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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2353 of 2002
M.A. No.1962 of 2002

New Delhi, this the 24th day of July, 2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Safdarjung Hospital Karamchari
Sanharsh Union
Union Off: Safdarjung Hospital,
New Delhi-110029.
2. Vinod Kumar
S/o Parsadilal Sharma
95, Chander Nagar,
Gurgaon, Haryana.

....Applicants

(By Advocates : Shri K.C. Mittal with
Shri Harvir Singh)

Versus

1. Secretary,
Ministry of Health & Family Welfare,
Govt. of India,
Nirman Bhawan,
New Delhi.
2. Director General
Ministry of Health & Family Welfare,
Govt. of India,
Nirman Bhawan,
New Delhi.
3. Principal & Medical Supdt.
VMMC & Safdar Jung Hospital,
New Delhi.
4. Secretary,
Ministry of Human Resource Development
Govt. of India,
Nirman Bhawan,
New Delhi.

....Respondents

(By Advocate : Shri S.M. Arif)

O R D E R

Shri Govindan S. Tamai:

Heard Shri K.C. Mittal along with Shri Harvir Singh and Shri S.M. Arif, learned counsel for the applicants and for the respondents respectively.

MA 1962/2002

MA 1962/2002 for joining is allowed.

OA 2353/2002

Applicants, who are members of Safdarjung Hospital Karamchari Sangharsh Union (Union), a recognised and authorised body, have on completion of one year of service training course from Safdarjung Hospital ~~been~~ become eligible to be appointed as Technical Assistants. This practice had been adopted earlier also by the respondents. However, attempt is being made vide an advertisement dated 15.6.2002 to eliminate the present applicants by amending the educational qualification as two years diploma in Medical Laboratory Technology (MLT). This was being done without amending the Recruitment Rules (RRs). Unless and until RRs are amended, no vacancy can be filled up by mere advertisement in the newspaper. The respondents, though have powers to amend the RRs, cannot exercise the same in an arbitrary and illegal manner ~~shorting~~ ^{shutting} out ~~the~~ ^a class of employees who are fully eligible and qualified with their professional/promotional avenues, being blocked up the prescription of a higher qualification. Respondents could have amended the RRs prospectively for freshers but for those who are working in the hospital for considerable time in the feeder cadre, no higher qualification should have been prescribed and they should have been considered for promotion on the basis of earlier eligibility condition of one year training in the hospital. Intervention of the Tribunal is called for to do rather justice to the applicants is what they prayed.

2. The grounds raised by them in the OA are that (a) attempt of the respondents for filling up the posts of Technical Assistant by revising the qualification and eligibility, calling for two years diploma in MLT without amending RRs issued under Article 309 of the Constitution is illegal; (b) the respondents cannot amend the RRs by exercising the powers arbitrarily and illegally amending the requirement with the result that qualified persons like the applicants already working in the lower cadre are left behind; (c) RRs could have been amended prospectively but not for those who are already working; (d) the move by the respondents is cutting at the roots of legitimate expectation of the employees like the applicants; and (e) the action of the respondents is illegal as brings about discrimination against those who have been earlier declared eligible to be appointed as Technical Assistant and have so appointed earlier.

3. Shri K.C. Mittal, learned senior counsel who appeared along with Shri Harvir Singh reiterated the case of the applicants and stated that any amendment or modification in the RRs would have to be prospective in nature and the attempt by the respondents for getting outsiders at the cost of those like the applicants by prescribing higher qualification without amending RRs was unjustified.

4. Replying on behalf of the respondents and reiterating their written submissions, Shri S.M. Arif, learned counsel points out that for filling up

the posts of Lab Assistant both direct recruitment and promotion were resorted to and the qualification now prescribed in the proposed RRs are meant for direct recruits. In the case of promotees, the earlier qualification would remain. According to him, as the hospital was an Industry covered under the Industrial Disputes Act, 1947, the applicant should have approached the Industrial Tribunal rather than Central Administrative Tribunal. The posts of Lab. Assistant in the hospital ~~are~~ ² filled up 50% by direct recruitment and 50% by promotion. The amendments have been proposed as far as the direct recruitment is concerned, so as to get in better qualified individuals. In fact CWP No.3018/2000 is pending before the Hon'ble Delhi High Court seeking issuance of a direction to the respondents for making suitable amendment in the RRs in respect of Lab. Assistant, keeping in mind, the new technology/innovation. Therefore, for direct recruitment changes in qualification were being proposed and the same was confined only to the direct recruits. Shri Arif, also points out that the plea of the applicants that their promotional avenues are blocked, was not correct. In fact, in terms of the existing RRs, qualifications for the promotees for being appointed as Lab. Assistant, ~~are~~ matriculation or with Diploma in MLT one year course from Safdarjung Hospital and the same remain unchanged. It was reiterated that the proposed upward reversion in education qualification is only for

direct one quota and the applicants should have no grievance in the matter.

5. We have carefully considered the matter. The posts of Lab. Assistant/Technical Assistants in Safdarjung Hospital is being filled by promotion and direct recruitment, 50% coming from each stream. While the educational qualification prescribed for the promotees have not been changed, in respect of direct recruitment, higher qualification has been prescribed. The apprehension that this would go against the career prospects and legitimate expectations of the applicants, has no basis. The applicants, who are already working, who have one year training course of MLT, are eligible for being considered against the promotion quota, which works out of 50%. The proposed changes are only for the remaining 50% meant for the direct recruitment wherein keeping in mind the advancement of the technology, the authorities have decided to call candidates with higher qualification. There is nothing irregular about it. If, however, the persons who are already working earlier want to come over to the stream of Lab. Assistant/Technical Assistants against the direct recruitment quota, they would have to satisfy the qualification of 10+2 plus MLT Diploma. This cannot be considered as unreasonable on any count. As the respondents have clearly pointed out that the advertisement is for filling up the vacancies on direct recruitment quota, applicants cannot not have any grievance. Since 50%

of the posts is kept for promotion quota to which the applicants belong, their interests are safeguarded, ^{and} it is not for them to indicate that as to how to fix the academic qualifications for direct recruitment.

6. We are convinced in the above circumstances, that the applicants have not made out any case for Tribunal's intervention. In the result, OA has to fail and it is accordingly dismissed. No costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

/ravi/

(GOVINDAN S. TAMPI)
MEMBER (A)

Yashini