

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1153 of 2015

New Delhi, this the 12th day of February, 2016

CORAM:

HON'BLE DR.B.K.SINHA, ADMINISTRATIVE MEMBER

AND

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Dr.Chandra Shekhar Sahukar,

Aged 56 years and 9 months,

employed as Deputy Commissioner (Animal Husbandry),

Department of Animal Husbandry & Dairying,

Ministry of Agriculture,

Room No. 493A,

Krishi Bhavan,

New Delhi 110001

And resident of C-376, DDA Flats,

East Loni Road,

Delhi 110093

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Applicant

(In person)

Vs.

Secretary,

Department of Animal Husbandry & Dairying,

Ministry of Agriculture,

Krishi Bhavan,

New Delhi 110001

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Respondent

(By Advocate: Shri J.P.Tiwari)

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RAJ VIR SHARMA, MEMBER(J):

The applicant, who is presently working as Deputy Commissioner (Animal Husbandry) in the Department of Animal Husbandry & Dairying, Ministry of Agriculture, has filed the present O.A. seeking the following relief:

- ø8.1 Consideration of Assistant Commissioner (Piggery) as a Specialist Veterinary Post for financial upgradation under Dynamic Assured Progression Scheme (DACP), which is effective w.e.f. 5.04.2002 before the Notification for change of designation of this post into Assistant Commissioner (Animal Husbandry) on 23rd August, 2007.ö

2. The brief facts of the applicant's case are that he was appointed as Assistant Commissioner (Piggery) on 3.11.1995. Subsequently, the post of Assistant Commissioner (Piggery) was re-designated as Assistant Commissioner (Animal Husbandry), when the Department of Animal Husbandry, Dairying & Fisheries, Animal Husbandry Officers Group "A" Posts Recruitment Rules, 2007, came into force, vide Notification dated 23.8.2007 (Annexure 11). He filed O.A.No.242 of 2009 before this Tribunal, claiming, *inter alia*, the grant of benefits of Dynamic Assured Career Progression Scheme (DACP) to him as was extended by the Government to various cadres of the Central Health Service (CHS) on the basis of the recommendations of the 5th CPC and 6th CPC, vide Notifications dated 5.2.2002 and 29.10.2008. The Tribunal dismissed the said O.A.No.242 of 2009, vide its order dated 9.9.2009. Being aggrieved by the Tribunal's order, dated 9.9.2009, the applicant filed W.P. (C) No. 2780

of 2011. In the meantime, he was promoted from the post of Assistant Commissioner (Animal Husbandry) to the post of Deputy Commissioner (Animal Husbandry) with effect from 9.7.2013. The Honøble High Court of Delhi, vide its judgment dated 14.10.2014, allowed the said writ petition and set aside the Tribunal's order dated 9.9.2009, *ibid*. The Honøble High Court also issued a direction to the respondent-Union of India to ensure that the DACP is granted to Veterinary Officers on the basis of the CPC's recommendation and implementation of the recommendation in respect of the GDMOs and Dental Doctors from the date the latter category-Dental Doctors were given that benefit. Thereafter, the applicant made representations dated 19.12.2014 and 1.1.2015 requesting the respondent to grant him the benefits of DACP by way of implementation of the Honøble High Court's judgment dated 14.10.2014, *ibid*, but to no effect. Therefore, he filed the present O.A. on 25.3.2015, seeking the relief as aforesaid.

3. In the counter reply, filed on behalf of the respondent, it has been stated, *inter alia*, that the judgment dated 14.10.2014 passed by the Honøble High Court of Delhi in W.P. (C) No. 2780 of 2011 is under challenge in SLP (C) No. 3505 of 2015 before the Honøble Supreme Court. The present applicant is respondent in the said SLP. In the present O.A., the applicant has deliberately kept the Tribunal in dark about the fact of filing of SLP by the respondent-Union of India before the Honøble Supreme Court against the Honøble High Court's judgment dated 14.10.2014, *ibid*. It is, thus, submitted by the respondent that since the very same issue as to

whether, or not, the DACP Scheme is to be extended to the veterinarians is *sub judice* before the Honøble Supreme Court, the present O.A. is frivolous, malicious, and misleading, and hence liable to be dismissed.

4. In his rejoinder reply, the applicant has not disputed the above averments made by the respondent.

5. We have perused the records, and have heard the applicant in person, and Shri J.P.Tiwari, the learned counsel appearing for the respondent.

6. It was contended by the applicant that the issue raised by him in the present O.A. is different from the one which is *sub judice* before the Honøble Supreme Court. The Degree in Veterinary Science or Animal Husbandry of a recognized University or equivalent, and Post Graduate Degree in any branch of Animal Science related to Production were prescribed as the essential qualifications for appointment to the post of Assistant Commissioner (Piggery) by way of direct recruitment and by way of promotion as well. Thus, the post of Assistant Commissioner (Piggery) was a Specialist Veterinary post. As per the new Recruitment Rules, a Livestock Officer without possessing the qualification of Post Graduate Degree in any branch of Animal Science can be appointed, by way of promotion, to the post of Assistant Commissioner (Animal Husbandry). The respondent unilaterally changed his designation from Assistant Commissioner (Piggery) to that of Assistant Commissioner (Animal Husbandry), vide notification dated 22.8.2007, *ibid*. Therefore, he has filed

the present O.A. seeking a direction to the respondent to consider the post of Assistant Commissioner (Piggery) as a Specialist Veterinary Post till 22.8.2007, i.e., prior to the issuance of the notification dated 23.8.2007, *ibid*, and to grant him financial upgradation under the DACP Scheme with effect from 5.4.2002.

7. Along with its counter reply, the respondent has filed copies of orders dated 20.2.2015, 1.5.2015, and 9.7.2015 passed by the Honøble Supreme Court in SLP (C) No.3505 of 2015 filed against the Honøble High Courtø judgment dated 14.10.2014. It transpires from the said orders that in response to the notice issued by the Honøble Supreme Court, the applicant, who is respondent in the SLP, has appeared through his learned counsel in the SLP. Counter affidavit has also been filed by the applicant. The pleadings in the SLP are also complete.

8. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions, we have found no substance in the contentions of the applicant. The issue raised by the applicant in the present O.A. was directly and substantially an issue in OA No. 242 of 2009, which was decided by the Tribunal, vide its order dated 9.9.2009, against the applicant. Allowing W.P. (C) No.2780 of 2011, filed by the applicant against the Tribunalø order dated 9.9.2009, *ibid*, the Honøble High Court of Delhi, vide its judgment dated 14.10.2014, set aside the Tribunalø order dated 9.9.2009, *ibid*, and directed the Union of India to ensure that DACP is granted to Veterinary Officers, like the applicant in the

present case, with effect from the date the Dental Doctors were given that benefit. The Union of India has filed S.L.P (C) No. 3505 of 2015 before the Honøble Supreme Court, challenging the Honøble High Court's judgment dated 14.10.2014, *ibid*. The present applicant, who is respondent in the S.L.P., has already appeared, through his learned counsel, before the Honøble Supreme Court, and has filed his counter affidavit in the S.L.P. The pleadings in the S.L.P. are also complete. In the above view of the matter, the applicant cannot be permitted to maintain the present O.A. by taking some other pleas and additional grounds for the very same relief. If so advised, the applicant may raise all his contentions/pleas before the Honøble Supreme Court at the time of hearing of the S.L.P.

8. In the light of what has been discussed above, we are not inclined to entertain the present O.A. which is accordingly rejected. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(DR.B.K.SINHA)
ADMINISTRATIVE MEMBER

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