

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.17312 of 2018 (O&M)

Date of Decision: 01.10.2018

Bihari Lal

...Petitioner

VS.

Union of India & Ors.

... Respondents

**Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Sudip Ahluwalia**

Present: Mr. Pankaj Mohan Kansal, Advocate for the petitioner

SURYA KANT J. (Oral)

(1) The petitioner assails the order dated 01.09.2016 passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal') whereby his OA has been dismissed primarily on the ground that it was barred by *res judicata*.

(2) When this matter came up for preliminary hearing on 13.09.2018, the Hon'ble 1st Division Bench examined the matter at length and passed the following order:-

"The petitioner is aggrieved by an order dated 01.09.2016, rendered by the Central Administrative Tribunal, Chandigarh Bench (for short, 'the Tribunal'), vide which his claim has since been declined being barred by the principle of res judicata in the wake of an earlier decision dated 03.05.2001, rendered by the Tribunal in O.A. No.201/PB/2001, filed by the petitioner.

A brief narration of facts that have led the petitioner to the current position would be expedient.

The petitioner belongs to SC category and was initially appointed as Technician on 27.07.1982. He was empanelled for promotion as Telecom Technical Assistant (TTA) w.e.f. 01.01.1994. The next channel of

promotion from the post of TTA is to the post of Junior Telecom Officer (JTO). And under the rules 50% of the vacancies in that grade are required to be filled by way of direct recruitment and the rest by way of departmental examination. Out of the departmental quota, 35% of the vacancies are reserved for screening test from amongst PI, WOs/ TAs and TTAs and the remaining 15% were reserved for departmental competitive examination. The petitioner was eligible to be considered against 35% quota out of which 15% posts were reserved for SC category and 7.5% for ST category. Pursuant to a circular dated 24.11.1998, the applications were invited by the respondent-authorities for the examination to be held on 14.05.2000 to fill up the posts of JTOs. The petitioner appeared in the said examination. The results were declared on 19.09.2000, but he remained unsuccessful. A large number of posts in the reserved category remained unfilled, for, the reserved candidates failed to secure even the minimum qualifying marks i.e. 40%. As a result, the petitioner submitted a representation to respondent No.3 to consider his claim under the relaxed standards prescribed for members of Scheduled Castes/Scheduled Tribes by taking into consideration his ACRs and overall performance. But to no avail. And it was in this background, he moved the Tribunal vide O.A. No.201/PB/2001 and prayed for a direction to the respondents to consider his claim in terms of the instructions contained in the letters dated 04.05.1981 and 14.02.1992 (appended as Annexures A4 & A5 with the O.A.) as also the judgment of the Tribunal in the case of Harphool Meena v. Union of India (O.A. No.658/HR/1999), dated 06.10.2000, and declare his results. However, vide order and judgment dated 03.05.2001, the Tribunal dismissed the claim of the petitioner as in terms of the judgment of the Hon'ble

Supreme Court in S. Vinod Kumar v. Union of India, 1996(8) 643, as also the office memo dated 22.07.1997 issued by the Department of Personnel and Training pursuant thereto, the concessions/relaxations as regards the provisions of lower qualifying marks/lesser level of evaluation for promotions etc. were withdrawn. Though it was noticed that subsequently vide office memo dated 03.10.2000, the relaxations/concessions extended to the members of SC/ST categories that were withdrawn vide memo dated 22.07.1997, were restored, but that was hardly of any consequence as test of the post of JTO was notified on 24.11.1998 and the results were declared on 19.09.2000, when the memo dated 22.07.1997 was still in operation. Even otherwise, the office memo dated 03.10.2000 was prospective in nature and thus would not apply to the past cases. However, later the petitioner again moved the Tribunal vide O.A. No.060/00569/2015 seeking a direction to the respondents to re-consider/reexamine his case for promotion to the post of JTO under the relaxed standards prescribed for the SC/ST candidates in terms of the judgment of the Hon'ble Supreme Court dated 15.07.2014, rendered in Civil Appeal Nos.6046-6047/2004 (Rohtas Bhankhar and others v. Union of India and another), wherein the office memo dated 22.07.1997 was held to be illegal and it was declared that the judgment delivered in S. Vinod Kumar's case (supra) was not a good law. However, vide order and judgment dated 15.10.2015, the Tribunal disposed of the said application with a direction to the respondents to consider the claim of the petitioner in the wake of the latest development i.e. judgment dated 14.09.2015 rendered in CWP No.11120 of 2011 (Gurcharan Singh v. Central Administrative Tribunal, Chandigarh Bench and others). But as vide order dated 18.02.2016, the respondents declined the claim of the petitioner, he again

approached the Tribunal vide O.A. No.060/00801/2016. But the same has since been dismissed by the Tribunal vide impugned order and judgment dated 01.09.2016 applying the principle of res judicata; for the relief claimed by the petitioner in the said O.A. as also in O.A. No.201/PB/2001, which was dismissed by the Tribunal on 03.05.2001, was the same. Thus, the petitioner, as indicated above, is before this Court.

Learned counsel for the petitioner submits that the impugned order is palpably erroneous as the principle of res judicata was hardly attracted to the matter at hands. He submits what has apparently been lost sight off by the Tribunal is that O.A. No.201/PB/2001 filed by the petitioner was dismissed by the Tribunal, vide order dated 03.05.2001, in the wake of the decision of the Hon'ble Supreme Court in S. Vinod Kumar's case (supra) as also the office memo dated 22.07.1997, whereafter the position had taken a sea change since the Hon'ble Supreme Court vide its decision in Rohtas Bhankar's case (supra) had not only held the memo dated 22.07.1997 as illegal but also held that the decision in the case of S. Vinod Kumar (supra) was not a good law. He asserts that the position as it was prior to issuance of office memo dated 22.07.1997 stood restored and the claim of the petitioner required re-consideration. Thus, the question; the memo dated 22.07.1997 being non-existent and the decision in S. Vinod Kumar's case (supra) no longer a good law the claim of the petitioner was still unworthy of consideration, was never materially and substantially in issue before the Tribunal in O.A. No.201/PB/2001, dismissed on 03.05.2001.

Further, it is urged that if at all the O.A. preferred by the petitioner was liable to be rejected being barred by the principle of res judicata then even his second O.A. i.e. No.060/00569/2015, decided on 15.10.2015, ought to

have been rejected on the same principles. Whereas, it was disposed of with a direction to the respondent-authorities to re-consider the claim of the petitioner in the wake of the subsequent developments and pass a speaking order. Particularly, for the counsel for the respondents himself submitted that the said O.A. could be disposed of in terms of the order dated 14.09.2015, rendered in O.A. No.060/00478/2015 (Baldev v. Union of India). Hence, the Tribunal seriously erred in applying the principle of res judicata to the matter at hands and dismissing the O.A. filed by the petitioner.

Notice of motion.”

(3) The respondents were accordingly called upon. As may be seen from the above-reproduced self-speaking order, the claim of the petitioner is required to be determined on merits by the Tribunal.

(4) Consequently, we allow the writ petition; set aside the impugned order dated 01.09.2016 and remit the case to the Tribunal for fresh adjudication of the controversy on merits. It is clarified that this Court has not expressed any views on merits and the Tribunal shall decide the case independently keeping in view the pleadings and material on record.

(5) Parties are directed to appear before the Tribunal on 15.10.2018.

(Surya Kant)
Judge

01.10.2018
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No