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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

MA NO. 1997/2003 IN
CP NO. 338/2002
OA NO. 171/2002

This the 17th day of December, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.K. NAIK, MEMBER (A)

Pawan Kumar & others

(By Advocate: Sh. Hori Lal)

Versus

Sh. D.M. Khaneta,
PHC/Addl. Secretary (Health)
Govt. of N.C.T. of Delhi
Technical Recruitment Cell,
9th Level 'A' Wing,
Delhi Secretariat,
I.T.O., New Delhi-110001.

(By Advocate: Sh. Vijay Pandita)

ORDER (ORAL) ON MA

By Sh. Kuldip Singh, Member (J)

This is an MA filed by the applicants under Sections 340 and 343 Cr. P.C. whereby the applicant has made a prayer to this Court to invoke its powers under Section 340 read with 343 Cr. P.C. to proceed against the respondents under Section 191 and 192 of IPC.

2. Facts in brief are that the applicants had filed an OA which was registered as OA-171/2002. In the OA applicants had sought a relief for filling up of the vacancies of Lab. Assistant in G.T.B. Hospital in accordance with the recruitment rules for the post of Lab. Assistant in medical institutions under the Delhi Administration. The posts as per Recruitment Rules could be filled up 25% by way of promotion from Lab. Attendants and 75% by direct recruitment.

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3. Applicants were working as Lab. Attendants. They claim that they fulfil the qualifications and have sought that the respondents who were trying to fill up all the vacancies by direct recruitment should not be allowed to fill up the post by direct recruitment. OA was allowed with an observation that the respondents would act in accordance with the recruitment rules and confine themselves to recruit persons against 75% quota meant for direct recruitment and shall also take steps to convene DPC for promotion against 25% quota for those who are eligible for promotion as Lab. Assistants.

4. Since according to the applicants these orders were not being complied with so they filed a CP which was contested by respondents and the Court on going through the documents placed on record came to the conclusion that they have complied with the directions of the Tribunal as a DPC has been held, so the CP was dismissed.

5. Applicant has now come up with the present application wherein he has alleged that in reply to the CP, the respondents had submitted that after the receipt of the copy of the order they had immediately wrote to the Additional Secretary (Health)-cum-Principal Health Secretary who is the competent authority for holding DPC on priority basis for implementation of Court's order and in para 24 of the reply respondents had also pleaded that Health Department has informed the respondents that DPC has been held on 16.9.2002 in the chamber of Principal Secretary (Health) to consider the promotion to the post of Lab. Assistant in compliance of the order.

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6. Applicant further allege that none of the petitioners was promoted to the post of Lab. Assistant nor DPC was held on 16.9.2002 nor the name of 111 departmental Lab. Assistants were approved by the said DPC. Court while disposing the CP relied on the false compliance affidavit and letter dated 7.3.2003 and dismissed the CP. Court also accepted the plea of the Govt. counsel that review DPC will be held with respect to Sh. Pawan Kumar whose name has been shown at Sl. No. 71 instead of 69. Thus, it is submitted that since no DPC has ever been held and none of the petitioners have been promoted, so falsee affidavit filed by the respondents should be taken note of it and Court should proceed for initiating action against the respondents under Section 340 of Cr.P.C.

7. Respondents in their reply to the present MA reiterated that they had convened the DPC in this regard and meeting was held on 16.9.2002 in the chamber of Principal Secretary (Health) and Family Welfare to consider promotion to the post of Lab. Assistant.

8. We have considered the arguments advanced by the learned counsel for the parties and have gone through the record. Counsel for applicant submitted that as per provisions of Section 340 Cr.P.C. when on an application made on this behalf or otherwise the Court is of the opinion that it is expedient in the interest of justice that enquiry is to be made in an offence referred to Clause B Sub Section (1) of 195 which appears to have committed or in relation to a proceeding in that Court or as the case may be in respect of a document produced or give any evidence in a proceeding in that Court.

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Such Court may after preliminary enquiry record a finding to that effect and make a complaint thereof in writing to the concerned Magistrate.

9. Now the question arises whether on the face of record it appears that any offence has been committed as contemplated under Section 195 of Cr. P.C. to this effect. We may mention that the main plea of the respondents was that they did infact hold a DPC proceedings. From the record we find that when the reply to the CP was filed alongwith it a letter was written by a Medical Superintendent, GTB Hospital, Govt. of NCT of Delhi requesting for convening of meeting in compliance with the order passed by the Tribunal.

10. Learned counsel for respondents has also written to the authorities requesting to take steps to convene the DPC for the post of Lab. Assistant at the earliest and as the next date in Court was fixed as 11.3.2003. Then there is a letter which shows that there are 325 posts under the direct recruitment quota and 108 posts of promotion quota and against that 111 persons were already working under the promotion quota, so there was no post vacant in the promotion quota. In view of the non-availability of post in promotion quota Government was unable to give any promotion to the post of Lab. Assistant.

11. Thus, we find that there was no wrong affidavit filed by the respondents nor any wrong information was given to the Court while disposing of the CP. Since no DPC could be held as departmental promotion could be recommended, as no vacancy was available. Though a formality of convening of DPC had been observed but no one could be recommended for promotion as



no vacancy was available. So we do not find that there appears to be any offence committed by respondents as enshrined under Section 195 of Cr. P.C. which may call for an action under Section 340 Cr. P.C. to be taken against the respondents. Hence MA is dismissed.

Naik
(S.K. NAIK)
Member (A)

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(KULDIP SINGH)
Member (J)

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