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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2057/2002

MA No. 1695/2002

New Delhi this the 3rd day of March, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Pradeep Kumar Tyagi
2. Ashok Kumar Chauhan
3. Rajbir Singh
4. Ashok Kumar Lakra

All C/o Pardeep Kumar Tyagi,
S/o Shri H.D. Tyagi,
R/o A-233 New Ashok Nagar,
Delhi 110096.

-Applicants

(By Advocate -None)

-Versus-

1. Union of India,
through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110 001.

2. Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
Baba Kharag Singh Marg,
New Delhi 110 001.

-Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

None appeared for applicants when the matter was taken up for hearing, even on the second call. I, therefore, proceed to decide the OA on the basis of the pleadings on record as per Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

2. Applicants aggrieved by non-implementation of the directions contained in Tribunal's order dated 25.11.93 in OA-1429/93 have sought regularisation from back date with all consequential benefits and same pay scale as admissible to permanent employees.

3. Applicants who have been working as Telephone

Operators for different period approached this court in OA-1429/93 for regularisation as Telephone Operators/LDC and benefit of regular employees with weekly off. By an order dated 25.11.93 application was partly allowed with the direction to the respondents to consider applicants for regular appointment on availability of posts giving them benefit of pay and allowances as allowed to permanent employees including consideration for weekly off.

4. In pursuance thereof a letter has been written to Director General of Health Services for creation of five posts of Telephone Operators upon the work study of Telephone Exchange at Dr. Ram Manohar Lohia Hospital. The aforesaid proposal is still under consideration with the Government for approval. Applicants being aggrieved with non-implementation of the direction filed CP-206/94 in OA-1429/93, which was dismissed on 31.3.95 with the observation that if regular posts are not available there is no question of regular appointment.

5. Applicants approached the Central Government Industrial Tribunal wherein respondents took the plea of res judicata. By an order dated 13.7.2001 preliminary objections have been rejected. Accordingly respondents filed CWP-1831/2002 where the proceedings pending before the CGIT have been stayed. At present the Writ Petition is still sub judice.

6. Applicants in this OA contended that though applicants have served for long years with the respondents, no steps have been taken in compliance of the directions in OA-1429/93 to consider them for regularisation despite

expiry of about 8 years. It is also stated that on the equitable principles also applicants are entitled for regularisation as well as similar benefits as paid to permanent employees.

7. On the other hand, respondents counsel Sh. A.K. Bhardwaj, took a preliminary objection and stated that once the Tribunal order in OA-1429/93 has attained finality applicants who filed OA-41/2002 seeking their appointments as LDCs which was also disposed of and review against which has been rejected, again filed a proceeding before the CGIT. As such not only res judicata the OA is hit by the doctrine of res sub judice.

8. Moreover, it is contended that applicants have not come up with clean hands as they had not disclosed the fact of filing proceeding before the CGIT as well as pendency of Writ Petition. As such on this ground alone OA is liable to be dismissed.

9. On merits it is contended that as the action has already been taken for creation of five additional posts of Telephone Operators in Dr. Ram Manohar Lohia Hospital which is under consideration and till regularisation they are not entitled for pay and allowances at par with permanent employees. They are still paid salary as applicable to daily wages employees in accordance with rules.

10. I have carefully considered the pleadings on record and the contentions of the learned counsel for respondents. Although from the documents annexed by the

respondents it is clear that applicants have approached CGIT where the preliminary objection of jurisdiction has been negated by the Presiding Officer of CGIT against which CWP-8139/2002 has been filed where the proceedings before the CGIT have been stayed. Aforesaid fact has been suppressed by applicants and has not been disclosed in para 7 of the application. As there is no explanation by way of filing the rejoinder to this effect. The aforesaid suppression is intentional and applicants have not come up with clean hands before this court. On this count alone the OA is liable to be dismissed as held by Apex Court in Chancellor and Anr. v. Dr. Bijayananda Kar & Ors., (1994) 1 SCC 169. Moreover, the present OA is not maintainable and hit by the doctrine of res sub judice and on a similar issue proceeding has been filed before the CGIT and against the order of rejecting the objection of the respondents as to jurisdiction the matter is still sub judice before the High Court of Delhi.

11. As in the earlier OA the same reliefs have been prayed by applicants against which a CP was also dismissed, seeking relief which have been conclusively dealt with and decided in an earlier OA, the present OA without any liberty is hit by the doctrine of res judicata.

12. In the interest of justice even on merits as well as the proposal for creation of five posts has already been mooted to the CGHS for approval by the Government I do not find any infirmity in the action of the respondents.

13. Accordingly, for the foregoing reasons, the OA is found bereft of merit and is dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)