

Central Administrative Tribunal, Principal Bench

Original Application No. 3071 of 2002
M.A.No. 2608/2002

New Delhi, this the 3rd day of November, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

1. Ms. Grace,
D/o Yonas Masih,
R/o RZA-38, Sitapuri-I
Pankha Road,
New Delhi-45
2. Ms. Sheela K.G.
D/o Pappan Gopalan
R/o 266, Patparganj,
Mayur Vihar Phase-I
Delhi-91.
3. Ms. Biny Mol P.
D/o P.K. Madhavan,
R/o E-72, Mehboob Khan Road,
Near Tilak Bridge,
New Delhi-2
4. Ms. Rosemary Shrivastava,
W/o
R/o 151, MCD Flats,
Nimri Colony,
Ashok Vihar Phase-II
Delhi-52
5. Ms. Sinny Mol K.S.
D/o K.R. Surendran,
R/o Qr. No. 30/96, Type-I Quarter
LNJP Quarters,
New Delhi-2
6. Ms. Sinny Mol A.S.
D/o A.K. Sridharan,
R/o House No. 100,
Hauz Rani, Malviya Nagar,
New Delhi-17

.... Applicants

(By Advocate: Shri P. Chakraborty)

Versus

1. Union of India,
Through its Secretary,
Ministry of Health & Family Welfare,
Shastri Bhawan,
New Delhi-1
2. Govt. of NCT of Delhi,
Through Principal Secretary (Medical)
New Secretariat,
Govt. of NCT of Delhi,
ITO, New Delhi-2

3. Medical Superintendent,
LNJP Hospital,
Jawahar Lal Nehru Marg,
New Delhi-2

.... Respondents

(By Advocate: None for respondent 1

Shri Ajesh Luthra, for respondents 2&3)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

M.A. 2608/2002

M.A. is allowed subject to just exceptions.
Filing of the joint application is permitted.

O.A. 3071/2002

The applicants are Staff Nurses working in Lok Nayak Hospital at Delhi. By virtue of the present application, they seek the following reliefs:

- i) To direct the respondents to accept as valid the OBC Certificate filed by the applicants relying on Govt. of India's following resolution/O.M.:-
- a) No.12011/68/93-BCC (C) dated 10.9.1993 published in the Gazette of India Extraordinary Part-I dated 13.9.1993.
- b) No.12011/9/94-BCC dated 19.10.1994 published in the Gazette of India Extraordinary Part-I on 20.10.1994.
- c) No.1201177/95-BCC dated 24.5.1995 published in the Gazette of India Extraordinary Part-I on 25.5.1995.
- d) No.12011/44/96-BCC dated 6.12.1996 published in the Gazette of India Extraordinary Part-I on 11.12.1996.
- ii) To regularise their services and absorb them against the vacant post of staff nurses in LNJP Hospital in view of their experience of about two years gained as staff nurse in LNJP Hospital and also on the ground that they have completed 240 days of work.
- iii) To grant the applicants the pay and allowances

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as staff nurse in the scale of Rs5000-8000/- on the principle of equal pay for equal work with effect from the date of their appointment in January, 2001 ignoring the artificial and illegal breaks given in the services by the concerned authority and considering them in continuous service since their date of appointment.

iv) Any other reliefs that this Hon'ble Tribunal may deem fit and proper in the above fact and circumstances, may also be granted to the applicants."

2. Admittedly, the applicants were appointed as Staff Nurse on short-term contract basis in January, 2001. They have continued to serve in the abovesaid Hospital with artificial breaks. The respondents had put in an advertisement for recruitment of Staff Nurses. The applicants' grievance is that they belong to OBC category and have not been considered as such. They also claim that since they have served the department for more than two years, they are entitled to regularisation and also the pay scale of a regular employee on the principle of "equal pay for equal work."

3. The petition has been contested. Respondents 2 and 3 have filed their replies separately. It is not in dispute that the advertisement was issued by the Hospital for short term contract appointment of Group 'C' para-medical staff including Staff Nurses. Respondents plead that in the advertisement, it was mentioned that each applicant must have an OBC category certificate issued on or before the closing date (16.10.2000). The applicants were appointed to the minimum of the scale of Rs.5000/- + Dearness Allowance as their remuneration. It is not specifically admitted that the applicants have been treated as OBC category candidate in the test that was held but it

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is denied that they are entitled to regularisation or the salary of regular employees.

4. We have heard the parties counsel.

5. Learned counsel for the applicants has raised the following contentions:

(a) the applicants should have been treated as OBC category candidates;

(b) they are entitled to regularisation because they have served the respondents for more than two years; and

(c) their services should not be terminated till such time the regular employees are appointed.

6. We have considered the said submissions and we record our findings as under.

7. So far as regular appointment of the applicants is concerned, the resume of the facts clearly indicate that the applicants had joined the respondents' hospital on contract basis. Regular appointment can only be made in accordance with the recruitment rules. No person can seek appointment de hors the rules. In such a situation, unless the applicants are selected in accordance with the recruitment rules which are in existence, the plea for

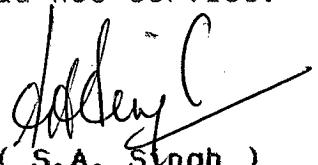
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regular appointment loses its thrust and significance.

8. Admittedly the test for recruitment to the post of Staff Nurse had been held. The applicants' learned counsel plea is that the applicants should have been treated as OBC category candidates. During the course of submissions, it transpired that this question had not been gone into by the respondents. Therefore, it would be appropriate to direct the respondents to look into the matter and consider if the applicants are OBC category candidates or not and thereupon place them as per their merit.

9. As regards the last claim, since the applicants have served the department for two years, it would be appropriate that their services should not be dispensed with unless their work and conduct is not found suitable or and they are replaced by regularly selected persons. With these directions, the O.A. is disposed of.

10. We make it clear that with respect to their claim of "equal pay for equal work", the applicants, if so advised, may file a separate O.A. as the said relief is separate from the relief pertaining to continuation of the ad-hoc service.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman