

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 709/2004

New Delhi this the 18 day of March, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Seema Sharma,
2/5, Mall Road,
Opp.Bindal Police Chowki,
Dehradun, Uttaranchal

..Applicant

(By Advocate Mrs. Prasanthi Prasad alongwith with Ms. Deepti)

VERSUS

1. Director,
C.S.I.R., Rafi Marg,
New Delhi.
2. Director,
I.I.P.,
Dehradun, Uttaranchal

..Respondents

(By Advocate Shri V.K.Rao along with Shri Satish Kumar)

ORDER

By this OA, applicant has sought the following reliefs:

“(a) To issue a writ of mandamus or any other appropriate writ order or direction, setting aside the termination of the applicant from the post of computer operator by declaring it as arbitrary, illegal and violative of the fundamental Rights guaranteed under Article 14,16 and 21 of the Constitution of India and also violative of the principles of Natural Justice and of the statutory policies.

(b) To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent No.2 to reinstate the applicant in the post of computer operator with effect from the date of the alleged termination and in view of the decision of the Hon'ble High Court of Delhi in CWP No. 6032 of 2000 (N .K. Rawat Vs. CSIR and Anr. And adopted by respondent No.1 and 2 and in view of OM dated 8.2.1982 passed by DUPT”.

2. It is submitted by the applicant that respondents had issued an advertisement on



27.9.1996 for filling up the post of Technician (Computer Operator) Grade II (1) in the pay scale of Rs.950-1400. There were three posts out of which two were reserved for general candidates and one for scheduled caste candidate. It was, however, stated therein that number of posts may vary (page 22). Pursuant to this advertisement, applicant applied and she had been called to appear in the interview/trade test conducted by them. She was declared pass. She was issued appointment letter dated 1.7.1998 as Technician (Computer Operator) Grade II (1) in the Institute of Petroleum Dehradun in the scale of Rs. 3050-4590 (page 24). Even though this appointment letter was issued on the recommendations of the Selection Committee yet her appointment letter was taken back on 6.7.1998 and instead applicant was given fresh letter dated 15.7.1998 wherein she was given offer of appointment as Computer Operator on contract basis on consolidated amount of Rs.2000/- P.M. for a fixed tenure under sponsored project entitled SSP- 3206 for 6 months. She accepted the assignment due to pressing reasons. On 28.2.1999 she was asked not to come in the office any more.

3. Being aggrieved she filed OA 967/1999 seeking restoration of her appointment letter dated 1.7.1998. The OA was dismissed vide order dated 21.12.2000, on the ground that person immediately above her in the panel, namely, Shri N.K.Rawat had filed OA 572/2000 but since that OA was dismissed vide order dated 11.9.2000 on the ground that applicant therein was given an appointment against a non existent vacancy therefore, her OA had to be dismissed (page 45).

4. It is submitted by the applicant that Shri N.K.Rawat filed CWP No. 6032/2000 in the Hon'ble High Court of Delhi challenging the order dated 11.9.2000. Ultimately his writ petition was allowed by the order dated 26.7.2002. The respondents challenged the order dated 26.7.2002 by filing SLP in the Hon'ble Supreme Court which was dismissed vide order dated 10.1.2003 (page 48) as such Shri N.K.Rawat was reinstated in service on 10.3.2003. On the same day, the applicant gave her representation to the authorities





requesting therein to reinstate her also in view of the judgement given by the Hon'ble High Court of Delhi in the case of Shri N.K.Rawat (page 50) but since no reply was given to her she had no other option but to file the present OA on 10.3.2004 seeking quashing of termination order.

5. It is submitted by the counsel for the applicant that since applicant was also similarly situated as that of Shri N.K.Rawat and in his case, relief was given by the Hon'ble High Court, therefore, she should also be given the same benefits and she should also be reinstated. Counsel for the applicant submitted that judgment given by the Hon'ble High Court in the case of Shri N.K.Rawat's case is judgment in rem, therefore, she was entitled to get the benefit of the same.

6. Respondents, on the other hand, submitted that the case of Shri N.K.Rawat was allowed by the Hon'ble High Court of Delhi as he had completed probation period and keeping in view the peculiar facts and circumstances of that case, applicant cannot take advantage of that order because her facts are absolutely different. Applicant was engaged as Project Assistant on 24.8.1992 for a specific period against the sponsored project. The post was purely temporary and co-terminus with the project and as such she cannot claim any regular appointment. Moreover, her case was earlier dismissed by the Tribunal and she never challenged the said order therefore, in her case the order passed by Tribunal had attained finality. She, therefore, cannot be allowed to agitate the same matter by filing second OA. They have thus prayed that the OA may be dismissed on this preliminary ground itself. In support of this contention, counsel for the respondents relied on the judgement given by the Hon'ble Supreme Court in the case of **Md. Aziz Alam and Ors Vs. UOI & Ors** reported in 2001 (1) SCC 93).

7. On merits counsel for the respondents submitted that there were only 3 posts as per the advertisement out of which 2 were reserved for general candidates and 1 reserved for scheduled caste candidate. Pursuant to the said advertisement 2 persons namely, Shri

namely, Shri Rajnish Bhatnagar and Ms. Anjali Sinha were appointed against general category and 3rd post was filled by a scheduled caste candidate. As per the relevant instructions, the respondents were to prepare a panel consisting of four persons only so that in case any person failed to join, the next person could be given offer of appointment. Instead they prepared a panel of seven persons, including these successful candidates and were gave them appointment letter as well. The panel itself was contrary to the instructions as it could have been prepared beyond the advertised number of posts. Moreover, the life of panel is one year, therefore, it was alive from 16.3.1997 to 15.3.1998. Contrary to these instructions, the offer of appointment was given which itself was null and void. They have further submitted that the husband of the applicant is a regular employee (PA to the then CAO) therefore, as per instructions of CSIR it was mandatory to take concurrence of DG, CSIR before issue of offer of appointment in her favour. No such concurrence was taken before issuing the offer of appointment. It was only when the case was sent for approval to DG, CSIR that mistake came to notice. Therefore, the offer of appointment was withdrawn and she was engaged on temporary post which was accepted by her. She never challenged the action of the respondents at that relevant time and it was only when her services were disengaged on contract basis, that she had filed OA 967/1999 which was dismissed. Therefore, now she cannot be allowed to file the 2nd OA in these circumstances.

8. I have heard both the counsel for the parties and perused the pleadings as well. Admittedly applicant was given offer of appointment as Computer Operator on 15.7.1998 (page 29). She did not take any objection but on the contrary she acquiesced to the situation by accepting the appointment on contract basis in 1998. It was only when her services were disengaged on 28.2.1999. That she filed first OA in 1990 bearing No. 967/1999. However, that OA was dismissed vide order dated 21.12.2000 (page 45) Applicant once again did not challenge the order dated 21.12.2000 passed by the Tribunal

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whereby her OA was dismissed meaning thereby she accepted the order passed by the Tribunal ^{also R} therefore, that order attained finality. She ^{has now R} filed the present OA only on 10.3.2004 seeking all those benefits which have been given to Shri N.K.Rawat by the Hon'ble High Court of Delhi.

9. The judgement was given in the case of Shri N.K.Rawat by the Hon'ble High Court of Delhi on 26.7.2002 in CWP 6032/2000. It was open to the applicant to at least file Writ Petition in the Hon'ble High Court of Delhi at that stage by challenging the order passed by the Tribunal and seeking the same benefits as had been given to Shri N.K.Rawat but even at that stage no such efforts were made by the applicant. The respondents filed SLP and even that was dismissed on 10.1.2003 whereafter Shri N.K.Rawat's appointment was approved by the Competent Authority and it was observed that he shall continue in the service of this Institute as regular appointee vide order dated 10.3.2003. Even at that stage, applicant did not file any Writ Petition before the Hon'ble High Court of Delhi. On the contrary she filed second OA before the Tribunal, that too after one year after the SLP was dismissed i.e. on 10.3.2004.

10. In these circumstances I am satisfied that the present OA filed by the applicant cannot be entertained because the order passed by the Tribunal was never challenged before the Hon'ble High Court of Delhi, it had, therefore, attained finality ^{and R} so long the 1st order ^{of Tribunal R} stands in law, whereby her prayer was rejected by the Tribunal, she cannot file second OA claiming the same relief simply because another person viz., Shri N.K.Rawat, was granted relief by Hon'ble High Court of Delhi. In these circumstances, the facts of present case would be fully covered by the judgement of Hon'ble Supreme Court as referred to above. In that case OA, filed by the petitioner, was rejected by the Tribunal. However when other similarly situated person filed OA, that was allowed, thereafter applicant therein filed second OA before the Tribunal seeking the benefit as given to similarly situated person by the Tribunal in other case. The second OA was rejected by



the Tribunal. The order passed by the Tribunal was upheld by the Supreme Court by observing that once the matter reached a finality it could not be reopened merely on the ground that in some other matter filed at the behest of some similarly situated persons, the Tribunal or the Court had granted some relief. It was further held by the Hon'ble Supreme Court that 15 years had² already elapsed from the date on which the appellants claim to have taken the test in question. I find same is the position in the present case as well.

11. In view of the above discussion, the second OA filed by the applicant seeking same relief is not maintainable. The same is accordingly dismissed as not maintainable.

12/13/3/05
(Mrs. Meera Chhibber)
Member (A)

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