CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No.1168/2002
2. OA No.1169/2002
3. OA No.1319/2002
4. OA No.1320/2002

(3)

New Delhi this the 23rd day of May, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA No.1168/2002

1. Dr. Arun Kumar,
S/o late Shri Muni Lal,
R/o H.No.540, Sector-9,
Faridabad, Haryana.

2. N.K. Dixit,
S/o late Shri G.H. Dixit,
R/o E-3/137,
Arera Colony,
Bhopal-462016.

-Applicants

(By Advocate Shri R.V. Sinha)

OA No.1169/2002

1. D. Chakraborty,
s/o Shri J.J. Chakraborty,

2. Anu Radha Bhatia (Km.),
d/o Shri V.N. Bhatia

3. R.M. Verma,
s/o late Shri Raja Ram Verma

4. Seraj Khan,
S/o lat eMohd. Majid Khan

5. Bhanu Pratap Singh,
s/o late Shri Rama Shanker Singh

6. Tejdeep Singh,
S/o late Dr. Harkirath Singh

7. D. Joshi,
S/o B.K. Joshi

8. M.K. Gar,
S/o Shri Hari Ram

9. Dr. Sudhanshu Shekhar,
S/o late Shri Anjani Kumar Ranjan Sinha

10. I.K. Sharma,
S/o D.L. Sharma

11. S.K. Sinha,
s/o Shri A.P. Lall

12. J.R. Verma,
S/o Sh. Ramchand Verma

13.B.K. Gupta,
s/o late Shri J.C. Gupta

14.V.K. Ingle,
s/o late Shri P.S. Ingle -Applicants

(By Advocate Shri R.V. Sinha)

OA No.1319/2002

V. Sambasiva Rao,
S/o Sh. V. Nageswara Rao,
r/o 5-4-96/1/1/, Bhulakshminagar,
Vanasthalipuram,
Hyderabad-500070. -Applicant

(By Advocate Shri R.V. Sinha)

OA No.1320/2002

1. B. Umamaheswara Rao,
S/o B.R.K. Murthy,
R/o E-24, Majeslie Mansion,
Shyamlal Buidlings,
Begumpet, Hyderabad.

2. M. Venkata Gopal,
S/o Shri M. Subba rao,
R/o Flate-102, Om Sai Nivas,
St.14, Nagarjunanagar,
Tarnoka, Hyderabad.

3. A. Sreenivas,
S/o Sh. A. Suryanarayana,
R/o 1-140/12/3/A, Street No.13,
Surya Nagar Colony,
Uppal, Hyderabad-500039. -Applicants

(By Advocate Shri R.V. Sinha)

-Versus-

1. Central Ground Water Board,
Jam Nagar House,
Man Singh Road,
New Delhi-110011
(Through: The Chairman)

2. Union of India,
Ministry of Water Resources,
Shram-Shakti Bhawan,
New Delhi-110001.
(Through: The Secretary)

3. Union Public Service Commission (UPSC),
Dholpur House, Shahjahan Road,
New Delhi-110011
(through: The Secretary) -Respondents

(By Advocate Shri S.M. Arif)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

As these four OAs involve common question of law and fact, they are disposed of by this common order.

2. In these OAs applicants have sought a direction to the respondents to call them for interview to be held by the UPSC for promotion to the grade of Scientist 'C' in the pay scale of Rs.10,000-15,200 under Flexible Complementing Scheme (FCS). These OAs were listed for admission and notices have been accepted by Sh. S.M. Arif on behalf of the respondents who took a preliminary objection by referring to the declaration made by the applicants in paragraph-7 of the OA, wherein it is incumbent upon the applicants to disclose any earlier OA filed before the Tribunal. In this conspectus Shri Arif stated that all the applicants, except applicant No.2 N.K. Dixit in OA-1168/2002 as well as applicant Nos. 4,8,10,11,12 and 14, namely Seraj Khan, M.K. Garg, I.K. Sharma, S.K. Sinha, J.R. Verma and V.K. Ingle respectively have not preferred any previous OA, as such their cases are maintainable.

3. Sh. V. Sambasiva Rao, applicant in OA-1319/2002 herein along with nine others filed OA-1032/96 before the Hyderabad Bench of the Tribunal, seeking their inclusion on the posts of Assistant Chemist/Assistant Hydrogeologist and further promotion. By an order passed on 19.4.99 the Court has disposed of the OA with the following directions:

"17. In view of what has been stated and discussed above, it is held that the Applicants (Asst.Chemist/Assistant Hydrogeologists) in this OA have been incorrectly and arbitrarily excluded from the operation of Flexible Complementing Scheme as extended to the Respondent Organisation by the Department of Science & Technology in November, 1983, and extended further to the Group "B" Officers of their grade (Rs.650-1,200 pre-revised)/Rs.2,000-3,500, Revised) by the same Department in May, 1986. It is also held that the posts of Assistant Chemist and Asst. Hydrogeologist are required to be incorporated as No.4 under the colum "Name of the Post" in the Table appearing between Rule 5 and 6 of Government of India Notification containing the Central Ground Water Board Recruitment Rules, 1995. Suitable additions/modifications are required to be made in the said Rules, wherever appropriate and necessary with a view to extending the Flexible Complementing to these Applicants.

18. It is directed therefore that a review be undertaken of the 1995 Rules to secure this objective. If necessary, the position of Flexible Complementing to Group "B" Officers in the scale of Rs.650-1,200/Rs.2,000/3,500 in the comparable scientific organisations and establishments of other Ministries may be ascertained. The review shall be undertaken and completed within six (6) months from the date of receipt of a copy of this order.

19. It is further directed that, consequent to such review of the Rules, the claims of the Applicants for in situ promotion to Junior Chemist/Junior Hydrogeologists from the date of coming into effect of the Recruitment Rules of 1987 be considered on merits and in accordance with the prescribed procedures within two (2) months thereafter."

4. The aforesaid decision was stayed by the Andhra Pradesh High Court.

5. In the above stated OAs applicants have also sought their promotion under FCS Scheme as Scientist 'C' as their juniors have been called for the interview and despite being called for the interview the same were withdrawn subsequently. V. Sambasiva Rao despite pendency of a Writ Petition before the Andhra Pradesh High Court against OA-1032/96 is reported to have instituted OA-679/2001 before the Hyderabad Bench of the Tribunal for promotion to the post of Scientist 'C' and it has been

contended that the same has been kept in abeyance on account of pendency of the Writ Petition before the High Court. In this view of the matter the learned counsel of the respondents stated that substantially the reliefs in both the OAs were identical and admittedly having not disclosed this fact in paragraph-7 of the OA the applicants have concealed the fact deliberately, which is a fraud upon the Tribunal and on this ground alone the OA deserves to be dismissed.

6. In OA-1169/2002, D. Chakraborty & Others have been impleaded, excepting applicant Nos.4,8,10,11,12 and 14 have filed OA-1216/99 before the Principal Bench and by and order dated 15.12.2000 in view of the stay of the operation of the V. Sambasiva Rao's case by the Andhra Pradesh High Court the OA has been adjourned sine die, with liberty to either of the parties to revive the same. This fact admittedly has not been disclosed by the applicants in paragraph-7 of the OA.

7. In OA-1320/2002, B. Umamaheswara Rao & Others, applicants have also filed OA-663/2001 before the Hyderabad Bench of the Tribunal on identical cause of action and relief and the same has not been disclosed by them in the present OA in paragraph-7.

8. In OA-1168/02 except applicant No.2 N.K. Dixit other applicants Dr. Arun Kumar has filed OA-180/HR/99 before the Chandigarh Bench of this Tribunal and by an order passed on 14.12.2000 the OA is disposed of on the basis of the decision in S.N. Bangar & Anr. v.

Union of India & Ors. (OA No.294/99) to await the decision of the Andhra Pradesh High Court. Applicants have also not disclosed this fact in their OA in paragraph-7.

9. Having regard to the aforesaid contentions learned counsel for the respondents stated that deliberate concealment with malafide intention on the part of the applicants in these OAs render the OAs not maintainable at the admission stage and are liable to be dismissed at the threshold. Furthermore, it is stated that having approached the Tribunal on the identical cause of action with similar reliefs, it is not permissible under law to the applicants to file another application on the same cause of action and reliefs.

10. On the other hand, learned counsel appearing for the applicants Sh. R.V. Sinha contended that these OAs have been preferred on different cause of action, wherein there has been a challenge to the rules and the grievance is that the juniors have been preferred over seniors. According to him the aforesaid preliminary objection of the respondents is a disputed fact and cannot be adjudicated without any reply being filed by them only on the basis of oral arguments. It is contended that a preliminary issue should have been framed and thereafter according liberty to the applicants the OAs can be disposed of.

11. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the learned counsel for the applicants that facts are disputed and cannot be

adjudicated without the reply of the respondents, cannot be entertained. It is open for the Tribunal to apply its mind to the material produced by the rival parties to arrive at a conclusion for deciding an issue. Even if there is no written reply filed by the respondents their oral arguments supported by authentic documents are sufficient for adjudication of the present OAs. It is not open to frame a preliminary issue. We have given ample opportunities to the learned counsel of the applicants to establish that the OAs filed earlier were filed on different cause of action. This is a valid compliance of the procedural rules and principles of natural justice.

12. Having compared the issues involved in the earlier OAs, which have not been disputed by the learned counsel for the applicants, filed by all the applicants, excepting a few mentioned in the order the applicants in these OAs prayed for their promotion as Scientist 'C' under FCS Scheme and as these cases have been kept in abeyance on account of pendency of a Writ Petition filed in Sambasiva Rao's case before the Andhra Pradesh High Court the earlier OAs as well as the present OAs, in our considered view, have been preferred on identical cause of action and the same reliefs prayed for. As per law and the procedural rules two OAs on one cause of action cannot be sustained and maintainable. It is also not disputed that the aforesaid earlier OAs preferred by the applicants do not find mention in paragraph-7 of the OA where it is incumbent upon the applicants to have disclosed any application filed earlier in the matter in respect of which the present applications have been made. As we have already arrived at a finding that these OAs are founded on the same cause of

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action, non-disclosure of the pendency of the OAs is a deliberate attempt on the part of the applicants to misrepresent and defraud the Tribunal. In this view of the matter the OAs are liable to be rejected at the threshold in limine at the admission stage itself. However, the aforesaid observations would not apply to applicant No.2, N.K. Dixit in OA-1168/2002 as well as applicant Nos. 4,8,10,11,12 and 14, namely Seraj Khan, M.K. Garg, I.K. Sharma, S.K. Sinha, J.R. Verma and V.K. Ingle, as respondents have not stated that they have filed earlier case before any of the Bench of the Tribunal. As such the declaration made in paragraph-7 by them cannot be found fault with. They are at liberty to pursue their remedies in accordance with law.

13. In the result and having regard to the discussion made above these OAs are dismissed at the admission stage, as not maintainable under the Administrative Tribunals Act, 1985 read with Procedure Rules, 1987. However, applicant No.2, N.K. Dixit in OA-1168/2002 as well as applicant Nos. 4,8,10,11,12 and 14, namely Seraj Khan, M.K. Garg, I.K. Sharma, S.K. Sinha, J.R. Verma and V.K. Ingle, are at liberty to pursue their remedies in separate proceedings, in accordance with law. No costs.

14. Let a copy of this order be placed in the case file of each case.

(Shanker Raju)
Member (J)

(V.K. Majotra)
Member (A)

Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
Copernicus Marg,
New Delhi 110001