

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR

Date of decision: 24.12.2003

OA No.589/2003

Jagdish Frasad Yadav s/o Shri Prabhati Lal Yadav r/o
Dusadon Ki Dhani, Kaladera, Tehsil Chomu, District Jaipur.

.. Applicant

VERSUS

1. Union of India through the General Manager,
Western Railway, Churchgate, Mumbai.
2. The Railway Board through its Chairman, Rail
Bhawan, New Delhi.
3. The Chief Personnel Officer, Western Railway,
Churchgate, Mumbai.

.. Respondents

Mr. P.V.Calla - counsel for the applicant

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K.Bhandari, Member (Administrative)

ORDER (ORAL)

The Railway Recruitment Board, Ajmer issued a notification for selection of 68 posts of Pharmacists vide Employment Information Bulletin No. 2/1995 wherein 18 posts were reserved for O.B.C. candidates. The applicant being eligible, applied for the same. He appeared in the written test on 19.11.95 and in the interview held on 26.12.95. He was subsequently declared successful. Since the applicant even after selection was not given appointment as Pharmacist, he filed OA in this Tribunal which was registered as OA No.430/2002. This Tribunal vide order dated 24.12.2002 dismissed the said OA in limine by observing that the same is devoid of merit. It will be useful to extract para 4 to 7 of the said order, which

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reads as under:-

"4. We have considered the arguments. It is evident that the applicant wants relief with respect to vacancies notified vide notification No.2/95 and panel Annex.A10 published on 27.12.95. There is no material on record to presume that out of the panel Annex. A10 Shri Peer Chand Tanwar was appointed. His Roll Numbers have not been stated in the OA. There is no name in Annex.A10 and therefore it cannot be accepted that the respondents have given appointment to the persons in the panel (Annex.A10) till the year 2000.

5. Even on assuming that Shri Peer Chand Tanwar was from the panel of 1995 (Annex.A10) the applicant cannot get relief in this case since it is not the case of the applicant that any person lower in merit to him has been given appointment.

6. It is settled legal position that selection does not confer indefeasible right to the candidate to get appointment. It is also not stated that there are rules to the effect that a selected candidate, has a right of appointment even after a number of years.

7. This OA being devoid of merit, is dismissed in limine."

1.1 The applicant has now filed the present OA thereby seeking similar reliefs which were sought in the earlier OA No.430/2002. The matter came up for admission on 17.12.2003, on which date none appeared on behalf of the applicant. This Tribunal in the interest of justice

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and in order to give opportunity to the applicant to make out a case as to how this OA is maintainable, passed the following order:-

"From what has been stated above, we are of the view that the present application is not maintainable. Since the applicant is not present today, let the matter be listed for admission on 24.12.2003. In case none appeared on behalf of the applicant, the matter will be decided accordingly."

1.2 Today, Shri P.V.Calla has put in appearance on behalf of the applicant. He was also apprised of the observations of the Tribunal regarding maintainability of this OA. The learned counsel for the applicant insisted that the present OA is maintainable. He has argued that in fact earlier the case of the applicant was not adjudicated in the absence of material. The learned counsel relied upon copy of the agenda item No. 21/2002 recorded in the informal meeting with the General Manager on 19.12.2002 (Ann.A20) wherein it has been recorded that appointment to the applicant has not been given till date whereas most of the persons in the panel has been offered appointment to the post of Pharmacist and one such person Shri Peer Chand Tanwar was given appointment in August, 2000. Thus, the learned counsel for the applicant contended that the Hon'ble Tribunal declined the relief in the earlier OA on the ground that regarding appointment of Shri Peer Chand Tanwar, there was no material on record which show that Shri Tanwar was empanelled in the same panel and as such the Hon'ble Tribunal observed that it cannot be accepted that the respondents have given appointment to a person from the panel in the year 2000. The learned counsel for

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Peer Chand Tanwar was given appointment in 2000 and he was lower to the applicant in the panel. Once the OA has been dismissed on merit as the applicant has failed to establish his case, it is not permissible to file second OA for same relief in order to fill the lacuna. Even in the second OA, the applicant has not placed any material on record to show that Shri Peer Chand Tanwar was lower in merit than the applicant except the averment made in para 5 (A) of the OA. Though the applicant has placed on record Ann.A14 and minutes recorded in the meeting of agenda item No. 21/2002 (Ann.A20) to show that Shri Peer Chand Tanwar was given appointment after expiry of the panel in the year 2000 but the submissions made by the learned counsel for the applicant that Shri Peer Chand Tanwar was lower in merit than the applicant has not been substantiated by any documentary evidence.

2.1. At this stage, it will be relevant to notice the conduct of the applicant in approaching this Tribunal by filing a separate OA for the same relief which according to us amounts to abuse of process of the court and operates as res-judicata. The earlier OA was dismissed in limine by this Tribunal vide order dated 24.12.2002 (Ann.A18) by a reasoned and speaking order. Thereafter the applicant made a representation dated 23.7.2003 (Ann.A19) to the Railway Minister. The applicant conspicuously remained silent in his representation about filing of the OA in the Tribunal and dismissal of the same. Even in his representation the applicant has not stated that one Shri Peer Chand Tanwar was given appointment after the expiry of the panel. He has also not stated that said Shri Tanwar, who is also an OBC candidate, was below him in the panel. The said representation was rejected vide the

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the applicant also drew our attention to the letter dated 30.12.95 (Ann.A14) to show that Shri Peer Chand Tanwar was also selected pursuant to the employment information No.2/95 and he was given appointment vide order dated 28.8.2000 whereas currency of panel expired on 26.12.96. It is further alleged in the OA that name of Shri Peer Chand Tanwar was shown below the name of the applicant and both belong to O.B.C. community, as such, the applicant was also entitled to appointment on similar footings as was given to Shri Tanwar.

2. We have considered the submissions made by the learned counsel for the applicant. We are of the firm view that the present OA is not maintainable. It cannot be disputed that the applicant has earlier filed OA No.430/2002 thereby praying that the applicant be given appointment pursuant to the selection held as per notification which appeared in employment information bulletin No. 2/95 against O.B.C. category. This Tribunal while disposing of the OA has categorically observed that there is no material on record to presume that Shri Peer Chand Tanwar was appointed out of the panel Ann.A10 and held that it cannot be accepted that the respondents have given appointment to a person in the panel Ann.A10 till the year 2000. In the alternative, the Tribunal also observed that even if it is assumed that Shri Peer Chand Tanwar was appointed from the panel of 1995 (Ann.A10) the applicant cannot get relief in this case. It is not the case of the applicant that any person lower in merit has been given appointment. Thus the earlier OA was dismissed on merits as the applicant could not prove his case as he has not produced any material to show that appointment from the panel of 1995 was made till 2000 and that Shri

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impugned order dated 12.8.2003 (Ann.A1) whereby it was recorded that since the Railway Board has expressed their inability to extend the currency of the panel prepared in the year 1995, therefore no appointment can be considered after expiry of the panel. Thus, no infirmity can be found in the order dated 12.8.2003 (Ann.A1). The learned counsel for the applicant has not shown any instruction or rule which provide that penal can be kept alive indefinitely. Even as per own saying of the applicant, currency of panel had expired on 26.12.96. If the contention of the learned counsel for the applicant is accepted that Shri Peer Chand Tanwar was given appointment vide order dated 28.8.2000 after expiry of the currency of the panel, such illegal appointment of Shri Tanwar will not give any right to the applicant for appointment as it is the well settled that Article 14 of the Constitution is not attracted in such cases. In the case of State of Bihar vs. Kameshwar Prasad, 2000 (4) 81 SC, it has been held that Article 14 is a positive concept which cannot be used in a negative manner. Thus, the applicant has not made out any case even on merits, even if it is assumed that the present OA is maintainable.

2.2 As already stated above, the applicant has filed this OA only on the basis that the case of the applicant was not adjudicated in the absence of the material. In that eventuality, the applicant at the most, ought to have filed review application as to under what circumstances he could not produce relevant documents in earlier OA and thus making out a case for reviewing the order dated 24.12.2002 passed in OA No. 430/2002. The second OA on this ground is not maintainable. This Tribunal cannot nullify the effect of the order which has been validly

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passed after recording reasons. In case the judgment is wrong on any account, the remedy lies before the higher forum. In case the matter has been adjudicated by the Tribunal on earlier occasion and the applicant has not placed sufficient material on record, the second OA is not a remedy and in that eventuality, the applicant could have filed a review application making out a case as in what circumstances, he could not place relevant documents before the Tribunal in the earlier OA and it is only in exercise of the powers of review, a judgment of the coordinate bench could be reviewed and not otherwise. Thus, we are of the firm view that the present application is totally misconceived and the second OA on the ground that the earlier OA was not adjudicated in the absence of material will not afford cause to the applicant to file a second application for similar reliefs.

2.3 At this stage it will also be useful to notice various pronouncements given by the Apex Court which clinches the matter in issue. Admittedly, the issue involved in the earlier OA was regarding non-appointment of the applicant pursuant to the panel prepared in the year 1995 for the post of Pharmacist. The said OA was dismissed as the applicant failed to substantiate his claim and the Tribunal held that the applicant has failed to show that the panel prepared in the year 1995 was made operative even in the year 2000 and one Shri Peer Chand Tanwar was junior to the applicant. The issue involved in the second OA is also regarding not giving appointment to the applicant on the basis of the panel prepared in the year 1995. Thus, the rule of res-judicata is attracted in the instant case. The Apex Court in the case of Mathura Prasad Sarjoo Jaiswal and ors. vs. Dossibai N.B.Jeejeebhoy, AIR 1971 SC 2355 in para 10 has held that

in determining the application of the rule of res-judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceedings by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be re-opened. Similarly, the Constitutional Bench of the Apex Court in the case of Daryao and ors. vs. State of UP and ors., AIR 1961 SC 1457 has held that rule of res-judicata has no doubt some technical aspects but the basis on which the said rule rests is founded on consideration of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by the Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. Such a decision pronounced by a court of competent jurisdiction is binding between the parties unless it is modified or reversed by adopting a procedure prescribed by the Constitution. In the instant case, it was open for the applicant either to challenge the decision in a higher forum or he could have also requested for modifying the decision by filing review application in case the earlier OA was adjudicated in the absence of material which was not in possession/knowledge of the applicant at that time but certainly the second OA was not a remedy. Further, the Apex Court in the case of Madhvi Amma Bhawani Amma and ors. vs. Kunjikutti Pillai Meenakshi Pillai and ors., AIR 2000 SC 2301 after relying the case of Panwar Kumar Gupta vs. Rochiram Nagdeo, AIR 1999 SC 1823, in para 8 has observed that rule of res-judicata incorporated in Section 11 of the Code of Civil

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Procedure (CPC) prohibits the Court from trying an issue which has been directly and substantially in issue in a former suit between the same parties, and has been heard and finally decided by that Court. The Apex Court further held that it is the decision on an issue and not a mere finding on any incidental question to reach such decision, which operates as res-judicata. As already stated above, the issue directly and substantially in the earlier OA was regarding not giving appointment to the post of Pharmacist on the basis of 1995 panel and the issued involved in this OA is also same. As such the principle of res-judicata is clearly attracted. Further, it is not open to pass contradictory judgments on the same facts and issue and the applicant should have adopted the procedure prescribed under the law to modify or reverse the findings so given in the earlier OA as held by the Constitutional Bench of the Apex Court in the case of Dayrao and others (supra).

3. For the reasons stated above, the present application is dismissed at the admission stage.


(A.K.EHANDARI)

Member (A)


(M.L.CHAUDHAN)

Member (J)