

10

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. Nos. 2428, 2429 & 2431 of 2004

M.A. 1968/04 IN O.A. 2022/04

This the 8th day of April 2005

Hon'ble Shri S. K. Naik, Member (A)

OA 2428/2004

Dr. Anjula Sagar
D/o Shri Bharat Bhushan
Field Investigator
CIET, NCERT, New Delhi
R/o Type III/A/23, NCERT Flats
Naseerpur, Pappankala, New Delhi-45

OA 2429/2004

Dr. Ranjan Kumar Biswas
s/o Late Baman Chandra Biswal
Field Investigator
CIET, NCERT, New Delhi
R/o Type III/C/45, NCERT Flats
Naseerpur, Pappankala, New Delhi-45

OA 2431/2004

Chattar Pal Singh
Technician Grade I,
CIET, NCERT, New Delhi
R/o Type III/19, NCERT Flats
Naseerpur, Pappankala, New Delhi-45

..Applicants

(Applicants in person)

Versus

National Council of Educational Research & Training (NCERT)
Through the Secretary
Sri Aurobindo Marg
New Delhi-16

..Respondent

(By Advocates: Shri R.K. Singh with Ms. Deepa Rai)

O R D E R

In all the three OAs stated above, the relief sought for by the applicants pertains to the quashing of the identical orders passed by the respondents dated 23.9.2004 and, therefore, they are being disposed of by this common order.

2. All the three applicants had earlier jointly filed the original application, being OA-2022/2004, when their representation dated

26.7.2004 was pending consideration before the respondents and, therefore, the same had been disposed of with direction to the respondents to decide the same keeping in view the judgment dated 17.5.2004 in OAs 696 - 698 of 2004, which had been filed by some of the colleagues of the applicants, seeking similar reliefs.

3. The respondents thereafter have passed the impugned order dated 23.9.2004, which is now under challenge.

4. The applicants have appeared in person and have argued their case. They have contended that since this Tribunal in its order dated 17.5.2004 has held that the cases would have to be considered from the point of view of their seniority determined on the basis of 'first-cum-first served', the respondents cannot go behind the order of the Tribunal and change the same on the pretext of a revised policy decision, which is claimed to have been taken subsequent to the passing of the said order. They have contended that the respondents are attempting to change the waiting list prepared earlier on the basis of 'first-cum-first served' basis, which should not be permitted as any change in the policy cannot have retrospective effect. They have, therefore, very forcefully urged that the respondents be directed to first exhaust the waiting list prepared on 'first-cum-first served' basis, which stood confirmed by this Tribunal and thereafter implement their revised policy.

5. Respondents had first filed a miscellaneous application, being MA-1968/2004, seeking an amendment to the directions given by this Tribunal in OA-2022/2004 only to the extent that the judgment dated 17.5.2004 passed in OAs 696 to 698 of 2004 may not be made applicable in the case of the applicants herein as the facts and circumstances were different and that the applicants had obtained the same order without disclosing the full facts with regard to a decision taken by the respondents on the basis of a joint meeting of the representatives of the Staff Residents Welfare Association, including the applicants and it had been decided that a single combined list for both those who are seeking change of accommodation from Papan Kalan to NIE campus and those seeking technical change from lower category to higher category within the NIE campus itself should be prepared.

 The respondents had thereafter




filed their counter reply, in which they have submitted that there had been some developments inasmuch as the respondents were faced with competing demands from the staff, who had been allotted accommodation at Papan Kalan as per their entitlement in the normal course and those who were allotted accommodation under the Incentive Scheme by relaxing the norms, and further from those in the main campus, who were waiting for years wanting change from lower to higher category on account of promotion/higher pay scale. The respondents, therefore, had to devise a policy so as to rationalize the allotment procedure and it was in that background that a meeting had been held with the representatives of the Staff Residents Welfare Association on 16.8.2004. It has been contended that apart from the representatives of the Association, the applicants were also present in the meeting but they had conveniently omitted the reference to such a meeting in their OA-2022/2004. The learned counsel has argued that the applicants have not come before the Tribunal with the clean hands as they suppressed this material fact and managed to obtain a direction, which was passed without any notice to the respondents. Even, in these OAs, the applicants have made no mention of the joint meeting and continue to mislead the Tribunal, he contends.

6. Contending that the facts and circumstances of the case adjudicated upon in OAs 696-698 of 2004, on which the case of the applicants is based, are entirely different from those obtaining in the present case, the learned counsel has submitted that the above-mentioned cases rested primarily on two premises, i.e., first it was only the changed list and the seniority of those who figured therein was in question. The conflict was with regard to seniority between those who were granted accommodation at Papan Kalan after relaxation of their pay scale, which was the sole eligible criterion and those who were allotted without any relaxation. Further the applicants involved therein had been actually given the change and allotted specific houses at the main campus and, therefore, they had got their water and electricity supply, etc. at Papan Kalan disconnected. It was in those circumstances that the unilateral order passed by the Council had been challenged in the earlier OA. In the present case, the facts are quite different and distinguishable. As already submitted, the learned counsel contends that the Council had to deal with the competing and conflicting claims for allotment of the quarters from three different streams, namely, (i) those in the

change list, who initially got allotment of quarters at Papan Kalan after relaxation in the pay scale, which was one of eligibility criteria and are seeking change from Papan Kalan to NIE Campus; (ii) those in the change list, who got allotment at Papan Kalan without any relaxation in the pay scale and are also seeking change from Papan Kalan to NIE campus and (iii) those in the technical change list, who are already in the NIE campus but who, on promotion, are awaiting allotment to higher category of quarters within the campus itself. It was in this background that the respondents had to devise and rationalize the scheme and the procedure for allotment in order to resolve the conflicting claims of all the three groups/streams in a harmonious manner, which would be fair and just for one and all. Since the applicants are challenging the new rationalized scheme in these OAs, they cannot draw a parallel with regard to the facts of the case in OAs 696 – 698 of 2004 and derive strength therefrom to seek the relief on the basis of the old waiting list. The ratio of the judgment in OAs 696 – 698 of 2004 cannot be applied in the present cases at all on account of the changed circumstances, the learned counsel contends.

7. Contending that the decision of the Tribunal in OAs 696-698 of 2004 did not prohibit the respondents for devising a policy to rationalize and reconcile the conflicting claims of the various groups/streams, the learned counsel fully justifies the action of the respondents, according to which, a fresh list has been drawn up and in accordance with the policy decision taken by the respondents, those who were given allotment at Papan Kalan after relaxation of the requisite pay scale, have been allowed their position in the said combined list on the basis of the date when they are given the eligible pay scale. Thus, the case of the applicants has been given due consideration by the respondents and the day they reach the requisite pay scale their names will be placed at the top of the list for the appropriate category for allotment in the main campus.

8. Learned counsel has further stated that since the applicant in OA-2431/2004 – Shri Chattrapal Singh – has already reached the eligible pay scale, the respondents have already decided to allot him a Type-III quarter in the main campus. To that extent, the relief sought for by the applicant in OA-2431/2004 already stands provided.

7/2008

9. I have heard the applicants at length as also have perused the records of the case.

10. The applicants have argued at length bringing to my notice that in the waiting/change list prepared by the respondents earlier, their names figured at Sl.Nos.40, 41 and 38 respectively and since the Tribunal vide its order dated 17.5.2005 in OAs 696 – 698 of 2004 has given a direction that the respondents could not deviate from the list which has been prepared on the basis of 'first-cum-first served', the respondents could not have devised a policy subsequent thereto, which has the effect of changing the said list. Their main contention is that the respondents, by virtue of the order passed by this Tribunal on 17.5.2004, were debarred from taking a policy decision, which has the effect of changing the list to the detriment of their interest. According to them, any decision could only have prospective effect without affecting the earlier list. They further contend that let the respondents operate on their new policy only after they have been allotted change accommodation. They have further assailed the order of the respondents on the ground that Shri B.S. Malik and Smt. P.S. Maheshwari, who are juniors to them, have been allotted the accommodation and thus even under the new policy, the respondents have resorted to discrimination. The respondents, I find, have explained this by stating that Shri B.S. Malik and Smt. P.S. Maheshwari have been given the change in accordance with the policy decision taken in the joint meeting held on 16.8.2004 wherein it had been decided that for those who were allotted quarters at Papan Kalan after giving relaxation in the eligible pay scale, the seniority in the combined list will be determined from the date the employees entered the eligible pay scale, i.e., Rs.5500/- pm. These two persons became eligible for allotment of quarters on the basis of change since they enter the pay scale w.e.f. 1.6.2003 and 19.8.2002 respectively and hence they were given change from Papan Kalan to NCERT campus w.e.f. 29.9.2004. The respondents have further explained that Dr. Anjula Sagar - applicant in OA-2428/2004 and Dr. R.K. Biswas – applicant in OA-2429/2004 – would enter the eligible pay scale in June 2005 and thus, there has been no discrimination.

11. I am inclined to agree with the explanation offered by the respondents that there has been no discrimination, vis-à-vis, Shri B.S. Malik and Smt. P.S. Maheshwari. It is not the case of the applicants that they have already reached the pay scale of Rs.5500/-

Done

pm. On the plea of the applicants that the order of the Tribunal in OAs 696-698 of 2004 was binding and, therefore, they could not have altered the old waiting list, has to be seen in the background of the administrative difficulties being faced by the Council in managing its affairs. The order on which the applicants are basing their claim was passed in OAs 696 – 698 of 2004 filed by some other applicants and it could not be held to be sacrosanct for all time to come. Allotment of accommodation is not a matter of right and it is only a concession that is granted to the employees and if the employer has devised a policy to reconcile the conflicting claims of various groups/streams, in which the applicants themselves were present, it cannot be said that the same has been devised in violation of any rule/instructions on the subject. When the respondents have themselves stated that the day the applicants reach the eligible pay scale for allotment of the quarter, their names would stand first in the seniority of the single changed list and would be allotted quarters immediately in the NIE campus this decision has been arrived at with the consent of all the concerned parties, I am of the considered view that the decision of the respondents cannot be treated to be in violation of any rule/order. One can understand the anxiety of the applicants, who were on the verge of being allotted the accommodation in the main campus, being delayed for sometime but cases of this nature cannot be decided on the basis of emotions. It is hoped that the respondents would consider the claim of the applicants for allotment of their entitled Type-III quarters in the main campus immediately after they reach the eligible pay scale since, ^{as} they have already decided to put their names on the top of seniority list. Insofar as applicant in OA-2431/2004 - Shri Chattrapal Singh – is concerned, it has been stated that the respondents have already decided to allot him the changed accommodation. This applicant, however, states that he has not received any communication in this regard. The respondents are, therefore, directed to implement their decision immediately, if not already done.

12. With these observations, all the three OAs/are disposed of with no order as to costs.

and MA-1968/04

S. K. Naik
(S. K. Naik)
Member (A)

/sunil/