

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1400/2001

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New Delhi this the 21st day of July, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Victoria Massey,
House No.31, East Azad Nagar,
Delhi-110051.
2. Helan Peter,
1/258, Trilokpuri,
Delhi-110091.
3. Valsamma John,
127-B Pocket J&K,
Dilshad Garden,
Delhi-110095.

...Applicants

(By Advocate: Shri R.Satish proxy for Shri
K.N.Madhusudhan)

-Versus-

1. Lt.Governor of Delhi,
6, Raj Niwas Marg,
Delhi-110095.
2. National Capital Territory of Delhi
Represented by its Chief Secretary,
5, Sham Nath Marg, Delhi.
3. National Capital Territory of Delhi
PHC cum Jt. Secretary(Health),
1, Jawahar Lal Nehru Marg,
New Delhi-110002.
4. Delhi Subordinate Service Selection Board,
Represented by its Secretary,
IIIrd Floor, UTCS Building,
Behind Karkardooma Court Complex,
Vishwas Nagar, Shahdara, Delhi-110032.
5. G.T.B.Hospital,
Represented by its Medical Suptt.,
Jawahar Lal Nehru Marg, New Delhi-110002.

...Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER (ORAL)

Mr. ~~Shanker~~ Raju, Member (J):

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Through this OA applicants have sought consideration for regularisation and as an interim relief sought disposal of their memoranda dated 18.11.1988 and others for relaxing the upper age limit.

2. MA-782/2003 filed by applicants is for seeking equal pay for equal work w.e.f. May, 1998.

3. Applicants in pursuance of a notification for engagement of qualified Nurses on short-term contract basis in Delhi Government Hospitals during the period when the regular Nurses were on strike having eligibility of age below 65 years and certificate/diploma in nursing from a recognized Institution applied. Applicants have been appointed on contract basis initially for 89 days without any right of regular appointment or seniority with a stipulation that their services can be terminated at any time on one month's salary/notice. They are also not made entitled to any benefit like, GPF, Gratuity etc. as admissible to other regular employees.

4. Representations have been made to the Lt. Governor for seeking relaxation of age for regularisation as Staff Nurses in view of clause 3 in the recruitment rules for class III and IV posts in Medical Institution published in Gazette dated 17.6.67. According to this provision for the reasons to be recorded in writing when it is necessary or expedient to do so, Administrator, i.e., L.G. in writing may relax any of the rules with respect to any class of persons. The aforesaid representations are still to be responded to.

5. Respondent No.3 who has taken decision to confirm the services of Staff Nurses and had joined duties during the strike period referred their cases to Delhi Subordinate Service Selection Board (DSSSB).

6. As the services of applicants were on contract and they had crossed the upper age limit, identically situated Nurses filed CWP-2712/99 in Mary Lokose Vadakara and Others v. Lt. Governor of Delhi and Others before the High Court of Delhi and by an interim order dated 20.5.99 in CM-6053/99 permitted applicants to continue their duties. The aforesaid petition was withdrawn with a view to file appropriate proceedings before this Tribunal. Accordingly, OA-844/2003 in Raj Rani v. L.G., filed before this Court applicants therein are continuing in service.

7. Learned counsel for applicants by referring to Govt. of N.C.T. order dated 12.9.92 contends that in case of Para Medical Staff those who have been recruited on contract basis have been paid salary admissible to the regular staff. Accordingly applicants are also entitled, on the principle of equal pay for equal work, to the same emoluments. Accordingly, a prayer has been made to allow the MA.

8. In so far as regularisation is concerned, it is contended that applicants had worked and in view of admitted position pertaining to 1008 posts lying vacant in the hospitals run by the Govt. of NCT, dispensing with the requirement of age limit under the relaxation clause applicants are entitled for being considered on the ground of legitimate expectation.

9. On the other hand, respondents' counsel Sh. Ajesh Luthra, in so far as equal pay for equal work is concerned, contends that being a fresh cause of action and applicants having not made any prayer to that effect cannot be entertained in the present OA.

10. However, as regards regularisation is concerned, it is contended that these Nurses on a written undertaking have been employed on short-term basis without relaxation of age and as the appointment of Staff Nurses is undertaken by DSSSB applicants cannot be regularised de hors the rules.

11. In so far as relaxation is concerned, it is stated that no such prayer is made in the present OA. However, when confronted with the decision of the Apex Court in case of Doctors and Teachers in Delhi Administration employed on contract basis where directions have been issued not to dispense with their services till they are replaced by regularly selected persons, respondents have not questioned the ratio laid down.

12. I have carefully considered the rival contentions of the parties and perused the material on record.

13. In so far as relief claimed for equal pay for equal work based on the Govt. of NCT of Delhi letter dated 12.9.2002 is concerned, as no relief has been claimed the same cannot be gone into by way of an MA. Accordingly MA is rejected. However, applicants are at liberty to make

representation to the respondents in this regard, who would consider their request in accordance with rules and instructions on the subject.

14. In so far as regularisation is concerned, as per the recruitment rules appointment of Staff Nurses is to be conducted through a selection by DSSSB and there is no provision for direct regularisation. However, as relaxation has been prayed for by applicants and a relief has been sought in para 9 to that effect, ends of justice would be duly met if Respondent No.1 is directed to consider their request for relaxation by a detailed and speaking order to be passed within three months from the date of receipt of a copy of this order.

15. In so far as contention put-forth as to continuance in service is concerned, High Court of Delhi (supra) allowed continuance of applicants till CWP was dismissed for want of jurisdiction. However, keeping in view the settled position of law, we direct respondents to continue applicants till they are replaced by regularly selected DSSSB candidates.

16. OA is disposed of in terms of the above directions. No costs.

S. Raju

(Shanker Raju)
Member (J)

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