

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 232/2005 with MA No.64/2006.

Jaipur, this the 20th day of April, 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

Suresh Tinker
S/o Sh. Brij Mohan Ji Tinker
Aged about 31 years,
R/o 27, Jagdamba Colony, Near Padam Sarover Marg,
Vaishali Nagar, Jaipur.

... Applicant.

By Advocate : Shri Surendra Singh Proxy counsel for
Shri Man Singh Gupta.

Vs.

1. Union of India through
Secretary to the Govt. of India,
Ministry of Industries,
New Delhi.
2. Chief Controller of Explosives,
Department of Explosives,
Government of India,
5th Floor, Block "A" CGO Complex,
Nagpur.
3. Dy. Chief Controller of Explosives,
Department of Explosives,
Government of India,
Near Amrapali Circle,
Vaishali Nagar,
Jaipur.

... Respondents.

By Advocate : Shri Kunal Rawat.

: O R D E R (ORAL) :

This is a unique case of harassment and arbitrary action on the part of the respondents whereby the service of the applicant was terminated and replaced by another ad hoc employee, despite the fact that this Tribunal in

OA No.304/99 decided on 11.01.2001 had directed the respondents not to dispense with the service of the applicant till regularly selected candidate is appointed and joined on the post, which judgment has attained finality.

2. Briefly stated, the facts of the case are that the applicant was appointed on the post of Stenographer Grade-III on ad hoc basis vide office order dated 27.03.1998 against regular vacancy, as no suitable candidate for the said post, which fall vacant in February 1997, was recommended by the Staff Selection Commission. Initially the ad hoc appointment of the applicant was made for 89 days which was continued from time to time. However, the services of the applicant were ultimately terminated vide order dated 15.6.1999 after a lapse of about one year. The applicant approached this Tribunal by filing OA No.304/99. The Tribunal passed an ex-parte interim order dated 30.6.99 thereby directing the respondents not to disengage the applicant from the post of Stenographer Grade-III and ultimately the said OA was finally disposed of vide order dated 11.01.2001 which is in the following terms :-

"We allow this OA and quash the impugned order Ann. A3 dated 15.6.1999 by which the applicant was terminated and respondents are directed not to dispense with the services of the applicant till a regularly selected candidate is appointed and joins on the post. The applicant will be free to participate in the process of selection, if initiated, for regular appointment on the post of Stenographer Grade-III."

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Thereafter the applicant filed another OA before this Tribunal which was registered as OA NO.385/2003 in which the main relief of the applicant was regarding regularization of his service since his initial appointment. In the alternative, the applicant has prayed that the direction may be given to the respondents to frame time bound scheme for considering his case for appointment on permanent basis. The ancillary reliefs which the applicant has also prayed in that OA were that the respondents may be restrained to appoint any person in place of the applicant and the applicant may be allowed to work as Stenographer Grade-III till order of regularization issued in his favour. The said OA was resisted by the respondents on the ground that the same is not maintainable and is barred by the principle of res-judicata inasmuch as the present OA is based on similar reliefs which was earlier decided by this Tribunal and the relief was restricted to the extent of continuance in service till duly selected candidates are made available. On merits, it was stated that nomination of the candidate for the said post has been received in the office of respondent No.3 and complying with the Hon'ble Tribunals order dated 11.1.2001 passed in earlier OA, there is no question for regularization of services of the applicant, rather the respondents have no option but to terminate his ad hoc services. On the basis of the stand taken by the respondents, this Tribunal upheld the contention of the respondents and

held that there is no infirmity with the action of the respondents in case the service of the applicant was not regularized. Further it was held that the applicant was not entitled to any relief as prayed for in view of the decision rendered by this tribunal in earlier OA and principle of res-judicata was clearly applicable in the instant case. This Tribunal also negated the case of the applicant for regularization in view of the law laid down by the Apex Court in the case of Dr. (Mrs.) Chanchal Goyal vs. State of Rajasthan, 2003 (2) SC SLJ 92 and it was observed that the applicant continued in ad hoc service for a period of one year as against 14 year in the case of Dr. Chanchal Goyal (supra) where termination was upheld by the Apex Court. Accordingly, the OA was dismissed. Thereafter the respondents without examining the decision rendered by this Tribunal in OA NO.385/2003 decided on 11.3.2005 in proper perspective terminated the services of the applicant vide impugned order dated 28.4.2005 on the garb that this Tribunal has dismissed the OA No.385/2003 and as such service of the applicant is liable to be terminated. It is this order which is under challenge in this OA.

3. Notice of this application was given to the respondents. The stand taken by the respondents in the OA was that since in second OA all the reliefs sought by the applicant have been rejected by the Bench, now the applicant has no case particularly when the respondents

have appointed another person by adopting due procedure of law and the rules. At this stage it will be useful to quote Para 8 of the reply which will clinch the matter in issue, which thus reads as under :-

" That the contents of para-4.5 of the Original Application are not admitted being in correct and misleading. The judgment of the Hon'ble Tribunal dated 11.3.2005 has superseded its earlier judgment dated 11.01.2001 thus the applicant has no case and the judgment dated 11.1.2001 has nothing to do with the case of the applicant at this stage. It is admitted that after the termination of the applicant on dated 28.04.2005, names of eligible candidates were called from local Employment Exchange and Sh. Ganga Singh was appointed w.e.f. 07.06.2005 for 89 days, Sh. Ganga Singh left the job on 24.6.2005 (A.N.) Hence Ku. Meena Sharma whose name was in the panel was appointed on the post of Steno Gr.III on ad hoc basis w.e.f. 1.7.2005 for 89 days."

Thereafter the matter was listed for hearing and adjourned from time to time. Vide order dated 17.2.2006, the respondents were given opportunity to apprise this Tribunal on the following aspects :-

"... The respondents shall also explain how they are resorting to ad hoc appointment despite the clear cut direction given by this Tribunal in earlier OA No.304/99 decided on 11.01.2001 whereby this Tribunal has directed the respondents not to dispense with the services of the applicant till a regular selected candidate is appointed and join on the post. Further this Tribunal in subsequent judgment dated 11.03.2005 has declined the relief to the applicant regarding his regularization of service on the post of Stenographer Grade-III only on the terms that the said post has to be filled on regular basis as per Recruitment Rules and the applicant has got no right to continue in service. This Tribunal has not observed in its subsequent judgment dated 11.3.2005 that the services of the applicant can be replaced by another ad hoc appointee whereas the ratio as laid down by the Tribunal in the said judgment is that the applicant has got no right to continue in service and the

department has a right to terminate his service by making regular arrangement. "

Thereafter the respondents filed MA No.64/2006 thereby reiterating the stand taken in the original OA that the earlier order of this Tribunal was superseded by the subsequent order of this Tribunal. Thus, the service of the applicant was terminated.

4. Despite opportunities granted to the respondents to rectify their mistake, the respondents have not chosen to avail this opportunity.

5. I have heard the Learned Counsel for the parties and gone through the material placed on record.

6. From the material placed on record, it is clear that the applicant was appointed on ad hoc basis against the regular vacancy of Stenographer Grade-III as the said post was lying vacant since February 1997 and the Staff Selection Commission has failed to nominate the suitable candidate. The said ad hoc arrangement was continued for a period of about one year and thereafter the service of the applicant was terminated. Feeling aggrieved by the action of the respondents, the applicant approached this Tribunal by filing OA No.304/99. The said OA was disposed of vide order dated 11.01.2001, the relevant portion of which has been extracted above. This Tribunal has quashed the termination order dated 15.6.1999 and the

respondents were directed not to dispense with the services of the applicant till a regularly selected candidate is appointed and joins on the post. It was further observed that the applicant will be free to participate in the process of selection, if initiated, for regular appointment on the post of Stenographer Grade-III. From the decision rendered by this Tribunal in the earlier OA viz OA No.304/99, it is clear that the services of the applicant could be dispensed with only if a regularly selected candidate is appointed and joins on the post and the applicant was also given opportunity to participate in regular selection. Admittedly till date, no regularly selected candidate has been appointed by the respondents and has joined the post of Stenographer Grade-III, thus, on the base of the judgment rendered by this tribunal in earlier OA No.304/99, it was not legally permissible for the respondents to terminate the services of the applicant especially when this judgment has attained finality.

7. In order to defeat the claim of the applicant and in order to uphold their arbitrary action, respondents have surprisingly taken totally an unacceptable plea that the services of the applicant were liable to be terminated in view of the subsequent judgment rendered by this Tribunal in OA No.385/2003 especially when there was not even a whisper in the decision rendered by this Tribunal in OA No.385/2003 that the service of the applicant as ad hoc

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Stenographer can be terminated and in his place the respondents can engage another ad hoc employee contrary to the decision rendered in earlier OA. Rather the conduct of the respondents is such that they made a false representation before this Tribunal in second OA on the basis of which the relief was declined to the applicant. The second OA i.e. OA No.385/2003 was filed by the applicant thereby praying for the following reliefs :-

"i) by appropriate order or direction the respondents No.1 to 3 may be directed to regularize service of the applicant since his initial appointment with all consequential benefits.

ii) In alternative by appropriate order or direction the Hon'ble CAT may be pleased to direct the respondents to frame a time bound scheme for considering his case for appointment on permanent basis.

iii) by appropriate order or direction the respondents be restrained to appoint any other person in place of the applicant.

iv) by appropriate order or direction the applicant be allowed to continue to work as Stenographer Grade-III till order of regularization is issued in his favour.

v) Any other appropriate order or direction, which the Hon'ble tribunal considers just and proper in the facts and circumstances may also kindly be passed in favour of the applicant."

From the prayer portion as quoted above, it is clear that the case of the applicant was regarding regularization from the initial date and in the alternative for a direction to the respondents to frame a time bound scheme so that the applicant may be absorbed permanently and it was in that context the applicant in Relief No.3&4 has prayed that the respondents may be

restrained not to appoint any other person in his place on regular basis and he be continued to work as Stenographer Grade-III till the order of regularization is not passed in his favour.

8. To defeat the claim of the applicant, the respondents have made a false representation before the Tribunal to the effect that the nomination of the candidate for the post in question has been received in the office of Respondent No.3 and complying with the order dated 11.01.2001 passed in earlier OA, there is no question of regularization of service of the applicant, rather the respondents have no option but to terminate the services of the applicant. The second plea taken by the respondents in the reply was that the subsequent OA is barred by principle of res-judicata as the applicant cannot be granted the said relief in view of the decision in the earlier OA. At this stage it will be useful to reproduce Para 3 of the judgment dated 11.3.2005 where such contention of the respondents has been noticed and which is in the following terms :-

"3. The respondents in their reply have taken objection regarding maintainability of this OA on the ground that the present case is barred by principle of res-judicata, inasmuch as, the present application is based on the similar reliefs which was decided earlier by this Tribunal and the relief was restricted to the extent of continuance in service till duly selected candidates are made available. On merits, it has been stated that nomination of the candidate for the said post has been received in the office of respondent No.3 and complying with the Hon'ble Tribunal's order dated 11.1.2001 passed in

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earlier OA, there is no question for regularization of services of the applicant, rather the respondents have no option but to terminate his ad hoc services.

9. The aforesaid contention of the respondents was taken note of by the Bench and in Para 7, the Bench observed as under :-

"7. Thus, in view of what has been stated above, we see no infirmity with the action of the respondents in case the services of the applicant were not regularized. Further, we are of the firm view that the applicant is not entitled for the relief as prayed for in view of the decision rendered by this Tribunal in the earlier OA and principle of res-judicate is clearly applicable in the instant case. Further, the view which we have taken is also in conformity with the law laid down by the Apex court in the case of Dr. (Mrs.) Chanchal goyal vs. State of Rajasthan, 2003 (2) SC SLJ 92 whereby the Apex Court has held that services of the ad hoc appointee unless the initial recruitment is regularized through prescribed agency, there is no scope for demand of regularization even though there was a selection even for the ad hoc selection which is inconsequential.....
..... Thus, according to us, the present OA is bereft of merit and is liable to be dismissed for the reasons stated hereinabove."
(emphasis supplied to the under line)

10. Thus, from the portion as quoted above, it is clear that the second OA was dismissed by this Tribunal solely on the basis of the stand taken by the respondents that the applicant is not entitled for regularization in view of the decision rendered in earlier OA and the service of the applicant is being replaced as the nomination of the candidate for the said post has been received in the office of Respondent No.3. Rather, surprisingly the respondents have acted contrary to the stand taken by them in the reply in earlier OA viz OA No.304/99. The

service of the applicant was replaced by giving ad hoc appointment to kumari Meena Sharma contrary to the decision rendered by this Tribunal in earlier OA whereby the respondents were directed not to dispense with the services of the applicant till a regularly selected candidate is appointed and joins on the post and that too by selection process in which the applicant was allowed to participate. Such action on the part of respondents cannot be justified on any count. Rather the respondents can be proceeded for forgery for filing false affidavit in the second OA i.e. OA No.385/2003 that the services of the applicant is being replaced by regular selected employee in terms of earlier judgment of this Tribunal dated 11.01.2001 and it is on the basis of this affidavit filed by the respondents, this Tribunal categorically held that the present OA is barred by the principle of res judicata and the applicant is not entitled for any relief for regularization in view of the earlier decision. In fact this Tribunal has reiterated the earlier decision while defeating the claim of the applicant in second OA. High-handedness on the part of the respondents is writ large. While terminating the services of the applicant in violation of the decision rendered by this Tribunal in OA No.304/99 decided on 11.1.2001 proceeded by resorting to ad hoc appointment by engaging Kumari Meena Sharma which course was not legally permissible for them at all. Even if, for arguments sake it is accepted that they have mis-interpreted the second

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judgment of the Tribunal, in that eventuality also the ad hoc service of the applicant could not have been replaced by engaging another person on ad hoc basis. This speaks itself about the biased and arbitrary action on the part of respondent authorities where they were bent upon to terminate the service of the applicant by taking false shelter of the judgment rendered by this Tribunal in second OA. Thus, the respondents are trying to justify unjustifiable action which cannot be accepted. It is an elementary rule of law that the coordinate Bench cannot supersede the judgment of another Bench. In fact the judicial order/judgment are set aside by the higher court. Further it is also clearly settled position that the administrative ipse dixit cannot infiltrate on to an arena which stands covered by judicial orders. That is what the Apex Court has held in the case of Anil Ratan Sarkar and others vs. State of W.B. and others, 2001 SCC (L&S) 866. Further the Apex Court in the case of Virender Singh Hooda and Ors. vs. State of Haryana and Anr. JT 2004 (9) SC 293 in Paras 47 and 48 of the judgment held that even the legislature cannot encroach on the judicial power, though they can nullify the judicial decision by changing the law retrospectively. This nullification of the fact of judicial decision can change the basis on which the decision is given by the Court in general which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights

and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and to function as an appellate court or tribunal, which is against the concept of separation of powers. Thus, when the legislature cannot make a law thereby setting aside the individual decision, admittedly, the respondents by administrative decision cannot pass any order which is contrary to the judicial decision, as if, they are functioning as an Appellate Court against the decision rendered by the judicial authority. Certainly in the instant case, the action of the respondents in terminating the services of the applicant vide impugned order amounts to over reaching the decision of this Tribunal dated 11.1.2001 in earlier OA No.304/99 which is not permissible in law.

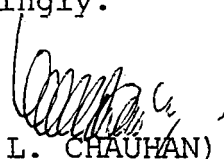
11. Thus, taking the lenient view in the matter and without further commenting upon the action of the respondents, the impugned order Annexure A/1 is quashed and set aside. Respondents are directed to re-engage the applicant in the same capacity which he was holding before passing the impugned order dated 28.4.2005 forthwith, in any case not later than 7 days from the date of receipt of this order.

12. The OA stands allowed in the aforesaid terms. Though it was a case worth granting heavy cost on the

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respondents, this Tribunal is leaving the matter at this stage.

13. In view of the order passed in the OA, no order is required to be passed in MA No.64/2006, which shall stands disposed of accordingly.



(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./