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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6287/2017, CM APPL. 26054/2017 -Stay & CM APPL.
57203/2023 -Disposal of Writ.

CHAIRMAN, NATIONAL TECHNICAL RESEARCH
ORGANIZATION (NTRO) & ORS Petitioners

Through: Mr. Vikram Jetly, CGSC with Ms.
Shreya Jetly, Advocates

versus

LT. COL (RETD.) RAJVIR SNGH & ANR Respondents

Through: Mr. M. K. Bhardwaj, Advocate

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

06.05.2024

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1. The present writ petition under Articles 226 & 227 of The Constitution of India seeks to assail the order dated 19.01.2017 passed by the learned Central Administrative Tribunal (the learned Tribunal) in O.A. No. 4681/2014. Vide the impugned order, learned Tribunal has allowed the original application filed by the respondent by holding that the case of the respondent was squarely covers by its earlier decision in O.A. No. 4273/2013 titled *Lt. Col.(Retd) Ashwani Kumar vs. UOI*.

2. The said decision dated 28.11.2014 passed by the learned Tribunal was set aside by this Court vide order dated 27.07.2023 in W.P.(C) 3737/2015.



3. It is the case of the petitioner that since it is recorded in para 6 of the impugned order that the respondents themselves had relied upon the decision of the learned Tribunal in ***Lt. Col.(Retd) Ashwani Kumar (supra)***, which has since been set aside, therefore, they are well and truly bound by the decision of this Court dated 27.07.2023 passed therein. As the decision of the learned Tribunal in ***Lt. Col.(Retd) Ashwani Kumar (supra)***, has been over turned.

4. On the other hand, Mr. M. K. Bhardwaj, learned counsel for the respondents, seeks to contend that the decision in ***Lt. Col.(Retd) Ashwani Kumar (supra)*** was not applicable to the facts involved in the present case. He further submits that though he had relied upon various other pronouncements before the learned Tribunal on behalf of the respondents, they have not been appreciated by the learned Tribunal while passing the impugned order. He next contends that the facts of the case involved herein were for relief qua the FCS whereas facts of the case involved in ***Lt. Col.(Retd) Ashwani Kumar (supra)*** were for functional promotion. As such, both cases involve facts arising out of different footing altogether. He, therefore, prays for dismissal of the present petition.

5. Having considered the submissions made by the learned counsel for both the parties as also, a perusal of the records, we find that it is the petitioner itself who in the present petition, in ground 'D' has categorically stated that "*the facts of Lt. Col (Retd) Ashwani Kumar Versus Union of India, O.A. No. 4723/2013, and the present case are completely different, as Ashwani Kumar was holding the rank of Lt. Col. in the pay scale of 13500-17100+ rank pay of 1600. He thereafter, joined Aviation Research Center (ARC) on deputation basis from Indian Army on 04.10.2004 as JDD(IA).*"



*Thereafter, taking premature retirement from Indian Army on 30.04.2007, he joined ARC against the post offered to him on reemployment basis i.e. AD(IA) in lower pay scale of Rs. 10000- 15200 w.e.f. 01.05.2007. On his deputation to ARC, he was performing duties assigned to the post of JDD(IA), whereas after his re-employment, he was assigned the duties of the post of AD(IA), i.e. one rank below JDD(IA). But in the present case both the Respondents joined on same post i.e. Scientist 'D' and not on any lower post like in Ashwani Kumar's case. Hence Ld. Tribunal erred in holding that present case was similar to the case of Ashwani Kumar's case". Meaning thereby, it is the case of the petitioner that the decision passed by the learned Tribunal in **Lt. Col. (Retd) Ashwani Kumar (supra)** was not applicable to the facts of the present case. Interestingly, today, learned counsel appearing for the respondents has also taken the similar plea.*

6. In these circumstances, we can safely conclude that learned counsel appearing for the parties are *ad idem* that the learned Tribunal in **Lt. Col.(Retd) Ashwani Kumar (supra)** is not applicable to the facts of the present case. Surprisingly, contrary thereto, a perusal of the impugned order passed by the learned Tribunal reveals that the impugned order has been passed in favour of the respondents solely on the basis of earlier decision rendered by the learned Tribunal in **Lt. Col.(Retd) Ashwani Kumar (supra)**.

7. In these circumstances, we have no other option but to set aside the impugned order and remand the matter back to the learned Tribunal for fresh adjudication of the O.A. No. 4681/2014 on merits.

8. The petition is, accordingly, allowed by setting aside the impugned order and remanding the matter back to the learned Tribunal for a fresh adjudication on merits. Accordingly, the writ petition is disposed of in the



aforesaid terms, alongwith all the pending applications.

9. The O.A. be listed before the Registrar of the learned Tribunal on 17.05.2024.

REKHA PALLI, J

SAURABH BANERJEE, J

MAY 6, 2024/akr