

Central Administrative Tribunal
Principal Bench: New Delhi

MA-3431/93
OA No.2307/93

New Delhi this the 7th Day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)
Shri B.S. Hegde, Member (J)

Dr. Mahabal Ram,
S/O Sh. Dukhloo Ram,
R/o 31-B, D.D.A. Flats (M.I.G.)
Rajouri Garden,
New Delhi.

...Applicant

(By Advocate Shri B.B. Raval)

Versus

1. Union of India through
the Secretary, Department
of Agricultural Research
and Education, and
Director General, Indian
Council of Agricultural Research,
Krishi Bhawan, New Delhi.

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

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

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

...Respondents

(By Advocate Sh. Manoj Chatterjee)

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement?
- ✓ 2. To be referred to the Reporter or not?
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement?
- 4. Whether it needs to be circulated to other Benches of the Tribunal?


(N.V. Krishnan)
Vice-Chairman

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ORDER

(Hon'ble Mr. N.V. Krishnan)

MA-3431/93 in OA-2307/93

The respondents in the OA have filed MA-3431/93 praying for vacation of the ad interim ex parte stay order passed by us on 29.10.93.

2. The O.A. was filed on 28.10.93 by the applicant, who is a Principal Scientist in the Indian Agricultural Research Institute, (IARI), challenging the appointment of Dr. V. Arunachalam, Principal Scientist, the fourth respondent, as Head of Genetics Division w.e.f. 1.11.93.

3. When the matter came up before us on 29.10.93

we directed the issue of notice to the respondents to file their reply to the O.A. We further directed as follows:-

"The applicant has prayed for an interim direction mentioned in para-9. The grievance of the applicant is against the Annexure-B order dated 23.10.93 by which the fourth respondent is being appointed as Head of Divisional ^(sic) Genetics Division w.e.f. 1.11.93 for a period of six months, as a stop gap arrangement or until further orders pending regular selection, without extra remuneration. It is stated that on the previous occasion when by the Annexure-A order dated 24.12.92 the fourth respondent was appointed as Head of Genetics the applicant represented on various grounds and, therefore, effect was not given to that order and the previous incumbent Dr. Balram Sharma continued as Head of the Genetics Division. The Annexure-B order is being passed when Dr. Balram Sharma is demitting office on 31.10.93. The learned counsel points out that Annexure A-3 would show that the applicant is senior to fourth respondent. He also points out that Annexure A-6 is the guideline for making interim arrangements (para 2(iii)) and shows that the principle of seniority would be applied for making interim arrangements. He, therefore, states that Annexure-B is violative of this principle and also mentions that the fourth respondent is junior to the applicant. In the circumstances he has prayed for an interim direction.

We, therefore, direct the third respondent not to give effect to the impugned Annexure-B order for a period of 14 days from today, i.e., till 11.11.93, on which date further interim directions will be issued after hearing the respondents. This interim direction shall be served by Dasti."

4. Aggrieved by this order the respondents filed on 8.11.93 MA-3431/93, seeking vacation of the above ad interim stay order, which has been continued from time to time. The applicants in the MA (hereinafter referred to as the respondents for the sake of convenience) have alleged as follows:-

"3. That the applicant by suppressing material facts from this Hon'ble Tribunal and by manipulating and incorporating certain hand-written words in a document misled this Hon'ble Tribunal as would be evident from Annexure A-3 at page No.53 of the OA wherein-after, "The list of scientists" the following words have been added by hand"....According to seniority....". It may be stated that this Hon'ble Tribunal vide its order dated 29.10.1993 relied upon this hand-written incorporated matter of the document as would be evident from the following lines of the ad-interim ex-parte stay ".....The ld. counsel points out that Annexure A-3 would show that the applicant is senior to fourth respondent.....". It is pertinent to mention that the said Annexure A-3 is only a list of the Scientists who are working in the Division of Genetics in different grades wherein Dr. Mahabal Ram, the applicant herein, has been shown in Sr. No.1 and the past Head of the Department is shown in Sr. No.4 and the respondent four figures in Sl. No.3. Annexed is the copy of the original list of the names of the Scientists without any categorisation marked Annexure R-1."

5. The list of names of the Scientists without any categorisation, which has been annexed as Annexure R-1 with the MA, is identical with the document produced as Annexure A-3 by the applicant except

for the fact the words and figure "September, 1993" A-3 is found written at the top of this Annexure and in addition, the words "according to seniority" are found written after the typed words "List of Scientists".

6. The respondents have contended that the fourth respondent - Dr. Arunachalam - is senior to the applicant and they have given the particulars of seniority of these two Principal Scientists in Annexure R-3. The respondents also state that, in addition, the applicant has been found guilty in disciplinary proceedings and minor penalty has been imposed on him by the Annexure R-4 order dated 30.6.91. It is contended that in view of the penalty imposed on him, even if the applicant was the seniormost Scientist among the Principal Scientists in the Division of Genetics, he could not have been offered the post of Head of Genetics Division. For these reasons, the respondents have prayed that the ad interim ex parte order dated 29.10.93 be vacated and that the O.A. itself be dismissed, as it has no merit.

7. The applicant has filed a counter-affidavit to the MA on 10.1.94, in which he has alleged that the respondents have appended four documents with the MA which have no relevance whatsoever. In so far as Annexures R-1 and R-3 are concerned, the applicant has stated as follows:-

"i) Annexure R-1 is the same list appended by the applicant in support of his contention that he heads the list of 87 Scientists in the Division of Genetics, and it is nowhere said that this list was not prepared by the Administrative Division of the Department of Genetics."

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"iii) As regards Annexure R-3 i.e. the Service particulars, it is most respectfully submitted that it cannot be treated as seniority list even by the remotest implication. To prove that the applicant is senior to Respondent No.4 Dr. V.Arunachalam, copies of service particulars regarding the applicant as well as Respondent No.4 Dr. V.Arunachalam are appended and marked as ANNEXURE CA-1 and ANNEXURE CA-2 alongwith a copy of the I.C.A.R communication No.8(21)/80-Per.IV dated 15th July, 1987, which is also appended and marked as ANNEXURE CA-3."

8. In the Annexure CA-1 the applicant has given full service particulars about himself and in the Annexure CA-2 he has given full particulars about the fourth respondent with a view to establishing that he is senior to the fourth respondent as Principal Scientist. He has also filed Annexure CA-3 which is a letter dated 15.7.87 of the Indian Council of Agricultural Research (ICAR) to the Director of I.C.A.R clarifying, among other things, that the Scientists who have been granted higher scales earlier will be treated as senior to those granted higher scale from a later date and the ARS Scientists granted promotion on a personal basis will be ranked junior to the Scientists holding research management position at Institute/ICAR headquarters.

9. The MA came up for consideration on 12.1.94, 18.1.94 and 20.1.94 when, after hearing the parties it was reserved for orders.

10. The learned counsel for the respondents contended that the Annexure A-3 document filed with the OA has been deliberately tampered with to mislead the Tribunal to believe that it was a list of Scientists according to the seniority. It is on the basis of this averment that the Tribunal was led to believe that the applicant was senior to the fourth respondent

and hence, an ad-interim order was given in favour such of the applicant. He contended that there is /a list, ^{filed} as is / at Annexure-3, but without any of the hand written words and figures viz. "September, 1993" at the top and the words "according to seniority" after the typed words "List of Scientists." The list as obtaining with the respondents has been exhibited as Annexure R-1. It is stated that this was not a seniority list and it was only meant for circulation of papers. It is urged that, as shown in the Annexure R-3, the applicant was junior to Dr. Arunachalam, fourth respondent. It is stated that in this regard a letter explaining the seniority position had already been sent on 17.3.93 (Annexure R-5) to the Director of ICAR. He contended that in view of the fact that the applicant has tampered with the Annexure-3 document to procure an interim order in his favour, the O.A. itself will have to be dismissed, as the applicant is not entitled to any relief because he has not come with clean hands before this Bench. In this connection the learned counsel for the respondents has drawn our attention to the judgement of the Supreme Court in Vijay Kumar Vs. State of Haryana (AIR 1983 SC 622). It was found that in that case the petitioners obtained an order from the Supreme Court for the maintenance of the status quo by making false representation that the provisional admissions granted to them were not cancelled and that they were continuing their studies as Post Graduate Students of Medical College on the relevant date. For this reason, the Supreme Court declared that the petitioners disentitled themselves from getting any relief or assistance

from the Court and hence the SLPs filed by them were dismissed. He has also drawn our attention to an unreported judgement of the Bombay High Court in writ petition No.2635/90 R.T. Sharma vs. Union of India & Others. In that case the petitioner made an averment that no other petition had been filed either in the High Court or in the Supreme Court, pertaining to the subject matter of that petition. This was found to be false, as, earlier, the petitioner, both in his individual capacity and in his representative capacity, had filed an identical petition which had been rejected in limini. In this view of the matter, it was observed that a petition based on lies and surmises cannot be allowed to pass muster and the penalty for falsehood is extinction and for that reason, as also for the reasons for which the earlier petition had been dismissed, the petitioner's petition was rejected in limini with costs.

10. The learned counsel for the applicant contended that there has been no tampering of any record by the applicant. He has stated in the course of the arguments that the Annexure-3 has been filed in the same form in which it had been obtained from the respondents and that it was not tampered with by the applicant. He also alleged that the respondents have suppressed material particulars about the service of the applicant and the fourth respondent to make it appear that respondent 4 was senior to the applicant. Therefore, this Tribunal has to reject their case. For, the Tribunal is bound to deny relief to any person who comes to the Court suppressing the material facts. In this connection he cited the decision of the Supreme Court in Welcome Hotel vs. State of Andhra Pradesh (AIR 1983 SC 1015). In that

case also, the Supreme Court found that the petitioners before them had suppressed the fact that the impugned order, fixing prices for food items, had already been replaced by another order dated 5.1.81. It was found that they were not entitled to any consideration at the hands of the Court, as that order was issued with their consent.

11. As a preliminary objection has been raised by the respondents, alleging that the applicant has tampered with the Annexure-3 document, we have found it necessary to address ourselves to this issue in the first instance. We have reproduced in paragraph-4 above the allegations made in the MA against the applicant. We notice that in the counter-affidavit filed by the applicant, this has not been denied at all. The counter-affidavit makes only two points. The first is the preliminary objection that without filing a counter-affidavit to the OA, the respondents are seeking vacation of the stay order and the second is a critical comment on the Annexures R-1 to R-5 submitted with the MA. The allegation is not denied anywhere. Therefore, *prima facie*, we have to hold that the applicant has by, implication, accepted the allegations made in the MA.

12. At the time of arguments, we drew the attention of the learned counsel for the respondents to the Annexure-7 letter dated 7.10.93 sent by the applicant to the third respondent, the relevant extract of which is reproduced below:-

"Dr. Balram Sharma's term as Head of Division of Genetics is going to over (sic) on 31st October, 1993. As per Council's guidelines for making interim arrangements during the absence

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of Director/Head of Divisions on short term/long term basis vide letter No.8-9/77-Per.IV dated 24th March, 1993 and being senior most in the Division (Seniority List enclosed) my claim to get the charge of the Head of Division of Genetics, IARI, New Delhi stands without any second thought."

13. We asked the learned counsel for the respondents why they have not produced the seniority list which was enclosed by the applicant alongwith this letter, which could have established whether that seniority list is the same as the Annexure A-3 document now produced with the OA, claiming to be a List of Scientists "according to seniority". The respondents produced the original personal file of the applicant bearing No.6-883/78/P-1 in which the Annexure-7 letter dated 7.10.93 is filed at page 145. The enclosure thereto is the same as the Annexure A-3 list excepting for the material difference that the words and figures in manuscript are not found in that Annexure. In other words, "according to seniority" found written by hand in Annexure A-3 are missing in that enclosure. This letter is dealt with in the third respondent's office on pages 41-43 notes. An office note was put up on 26.10.93. It was mentioned in that note that the seniority list enclosed by the applicant was only a list of the Scientists of the Division of Genetics and not a seniority list. It was also mentioned that orders have already been issued, appointing Dr. V.Arunachalam as Head of Genetics on a stop gap arrangement w.e.f. 1.11.93 for a period of six months by the order dated 23.10.93 after considering all rules and regulations. The J.D.A. suggested on 29.10.93 that the applicant be informed that Dr. Arunachalam is senior to him.

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This note of the JDA was put up to the Director who saw this case on 31.10.93 and agreed with the suggestion given by the JDA. This file was also shown to the learned counsel for the applicant. No objection was taken that the seniority list sent by the applicant with his letter dated 7.10.93 which is kept on the personal file of the applicant, produced by the respondents, was not the seniority list sent by the applicant, as it did not contain the written words and figures which appear on Annexure A-3. Thus, when the applicant made a representation to the third respondent on 7.10.93 the seniority list which he sent to support his claim did not contain the words in manuscript now found written in the Annexure A-3 document.

14. The arguments of the learned counsel for the applicant that Annexure A-3 in the form in which it is filed, including the words in manuscript, was obtained from the office of the third respondent, do not carry any conviction for the following reasons:-

- i) He has produced for our perusal the original of that document. We notice that 'September, 1993' is written and underlined in red ink. The words "according to seniority" are written in blue ink. It is highly unlikely that these words could have been written by any authorised officer in the respondents' office, for he would not, normally have used 2 inks to write these words. Secondly, as the list is a cyclostyled one, he would have ensured that these words were recorded on all copies by stencil or photo copy. That apart, if he had obtained it he could have sent that list alongwith the letter dated 7.10.93

u (Annexure A-7).

ii) It appears to us, in retrospect, that the applicant has deliberately not chosen to enclose with Annexure A-7 letter the seniority list which he had sent along with that letter to the respondents, lest the tampering with the time of Annexure A-3 should become self evident at admission.
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iii) There is no denial of the serious allegations made in the MA in the counter-affidavit filed by the applicant.

iv) In the face of this allegation the applicant has not even cared to point out in his counter-affidavit as to from whom he got this Annexure A-3 document and when.

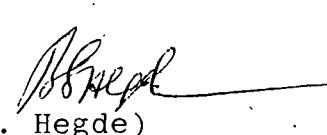
15. In these circumstances, we are satisfied that, while there is no direct proof that the applicant himself has tampered with the document and has written in manuscript the words found written in Annexure A-3, we have no doubt, in view of the surrounding circumstances, that the applicant very well knew that this was not issued to him by the respondents in this form. The onus, therefore, lies on him to establish how the tendentious words in hand have been got written on the Annexure A-3 document. Obviously, they are meant to prop up his claim that he was senior to Dr. Arunachalam. For, but for this insertion, we certainly would not have considered the Annexure A-3 as a seniority list. At any rate, the interim order as issued on 29.10.93 would not have been issued.

16. We are, therefore, satisfied that the applicant very well knew that the Annexure A-3 was not a list of Scientists according to the seniority as issued by the respondents and yet, knowingly, he has produced this document to obtain relief in the OA as well as to obtain

an interim order. In these circumstances, the rule laid down by the Supreme Court in the cases of Vijay Kumar and Welcome Hotel, referred to above will fully apply to this case. We hold that the applicant by his conduct has rendered himself disentitled to any reliefs in this OA.

17. In the circumstances, we find that we are not required to consider any other issue in this case, particularly, the question of seniority as between the applicant and the fourth respondent, about which a lot of arguments were advanced and a number of documents were produced for our perusal. We are of the view that, as this application is liable to be dismissed at the threshold, it is not necessary for us to examine the other issues on merits. The question whether the respondents have suppressed any information in regard to seniority, as alleged by the learned counsel for the applicant can arise only at a later stage and, therefore, the plea that the respondents contentions should be dismissed summarily cannot be considered now.

18. In the circumstances, we dismiss this OA on the ground that the applicant has obtained an ad-interim order by making a representation which he very well knew to be false. The M.A. is, therefore, allowed. The interim order issued on 29.10.93 is vacated and the O.A. itself is dismissed.


(B.S. Hegde)
Member (J)


(N.V. Krishnan)
Vice-Chairman

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