

**Central Administrative Tribunal
Principal Bench**

OA No. 3859/2015

New Delhi this the 16th day of October, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Moni Singh Krotia
S/o Shri Ramesh Chandra
R/o 3 Type II, Lal Bhadur Shastri Hospital,
/Campus Khichdipur, Delhi-110091

(Applicant working as O.T. Technician
with Respondent No.3)

-Applicant

(By Advocate: Mr. Rohit Minocha)

Versus

1. Govt.of NCT of Delhi
Through its Secretary
Health and Family Welfare
Deptt., 9 Level, A-Wing
Delhi Sectt., ITO, New Delhi -2
 2. The Director
Directorate of Health & Family Welfare
E-Block, Saraswati Bhavan
Connaught Place, New Delhi-1
 3. The Medical Superintendent
Lal Bahadur Shastri Hospital
Kichripur, Delhi-91
- Respondents

ORDER (Oral)

By Mr. A.K. Bhardwaj, Member (J):

In the present OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought issuance of direction to the respondents to appoint him as OT Technician w.e.f. 12.10.2002. We find from the

order dated 24.04.2009 passed in OA No. 671/2003 filed by the applicant that after having examined his claim for appointment as OT Technician, the Tribunal had issued directions to the respondents to ensure issuance of appointment order appointing him as OT Technician within three weeks from the date of the order. Having issued such directions, this Tribunal specifically viewed that it would not be possible for us to take note of the claim of the applicant that he has a right to get appointment retrospectively. Nevertheless, the applicant was allowed to make representation in the matter. Paras 12 and 13 of this Tribunal read thus:-

“12. The cumulative results of these discussions compel us to hold that the applicant has been given a raw deal and his grievances are required to be redressed. We direct that since the applicant has come successful in the written test, without any further formalities, he should be conferred with appointment, as the Medical Officers were clamouring that existing posts required to be filled up expeditiously. The concerned respondent should ensure that appointment order should be issued to the applicant as OT Technician, within three weeks from today. However, it may not be possible for us to take note of his claim that he has a right to get appointment retrospectively, in these proceedings; he may represent in the matter.

13. Nothing stated in the order should also be taken as frustrating the right of the fourth respondent, if any, as we have not independently discussed about his credentials than what was essential for disposal of this Original Application alone. No costs.”

2. Once the issue regarding appointment of the applicant as OT Technician was directly and substantially an issue in OA No. 671/2003 (ibid), the applicant cannot maintain a separate OA for appointment from retrospective effect. Such claim would be barred by constructive *res judicata*.

3. As far as the observations made by the Tribunal regarding the representation to be made by the applicant in the matter is concerned, it was only an equitable observation to enable the applicant to work out his claim with the respondents.

4. Regarding judicial intervention in the matter, the Tribunal made a specific observation that it was not possible for it to take note of his claim that he has a right to get appointment retrospectively. In one way, the Tribunal had specifically adjudicated the claim of the applicant regarding the appointment from retrospective date also. Above all, the order was passed by the Tribunal on 24.04.2009 and the present OA filed by the applicant on 12.10.2015 is also barred by limitation. If the applicant had any impression that ramification of the order passed by the Tribunal was that the respondents would have to take decision in his representation, he could have taken the recourse permissible under law in this regard. We do

not find the OA maintainable and the same is accordingly
dismissed *in limine*.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

/lg/