

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

M.A. No.128 of 2002  
O.A. No.1043 of 1997  
M.A.No. 129 of 2002  
O.A. No.367 OF 1998

Present : Hon'ble Mr. S. Biswas, Administrative Member  
Hon'ble Mr. A. Sathath Khan, Judicial Member

1.Ruma Chakraborty, W/o Ajay Chakraborty  
residing at Block 'C' Plot 215, Survey  
Park, Santoshpur, Calcutta-700 075 &

2.Sanjoy Kumar Saha, S/o Saroj Kumar  
Saha residing at P.O. Ramkrishnapalli,  
Via Sonarpur, 24-Parganas (S),

... Applicants

VS

1. Union of India, through the Secretary  
Ministry of Science and Technology,  
Anusandhan Bhavan, Rafi Marg, New Delhi  
-110 001

2. The Director General, CSIR, Anusandhan  
Bhavan, Rafi Marg, New Delhi-110 001

3. The Director, CGCRI, 196, Raja S.C.  
Mullick Road, Calcutta-32

4. Sri Partha Mukherjee, JTA, Library  
Section Office of the Director, CGCRI,  
Calcutta-32

5. Sri Debabrata Roy, JTA, Electrical  
Section, Office of the Director, CGCRI,  
Calcutta-32

... Respondents

For the Applicants : Mr.P. C. Das, counsel

For the Respondents : Mrs. Uma Bhattacharyya, counsel

: : Date of order: 29-04-2003

O R D E R

Hon'ble Mr. A. Sathath Khan, JM

As the issues involved in both the OAs and the point  
involved in both the MAs are same, they were heard together and a  
common order is passed.

2. The brief facts common to both the cases are as follows:

The applicants in the above OAs applied for the post of  
Junior Technical Assistant (JTA), Pursuant to advertisement  
No.1/90 of the Central Glass and Ceramic Research Institute



(CGCRI) and they were selected by the Selection Committee and placed in the selected panel and the same was also approved by the competent authority, viz., the Director, CGCRI on 12.3.92. The applicants were also directed to fill up the attestation form for Police verification etc., but the applicants received no further communication from the respondents. The applicants found advertisement dated 31.1.95 being Advt. No.1/95 inviting applications for three posts of JTA (SC-1 and Gen-2). The applicants made representations on 3.2.95 and 7.2.95 to the Director, CGCRI stating that they should be given appointment on the basis of the selection made in 1992. As there was no response, the applicants made an appeal to the Director in March, 1995 and another appeal in April, 1995 to the Director General, New Delhi. The applicants received letter dated 23.9.95 from the Controller of Administration, Calcutta stating that due to ban on filling up of any vacancy excluding the vacancy reserved for SC and ST, none of the selected candidates against Advt. No.1/90 could be appointed and that Shri Tapash Ghosh was not appointed from the empanelment against Advt. 1/90, but from the selected panel of 1989 pursuant to the order of CAT, Calcutta Bench. Thereafter, Shri Partha Mukherjee and Shri Debabrata Roy were appointed as JTA in 1996 pursuant to Advt. No.1/95 dated 31.1.95. Again the respondents invited applications against 17 posts of JTA (SC-2, ST-1, OBC-5 and Gen-9). Hence the applicants have approached this Tribunal for directing the respondents to give appointment to the applicants as JTA on the basis of the panel of 1992 with seniority over the above said Shri Partha Mukherjee and Shri Debabrata Roy who were empanelled pursuant to Advt. No.1/95.

3. The respondents' case is that though the applicants were selected for the post of JTA pursuant to Advt. of 1/90, ~~but~~ before the Police verification report was received by the respondents, the Jt. Secretary, CSIR by a JO letter dated 15.7.92 issued instructions to keep all vacancies in abeyance except backlog

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vacancies of SC and ST, that the case of Shri Tapash Ghosh cannot be considered to be a case of similarly placed person because he was selected in the year 1989 pursuant to Advt. No.4/87 and that he was appointed as directed by this Tribunal in OA 150/93. The respondents further contended that one general candidate was selected and appointed pursuant to Advt. No.1/95 as per the new CSIR Recruitment Rules, 1994 and that the applicants are not eligible to apply for the post of JTA under the said Rules pursuant to Advt. No.3/96. The respondents further contend that withdrawal of restrictions on filling up of vacancies was granted on 19.9.95. The respondents further contend that the validity period of the panel of the year 1992 has expired after one year and hence the applicants are not entitled to get any appointment on the basis of the selected list of 1992. Under these circumstances, the respondents contend that there are no merits in the OAs and pray for dismissal of the OAs.

4. M.A. No.128/02 in OA 1043/97 & M.A.No.129/02 in OA 367/98

The above MAs have been filed to condone the delay in filing the OAs. The learned counsel for the respondents vehemently opposed the above MAs on the ground of limitation and contended that since the applicants were selected in 1992 they cannot seek remedy in 1997 and 1998. Learned counsel for the applicants submitted that similarly placed person viz., Shri Tapash Ghosh filed OA 150/93 in this Tribunal in which the respondents were directed to appoint him as JTA, that the applicants are also similarly placed persons who are entitled to similar benefits by condoning the delay in filing the OAs on the basis of the Apex Court decision in K.C. Sharma & Ors. vs. Union of India & Ors. reported in 1998 SCC (L&S) 226. However, the learned counsel for the respondents contended that the above said Tapash Ghosh cannot be considered to be a similarly placed person since the Tribunal directed his appointment on the basis of his selection in 1989 pursuant to Advt. No.4/87 and not on the

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basis of selection in 1992 pursuant to Advt. No.1/90. Of course, it is true that the order of this Tribunal in OA 150/93 was passed on the basis of the selection of said Tapash Ghosh in 1989 though he was in the select list of 1992 also. However, the principle laid down by this Tribunal in OA 150/93 is that the respondents cannot make fresh recruitment without appointing persons who are in the earlier select list. Viewed from this angle, the applicants can be considered as similarly placed persons like the above said Tapash Ghosh, though their selections were pursuant to different notifications. Moreover, the applicants were selected and empanelled in the year 1992, but they were informed by a letter dated 20.9.95 of the Controller of Administration that they could not be appointed due to ban in filling up of the vacancies and hence the applicants had good and sufficient reasons to wait for the lifting of the ban. The learned counsel for the applicants further submitted that the applicants were under bonafide impression that they would be appointed after the ban is lifted by the Government. However, when the applicants came to know of the two advertisements in 1995 and 1996 to fill up the vacancies in the post of JTA from general candidates, they have approached this Tribunal by filing the above OAs. Taking into consideration the information given by the respondents that there was ban in filling up the vacancies and the action of the respondents in inviting applications for the same post in 1995 and 1996 after the restrictions in filling up the vacancies were removed ignoring the earlier select list, we are of the view that this is a fit case in which the delay in filing the OAs should be condoned in the interest of justice. Accordingly, both the MAs 128/02 and 129/02 are allowed and the delay in filing the above OAs is condoned.

5. After condoning the delay in filing the OAs, we took up OAs 1043/97 and 367/98 for hearing and heard the learned counsel for the applicants and the respondents and considered all the



pleadings and relevant records of the case.

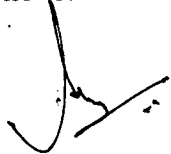
6. The learned counsel for the applicants submitted that the action of the respondents in calling for fresh applications by Advt. No. 1/95 for the post of JTA and selecting and appointing Shri Partha Mukherjee and Shri Debabrata Roy ignoring the earlier select list in which the applicants are included is arbitrary, unreasonable and illegal. In this connection, the learned counsel for the applicants relied upon the DOPT OM dated 8.2.82 the relevant portion of which reads as follows :-

"Once a persons is declared successful according to the merit list of selected candidates; which is based on the declared number of vacancies, the appointing authority has the reason to appoint him even if the number of vacancies undergoes a change after his name has been included in the list of selected candidates. Thus where the selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated, or alternatively intake for the next recruitment reduced by the no. of candidates already awaiting appointment and the candidates awaiting appointment should be given appointments first, before starting recruitment or examination."

7. On the contrary, learned counsel for the respondents contended that the applicants could not be appointed on account of ban in filling up of the vacancies as per letter dated 15.7.92 of the Jt. Secretary, CSIR and that <sup>when</sup> the ban was lifted by letter dated 19.9.95, the validity period of 1992 select list expired and the new CSIR Recruitment Rules came into force and hence Advt. No.1/95 and Advt. No.3/96 were issued under the new Recruitment Rules under which the applicants are not eligible to apply. The respondents cannot blow hot and cold by <sup>taking</sup> ~~backing~~ inconsistent stand to suit their convenience in a whimsical and arbitrary manner. The respondents expressed their inability to appoint the applicant as per 1992 select list on the ground of ban issued by the Jt. Secretary, CSIR in DO letter dated 15.7.92 and when the ban was lifted by letter dated 19.9.95 the respondents contended that the validity period of the 1992 panel has expired and the new CSIR Recruitment Rules have come into force and hence the applicants cannot be appointed. If the select panel of 1992 could not be

operated due to ban, the validity of 1992 select panel also cannot expire during the period of ban. Moreover, the introduction of new Recruitment Rules cannot affect the validity of the earlier panel prepared on the basis of the then existing Recruitment Rules. It is clear from the OM cited above that where the selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment should be given appointment first, before starting appointment from a fresh list from subsequent recruitment or examination. Hence we hold that the action of the respondents in inviting applications for the post of JTA by Advt. No.1/95 and Advt. No.3/96 and selecting and appointing candidates ignoring earlier select list of 1992 pursuant to Advt. No.1/90 in which the applicants are included is arbitrary, unreasonable and illegal. This Bench of the Tribunal had taken similar view in the case of Tapash Ghosh in OA 150/93. Consequently, we direct the respondents to appoint the applicants in OAs 1043/97 and 367/98 as JTA forthwith on the basis of select list of 1992 pursuant to the Advt. No.1/90 and if any candidate has been appointed as JTA from any panel prepared after 1992 panel, the applicants should be given seniority over and above the said candidates.

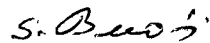
8. In the result, both the OAs are allowed as indicated above with no order as to costs.



(A. Sathath Khan)

MEMBER (J)

29/4/03



(S. Biswas)

MEMBER (A)