard the learned counsel for the applicant at admission stage. The contention of the learned counsel for the applicant is that the present application is maintainable and not barred by the principle of res-judicata inasmuch as in the last line of the order passed by the Tribunal, as quoted above, liberty has been reserved to the applicant to approach the respondents for appropriate relief. I have considered the submission made by the learned counsel for the applicant and I am not inclined to accept the same. The order has to be read in its entirety. From the perusal of the order, which has been quoted in its entirety, it is clear from para-1 of the order that the applicant has moved an application for compassionate appointment and the same was dismissed as withdrawn on the statement of the applicant that he will make a request

for compassionate appointment of his sister, who is still unmarried, and liberty may be given to his mother to make fresh request to the respondents to give compassionate appointment to his unmarried sister. It was on this clear statement made by the applicant that the earlier OA was dismissed as withdrawn. Therefore, though the relief of compassionate appointment was sought by the applicant in the earlier OA i.e. OA 359/2001 but the same was not pressed by the applicant and the said OA was dismissed as withdrawn without liberty reserved to the applicant to file a second application on the same ground. Thus, the present application is not maintainable and is hit by the principle of res-judicata. The matter is squarely covered by the ratio as laid down in the decision of the Apex Court in the case of Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors., AIR 1987 SC 89, and Avnish Nagra v. Navodaya Vidyalaya Samiti & Ors., 1997 SCC (L&S) 565, whereby the Apex Court has held that the second petition on the same cause of action is not maintainable whereby the earlier petition has been withdrawn without permission to institute fresh petition. The Apex Court in the case of Chief Administrator & Anr. v. Dr. Abhaya Charan Mishra, 1999 SCC (L&S) 660, has further held that fresh petition seeking relief which sought but not granted in an earlier petition though no express reference made in the order, is not maintainable. It will be useful to quote para-2 of the said order, which reads as under :

"It appear that in the earlier petition filed by the respondents, OA No.7 of 1988, that very relief was sought, but the same was not granted, in that, there was no reference to that relief. Counsel for the respondent says that it was on account of the fact that it was not pressed. Be that as it may, the relief was sought in view of Explanation V to Section 11 of the Code of Civil Procedure. Therefore, if the relief is sought and was not granted by the Court for whatever reason, a fresh petition seeking the very same relief could not have been entertained. We are, therefore, of the opinion that the Tribunal was in error in entertaining the second petition and granting the relief which was not granted in the earlier petition merely because in the judgement of the earlier petition, there is no reference to that relief. The rule of res-judicata should apply in such cases. We, therefore, allow this appeal, set aside the order of the Tribunal and direct that the relief in regard to salary on the principle of equal pay for equal

work granted by the Tribunal was not admissible to the respondent. There will be no order as to costs."

Thus, from the portion, as quoted above, it can be gathered that if the relief is sought and the same was not granted by the Court for whatever reasons, a fresh petition seeking very same relief could not have been entertained. In the instant case also the applicant has chosen to withdraw the earlier OA with a liberty reserved to expose the cause of his unmarried sister for seeking compassionate appointment. Now the applicant cannot be permitted to ventilate his grievance for compassionate appointment for himself again when the earlier OA filed by him has been dismissed as withdrawn on the asking of the applicant and with clear understanding that he will be pursuing the cause of his unmarried sister for the purpose of compassionate appointment with the respondent authorities. It is in this context that the direction given by this Tribunal in the last para of the order passed in OA 359/2001 has to be understood, which means that either the applicant or his mother or his sister is at liberty to approach the respondents for appropriate relief regarding the cause of unmarried sister and not regarding the applicant in whose case his earlier application for compassionate appointment has been dismissed as withdraw without any liberty and that order qua the applicant has attained finality.

45. In view of what has been stated above, I am of the opinion that this application is not maintainable when the earlier OA 359/2001 whereby the applicant has sought the same relief for compassionate appointment has been dismissed as withdrawn. Whatever may be the reasons, the second petition on the same cause of action and relief by the same applicant is not maintainable in view of the law laid down by the Apex Court and as noticed above.

6. Resultantly, this OA is dismissed as not maintainable with no order as to costs.


(M.B. Chaitanya)
Member (Judicial)