

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) Nos. 416-18/2006**

% **Date of Decision: 22.03.2011**

Dr. Jasveer Singh & Ors. Appellants

Through Mr. Rajshekhar Rao and Ms. Anu
Bagai, Advocates

Versus

UOI & Ors. Respondents

Through Mr. Krishna Kumar, Advocate for
respondent Nos. 1 & 2
Ms. Nisha Bagchi for Ms. Anupam
Srivastava, Advocate for respondent
Nos. 3 to 9
Mr. Abhay N. Das, Advocate for
impleaded respondents

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be
reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners have challenged the order dated 16th
December, 2005 passed by the Central Administrative Tribunal,
Principal Bench in O.A No. 38/2005 titled as "Dr. Jasveer Singh &

Ors. v Union of India & Ors.” dismissing their original application whereby the petitioners had sought for quashing of an order dated 8th October, 2004 and a direction to the respondents to issue a fresh seniority list reflecting the grant of selection grade 4500-5700 to the petitioners and others covered by an order dated 28th February, 2003.

2. Brief facts to comprehend the disputes are that the petitioners were granted selection grade by an order dated 28th February, 2003 w.e.f. March, 1997. The petitioners claim that respondent Nos. 1 and 2 should have issued seniority list reflecting grant of selection grade to the petitioners. The petitioners also challenged the *inter se* seniority issued by the order dated 8th October, 2004 of 31 doctors circulated vide Ministry’s letter dated 14/17th October, 1994.

3. The petitioners had asserted in O.A. No.38/2005 that they had earlier filed an original application being O.A No. 2232/1998 titled as “Dr. Jasveer Singh & Ors. Vs. UOI & Ors.” praying for the reliefs which were disclosed by the petitioner in O.A. No.38/2005, in the following terms:-

“4.1 The applicants along with 12 others earlier filed an OA No.2232/1998 Dr. Jasveer Singh & Others vs. UOI praying for the following relief:

i) direct the respondents to consider the applicants for being given two time-bound promotions keeping in view their status as Specialists and to place them in the pay scale of Rs.4500-5700 on the completion of eight years of service w.e.f. March, 1997.

ii) quash and set aside the seniority list dated 14th October, 1994 stipulating that the 31 DMO's who were directly recruited be assigned seniority on the basis of batch date of joining viz-à-viz the batch date of promotion of promotee DMO's on the completion of their 5 years of regular service as ADMO's;

iii) accord due and correct seniority to the applicant in the seniority list above the General Duty Medical Officers after giving the pay scale of Rs.4500-5700 to the applicants;

iv) pass any other or further order(s) as may be deemed fit and proper by this Tribunal in the light of facts and circumstances of the case”.

4. According to the petitioners, their grievance in O.A No. 2232/1998 was that whereas the Ministry of Railways had already implemented the recommendations of Tikku Committee for the grant of two time bound promotions in the case of General Duty Doctors recruited as Assistant Divisional Medical Officers (“ADMOs”), however, the recommendations had not been implemented in the case of doctors directly recruited. The said original application was disposed of by an order dated 21st March, 2001, partly allowing the original application directing the respondents to consider the request

of the petitioners for grant of time bound promotion and pay scale of Rs.4500-5700. The Tribunal had held that the request of the petitioners for grant of scale of Rs.4500-5700 to be considered in accordance with Recruitment Rules and other instructions on the subject, if they are otherwise found fit for the same.

5. Though, the petitioners had specifically sought quashing of seniority list dated 14th October, 1994, the Tribunal in para 14 had categorically rejected the challenge to the seniority list of 1994. Para- 13 & 14 of the Tribunal's order dated 21st March, 2001 in OA No.2232/1998 is as under:-

“13. It is an admitted fact that the applicants were recruited through UPSC in response to the advertisement released by the respondents in the higher scale of Rs.3000-4500 with the prospects of further promotion to the grade of Rs.3700-5000 and again Rs.5900-6700, of course, after putting in certain years of service in the respective grade. However, we do not find specialists anywhere attached to the posts as contended by the applicants. The facts remains that the candidates have to posses medical qualification (MBBS precisely) with Post Graduate qualification in the concerned speciality and 3 years work in a responsible post concerned with the speciality. In view of this, the contention of the applicants they were recruited as Specialist DMOs has no force.

14. A perusal of the judgment in Dr. Mitra's case shows that the respondent –Railway administration were directed to draw up a seniority list of DMOs in accordance with the principles laid down in this judgment and to make fresh appointment from among DMOs to the posts of Medical Superintendent. Again in a miscellaneous petition no.2211/88 the apex court held

that such seniority list should be implemented irrespective of the fact that some of the persons mentioned therein have subsequently retired. Such directions should be implemented within a period of three months from the date of decision. In other words, respondents should have drawn seniority list immediately after getting clarification from the apex court and circulated the same to the concerned persons. We are not aware whether any objections were ever called for from the individuals concerned and there were any response for the same before issuing the final seniority list, as per Government of India's instructions on the subject. The applicants have also not come up with any valid explanation in challenging the seniority list after a gap of several years. Further, any change in the seniority list of 1994 at the stage will have an adverse effect to those affected. **Therefore applicant's challenge to the seniority list of 1994 is liable to be rejected."**

6. The plea of the petitioners for setting aside the seniority list dated 14th October, 1994, was declined by the Tribunal, however, the order of the Tribunal was not challenged by the petitioners. The respondent Nos. 1 and 2 had, however, challenged the same order whereby they were directed to consider the plea of the petitioners to grant them scale of Rs.4500-5700 in accordance with Recruitment Rules and other instructions on the subject. Before the High Court also, in the writ petition filed by respondent Nos. 1 and 2, the petitioners did not claim any relief regarding rejection of their prayer for quashing and setting aside the seniority list dated 14th October, 1994. The writ petition filed by respondent No. 1 was however, dismissed by the High Court by an order dated 29th August, 2002.

7. The petitioners also contended that order of the Tribunal dated 21st March, 2001 was not implemented for considerable time entailing filing of a contempt petition being CCP 390/2001. Thereafter, the order of the Tribunal to consider the request of the petitioners for grant of scale of Rs. 4500-5700 was considered and an order dated 28th February, 2003 was passed.

8. According to the petitioners, against the order dated 29th August, 2002 dismissing the writ petition, the respondent nos. 1 and 2 had filed a special leave petition being SLP 125/2003 in the Supreme Court, which was also dismissed later on. In the meantime, the petitioners were granted selection grade and they sought change of seniority on account of grant of selection grade to them which was declined by an order dated 8th October, 2004. By order dated 8th October, 2004, the request of the petitioners to issue a fresh seniority list reflecting grant of selection grade by order dated 28th February, 2003 was also declined, which was challenged by the petitioners by filing an original application being O.A No. 38/2005 titled as “Dr. Jasveer Singh & Ors. Vs. UOI through Ministry of Railways and Ors.”

9. The original application filed by the petitioners was contested by respondent Nos. 1 and 2 contending that the relief sought against the seniority list of 1994, has already been declined in O.A No. 2232/1998 by order dated 21st March, 2001, which was not challenged by the petitioners and therefore, it has become final. It was also contended that since, the relief against the seniority list of 1994 has become final, the petitioners are not entitled to claim re-drafting of seniority list on the basis of grant of selection grade. It was contended that since the seniority between the petitioners and the private respondents No. 3 to 15, has already been finally adjudicated being matter in issue directly and substantially in previous O.A No. 2232/1998, which order has become final, therefore, the present original application regarding the said relief is barred by the principle of *res judicata*. It was also asserted by respondent Nos. 1, 2 and other respondents that though the provisions of Civil Procedure Code ("CPC") are not strictly applicable to the Tribunal, yet principle laid down under Section 11 of CPC is applicable on the basis of doctrine of Principle of Convenience to ensure that the issue which is directly and substantially an issue in earlier proceedings has been finalized between the same parties are not to be raised in subsequent proceedings. The respondents relied on Pondicherry Khadi & Village Industries Board v. P. Kulothangan

& Anr., 2004 (1) SCC 68 and State of Haryana Vs. State of Punjab, (2004) 12 SCC 673.

10. The Tribunal after considering the pleas and contentions, had dismissed the original application being O.A No. 38/2005 by order dated 16th December, 2005, which is challenged by the petitioners, in the present petition, *inter alia*, on the grounds that comparing the reliefs claimed in O.A No. 2232/1998 and O.A No. 38/2005, it is apparent that the cause of action arising therein are distinct and consequently, rejection of the seniority list of 1994 in O.A No. 2232/1998 will not impact the challenge to the said list on account of implementation of seniority selection grade of Rs.4500-5700 to the petitioners. According to the petitioners, the seniority list of 14/17th October, 1994, only depicted the seniority assigned to the directly recruited Divisional Medical Officers viz-a-viz the promotee Divisional Medical Officer in the grade of DMO. Rejection of the prayer for the change of seniority list of 14/17th October, 1994 was only pertaining to grant of promotion to the next post of Senior Medical Officer in the pay scale of Rs.3700-5000 to the petitioners as well as private respondents. According to the petitioners, the grant of pay scale of Rs.3700-5000, and thereafter second time bound promotion in the selection grade in the pay scale of Rs.4500-5700 w.e.f. March, 1997

to May, 1998 on completion of eight years of service will impact their seniority whereas private respondents got their normal third promotion in the same selection grades from dates falling between June, 2000 to November, 2001. According to the petitioners, the seniority list of 14/17th October, 1994, was not found relevant for the purpose of granting selection grades to the petitioners and therefore, the Tribunal erred in not allowing their prayer for re-drawing the seniority list on the basis of grant of selection grade to the petitioners.

11. The petitioners also contended that the order of the Tribunal in O.A No. 2232/1998 had to be read as whole and could not be considered by picking out of its joined sentences and paragraphs. The petitioners also contended that the matter initiated in O.A No. 2232/1998 was not directly and substantially in issue in O.A No.38/2005 in respect of seniority list of 14/17th October, 1994 and thus, the Tribunal has committed an error in dismissing their original application being O.A No. 38/2005.

12. The petition has been contested by respondent Nos. 1 and 2 contending, *inter alia*, that from the averments made in O.A No. 2232/1998 as well as in O.A No. 38/2005, it is apparent that in both

the original applications, the challenge was to seniority list dated 14/17th October, 1994. The challenge to the seniority list dated 14/17th October, 1994 was declined in O.A No. 2232/1998. Consequently, the same issue could not be re-agitated by the petitioners in O.A No. 38/2005. The respondents asserted that *inter se* seniority between DMOs who are inducted by way of promotion from the post of Assistant Divisional Medical Officers (ADMOs) and directly recruited Divisional Medical Officers was drawn in the seniority list of 14/17th October, 1994. The recruitment into Indian Railway Medical Service ("IRMS") is at the lowest grade of ADMOs and the recruitment is done as per the Recruitment Rules of 1978. It was emphatically contended that the private respondents were already promoted to the post of DMOs when the direct recruitment was done for the post of DMOs of selection made by UPSC and such private respondents are senior to the directly recruited DMOs like petitioners. These matters were considered and their claim challenging the seniority list drawn on 14/17th October, 1994 was declined which cannot be re-agitated by them in another original application being O.A No. 38/2005.

13. The respondent Nos. 1 and 2 also contended that the petitioners were placed in the next higher grade, i.e., Selection Grade

vide Order No. E(O) III- 2003/PM/28 dated 28th February, 2003 subject to outcome of SLP(C) No. 125/2003 and CA No. 603/2003. The said Civil Appeal being 603/2003 has also been dismissed by an order dated 20th January, 2010. The order passed in CA 603/2003 is as under:-

“on the facts of the case, we are not inclined to exercise our discretion under Article 136 of the Constitution of India.

The Civil appeal is dismissed accordingly. No costs. However, question of law is kept open”.

14. The respondent Nos. 1 and 2 also contended that subsequent to the placement of the petitioners (who were recruited directly in the grade of DMO) in selection grade vide order dated 28th February, 2003, a clarification vide letter E(O) 1/94/SR-6/7 dated 8th October, 2004 was issued to the effect that *inter se* seniority of the doctors appointed directly as DMOs circulated by recent board's letter No. E(C)1/94/GK-6/7 dated 14/17th October, 1994 would remain unchanged in view of the rejection of the request of the petitioners in O.A No.2232/1998.

15. The respondent Nos. 1 and 2 also relied on Railway Medical Service Recruitment Rules, 2000 and the Circular of the Ministry of Railways regarding grant of Non Functional Selection Grade (“NFSG”)

to the organized group "A" Railways Services to contend that promotion to the Non Functional Selection Grade is actually a placement in the higher pay scale. The respondents also contended that for promotion to Senior Administrative Grade (SAG) eight years service in Junior Administrative Grade (JAG) is required which may or may not include the service in the Non Functional Selection Grade (NFSG) and therefore, there could not be any gradation list at the level of NFSG on the basis of which promotion to the Senior Administrative Grade (SAG) would be considered.

16. The respondent Nos. 1 and 2 also contended that under the Assured Career Progression Scheme, the promotions are to be made without linkage to the vacancies and in the circumstances, the seniority position of the IRMS Officer at the Jr. Administrative Grade is as per the Recruitment Rules material for promotion to Sr. Administrative Grade and promotion could not be to Sr. Administrative Grade on account of promotion to Non Functional Selection Grade. Therefore, it was contended that a fresh seniority list reflecting grant of Non Functional Selection Grade (NFSG) is not contemplated.

17. An application being CM No. 10593/2010 for impleadment was also filed by 25 Senior Divisional Medical Officers praying for their impleadment contending that they are also Senior Divisional Officers belonging to Indian Railway Medical Services and are similar to the petitioners, however, substantially junior to them. It is further contended that they were appointed to the post of Divisional Medical Officers on the basis of seniority on promotion from the post of Assistant Divisional Medical Officers (“ADMOs”) and the petitioners were already promoted to the post of DMOs when the direct recruits were at the post of DMOs upon selection made by the UPSC and as such they were senior to directly recruited DMOs like the petitioners.

18. The applicants contended that in case the order of the Tribunal is set aside despite the fact that the plea of the petitioners is barred by *res judicata*, it will affect the seniority of large number of persons including the applicants who were substantially senior to the petitioners of the instant writ petition. In the circumstances, the applicants sought that they be impleaded as respondents to the writ petition and be allowed to take part in the proceedings. During the hearing of the writ petition, however, no one has appeared on behalf of the applicants.

19. This Court has heard the learned counsel for the parties and have also perused the record of the Tribunal annexed with the writ petition. The Tribunal while dismissing the application of the petitioners had held that though the provisions of Civil Procedure Code, 1908 are not strictly applicable yet the principle laid down under Section 11 of the Civil Procedure Code, 1908 are applicable. Reliance was placed by the Tribunal on Pondicherry Khadi & Village Industries Board Vs. P. Kulothangan & Anr, 2004 (1) SCC 68 and State of Haryana Vs. State of Punjab, (2004) 12 SCC 673 where it was held by the Supreme Court that doctrine of *res judicata* and Order 32 Rule 2 of the Supreme Court Rules are not only technical rules of procedure but are also fundamental to the administration of justice in all courts based on the principle that there must be an end to litigation. The Tribunal held that in O.A No.2232 of 1998 apart from seeking the selection grade, one of the grievances and reliefs prayed for was regarding grant of seniority and challenge to the seniority list dated 14/17th October, 1994 whereby the ADMOs of 1983 batch were shown junior and the petitioners had been placed below 1982 batch of ADMOs. The Tribunal had noticed that the plea raised on behalf of the petitioners was that as concept of time bound promotions was not applicable and the qualitative changes have come into the existence after Tikku Committee's recommendations,

which has also been implemented by OM dated 14th January, 1991, therefore, this has resulted in a fresh cause of action to the petitioners. Despite considering the fact that selection grade had been given to the petitioners retrospectively, the plea of seeking change of seniority on the basis of that was turned down. While declining the change of seniority list dated 14/17th October, 1994 the plea of delay was also taken into consideration holding that at belated stage things cannot be unsettled as it would have adverse effect to those who would be effected by it. The Tribunal thus held that the question of grant of selection grade, which would not have altered the seniority, had already been considered by the Tribunal and the issue regarding change of seniority on the basis of grant of selection grade has been finally settled between the parties, therefore, it cannot be raised in the subsequent proceedings in OA 38 of 2005 and the findings of the Tribunal in OA No.2232 of 1998 would be barred by the principle of *res judicata*. The observations of the Tribunal in para 17 and 18 of the impugned order are as under:-

“17. On careful consideration of the rival contentions of the parties and perusal of the material on record, the question of grant of selection grade, which could have altered the seniority having considered by the Tribunal and this issue of change in seniority have been settled finally between the parties, cannot be raised in a subsequent proceedings before the Tribunal would certainly be hit by principle of *res judicata*.”

18. The contention raised by the senior counsel of the applicants that the Tribunal would not have foresighted grant of scale of pay and change in the seniority on account of such grant of selection grade which as a new cause of action vide order dated 28.2.2003 has again revived the cause of seniority cannot be countenanced. After taking into consideration the contentions raised as to change in the seniority on grant of selection grade and thereafter partly allowing the O.A. with grant of selection grade to the applicants which is implied and specific rejection of the prayer of seniority on the ground that settled things cannot be unsettled is in consonance with the decision of the Apex Court in **B.S. Bajwa vs. State of Punjab**, 1998 (2) SCC 523. A valid objection raised both by the official respondents as well as learned counsel appearing for the private respondents cannot be brushed aside.”

20. Learned counsel for the petitioners has emphasised that the seniority list only depicted the seniority assigned to the directly recruited Divisional Medical Officers viz a viz the promotee Divisional Medical Officers in the grade of DMO and the rejection of the prayer regarding seniority meant the seal of approval on the seniority in the grade of DMOs. It is contended that earlier seniority regulated the grant of promotion to the next post of Senior Medical Officer in the pay scale of Rs. 3700-5000/- to the petitioners and thereafter, they were granted the second time bound promotion in the selection grade in the pay scale of Rs. 4500-5700/- w.e.f. March, 1997 to May, 1998 on completion of eight years of service whereas private respondents got their normal third promotion in the same selection grade from the dates falling between June, 2000 to November, 2001. In the

circumstances, it was contended that the plea of the private respondents that challenge the seniority list dated 14/17th October, 1994, is hit by the principle of *res judicata* is not sustainable.

21. Perusal of the prayer (iii) made in OA No.2232 of 1998 which reads as follows:

“iii) accord due and correct seniority to the applicant in the seniority list above the General Duty Medical Officers after giving the pay scale of Rs.4500-5700/- to the applicants.”

Similar prayer made in O.A 38 of 2005 dismissal of which lead to the present writ petition reads as follows:

“(iii) Direct the respondents to issue a fresh seniority list reflecting the grant of selection grade to the applicants and others covered vide order dated 28.02.2003.”

22. In the facts and circumstances, it cannot be held that the petitioners were not claiming the seniority upon the grant of its pay scale of Rs.4500-5700/- in both the petitions. The relevant averments in the OA No.2232 of 1998 in paragraph No.4.11 reads as follows:-

4.11. The respectful submission of the applicants is that it was only after the grant of the scale of pay of Rs.4500-5700 on completion of eight years of service in the initial pay scales that the seniority of the applicants could be fixed along with officers of the General Duty Cadre in the pay scale of Rs.4500-5700. However, what has been done by the respondents is to merge

their seniority with the General Duty Medical Officers of the Railways at the state of pay scale of Rs.3000-4500 itself. This irrational act on the part of the respondents has placed the applicants in a highly disadvantageous position vis- a-vis the General Duty Medical Officers. In order to justify their ill-conceived and irrational act, the respondents have taken refuge behind the judgment of the Hon'ble Supreme Court in D.K. Mitra's case. The respectful submission of the applicants is that the ratio of the judgment in D.K. Mitra's case which was rendered way back in 1985, when there was no concept of time-bound promotions which was introduced only in 1991, is not applicable in order to fix the seniority of the applicants in view of the qualitative changes which came into existence after the Tikku Committee's recommendations and issuance of O.M. Dated 14th November, 1991. Thus the applicant say and submit that the fixation of seniority of the applicants following the judgment of the D.K. Mitra's Versus Union of India has no rational basis and in view of the later developments, facts and circumstances, its application while fixing the seniority of the applicants work against the service progression of the applicants.”

The prayer made in paragraph 4.11 in OA No.38 of 2005 where the Tribunal had passed the impugned order dated 16th December, 2005 declining the relief to the petitioners on the ground that the petition was barred by the principle of *res judicata* reads as follows:-

“4.11 The respectful submission of the applicants is that after the grant of selection grade to the applicants vide order dated 28.2.2003, the position had undergone a change and the seniority list dated 14/17.10.1994 was no longer relevant. It was incumbent on the part of the respondent No. 1-2 to have issued a fresh seniority list depicting position of all those who were granted selection grade vide order dated 28.2.2003 from varying dates. This is all the more necessary and imperative for the purpose of consideration for promotion to the next grade viz. Senior Administrative Grade for which the eligibility

even in accordance with new Recruitment Rules of 1991 is :-

“Medical Superintendents with 8 years regular service in the grade (including service, if any, in the non-functional selection grade) or 17 years regular service in group A post out of which at least 4 years regular service should be in JA grade.”

23. In the facts and circumstances, it can be inferred apparently that in both OAs the reliefs claimed by the petitioners were based on the grant of selection grade of Rs.4500-5700/- to them. Though in the OA No.38 of 2005, in the prayer, grade Rs.4500-5700/- is not mentioned, however the relief is based on the grant of grade of Rs.4500-5700/- which was also the relief claimed in the earlier OA being No.2232 of 1998.

24. Perusal of both the OAs unequivocally reflected that though relevant paragraph 4.11 in both the OAs have been worded slightly differently, however, they were both founded upon the ground of seniority based upon the grant of selection grade of Rs. 4500-5700/-.

25. The claim of grant of selection grade of Rs.4500-5700/- had become final as the Civil Appeal No.603 of 2003 was dismissed by the Supreme Court by order dated 20th January, 2010. In the circumstances, the inevitable inference that the matter in issue

between the parties in OA No.38 of 2005 was directly and substantially in issue in OA No.2232 of 1998 cannot be faulted. In OA No.2232 of 1998 the challenge to the seniority list dated 14/17th October, 1994 was declined by the Tribunal which has become final, the findings of the Tribunal will be *res judicata* even though the emphasis of the Tribunal while dismissing the plea of the petitioners was the delay in approaching the Tribunal challenging the seniority list of 14/17th October, 1994. Under the Railway Medical Service Recruitment Rules, 2000 and the Circular of the Ministry of Railways regarding grant of Non Functional Selection Grade ("NFSG") to the organized group "A" Railways Services promotion to the Non Functional Selection Grade is actually a placement in the higher pay scale. Also for promotion to Senior Administrative Grade (SAG) eight years service in Junior Administrative Grade (JAG) is required which may or may not include the service in the Non Functional Selection Grade (NFSG) and therefore, there could not be any gradation list at the level of NFSG on the basis of which promotion to the Senior Administrative Grade (SAG) would be considered.

26. In the circumstances, no illegality can be inferred in the order of the Tribunal dated 16th December, 2005 declining the relief to the

petitioners on the ground that claim is barred under the principle of *res judicata*.

27. The learned counsel for the petitioners has also relied on (1994) 4 SCC 422, Krishan Lal v. State of J & K holding that the principle of *res judicata* would be inapplicable where there was no decision on merits in the earlier proceedings. The precedent relied on by the petitioners is distinguishable as in this case in the earlier proceedings there was no decision on merits as the single Judge while disposing of the writ petition had observed that :

“This syndrome of errors, omissions and oddities, cannot be explained on any hypothesis other than the one that there is something fishy in the petitioner’s version..”

This observation had been relied upon by the High Court in holding that the suit was barred by *res judicata* which was set aside by the Supreme Court holding that the observations as made by the High Court is not the decision on merits. In contradistinction in the case of petitioners in OA No.2232 of 1998, the plea of the petitioners for change of seniority on the ground of grant of selection grade of Rs.4500-5700/- was considered and declined. While declining the change of seniority list dated 14/17th October, 1994 on the ground that the petitioners had been granted selection grade of Rs.4500-5700/- prior to the private respondents, the plea of delay was also

considered and the relief of quashing the seniority list dated 14/17th October, 1994 was declined on this ground also. In the circumstances, it cannot be held that the plea of the petitioners was not decided by the Tribunal on merit.

28. Consequently, on the ratio of Krishan Lal (Supra), the petitioners are not entitled to contend that their plea was not decided on merits and findings of the Tribunal will not be *res judicata*, even while rejecting their plea for quashing the seniority list of 14/17th October, 1994, the ground of delay was also considered. If the relief has been declined to the petitioners on merits including delay, they cannot allege that their pleas had not been adjudicated and declined on merits. The question of delay is also the plea of the petitioners and declining the relief even on this ground will also constitute adjudication on merits and the same plea cannot be re-agitated.

29. In the entirety of the facts and circumstances, the learned counsel for the petitioners has not been able to make out any such ground on the basis of which, it can be held that the order of the Tribunal dated 16th December, 2005 in O.A No.38 of 2005, titled as “Dr.Jasveer & Ors. v. Union of India & Ors.” suffers from any illegality, unsustainability, or perversity which shall entail any

interferences by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and it is therefore, dismissed. Parties are however left to bear their own costs.

ANIL KUMAR, J.

VEENA BIRBAL, J.

March 22, 2011.
rs/vk