

Central Administrative Tribunal, Principal Bench

O.A. No. 2050/2004

New Delhi this the 11th day of April, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman(J)
Hon'ble Mr. S.K. Naik, Member (A)

1. Ms. Vandana
W/o Shri Roshan Lal
Technical Assistant
DDU Hospital,
Hari Nagar,
New Delhi.

R/o F-255 Vikas Puri,
New Delhi-110 018.
2. Ms. Poonam Bakshi
W/o Shri Yogi Bakshi
Lab. Technician
DDU Hospital,
Hari Nagar,
New Delhi.

R/o B-160 Vishwas Park,
Uttam Nagar,
New Delhi-110 059.
3. Shri Ram Parvesh Roy
S/o Shri Bhola Ram
Lab. Assistant,
DDU Hospital,
Hari Nagar, New Delhi.

R/o H-22 Shakurpur,
Delhi-110 034.
4. K. Sunil Kumar
S/o Shri Karunakaran
Jr. Radiogrpaher,
DDU Hospital,
Hari Nagar,
New Delhi.

R/o 10/126, Subash Nagar,
New Delhi-110 067.

.....Applicants

By Advocate: Shri K.N.R. Pillai.

Versus

1. The Government of NCT of Delhi
Through:
The Secretary (Medical)
Department of Health and Family Welfare,
Delhi Sachivalaya,
I.P. Estate, New Delhi-110 002.

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2. The Medical Superintendent,
DDU Hospital,
Hari Nagar,
New Delhi-110 064.

... Respondents

By Advocate: Shri Vijay Pandita.

ORDER (ORAL)

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

These 4 applicants have filed this OA for relief to the following effect :-

“ a direction to the respondents that in complying without further delay with the order already passed by this Tribunal on 24.10.2002 and granting salary as admissible to regular employees in the corresponding grades to the applicants from the dates of their initial engagement, they should also grant them all allowances admissible to regular Laboratory Staff, including DA, CCA, HRA, Uniform Allowance, Washing Allowance and Medical Attendance and Treatment on the same scale as far regular Laboratory Staff”.

2. The applicants were appointed as Laboratory Staff on contract basis for a period of 90 days at a time with intermittent break. Three of them applicants No.1 to 3 filed OA No. 194/2002 and applicant No.4 filed OA No.1471/2002 apprehending their termination and sought relief for grant of pay scale which is admissible to regular technicians and laboratory staff and for regularisation of their service after age relaxation etc. These two OAs were decided on 24.10.2002. Direction to the following effect was given:-

“(i) The respondents are directed that in the event of appointing candidates on regular basis to the posts of Technical Assistants/Lab. Technicians/Lab. Assistants and Junior Radiographers, the claim of the applicants herein for the said posts should also be considered. While doing so, their experience of service, already rendered, should be taken into account and proper weightage should be given to the same. Age relaxation may be made as per DOP&T guide-lines and judicial pronouncements on the subject. Till regular appointments are made, applicants' services should not be terminated.

(ii) The respondents are also directed to make payment of salary as admissible to regular employees in the aforesaid grade to the applicants from the date of their initial engagement within a period of two weeks from the date of receipt of a copy of this order and they would be entitled to future pay on the principle of equal pay for equal work at par with regular employees”.

3. About 23 other similarly situated persons holding the post of Technical Assistants, Lab. Technicians, Lab. Assistants and Junior Radiographer filed similar OAs for grant of similar relief which were also allowed by the Tribunal. The respondents implemented the order of the Tribunal in respect of 20 of the applicants vide order dated

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20.7.2004 leaving 7 applicants, including 4 applicants herein, in whose case the order has not been implemented as yet. This led to the filing of the present OA by these applicants. W

4. The respondents have contested this OA on two grounds. Firstly the relief prayed for cannot be granted to the applicants in view of the judgment of the Hon'ble Supreme Court in Orissa University of Agriculture and Technology Vs. Manoj K. Mohanty, 2003 (1) SC SLJ 363, Utkal University and Another Vs. Jyotiramyee Nayak and Others, 2003 (2) SC SLJ 249 and Km. Priti Chopra Vs. Managing Director, 2000 (2) IS LJ 197 and secondly in view of the filing of the previous OAs No. 194 and 1741 of 2002 which was decided on merits, the present OA is barred by Section 19, 20 and 21 of the Administrative Tribunals Act, 1985 (the Act).

5. We have heard the learned counsel for the parties and have perused the relevant record.

6. At the outset learned counsel for the respondents has raised a preliminary objection that the present application on the same cause of action and for the same relief which was claimed in the OAs No. 194/2002 and 1741/ 2002 (Annexure R-3) is barred by principles of res judicata and otherwise is also not maintainable.

7. The applicants have filed this OA for a direction to the respondents to implement the order of this Tribunal dated 24.10.2002. An application for execution under Section 27 of the Act and not an OA would be maintainable for it. A fresh OA for grant of relief similar to the one which was granted by order dated 24.10.2002, would be barred by principles of res judicata and the present OA would not be maintainable. But instead of filing an application for execution, the applicants have filed this OA for implementation of the order dated 24.10.2002. The learned counsel for the applicant has requested that the present OA to be treated an application for execution.

8. Rule 24 of the CAT (Procedure) Rules, 1987 has provided "the Tribunal may make such orders or give such directions as may be necessary or expedient to effect to its order or to prevent abuse of its order or to secure ends of justice". In the present case in order to secure the ends of justice and give effect to our order dated 24.10.2002 we are inclined to accede to the request of the learned counsel for the applicant and treat the present application as an application for the execution of the order. In this connection we may also notice that although the benefit of the order dated 24.10.2002 passed in the OAs

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24.10.2002 we are inclined to accede to the request of the learned counsel for the applicant and treat the present application as an application for the execution of the order. In this connection we may also notice that although the benefit of the order dated 24.10.2002 passed in the OAs of similarly situated Technical Assistants, Lab. Technicians, Lab. Assistants and Junior Radiographer has been granted by the respondents by their order dated 20.7.2004, for no valid reason a similar order has not been passed in respect of the present applicants although they were also entitled to be treated with equality. In fact, before the Hon'ble High Court in CWP 8/2003 the counsel for the respondents had made a statement and the Writ Petition was disposed of by the following order:-

“ Learned counsel for the petitioners submits that the Department has decided to release full salary and other allowances which would be at par with the regular employees, to the ad hoc workers, who have completed more than one year. Learned counsel submits that in view of the said decision the petitioners are not interested in pursuing this Writ Petition further.

The writ petition as well as applications for interim reliefs are, accordingly, dismissed as not pressed. Interim order dated 27th February, 2003 stands vacated”.

9. The respondents have not extended the benefit of that order also to these applicants. Therefore, by virtue of power vested in Rule 24, mentioned above, and to do substantial justice it is necessary to give a direction to the respondents for implementing the order of the Tribunal. It is now well settled that the courts should do substantial justice to the parties and not deny a just relief on technicality of law.

10. As regards to the second contention of the respondents, suffice to mention that the order of this Tribunal passed in OA 194/2002 and 1741/2002 dated 24.10.2002 and the order of the Hon'ble High Court dated 30.9.2003 have become final. They have not been challenged before any superior court.

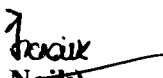
11. “It is well settled that even orders which may not be strictly legal become final and are binding between the parties, if they are not challenged before the superior courts”^{are} to be implemented by the respondents (See **Authorised Officer (Land Reforms) Vs. M.M.Krishnamurthy Chetty (1998) 9 SCC 138**). Therefore, the contention of the learned counsel for the respondents that the applicants cannot be granted relief in view of the judgment of the Hon'ble Supreme Court cited in their

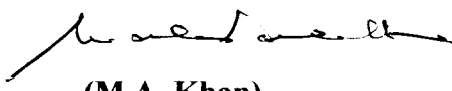
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reply is devoid of any merit. So far as the parties are concerned, they are bound by the orders of this Tribunal and the Hon'ble High Court have to implement them on their own tenor. The Tribunal will not sit in appeal and decide about the legality and validity of the order passed by it earlier. The law laid down by the Hon'ble Supreme Court in the cited judgments will not apply in view of the finality which earlier orders have achieved. Therefore, the cited judgments do not advance the case of the respondents in the present proceedings.

12. Moreover, out of 27 similar situated persons the order of the Tribunal has been implemented in respect of 20 of them. It will be traversity of justice if the applicants are not allowed to reap the fruit of the order and granted same relief which other persons of the same group have been granted. There cannot be inequality among equals. It would be violative of the principles enshrined in Article 14 and 16 of the Constitution of India. The applicants for this reason also are entitled to be treated at par with other applicants who have been granted benefit of similar orders of the Tribunal vide order dated 20.7.2004.

13. In view of the above discussion, we treat the present OA as an application for execution filed by the applicants and direct the respondents to implement the order dated 24.2.2002 passed in OA without any further delay in the same manner in which it has been implemented in respect of the applicants of other OAs vide order No.F.6(79)/2000/DDUH/Estt./8140-50 dated 20.7.004 (Annexure A-II). We allow the applicants to move the court for appropriate action in case the order is not implemented within 6 weeks.


(S.K. Naik)
Member (A)


(M.A. Khan)
Vice Chairman (J)

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