

**Central Administrative Tribunal
Principal Bench**

OA No.4128/2013

New Delhi, this the 18th day of July, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Dr. P. K. Pandey
Aged about 58 years,
S/o Shri R. J. Pandey
R/o A-170, Pocket 4, Mayur Vihar,
Phase-1, Delhi-91 working as
Director, Professor of Ophthalmology
Maulana Azad Medical College &
Guru Nanak Eye Centre,
New Delhi 110 002.

... Applicant.

(By Advocate : Shri M. K. Bhardwaj)

Versus

1. Union of India through
Secretary
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Dean
Maulana Azad Medical College,
New Delhi 110 002.
3. Dr. Kamlesh
Director Professor, MAMC and
service to be effected through:
The Dean, Maulana Azad Medical College,
New Delhi 110 002.
4. Principal Secretary
Department of Health & Family Welfare,
Govt. of NCT, 9th Level,
Delhi Secretariat,
New Delhi.
5. The Director
Guru Nanak Eye Centre,
Maharaja Ranjit Singh Marg,
New Delhi 110 002.

... Respondents.

(By Advocates : Mrs. Kiran Ahlawat for respondent No.1.
Shri N. K. Singh for Mrs. Avnish Ahlawat for respondents
No.2, 4 & 5.
Dr. K. S. Chauhan with Shri Ajit Kumar Ekka, Shri
Murari Lal and Shri Ravi Prakash for respondent No.3)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

Through the medium of this Application, the applicant has sought following reliefs:-

- “(a) Call for the records;
- (b) Pass an order declaring and quashing employment of Respondent No.3 against temporary posts of Assistant Professor w.e.f. 01.03.1990 and continuation thereafter against non-existent post as illegal and void, being an act of fraud committed by respondents jointly;
- (c) Pass an order setting aside the consequential seniority ascribed to respondent No.3, and all promotions granted to him;
- (d) Pass an order directing for recovery of funds paid as salary to respondent Nos.3 w.e.f. 01.03.1990 without sanctioned posts or funds;
- (e) Pass such further or other orders which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case.”

2. The claim of the applicant in the present OA is that the private respondent No.3 was appointed against non-teaching cadre, and on temporary basis. It is further alleged that respondent No.3 was promoted as Associate Professor against temporary post of Assistant Professor on 24.08.1987, and later on promoted as Professor and Director-Professor. In para 7 of the OA, the applicant has made following declaration:-

“7. Matters previously not filed or pending before any Court:
The petitioner further declare that he had not previously filed any application, writ petition or suit for the relief in respect of which this application has been made, before any court or another authority or any other bench of the Tribunal, nor any such application, writ petition or suit is pending before any of them.”

3. Mrs. Kiran Ahlawat, learned counsel for respondent No.1, Shri N. K. Singh, learned counsel for respondents No.2, 4 & 5 and Dr. K. S. Chauhan, learned counsel for respondent No.3 have brought to the notice of the Tribunal that the applicant, in fact, is guilty of concealment

of facts and misrepresentation, and also making a false declaration in para 7 of the OA by concealing the fact that earlier he had filed OA No.2248/2009 which came to be dismissed by this Tribunal on 18.08.2009. It is further contended that thereafter a review application, i.e., RA No.191/2009 was also filed. This RA was also dismissed vide order dated 22.10.2009. Copies of the judgment dated 18.08.2009 in OA No.2248/2009 and order dated 22.10.2009 in RA No.191/2009 are annexed as Annexure R/1 with the counter of respondents No.2, 4 & 5, and also part of counter filed on behalf of respondent No.3.

4. From the perusal of the averments made in the present OA and the judgments referred to hereinabove, we find that the applicant has filed the present OA seeking the same relief based upon same allegations and same cause of action. The mere fact that the applicant is guilty of active concealment and making false declaration in the OA, disentitles him from claiming the relief, even if he is entitled to the same. The factum of earlier litigation has been totally withheld from the court, rather a false declaration has been made in para 7 as mentioned herein above. We are informed that the same counsel who has filed the present OA, represented the applicant in the earlier litigation as well. This is a serious matter. The applicant having suffered a judgment earlier in respect of the same relief, he is not entitled to file a second application. Apart from this legal aspect, the applicant has deliberately concealed this fact from the Tribunal in the present OA rather made a false declaration in para 7 about the filing of earlier litigation. For the above reason alone, this OA is liable to be dismissed with costs. We also intended to initiate proceeding for perjury for making a wrong declaration. However, keeping in view the age of the applicant, who is reportedly 63 years of age, we have refrained ourselves from doing so.

5. The applicant being guilty of deliberate concealment of facts, this Application is dismissed with cost of Rs.75,000/- (Rupees Seventy Five thousand) to be deposited with the Delhi State Legal Services Authority within a period of one month, failing which, this order shall be executed as a decree of the Court. This file shall be placed before the Bench after expiry of one month for limited purpose of ensuring compliance of this order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

pj/