

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

D. A. NO. 317/2002

(19)

New Delhi, this the 3rd day of September, 2002

HON'BLE MRS. LAKSHMI SWAMINATHA, VICE CHAIRMAN (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Pritul Kumar, S/o Shri Mahipal Singh,
R/o Block No. 22/RR, H.No. 500-502,
Ordinance Factory Estate,
Muradanagar,
Ghaziabad (UP)

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Applicant

(By Advocate : Shri R.V. Sinha)

Versus

Union of India, through

1. The Secretary,
Ministry of Defence (Production Deptt.)
South Block,
New Delhi

2. The Chairman/Director General,
Ordinance Factory Board,
10-A, Sahid Khudi Ram Bose Marg,
Kolkata

3. The General Manager,
Ordinance Factory, Muradanagar,
Ghaziabad, UP.

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Respondents

(By Advocate : Shri S. Mohd. Arif)

ORDER (ORAL)

By Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)

In this application, the applicant is aggrieved by the action of the respondents in not issuing ^{the} ~~the~~ appointment letter to him for the post of Pharmacist in terms of the advertisement published by them in 1999.

2. Brief relevant facts of the case are that according to the applicant he had been selected and his name had been placed at serial no. 2 in the merit list in pursuance of the advertisement issued by the respondents for the post of Pharmacist in the year 1999. These facts are not disputed as seen from the reply filed by the respondents. The applicant's grievance is that when the candidate Shri A. Mohania, who was placed at serial no. 1 in the order of merit

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in the panel had declined inspite of several reminders being issued for appointment to the post of Pharmacist, the offer of appointment to candidate one was cancelled finally on 20.10.2000. The learned counsel for applicant has submitted that thereafter, the respondents have issued another advertisement on 23.3.2002. In this advertisement the respondents have stated that with reference to the previous advertisement issued by them in the Employment News dated 2-8 October, 1999, wherein the written test and the interview were also held for the post of Pharmacist, the same has been cancelled due to administrative reasons. The main contention of Shri R.V. Sinha, learned counsel with regard to these administrative reasons, is that they are non-existent and even if they are existent these are arbitrary and unreasonable, leading to the cancellation of the earlier advertisement where the applicant had been placed at serial no.2 in the merit list.

3. We have seen the reply filed by the respondents and have also heard Shri S. Mohd. Arif, learned counsel. The learned counsel has contended that the cancellation of the earlier panel which had been prepared on the basis of the advertisement issued in 1999 for the post of Pharmacist was done because of certain complaints received by the respondents from one of the Unions against the selection process which have been ~~conveyed~~^{by} by their Chief Vigilance Officer (CVO), who had also consulted the Chief Vigilance Commissioner in New Delhi. He has submitted the departmental records of respondent No.3, i.e. Ordnance Factory, Muradanagar and has drawn our attention to the correspondence between respondent No.3 and respondent No.2 in the matter, regarding filling up the vacant post of Pharmacist and a Medical Assistant which was the subject matter of the recruitment in pursuance of the advertisement issued in 1999. References have been made in these correspondences to the complaints received ~~by~~^{by} the Ordnance Factory Karmachari Union, Muradanagar addressed to the Chief Vigilance Commissioner that the papers for the written test had been leaked out and requested the authorities not to issue appointment letters and to conduct fresh recruitment for the post of Pharmacist.

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According to the respondents, it was only after consideration of these complaints by the CVO that the competent authority took a decision to cancel the then existing selection and take fresh recruitment action for which another advertisement has been issued on 23.3.2002.

4. In the application a reference has also been made to the fact that one Shri Praveen Kumar Sharma has been selected and appointed against a subsequent vacancy which was advertised by the respondents on 5 - 11 May, 2001. To this the respondents have submitted that during the above recruitment process, a fresh vacancy for the post of Pharmacist had arisen and the matter was referred to the Employment Exchange, Modinagar, for sponsoring names of candidates for the same. The Employment Exchange had sponsored 19 candidates including the applicant. Letters for written test were also forwarded to the applicant along with other candidates, but the applicant did not appear in the written test. Accordingly, the learned counsel for respondents has submitted that the candidate who qualified on merit was issued appointment letter for the post of Pharmacist. During the hearing, Shri R.V. Sinha, learned counsel for applicant has submitted that he is not pressing the point with regard to the appointment of the aforesaid Shri P.K. Sharma. He has submitted that it was not necessary to press the matter with regard to the appointment of Shri P.K. Sharma as the applicant had been placed at serial No.2 in the merit list prepared following the advertisement in the year 1999. His submissions are, however, noted to show that the applicant's claim is limited to his grievance with regard to cancellation of the earlier advertisement issued in 1999 by the respondents and issuing another advertisement for the same post on 23.3.2002.

5. Both the learned counsel have relied on a number of judgements, ~~the~~ one being the judgement of the Hon'ble Supreme Court in K. Jayamohan vs. State of Kerala and Another ¹⁹⁹⁷ ~~reported in~~ AIR 1997 SCC 2619) Para 5 of the aforesaid judgement is reproduced below:

"5. It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right for appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non-appointment. Equally, the Public Service Commission/recruitment agency shall prepare waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgement of the High Court warranting interference."

6. Shri R.V. Sinha, learned counsel for applicant has submitted that he is not questioning the powers of the respondents to cancel any panel without making any appointment for good and sufficient reason. His main contention is that there is no reasonable explanation given by the appointing authority not to proceed further in the selection of the applicant whose name appears in the merit list at serial No.1, after cancelling the offer of appointment given to the first candidate, namely, Shri Mohania who had not responded to the offer of appointment given to him.

7. The other judgement relied upon by Shri R.V. Sinha, learned counsel for applicant is in the case of Rajender Singh and Others vs. Safdarjung Hospital and Another (C.W. No.3600 of 1999) decided by the Delhi High Court on 22.4.2002, copy placed on record. The learned counsel has contended that even at the time of offer of appointment to the candidate who was placed at serial No.1 i.e. Shri Mohania, there were complaints from the Union, but nevertheless the respondents issued the offer of appointment to him. He has submitted that Union's letters and complaints have been submitted to the respondents on 28.1.2000, 7.3.2000 and 13.11.2000. On the other hand, the learned counsel for respondents has submitted that order of the after the cancellation of the offer of appointment to Shri Mohania was issued on 20.10.2000 another complaint was received from the Union on 21.10.2000 which had been looked into by the concerned authorities. We are not impressed by the arguments advanced by Shri R.V. Sinha, learned counsel for applicant that merely because the CVO and CVC had stated that there was nothing much in the

complaints and they may continue with the selection process initiated in pursuance of the advertisement issued in the year 1999 ^{and thereafter}, the respondents are precluded from looking into the matter ^{for} considering the same ~~matter~~ ^{matter}. We have seen the judgement of the Delhi High Court in Rajender Singh & Others (supra). It is settled law that any ratio of the judgement has to be applied with reference to the facts and circumstances of the case. In the present case, even if the applicant was on merit list at serial No. 2 as held by the Supreme Court in K. Jayamohan's case (supra) ~~he~~ ^{he} does not acquire any absolute right for appointment. The contention of the learned counsel for applicant that cancellation of the aforesaid selection was done without application of mind and taking into account the facts and circumstances of the case cannot be ~~accused~~ ^{agreed} to in the facts and circumstances of the case. In the subsequent advertisement issued by the respondents on 23.3.2002, the respondents have clearly stated that they have cancelled the earlier selection for administrative reasons and we also find that in the meantime correspondence has been exchanged amongst the concerned officers. The nature of the allegations made by the Union cannot also be ignored by the competent authorities which not only refers to the allegation that certain papers were made available to both the candidates before conducting the written test but there were certain other allegations based on caste and so on. Needless to say ^{that} the inquiry into such matters would take some time. Therefore, in the facts and circumstances of the present case as the respondents have given reasonable explanation for cancelling the earlier selection in which the applicant had been placed in the merit list at serial No. 2, they have decided to issue a subsequent advertisement for the earlier post and for a post which had arisen subsequently, we do not find any justification to interfere in the matter. ^{Therefore}, the judgement of the Hon'ble High Court in Rajender Singh and Others (supra) will not assist

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the applicant in the facts and circumstances of the application.

8. In view of what has been stated above, we do not find any merit in the application. The OA accordingly fails and is dismissed.

No costs.


(S.A.T. RIZVI)

Member(A)


(MRS. LAKSHMI SWAMINATHAN)

Vice Chairman (J)

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