

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No. 1700/2015
MA 1551/2015**

Reserved on 07.12.2016
Pronounced on 13.12.2016

Sh.B.K.Kansal @ Birjesh Kumar Kansal,
and others

Vs.

Govt. of NCT of Delhi through
Chief Secretary, Players Building,
Delhi Secretariat, IP Estate,
New Delhi and Others.

For applicant : Mr.S.K.Gupta

For respondents: Mrs.Sangita Rai with Mr. Pradeep Singh
Tomar.

O R D E R (ON PRILIMINARY OBJECTION)

Mr. Shekhar Agarwal, Member (A):

During the course of hearing of OA No.1700/2015, learned counsel for the respondents, Ms. Sangita Rai, had taken a preliminary objection that the applicant had not come to this Tribunal with clean hands and had concealed the fact of filing a similar OA before this Tribunal in the past. She drew our attention to para 7 of the OA wherein the applicant has declared that he has not filed any other petition in this Tribunal or any other Court for similar relief. Ms. Sangita Rai, submitted that the applicant had earlier approached this Tribunal by filing OA No. 4318/2012 which was decided by the Tribunal on 27.08.2014. The applicant has concealed this fact from the Tribunal and, therefore, this OA deserves to be dismissed with heavy cost. She relied on the judgment of a coordinate bench of this Tribunal dated 18.7.2016 in OA No. 4128/2013, titled **Dr.P.K.Pandey Vs.**

Union of India and Others in which under similar circumstances the application was dismissed with cost of Rs.75,000/-. She submitted that the aforesaid order of this Tribunal has been upheld by the Hon'ble High Court of Delhi, even though the cost amount has been reduced.

2. In reply to the aforesaid submission, learned counsel for the applicant, Shri S.K.Gupta, stated that the objection taken by the respondents was misconceived and baseless. He stated that in the list of dates and events, the applicant has very clearly mentioned that he had earlier filed OA no. 4318/2012 which was disposed of by this Tribunal on 27.8.2014 with a direction to the respondents to examine the issue in the light of earlier judgment in the case of **M.S.Narwal Vs. Govt. of NCT of Delhi & Others** (OA No. 146/2012). Shri Gupta further submitted that the applicant has enclosed with this OA a copy of the OA no. 4318/2012 which is available at pages 78 to 91 of the paper book. Not only that, the applicant has enclosed at page 92 Annexure A-15, a copy of the counter reply filed by the respondents in that case. At page no. 108 of this OA a copy of the order passed by the Tribunal on 27.08.2014 has also been enclosed. Further, he submitted that the order impugned by the applicant in this OA was passed in compliance of the direction of the Tribunal as given in its judgment dated 27.08.2014 and there is a mention of the same in the last para of the order. Therefore, Shri Gupta submitted that had there been any intention on the part of the applicant to conceal any fact from the Tribunal, he would not have enclosed all these documents

himself with the OA. He submitted that it was only inadvertently that in para 7, this fact has not been mentioned.

3. We have heard both sides on this issue and have perused the material on record. We agree with the learned counsel for the applicant that there appears to be no intention on the part of the applicant to conceal the fact of his having filed OA no. 4318/2012 earlier. In fact the impugned order has been passed in compliance of the judgment of this Tribunal in that OA. Since the judgment in OA no.4318/2012 was given without going into the merits of the case. It was open to the applicant to now challenge the impugned order on merits through appropriate fresh proceeding. Accordingly this OA has been filed and we see nothing wrong in filing of the same.

4. This case is different from **Dr.P.K.Pandey's** case (supra) relied upon by the learned counsel for the respondents, as in that case this Tribunal had come to the conclusion that the applicant had deliberately concealed the factum of filing of earlier OA from the Tribunal. In this case, in view of what has been mentioned above, we do not see any intention on the part of the applicant of any concealment. As such, the judgment of **Dr. P.K.Pandey** cannot be any help to the respondents.

5. We note that this objection has not found mention in the counter reply of the respondents but was raised only during the course of argument when Ms. Sangita Rai insisted that this be

decided by the Tribunal before it proceeds to hear the OA. We find this objection to be frivolous and waste of precious judicial time and reject the same. However, we make it clear that we have not expressed any opinion on the merits of this case.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Shekhar Agarwal)
Member (A))

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