

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1843 OF 2013

New Delhi, this the 7th day of November, 2016

CORAM:

HON^ØBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND

HON^ØBLE SHRI K.N.SHRIVASTAVA, ADMINISTRATIVE MEMBER
í í í .

Yash Pal,

S/o Shri Bal Krishan, R/o J-178 Vikas Puri,
New Delhi-110018.

Retired on 31.01.2013 from National Physical Laboratory Dr. K.S.
Krishnan Marg, Near East Patel Nagar,
New Delhi-110012. í Applicant

(By Advocate: Ms.Shilpi Satyapriya Satyam)

Vs.

1. Director General, Council of Scientific & Industrial Research,
2, Rafi Marg,
New Delhi-110001.

2. Director,
CSIR-National Physical Laboratory,
Dr. K.S. Krishnan Marg, Pusa,
Near East Patel Nagar,

New Delhi-110012. í í .. Respondents

(By Advocate: Ms. Neha Bhatnagar)

ORDER

Per Raj Vir Sharma, Member(J):

This Original Application has been filed by the applicant seeking the following reliefs:

- õa) To recall the judgment in OA 2990/1991 & 1757/1994 dated 08th August, 1997 and judgment in OA No.1755/2003 dated 6th May, 2004 obtained by giving contradictory statements, concealing the material facts and fraud before this Hon^Øble Tribunal and Hon^Øble High Court of Delhi.
- b) To permit the applicant to challenge the constitutional validity of Merit and Normal Assessment Scheme

(MANAS) and Revised Merit and Assessment Scheme (Revised MANAS) implemented retrospectively w.e.f. 01.04.1988 and 01.04.1992 respectively.

- c) Any other Writ or order or direction which it deem fit and proper in the facts and circumstances of the case and in the interest of justice.ö

2. The respondents have filed a counter reply resisting the O.A. The applicant has also filed a rejoinder reply thereto.

3. We have carefully perused the records, and have heard Ms.Shilpi Satyapriya Satyam, the learned counsel appearing for the applicant, and Ms.Neha Bhatnagar, the learned counsel appearing for the respondents. We have also perused the written note of submissions filed by the applicant.

4. A perusal of the records reveals that the applicant had joined National Physical Laboratory, a constituent unit of the Council of Scientific and Industrial Research (the respondent), as a Fine Mechanic with effect from 18.5.1979. The said post was in Group II category; the other categories being Group III and Group IV in the ascending order. The respondent introduced a New Recruitment and Assessment Scheme (NRAS, for short), which was circulated on 2.11.1981 for Fast Track Promotions, (FTP, for short), to the scientific and technical staff as were in position on that date, and who possessed the prescribed entry level qualification for the next/higher group, subject to conditions stipulated in the scheme. The respondents, by their letter dated 5.3.1983, changed the cut-off date for the prescribed eligibility qualification from 2.11.1981 to 31.12.1981. The applicant completed and passed the Associate Membership Examination, Sections A and B of the Aeronautical Society of India on 1.9.1982. The said examination is recognized as equivalent to Bachelors Degree in Aeronautical Engineering for the purpose of recruitment by the

Ministry of Education. The respondent considered the case of the applicant for FTP, and by an order dated 21.2.1983 he was, with effect from 1.9.1982, promoted from the post of Fine Mechanic in Group II (3) to Technician Grade VIII in Group III(1), with three advance increments above the normal fixation. NRAS came to an end on 31.3.1988 and was replaced by the Merit and Normal Assessment Scheme (MANAS, for short), which was circulated vide letter dated 12.7.1990, but implemented with effect from 1.4.1988. The applicant did not question and challenge NRAS till 1991. In the year 1991, he filed O.A. No. 2990/1991 urging that he was wrongly denied consideration for promotion as Scientist Grade in Group IV, and that if he had been granted the said promotion, he would have been beneficiary of further promotions on fast track. Thus, he prayed for a direction to the respondents to grant him promotion to the Scientist Grade in Group IV, along with consequential benefits. It was also stated by the applicant that he had made representations for his promotion to the Scientist Grade, but the respondent had informed him that he was not entitled to consideration for promotion to Group IV, and that by mistake he had been promoted to Group III(1) with effect from 1.9.1982 under NRAS, when he should have been promoted in normal course to Group III(1) from 3.5.1984.

4.1 The applicant also filed another O.A. No. 1757/1994 challenging the vires of the letter dated 5.3.1983 by which the cut-off date for educational qualifications was fixed as 31.12.1981.

4.2 The aforesaid two O.A.s were disposed of by the Tribunal, vide order dated 8.8.1997, the operative portion of which reads as under:

"15. In the light of the above discussion, we come to the following conclusions:-

- (i) The applicant is not entitled to promotion as Scientist B w.e.f. 1.9.1982 in the pay scale of Rs.700-1300 (pre-revised) with consequential benefits;

- (ii) The orders of respondent No. 1 and 2 in O.A. No. 1757/1994, dated 3.3.94, 4.7.94 and 16.11.1984 are not ultravires;
- (iii) The respondents' O.M. dated 28.1.91 is quashed to the extent it seeks to postpone the date of promotion of the applicant from 1.9.1982 to 3.5.1984."

4.3 The aforesaid order of the Tribunal was made subject matter of challenge before the Hon'ble High Court of Delhi in Writ Petition (Civil) No. 4817/1997, but the challenge was rejected by the detailed judgment dated 16.11.1998. SLP (C) No.4127/1999 filed by the applicant against the said judgment was dismissed by the Hon'ble Supreme Court, vide order 30.3.1999.

4.4 The aforesaid order of the tribunal, therefore, got stamp of approval from the Hon'ble High Court and attained finality in view of the decision of the Hon'ble High Court, and dismissal of the SLP by the Hon'ble Supreme Court.

4.5 The applicant, it is apparent, did not remain quiet thereafter. He filed another O.A. No. 1755/2003 before the Tribunal, praying for the following reliefs:

- "(a) To judicially review the New Recruitment and Assessment Scheme (NRAS) of the respondent and declare them ultra vires violative of Article 14, 16 and 39(d) of the constitution.
- (b) If the NRAS is declared ultra vires to the Constitution of India to direct the respondent to grant placement in Group IV on the basis of interview held on 16th February 1983 as per direction by the Hon ble Supreme Court in State of Bihar vs Dr. Braj Kumar Mishra 1999 SOL Case No.
- (c) To grant consequential benefits including arrears and interest @ 18% p.a. from the date of due to date of payment."

The Tribunal, by its order dated 6.5.2004, dismissed the said O.A. No.1755 of 2003 on the principles analogous to res judicata.

4.6 Challenging the Tribunal's order dated 6.5.2004, *ibid*, the applicant filed W.P. (C) No.10395 of 2004 before the Hon'ble High Court of Delhi. The Hon'ble High Court, by its order judgment dated 23.5.2011, dismissed the said

W.P. (C) No. 10395 of 2004. SLP (C) No.25894-95 of 2011 filed by the applicant challenging the judgment dated 23.5.2011, *ibid*, was dismissed by the Hon'ble Supreme Court, vide order dated 24.9.2012. The Review Petition No.2629-30 of 2011 filed by the applicant was dismissed by the Hon'ble Supreme Court, vide order dated 09.1.2013.

5. After going through the records, and the relevant orders/judgments passed by this Tribunal, the Hon'ble High Court of Delhi, and the Hon'ble Supreme Court, which have been referred to above, we do not find any substance in the contention of the applicant that the Tribunal has passed the orders dated 8.8.1997 and 6.5.2004, and has decided O.A.Nos.2990/1991, 1757/1994, and 1755/2003 against him on account of any misrepresentation of facts, or suppression of material facts, or fraud perpetrated by any party to the proceedings. We find that the aforesaid orders, which are sought to be recalled on the purported ground of misrepresentation of facts/suppression of material facts/fraud, have been passed by the Tribunal after analyzing the materials available on record, and after hearing the parties. As discussed in the preceding paragraphs, the aforesaid orders passed by the Tribunal have been upheld by the Hon'ble High Court of Delhi, and the SLPs filed by the applicant against the same have been dismissed by the Hon'ble Supreme Court. None of the decisions cited by the applicant in the written note of submissions improves his case. Therefore, we have no hesitation in holding that the O.A. is devoid of any merit.

6. Accordingly, the O.A. is dismissed, and all the pending Misc. Applications are disposed of. No costs.

(K.N.SHRIVASTAVA)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER