

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**MA-1258/2017
MA-1259/2017
MA-1071/2017 in
OA-2906/2016
MA-2589/2016**

Reserved on : 25.04.2017.

Pronounced on : 28.04.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Nirmala Gupta & Ors.

Vs.

CGA

Present : Sh. S.K. Gupta, counsel for applicants.
Sh. Rajesh Katyal and Sh. Hanu Bhasker, counsel
for respondents.

MA-1071/2017

This application has been filed by the applicants for making certain amendments in the OA. Learned counsel for the applicants Sh. S.K. Gupta submitted that during pendency of the OA the respondents have passed an order dated 22.03.2017 by which the examination has been cancelled. Sh. Gupta stated that it has become necessary now for the applicants to place this order on record with suitable amendments in the relevant clauses of the OA. He has, therefore, filed this application seeking leave of the Tribunal for making these amendments.

2. This prayer has been opposed by the respondents in the reply filed by them. Learned counsel for the respondents Sh. Rajesh Katyal

submitted that the order dated 22.03.2017, which the applicants are seeking to place on record and challenge by making amendments in the OA was also challenged in another OA No. 1072/2017. The aforesaid OA was dismissed by a Co-ordinate Bench of this Tribunal vide order dated 30.03.2017. If the prayer of the applicants is allowed then they would be challenging an order, which has already been upheld by this Tribunal and, therefore, their action would be contrary to law.

3. We have heard both sides and have perused the material placed on record. Sh. Gupta argued that it is settled law that only ratio laid down in a judgment is binding and since in the order of the Tribunal in OA-1072/2017 no ratio has been laid down, that order cannot be binding on this Bench of the Tribunal. He also submitted that this order was per incuriam of the settled law on the subject as laid down by the Apex Court and as has been discussed in detail by this very Bench of the Tribunal in its judgment pronounced on 01.02.2017 in OA-3941/2015 (Puneet Kumar & Ors. Vs. Chief Secretary, GNCT of Delhi & Ors.). Further, he submitted that this Bench of the Tribunal also has the option of referring the matter to a Larger Bench in case this Bench disagrees with the order of a Co-ordinate Bench.

4. After considering the submissions of both sides, we are inclined to agree with learned counsel for the applicant Sh. Gupta. Once the order dated 22.03.2017 of the respondents is brought on record and impugned by the applicants, it is open to this Bench to decide whether to follow the order of the Tribunal in OA-1072/2017 or adopt any other legal course of action. The amendments, therefore, prayed for by the applicants cannot be denied on the grounds taken by the respondents.

5. We, therefore, allow this M.A. Amended OA filed by the applicants along with MA is taken on record.

MA-1258/2017

6. This application has been filed seeking stay of recovery against the applicants. Sh. Gupta, learned counsel stated that the respondents have not only ordered cancellation of the examination but have also ordered review of all the benefits granted on the basis of the aforesaid examination. He further submitted that this order of the respondents would lead to recovery of the stipend amount granted to the applicants after passing the aforesaid examination. This would cause hardship to them. Hence, he submitted that recovery of the aforesaid stipend amount be stayed during pendency of the OA.

7. The aforesaid prayer has been opposed by the respondents. In our opinion, no irreparable loss will be caused to the respondents if recovery is stayed during pendency of the OA. In case the applicants are not successful in this OA then recovery of entire amount can always be made from them. The balance of convenience, therefore, lies in staying the recovery to prevent hardship to the applicants.

8. In view of the aforesaid, we allow this application and direct that while the respondents would be at liberty to stop further payment of stipend to the applicants, recovery of the stipend amount already paid to the applicants shall remain stayed during pendency of the OA.

MA-1259/2017

9. This Application has been filed by the applicants seeking stay of the fresh examination ordered by the respondents. During the course of arguments, it was fairly submitted by learned counsel for the applicants that the re-examination has now been scheduled for the month of July, 2017. In view of this, we keep this M.A. pending to be decided along with the OA.

OA-2906/2016

10. Respondents may file reply to the amended OA within two weeks. Rejoinder, if any, may be filed within a week thereafter. List again on 30.05.2017.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/