

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(29)

O.A./T.A. No. 386 of /1994 Decided on: 2.8.96

Dr. Mahabal Ram APPLICANT(S)
(By Shri M.K.Dua Advocate)

VERSUS

U.O.I. & Ors. RESPONDENTS

(By Shri Manoj Chatterjee & Ms. K. Iyer Advocates)

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THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~XXXXXX~~ / DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No

Adige
(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 386 of 1994

New Delhi, dated the 2nd August, 1996

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HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Dr. Mahabal Ram,
S/o Shri Dukhloo Ram,
R/o 31-B, DDA Flats (MIG),
Rajouri Garden,
New Delhi.

..... APPLICANT

(By Advocate; Shri M.K. Dua)

VERSUS

1. Union of India through
the Secretary,
Dept. of Agricultural
Research & Education,
New Delhi.

AND

Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.

2. The President,
Indian Council of Agricultural Research,
Govt. of India,
Krishi Bhawan,
New Delhi.

3. The Director,
Indian Agricultural Research Institute,
Pusa, New Delhi-110012.

4. Dr. V. Arunachalam,
Principal Scientist,
Indian Agricultural Research Institute,
Pusa,
New Delhi-110012. RESPONDENTS

(By Advocate: Shri Manoj Chatterjee & Ms. K. Iyer)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application, Dr. Mahabal Ram has prayed for the following reliefs:

- i) To direct the Respondents to produce a finalised seniority list of the Scientists in the Genetics

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Division, particularly showing the position of the applicant and Dr. V. Arunachalam and case be decided on merit;

ii) To direct the Respondents to appoint only the senior most Scientist as Head of the Division of the Genetics, which is only an arrangement as per guidelines, which is neither a promotion nor a selection;

iii) Award exemplary cost for this application with a further request to pass any other order/orders or direction/directions as deemed fit in the light of the facts and circumstances of the case.

2. While presenting his case, Applicant's counsel Shri M.K. Dua stated that he was not pressing Relief (ii) and we are, therefore confining ourselves to Reliefs (i) and (iii).

3. At the very outset Respondents' counsel Shri Manoj Chatterjee raised the preliminary issue that this O.A. is not maintainable at all because it is settled law that the same cause of action/relief claimed by the party cannot be agitated in the same forum, and the reliefs claimed in this OA by the applicant are similar to the relief which was sought for in OA No. 2307/93 which was dismissed by detailed judgment dated 7.2.94. In this connection, Respondents' counsel has invited our attention to the fact that the applicant has made in the present O.A. the same parties as Respondents, as that of O.A. No. 2307/93; that similar averments have been made in the present O.A., which were also made in the O.A. No. 2307/93; that the grounds for relief and the details of remedy, in the present O.A. are similar to the relief in O.A. 2307/93 and that in the present O.A. the applicant has relied upon the same alleged seniority list, which he had annexed with the O.A. 2307/93 to establish his case, which

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after detailed arguments had been held by the Tribunal against him.

4. In OA-2307/93, the applicant who is a Principal Scientist in the IARI had challenged the appointment of Dr. V. Arunachalam Principal Scientist, Respondent No.4 as Head of the Genetics Div. from 1.11.93. Enclosed with that OA at Page 53 was a list of Scientists (Ann. A-3) according to which the applicant claimed that he was senior to R-4. When the O.A. initially came up for hearing, ex-parte interim orders were passed not to give effect to the order dated 23.10.93 by which R-4 had been appointed as Head of the Genetics Div. w.e.f. 1.11.93. Aggrieved by that interim order an MA-3431/93 seeking vacation of the above ad-interim order was filed by the respondents, alleging that by manipulating and incorporating certain hand-written words in the list of Scientists (Ann. A-3), the applicant had led the Tribunal to believe that the said list was a seniority list and therefore misled the Tribunal into passing the interim orders.

5. After hearing both the counsel, OA-2307/93 and MA-3431/93 were disposed of by judgment dated 7.2.94. In that judgment the Tribunal had held that they were satisfied that the applicant very well knew that the Annexure A-3 was not a seniority list of scientists as issued by the Respondents and yet knowingly,

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he has produced this document to obtain relief in the O.A. as well as interim order.

The Tribunal also took note of the contentions of the official Respondents that R-4 Dr. V. Arunachalam was senior to the applicant and specifically referred to the particulars of seniority of these two Principal Scientists (namely Dr. Arunachalam and the applicant) as given in Annexure R-3 to the Respondents' reply to that O.A. The Tribunal also noted the Respondents' contention that the applicant apart from being junior to Dr. Arunachalam had been found guilty in disciplinary proceedings and a minor penalty had been imposed against him by the Order dated 30.6.91 (Annexure R-4) and in view of the penalty imposed upon him even if he had been senior most Scientist among the Principal Scientists in the Genetics Div. he could not have been offered the post of Head of the Genetics Div.

6. On the other hand the Tribunal also noted the applicant's contention that Annexure R-3 which gave service particulars could not be treated as a seniority list and further noted the applicant's own service particulars along with the service particulars of R-4 as supplied by the applicant by which he sought to establish that he was senior to R-4 as Principal Scientist.

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7. In the background of the Hon'ble Supreme Court's judgments in Vijay Kumar Vs. State of Haryana AIR 1983 SC 622 and Welcome Hotel Vs. State of Andhra Pradesh AIR 1983 SC 1015, the Tribunal in its judgment dated 7.2.94 held that by tampering with the list of scientists to lead the Tribunal to believe that it was a seniority list, applicant had rendered himself disentitled to any relief and accordingly the Tribunal dismissed O.A. No.2307/93 and vacated the interim orders.

8. The applicant filed SLP 639/96 in the Hon'ble Supreme Court against the said judgment dated 7.2.94 which was dismissed on 2.1.96.

9. During arguments, applicant's counsel Shri M.K. Dua contended that OA-2307/93 was dismissed by the Tribunal on purely "technical grounds". The facts as noticed above make it abundantly clear that the dismissal of OA-2307/93, which was upheld by the Hon'ble Supreme Court cannot be termed to have been on "purely technical grounds" and hence the judgment in Sheodan Singh Vs. D.Kanwar AIR 1996 (SC) 1332 relied upon by the applicant's counsel does not advance the applicant's case.

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10. We have given this matter our careful consideration.

11. At the outset we note that after the dismissal of OA No. 2307/93 by judgment dated 7.2.94, no fresh cause of action has arisen which justifies the filing of the present OA on 17.2.94.

12. Furthermore, a perusal of the contents of the present OA shows that actually it is not different from OA 2307/93. In the guise of alleged non circulation of the seniority list of the Scientists in the Genetics Div. of the IARI and the alleged violation of the guidelines in appointing the seniormost Scientist as the Head of Division, as well as the alleged non disposal of his representation dated 26.7.93 the applicant in the present OA is in fact challenging the appointment of Dr. Arunachalam as Head of the Genetics Division. The respondents have contended that the averments and the reliefs claimed by the applicant in the present OA are almost similar to the reliefs which had been sought in OA 2307/93; in the present OA the same parties have been made as the respondents as in OA 2307/93; similar averments have been made in the present OA as in OA 2307/93 so much so that many of the paragraphs are identical; the grounds for reliefs are almost similar to OA 2307/93; the details of remedies are also almost similar; and in the present OA also the same list of Scientists has also been relied upon which was under cloud in OA 2307/93.

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Prima facie we see no good reasons to disagree with respondents' contentions. In so far as the alleged non disposal of the applicant's representation dated 20.7.93 is concerned, it is surprising that no reference of the same has been made in his OA 2307/93 although representation/ letters sent subsequently have been referred to.

13. It is true that OA 2307/93 was not dismissed after adjudication on merits, but was dismissed because the applicant based his claim on a document which was held by the Tribunal to have been tampered with, thus rendering him disentitled to the reliefs which he had claimed.

14. Under the circumstance while the present OA is strictly speaking not hit by the principle of res-judicata, merely by changing the wording of the relief clause here and there, through the present OA, the applicant cannot expect to secure what he was expressly disentitled from securing by his own misconduct in OA 2307/93.

15. In OA 2307/93 he had challenged the appointment of Dr. Arunachalam as Head of the Genetics Div., but had rendered himself disentitled to any relief because he had relied upon a document which was held by the Tribunal to have been tampered with. The present OA also, in all material particulars, is substantially similar to OA 2307/93. In the present OA also essentially the applicant's challenge is to Dr. V. Arunachalam's appointment as Head of Genetics Div. and once again he has relied upon the very same document (paragraph 4.17 of the OA and Annexure A12) which had

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earlier been held by the Tribunal to have been tampered with.

16. Under the circumstance, the applicant once again renders himself liable to disentitlement from seeking any relief which flows from that very same document and this OA therefore deserves to be dismissed at the threshold itself.

17. For the reasons recorded above, we dismiss this OA. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J).

S. R. Adige
(S. R. ADIGE)
MEMBER (A).

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