

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

ALLAHABAD this the **21<sup>st</sup>** day of **May, 2008.**

**HON'BLE MR. JUSTICE A.K. YOG, JUDICIAL MEMBER.  
HON'BLE MR. K.S. MENON, ADMINISTRATIVE MEMBER.**

**ORIGINAL APPLICATION 1469 OF 2005**

1. S.C. Shukla, S/o Sri H.C. Shukla, Executive Member of Malaria Research Centre Employees Welfare Association, F.S, Shankergarh, Distt. Allahabad.
2. Dr. Bhartendu Shahi, Research Officer R/o Village and Post Baruraj, District Muzafarpur, (Bihar).
3. Dr. Ashish Gupta, Research Scientist C/o Mrs. Santosh Gupta G-262, HIG Flats, Partap Vihar, Ghazibad.
4. Dr. Paritosh Kumar Kar, Research Officer S/o Late S.N. Kar, Village and Post Balichak, District Midnapore (West), West Bengal) PIN # 721 124
5. Shri V.P. Ojha Asstt. Research Officer R/o Village and Post Amher Patti Utter, Tehsil Rasra District Ballia, (Uttar Pradesh).
6. Prem Kumar Chadda R/o 246/1, Civil Lines, Roorkee, (Uttaranchal).
7. Harish Kumar Sharma C/o Shri K.L. Bhargava, house No.H/1 Krishnanagar Colony, P.O. Gurukul Kangari, District Haridwar, (Uttaranchal).
8. Md. M. Shakir R/o Mohalla Kotrawan, P.O. Jwalapur, District Haridwar, (Uttaranchal).
9. Padam Prakash Pant S/o Devidutt Pant, Village and Post Shyampur Tulsivihar, District Rishikesh, (Uttaranchal).
10. Lekh Ram, Field Lab Attendant S/o Sh Rati Ram Village Jamalpur Kala, P.O. Jwalapur, District Haridwar, (Uttaranchal).
11. G.S. Negi, Lab Attendant, Village Jukanoli, Post Gunai District Almora, (Uttaranchal).
12. Arvind Kumar S/o Shri Niranjan Lal Ji, Vill. Nagaldam, P.O. Nawabganj, District Farukhabad, (Uttar Pradesh).

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13. Rajesh Kumar Singh S/o Shri Samay Singh Shaini, Vill. And P.O. Bahadur Pur, District Haridwar (Uttaranchal).
14. Mohan Chandra S/o Late Khyali Ram Vill. Padolia, P.O. Manan District Almora, (Uttaranchal).
15. Satpal Singh S/o Shri Jagpal Singh, Village and P.O. Shaktinagar Power House, Bahadrabad, District Haridwar, (Uttaranchal).
16. Bijoy Medhi R/o Village Teteliasara, Post Office Teteliasara, District Nagaon, (Assam).
17. Dr. S.N. Sharma S/o Late Ram Chand, House No.1552, HUDA Sector-6, Bahadurgarh District Jhajjar, (Haryana)-124507.
18. Chander Singh Mahara S/o Late Shri Gusai Singh R/o Village Bisht Bakhli, P.O. Ganai Chaukhutia, District Almora, (Uttaranchal) 263656.
19. H.S. Negi S/o Late Sh. B.S. Negi Shivalik Vihar, Bisht Dhada, Bithria No.1, P.O. Haripur Nayak, Haldwani, District Nainital, (Uttaranchal) 263141.
20. Dinesh Chand Joshi S/o Late Sh Girish Chand Joshi, House No.5/200, Malla Gorakhpur P.O. Bhotia Parao, Haldwani, District Nainital (Uttaranchal) 263141.
21. Ram Preet Prasad S/o Sh. Rojhan Prasad, Village Pokhar Bhinda, P.O. Mahua Karkhana, District Kushi Nagar (U.P.) 274402.
22. Rajendra Singh Bisht S/o Late Sh S.S. Bisht, Vill Sanozi Molli Near Water Tank P.O. Bhotia Parao, Haldwani, District Nainital, (Uttaranchal) 141.
23. Dilip Singh Bisht S/o Late Uday Singh Bisht, House No.207 EWS Avas Vikas Colony, Bhotia Parao, Haldwani, District Nainital, (Uttaranchal) 263141.
24. M.P. Singh Village Kalyanpur P.O. Basehera Uperhar, Shankargarh, District Allahabad (U.P.).
25. Rakesh Jacob 214/E Gautam Nagar New Delhi-49.
26. Dr. Raj Kumar 23/C, G.S. Block, Dilsad Garden Delhi 32.
27. Dr. S.P. Singh R-2 239 Lokesh Park, Nazafgarh, Delhi-43.
28. Tarun Malhotra, 1A Krishna Apartment, Paschim Vihar, Delhi-64.
29. Ram Kumar, Resident of Mayur Vihar, Delhi.
30. Dr. S.N. Tiwari S/o Late Sh. Laxmi Ram Pal Tiwari Surjapole, P.O. Sawar, District Ajmir, (Rajasthan).
31. Dr. Anil Kumar Kulshrestha C/o Sh. Jawahar Lal Kulshrestha 638/535 Kareli Scheme GTB Nagar, Allahabad (U.P.) 2110016.

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32. Dr. T.S. Sathyanarayan S/o Late T.N. Sundarajan, 765, 4<sup>th</sup> Main "A" Block, Rajainagar, 2<sup>nd</sup> Stage, Bangalore- 560010.
33. Ashok Kumar Upadhyay S/o Sh. Chandrabhan Upadhyay, Village Kasturipur, P.O. Gaddopur, District Jaunpur, (UP).
34. Dr. M. Asrarul Haque Son of Prof. M.Zafarullah. At Mehindipir, P.O. Chandini Chowk, District Cuttack 753002, Orissa.
35. Dr, P.K. Tyagi Village Malpura, P.O. Morna Bhopa District Muzaffarnagar, (U.P.)
36. Sobhan Phookan C/o Late Padmeshwar Phookan, Village Mornoiguri P.O. Kalabari District Sonilpur, (Assam)-784178.
37. Bipul Ch. Kataki Village Borjahaar Gaon, P.O. Dekargaon, District Sonilpur (Assam) 78.
38. Dibakar Medhi Village Lamipuri (A) Block P.O. Nikashi, Dist. Nalbari, Assam.
39. Babul Rahang, Village Morokdola Post Sonapur, District Kamrup, (Assam).
40. Benedic Goria, Village Oral Basti, P.O. Sonapur, District Kamrup, (Assam).
41. Mansur Ali Ahmed Village Ag Gomi P.O. Ag Gomi District Kamrup, (Assam).
42. Dilip Sharma Village Jyolnaya, P.O. Sonapur, District Kamrup, (Assam).
43. S.P. Baruah Village Kamarkuchi, P.O. Sonapur, District Kamrup (Assam).
44. Paresh Das Village Satgoan, P.O. Satgoan, District Kamrup, (Assam).
45. Padmeshwar Sharma, Village Nahira, P.O. Nahira District Kamrup, (Assam).
46. Dhiren Boro, Village Kalisatra, P.O. Daligoan, District Golpara, (Assam).
47. Kanuram Das, Village Bala, P.O. Arikuchi, District Nalbari, Assam.
48. Dinesh Chand Deka, Village Agdola, P.O. Bahihala Chariali, District Kamrup (Assam).
49. Malari Research Centre Employees Welfare Association Registered No.S-29900, under Registration of Societies Act XXI of 1860, through Sri S.C. Shukla, its Executive Member.

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.....Applicants

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**VERUS**

1. Indian Council of Medical Research, V. Ramalinga Swami Bhawan, Ansari Nagar, New Delhi through its Director General.
2. Malaria Research Centre, 22, Shamnath Marg, New Delhi Through its Director.
3. Ministry of Health and Family Welfare, Govt. of India, Nirman Bhawan, New Delhi through its Secretary.
4. Ministry of Science and Technology, Govt. of India, Technology Bhawan, New Mehrauli Road, New Delhi Through its Secretary.
5. Ministry of Finance (Department of Expenditure), Govt. of India, New Delhi through its Secretary.

.....Respondents

Present for applicants : S.K. Om, Advocate  
 with  
 Ashok Mehta, Advocate  
 Counsel for respondents: M.B. Singh , Advocate

**ORDER****BY HON'BLE MR. JUSTICE A.K. YOG, J.M.**

We have heard Sri S.K. Om, Advocate, representing the applicant at length and perused the pleadings. Relevant extract of Order dated 09.12.2005 (on the order sheet) reads: -

*“..... From the perusal of the array of the applicants, it is found that most of the applicants belong to different States having different jurisdiction i.e. Bihar, Assam, Haryana, New Delhi, Rajasthan and Orissa, so the learned counsel for the respondents may file CA regarding maintainability of the O.A including jurisdiction and on the point whether the provisions provided in Section 20 of the A.T. Act have been complied with before filing of the O.A”.*

2. Applicant Nos. 1 to 28 resided/posted, at the time of filing of O.A, at different Districts/stations (in different States) within territorial jurisdiction of different Benches of Central Administrative Tribunal. In para 1 of the 'Dates and Events' (particular page 2 of O.A compilation) it

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is stated that "the petitioners are either the Officers or Research Scientists or employees in the host institute of Malaria Research Centre, New Delhi, under the autonomous body Indian Council of Medical Research, New Delhi. .... .The petitioner No. 49 is a registered welfare association of the officers , Research Scientists and employees of the Malaria Research Centre , which had opened various Filed Stations through out the country.....".

3. Through this O.A the applicants claim regularization on various pleas/grounds (mentioned in the O.A itself) and the relief as contained in para 8(A) of the O.A reads- "to issue necessary orders, writ or direction to respondents to regularize the services of the petitioners".

4. Applicants have filed Application praying for joining in single application. Rule 4(5)(a) and 4(5)(b) of Central Administrative Tribunal (Procedure) Rules, 1987 (for short 'Rules 1987') read:

"4(5)(a). Notwithstanding anything contained in sub rule (1) to (3), the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause of action and the nature of relief prayed for that they have a common interest in the matter.

4(5)(b). Such permission may also be granted to an association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories of persons on whose behalf it has been filed [provided that at least one affected person joins such an application].".

**(Underlined to emphasize)**

In view of the above more than one person can be allowed to join in one application subject to the condition that having regard to 'cause of action' and 'nature of relief prayed' the applicants willing to join together, have common interest in the matter. That Tribunal may *also* permit an 'association' to represent its Members, (who are desirous to join in a

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single application) provided the application discloses the 'class/grade/categories of persons on whose behalf it has been filed' and, at least, one affected person joins such an application.

5. There is no categorical pleadings that persons seeking to join in single application have common interest in the matter. Further we find that the applicants have not disclosed the 'class', 'category' and 'grade' of Members of Association/Applicant No. 49. Learned counsel for the applicant referred to Annexure 13-B to show categories and grade of the applicants. It is wholly irrelevant and not sufficient compliance of Rule 4(5)(b) of Rules 1987. Details contained in Annexure can not partake position of 'pleadings'.

6. With respect to preliminary objection on the ground of jurisdiction, Sri S.K. Om, Advocate appearing on behalf of the applicants drew our notice to rule (6) of Rules of 1987, which reads as follows: -

"6. **[Place of filing application]** - (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

- (i). the applicant is posted for the time being, or
- (ii). the cause of action, wholly or in part, has arisen:

*Provided that with the leave of the Chairman, the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench, which has jurisdiction over the matter".*

7. Shri S. K. Om learned counsel attempts to argue, relying on Rule 6 (quoted above) that it permits an applicant to file an application before Bench of the Tribunal, where he is time being posted. On careful

reading of the rule one finds that the rule provides that "ordinarily" an application shall be filed with the Registrar of the Bench within whose jurisdiction the applicant time being resides / posted". The above provision further contemplates that in a given case considering peculiar facts of the particular case, an application may be filed before Central Administrative Tribunal, Principal Bench at new Delhi with the leave of the Chairman.

8. In the instant case, it is not disputed that Head Office of the Registered Association/Applicant No.49 is at New Delhi. All the respondents in the O.A are at New Delhi whereas the applicants belong to various Districts/States. The applicants have option to file OA before Principal Bench at New Delhi. In such a situation, in our opinion, undoubtedly the Principal Bench at New Delhi had appropriate the jurisdiction. This is also warranted in the facts of the case like present one. C.A.T. - Principal Bench should have been approached as it could, in the ends of justice and also in view of the 'public policy', similar matters pending before different Bench of C.A.T. could be clubbed together to avoid the possibility of contradictory order/S being passed putting the Tribunal into a possible embarrassment.

9. In view of the above discussion, we find that this O.A should have been presented before C.A.T. Principal Bench, at New Delhi where all the defendants also reside, cause of action also arose at New Delhi and no prejudice is or appears to be caused to the applicant, who belongs to different States like Assam, Bihar, New Delhi, Uttaranchal and U.P. As far as the applicants belonging to U.P. are concerned, it is come on record that the applicant No. 1, who was posted at Allahabad at the time of filing of Original Application, has now been posted at M.R.C Filed

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Station, Ranchi, Jharkhand (as per address shown by the applicant in his Short Rejoinder Affidavit sworn 11.04.2006). The applicant No. 3 is posted at Ghaziabad and applicant No. 12 at Farrukhabad, i.e. the Districts in U.P. - nearer to New Delhi than Allahabad. In this situation, there appears to be no good reason to present this O.A before C.A.T., Allahabad Bench.

10. In addition to the above, reference be made to in para 6(d) of Short C.A, (sworn by Sri S.K. Gupta (filed on behalf of the respondents) reads as follows: -

*“.....some of the applicants had filed original application No. 773 of 2004 against the order dated 17.05.2005 and 05.05.2004 (Annexure 1 and 2 of this application) and had claimed similar reliefs as claimed in this original Application. As such the present original application being second original application by the applicants is not maintainable.....”.*

11. The aforesaid para 6(d) is replied vide para 3 of Short Rejoinder Affidavit (sworn by Sri S. C. Shukla filed on behalf of the applicants), which reads as under: -

*“That the contents of paragraph 1, 2 and 3 of the Short Counter Affidavit of the Respondents need no reply, while the contents of paragraphs 4, 5, 6, 7 and 8 of the Short Counter Affidavit of the Respondents are misconceived hence emphatically denied and not admitted.”.*

12. From the above pleadings on record it is clear that averment regarding filing of earlier O.A No. 773/04 by some of the applicants challenging this very order impugned in this O.A has not been denied

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and the said averment made in para 6(d) stands un-rebutted. Again we find that the Supplementary Counter Affidavit (dated 25.4.2006) was filed and it para 1 and 2, which are relevant to decide the preliminary objection .

*"1. That the relief sought by the applicants is barred by the principle of res-judicata as the Malaria Research Centre Welfare Employees Association has already raised an identical issue vide T.A No. 29 of 1999 and the same has been decided by the Central Administrative Tribunal, Principal Bench, New Delhi vide order dated 11.10.2002.*

*2. That being aggrieved by the said order, the Association has filed a Civil Writ Petition No. 1545/2003 which is pending for hearing and final disposal before the Hon'ble High Court of Dehli at New Delhi but the applicants have concealed these facts from this Tribunal and hence , the application of the applicant is liable to be dismissed.".*

13. Afore quoted para 1 and 2 of the Supplementary Counter Affidavit have been replied (by the applicants) vide paragraph 3 of Rejoinder Reply dated 20.08.2007. Relevant extracts of para 3 of Rejoinder Reply are reproduced: -

*".....non-maintainability on their own showing that Civil Writ Petition No. 1554 of 2003 against the order in T.A No. 29 of 1999 is pending in the Hon'ble High Court of Delhi at New Delhi, and as such the matter being sub-judice is not hit by the principle of *rejudicata*, and, therefore, the ground urged by the respondent No. 1 and 2 to dismiss the present O.A is wholly without substance. There is no concealment of any fact as the pendency of Civil Writ Petition No. 1554 of 2003 did not affect the merits of this present O.A.".*

*Am,*

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14. From afore mentioned pleadings, it is clear that factum of filing of T.A No. 29/99 before Principal Bench and thereafter filing of Writ Petition No. 1554/03 in Delhi High Court against the order of Principal Bench deciding the said O.A, have not been denied and rather admitted but not disclosed in the OA. Contention of the respondents stands strengthened from the fact that the Association "Malaria Research Centre Employees Welfare Association/applicant No. 49" is impleaded as the last applicant and not as applicant No. 1, (which is normally done). Copy of 'By-laws', of the association also not filed to assess the stand of Principal Officer of the Society e.g. President/Secretary, and whether their power could be 'delegated' below. The applicants appear to be full conscious of the legal position. The applicants have made an attempt to fill in the lacuna (as far as representation of the association is concerned) by filing extract of resolution on the letter head of the Association dated 20.07.2004, which is reproduced and reads: -

*"Resolved that it has been decided by the Governing Body of the Association to authorize the **Executive Members** at their respective Branch Office to engage Advocate (s) and sign, verify, file and process the applications etc. in the Hon'ble Court, shall be responsible for the management and administration of all the affairs of the society at their respective Branch Office. Furthermore resolved that **Executive Members** are also authorized to do all other necessary formalities and incidental acts in this regards as and when required pertaining to the court cases meant for the benefit of its members of the Association. List of the Executive Members are enclosed."*

A bare perusal of this letter written by the General Secretary of the Association (Head Office) clearly shows that Executive Members of respective Branch Offices were authorized to engage, sign, verify and file the application/etc. in the Hon'ble Court and to be responsible for the management and administration of all the affairs of the Society at their respective Branch Office. This clearly indicates that Executive Members of Allahabad Branch Office (Dr. B. Sahai, S.C. Shukla and Satish Kumar) were competent to act on behalf of the Association with respect to their own Branch Office and not with respect to the Members of other Branch Office.

15. We may refer to Rule 7 of the Central Administrative Tribunal Rules of Practice, 1993, which read: -

*(b)*

**"Production of authorization for and on behalf of an Association: -**

*Where an application/pleading or other proceeding purported to be filed is by an Association, the person or persons who sign (s)/verify (ies) the same shall produce along with such application, etc., for verification by the Registry, a true copy of the resolution of the Association empowering such person (s) to do so.*

*Provided the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorization."*

It is to be found that there is no resolution of the governing body/general body of the registered society/association in question, as such, and such resolution as required under Rule 7 (quoted above) was filed/annexed with the O.A. at the time of filing.

16. Be that as it may we are not required to go deeper and further address on these issues as this O.A. can be disposed on a single point namely the Association had also filed an O.A. before the Principal Bench, New Delhi, which having been decided, a Writ Petition was filed, which was pending before the Delhi High Court and, as such, these facts have not been rebutted by the applicant at all. In these circumstances, the applicants cannot be permitted to file a fresh O.A. for similar cause of action. We find that the Association had already raised the issue, which was filed and decided by the Tribunal and said to be pending before the Delhi High Court. Here again Association has been impleaded as respondent No. 49. This cannot be permitted; otherwise also we find that there is no explanation worth the salt for condoning delay in filing the O.A. The objection was raised by the registry at the time of filing of the O.A. Learned counsel said that he will argue on the point of limitation and satisfy the Bench. However, we find that in respect to the specific preliminary objection on behalf of the department (as noted above), no explanation whatsoever has been furnished on behalf of the applicants in the Rejoinder Affidavit. The O.A. is clearly time barred.

17. We called for the original record/s of O.A. No. 773 of 2004. On perusing the record of O.A. No. 773 of 2004, we find that the impugned order challenged in the O.A is also the same. Applicants in O.A. No. 773 of 2004 are as under: -

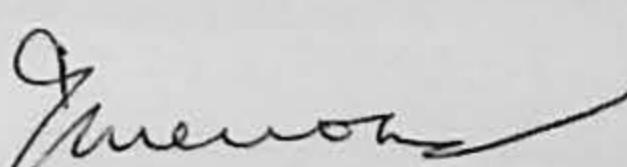
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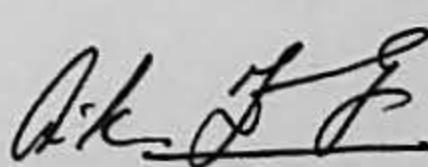
1. *Malaria Research Centre Employees Welfare Association, Regd. No. S-29900, Head Office 2, Nanak Enclave, Radio Colony, Delhi - 110009, through Sri Satish Chandra Shukla, its Executive Member.*
2. *Dr. B. Shahi, aged about 51 years, Son of (Late) Dr. U.S. Shahi, Working as Officer Incharge, Malaria Research Centre, Community Health Centre, Field Station Shakargarh, Allahabad.*
3. *S.C. Shukla, aged about 41 years, Son of Sri H.C. Shukla, working at Malaria Research Centre, Community Health Centre, Field Station, Shankargarh, Allahabad."*

Above applicants are applicant No. 1, 2 and 49 in the present O.A. Apparently, there is no valid justification for not disclosing the factum of pendency of O.A. No. 773 of 2004 in the present O.A.

18. In the result, we hold this O.A. as time barred, barred by principle of 'constructive resjudicata', apart from the fact that the relevant facts are not disclosed (as noted above) in our order. The O.A. accordingly stands dismissed.
19. There will be no order as to costs.



**MEMBER (A)**



**MEMBER (J)**

/Anand/