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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA. No. 060/00903/2014
MAs No. 060/00346/15 & 060/00348/15

Reserved on: 10.04.2015
Pronounced on: 16.4.2015

CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

Jasmer Singh aged 56 years, s/o Sh. Teja Singh, working as Technical Assistant, Deptt. of Bio-Chemistry, Post Graduate Institute of Medical Education & Research, Chandigarh.

.....Applicant

Versus

1. Union of India, through the Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, Maulana Azad Road, New Delhi.
2. Union of India, through Union Health & Family Welfare Minister, (exercising the powers of President of PGIMER, Chandigarh), Nirman Bhawan, New Delhi-110011.
3. The Director, Post Graduate Institute of Medical Education & Research, Sector 12, Chandigarh.
4. Gurmail Ram s/o Sh. Mehar Ram, Technical Assistant, APC, Post Graduate Institute of Medical Education & Research, Sector 12, Chandigarh.

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.....Respondents

Present: Sh. Satbir Singh Katnoria, counsel for the applicant.

Sh. Rajesh Garg, Sr. Advocate alongwith with Ms. Nimrata Shergill, counsel for respdts. No. 1-3.

Sh. Jagdeep Jaswal, counsel for respdt.No.4.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA under Section 19 of the Administrative Tribunals Act, 1985, is directed against alleged inaction on the part of the respondents No.2 and 3 in not recalling the order dated 14.09.2010 (Annexure A-12) passed by respondent No.3 on the basis of a decision in TA No. 146-CH-2009 dated 25.05.2010 (Annexure A-11) passed by this Hon'ble Tribunal and also inaction on the part of respondents No.2 and 3 in not deciding the legal notice dated 07.03.2014 sent by the applicant through his counsel, which is still pending and has not been decided due to the reasons best known to the respondents No.2 and 3. It is stated that the respondent No.4 has got the order dated 25.05.2010 (Annexure P-11) by making false and baseless pleadings and by misleading this Tribunal. Admittedly the applicant was initially appointed as Junior Laboratory Technician in PGIMER, Chandigarh and he joined duty on 11.09.1980. Thereafter a post of Senior Laboratory Technician was advertised only

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for SCs. The applicant applied against the said post and was selected and appointed as Senior Laboratory Technician vide order dated 13.04.1983.

Accordingly, the applicant joined on the post of Senior Laboratory Technician on 16.04.1983. This fact has been concealed by respondent No.4 and respondent No.4 has made false averments in the writ petition filed in the Hon'ble Punjab and Haryana High Court which was later on transferred to this Hon'ble Tribunal and was numbered as TA No.146/CH/2009, as well as in the review application No.11 of 2010 filed in TA No.146/CH/2009. Therefore, the respondent No.4 played fraud with this Tribunal and with the applicant by suppressing material facts and by also making false representation knowingly and carelessly which is not based on truth. The act and conduct of the respondent No.4 amounts to contempt and also amounts to interference with the administration of justice. Therefore, apart from recalling the order dated 25.05.2010 (Annexure A-11) and setting aside the illegal impugned order dated 14.09.2010 (Annexure A-12), the contempt proceedings be initiated against respondent No.4. The respondent No.4 has not only got the seniority over and above the applicant by playing fraud with the court and the applicant, but also got

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monetary benefits from the respondent Institute thereby causing wrongful loss to the Institute and wrongful gain to himself by playing fraud.

2. In the grounds for relief, it has interalia been stated that the applicant has been able to establish and prove that the respondent No.4 has obtained the order dated 25.05.2010 (Annexure A-11) by suppressing material facts and by playing fraud with this Tribunal as well as applicant. From the perusal of the documents attached with this application it stands established that the respondent No.4 has made false representation knowingly. This act of the respondent No.4 also amounts to contempt in as much as it also amounts to interference with the administration of justice. It is settled law that the courts of law are meant for imparting justice between the parties and one who comes to the court must come with clean hands. It is also settled law that if in judicial proceedings once a fraud is proved, all advantages gained by playing fraud can be taken away and in such an eventuality question of non executing of statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non-est. The applicant is relying upon the judgments reported as 2009(1) SCT 566,

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2010(2) CCC 103, 2011(4) CCC 241, 2012(1) SCC 476, 2012(5) JT 607 and 2010(3) SCC (Crl) 878. The case of the applicant is squarely covered with the aforesaid judgments and therefore this is a fit case for recalling the order dated 25.05.2010 (Annexure A-11) and for setting aside the order dated 14.09.2010 (Annexure A-12) passed by respondent No.3 in pursuance to the order dated 25.05.2010 (Annexure A-11) passed by this Hon'ble Tribunal.

3. In the written statement filed on behalf of the respondents No. 1-3, it has been stated that as per the Recruitment Rules applicable in 1983, the post of Senior Lab Technicians had to be filled 25% by direct recruitment and 75 % by promotion from amongst Junior Lab Technician who fulfilled the required qualifications, which are as under:

B.Sc/ B.Sc Medical Technology (Lab) with 2 years Experience as Junior Lab Technician
Or

Matric with Science/ Inter Science with Diploma in Medical Lab Techniques from a recognized Institution with 3 years experience as Junior Lab Technician.

Sh. Jasmer Singh was appointed as Sr. Lab Technician vide office order dated 13.04.1983. This post was filled 25% by direct recruitment. The fact of this recruitment cannot be checked because of

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non-availability of records as most of the record was weeded out vide this Office Order dated 14.12.2010.

4. It has further been stated that Sh. Gurmail Ram filed a writ Petition No. 17478 of 2001 inter-alia praying seniority as Sr. Lab Technician over and above respondents No. 2 & 3 i.e. Sh. Jasmer Singh Technical Assistant and Sh. Shiv Charan Singh, Technical Assistant, respectively who were from reserved category and further prayed for the quashing of promotion order of both the respondents no. 2 & 3. Sh. Gurmail Ram also prayed that the PGI be directed to refix the seniority of the petitioner treating him senior to respondent No. 2 & 3 after their reversion from the post of Technical Assistant to that of Sr. Lab Technician. Lastly, he claimed step up of salary to the level of respondent No. 2 and release of arrears of salary along with the interest @ 18% per annum. The matter was referred to the CAT Chandigarh. The TA was disposed of on 7.12.2009 with direction to the PGI to examine the case of applicant for seniority over Respondent No. 3 under catch-up rule within a period of four months. Sh. Gurmail Ram filed a review petition against the order passed by the CAT dated 07.12.2009, arguments were heard before the Tribunal and disposed of with the direction to the PGI to consider the case of applicant for grant of benefit under catch-up

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principle for grant of seniority over respondent No. 3 with admissible benefit in the light of the following observations:

"In this case also admittedly the applicant was senior to private respondents as Jr. Lab Technicians but was made junior to them in, promoted post of Senior Lab Technician. The applicant was appointed as Jr. Lab Technician in 1979, whereas the Respondents No. 2 & 3 were appointed as such in 1980. By getting benefit of reservation, the respondent no. 2 was promoted as Sr. Lab Technician on 16.04.1983. The petitioner was promoted as Sr. Lab Technician on 01.03.1992 i.e., when private respondents were already working in that cadre. On such promotion the applicant was to be placed above respondent No. 2. Similarly, when turn of applicant comes for promotion as Technical Assistant he will have to be placed above his juniors if such promotion takes place upto 17.06.1995 as after this date of Constitution stood amended."

In compliance with the judgment of the CAT, the authorities fixed the seniority of Sh. Gurmail Ram above Sh. Jasmer Singh as Sr. Lab Technician w.e.f. 01.03.1992 vide order dated 14.09.2010.

It is also stated here that Sh. Charan Singh Rayat and others and Sh. Kundan Singh and another also filed O.As No. 998/CH/10 and No. 996/CH/10 praying for issuing a direction to the respondents to extend the benefit of judgment dated 25.05.2010 passed by the Hon'ble CAT in the case of Sh. Gurmail Ram versus PGIMER, Chandigarh. Arguments were heard before the Tribunal the following order was passed on 04.07.2011:

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"After hearing the learned counsel for the parties and taking into consideration that the seniority of the applicants except Dr. Charan Singh Rayat (applicant No. 1 in OA No. 998/CH/2010) has been fixed rightly, we dispose of both these OAs with directions to Respondent No. 2 to grant other permissible benefits and to reconsider the case of Dr. Charan Singh Rayat afresh and fix his seniority at an appropriate place as per Law & Rules within a period of two months from the date of receipt of a copy of this order, after affording an opportunity of hearing to Sh. Jasmer Singh. Orders so passed by communicated to the concerned applicant."

A personal hearing was given to Sh. Jasmer Singh on 02.09.2011 by the DPGI, Chandigarh. Sh. Jasmer Singh attended the personal hearing on 02.09.2011 before the DPGI, Chandigarh and he gave in writing that he agrees fully with the said order decided since there would be no financial loss to him. Accordingly the seniority of Sh. Charan Singh Rayat as Sr. Lab Technician was fixed above Sh. Jasmer Singh vide order dated 23.09.2011

5. In the written statement filed on behalf of respondent No. 4, it has been stated that present Original Application suffers from concealment of facts in as much as the Original applicant / respondent no.2 in O.A. concealed the material fact that he was already aware about the order passed by this Tribunal dated 25.05.2010 and subsequent similar orders and the said order was implemented with his consent. Therefore the instant Original Application deserves to be dismissed on

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this score alone. The applicant was also aware about the proceedings before the Hon'ble High Court as well as before this Tribunal but never bothered to present himself and after passing of order dated 25.05.2010 and other similar orders, he consented that necessary benefit accruing from order dated 25.05.2010 be granted to the applicants therein. Other similar cases were titled as Kundan Singh and Anr. Vs. PGIMER and Anr and Dr. Charan Singh Riyat and Ors. VS. PGIMER and Ors. (OA No.996/CH/2011) and (OA.No.998/CH/2011) and the notice was served upon the Original applicant but he again did not appear before the Tribunal. Thereafter, since the aforesaid OAs were also a similar nature, the case were decided in favour of the applicants in those OAs. Another bunch of petitions was allowed on the basis of aforesaid OAs vide order dated 15.11.2011 which has also been upheld by the Hon'ble Punjab and Haryana High Court vide judgment dated 07.01.2013 and therefore after order dated 25.05.2010, it is not open to the Original applicant to agitate before this Hon'ble Tribunal at this stage to contend that he was never offered any opportunity to appear before the Tribunal. The instant OA has been filed by the applicant after delay of more than 1483 days after he was served order dated 14.9.2010, vide which the answering respondent was accorded seniority over and above the applicant and, therefore, the

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original application suffers from inordinate delay and, as such, OA requires to be dismissed on this short ground itself. Though applicant has shown his lack of awareness about the case and has stated that no notice was served upon him but he admittedly knew about the order dated 14.9.2010 passed against him. A copy of letter signed by the Original applicant in this context is enclosed as **Annexure R/4/1**. Once having accepted the order passed by this Hon'ble Tribunal, which has attained finality and been implemented way back in 2010, the present OA is clear misuse of process of law and deserves to be dismissed with heavy costs upon the applicant.

6. Rejoinder has been filed on behalf of the applicant to both the written statements. Later, MA No. 346/2015 was filed under Rule 8(3) of the CAT Procedure Rules praying that Annexures R-4/6 and R-4/7 be taken on record. MA. 348/15 has been filed on behalf of one Dr. Charan Singh Rayat for being impleaded as respondent in the OA.

7. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant reiterated the content of the OA. He stated that he was appointed as Senior Lab Technician as a

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direct recruit, but the respondents had treated his appointment as promotion and TA No. 146/CH/2009 had been allowed against him although he had not even been served in the matter and was therefore, not allowed opportunity to present his side of the matter. His seniority had been challenged and the respondent No. 4 had been placed above him and he had derived undue benefit on account of the order dated 25.5.2010 in TA No. 146/CH/09. Later, many other persons filed their claims seeking similar benefits as allowed in TA No. 146/CH/2009 and all these persons had been placed above the applicant in the seniority list.

8. Sh. Rajesh Garg, learned counsel for the respondents no. 1-3 stated that even if it was presumed that order dated 25.1.2010 was passed without the applicant having been heard in TA No. 146/CH/2009, the implementation of this order of the CAT was effected through order dated 14.9.2010. This order had been served upon the applicant in the present OA but he had filed the present OA in October, 2014 and hence the same was barred by limitation. Learned counsel also stated that the records relating to promotions/appointment of Senior Lab Technicians effected in 1983 had been weeded out.

9. Sh. Jaswal, learned counsel for the respondents also emphasized the aspect of delay. He stated that as per the rules, the posts

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of Senior Lab Technicians were to be filled 100% by promotion, and the applicant had also been promoted to the post of Senior Lab Technician and not been directly recruited. He stated that the provision of 25% recruitment was introduced in the Rules much later while the applicant was appointed as Senior Lab Technician in 1983. Learned counsel stated that this was the stand of the respondent PGIMER in the CWP filed in this matter. At that time, the respondents had clearly stated that the applicant had been promoted as Senior Lab Technician and not been directly recruited. Sh. Jaswal also submitted that as per the Gradation List of Senior Lab Technicians issued vide Memo dated 28.5.1997 (taken on record), the applicant's name was shown at Sr. No. 38 and he was shown in Column No. 9 as having been promoted to this post. The applicant had not impugned this seniority list which he should have done had his claim for being appointed as Senior Lab Technician through direct recruitment been valid.

10. To a pointed question from the Bench, the learned counsel for the applicant stated that as a result of the order dated 25.5.2010, the seniority of the applicant had been changed, but he did not suffer any monetary loss on this account nor were his promotions to the higher post delayed.

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11. We have given our thoughtful consideration to the matter. It is evident from the material on record that the applicant was aware of the order dated 14.9.2010 through which the order of the CAT dated 25.5.2010 in TA No. 146/CH/2009 was implemented. The OA seeking recalling of this order has only been filed on 7.10.2014. There is no explanation for delay on this account. Also, it is clear that except for change of his position in the seniority list of Senior Lab Technicians, the applicant had not suffered any adverse consequences, monetary or otherwise, on account of this order. Hence, we conclude that this OA is barred by limitation and is dismissed. MAs No. 060/00346/15 & 060/00348/15 are also disposed of accordingly.

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(RAJWANT SANDHU)
MEMBER(A)

B. A. Agarwal
(DR. BRAHM A. AGRAWAL)
MEMBER(J)

Dated: 16.4.2015

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