

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NOS. 141/2001, 2868/2001, 2869/2001
AND OA NO. 2870/2001

New Delhi, this the 20th day of September, 2002

HON'BLE MR. S.A.T. RIZVI, MEMBER (A)
HON'BLE MR. SHANKAR RAJU, MEMBER (J)

O.A. NO. 141/2001:

Smt. Kiran Bala,
W/o Sh. Rajesh Kumar,
R/o, 6106/7, Block No.1,
Dev Nagar, Karol Bagh,
Delhi - 110 005

(By Advocate : Shri M.K. Gupta) Applicant

Versus

1. Government of National Capital Territory of Delhi, Through its Chief Secretary, 5, Sham Nath Marg, Delhi-110054
2. Delhi Subordinate Services Selection Board, Govt. of N.C.T. of Delhi UTCS Building, Behind Karkardooma Courts Complex, Vishwas Nagar, Shahdra, Delhi - 110 032
3. Principal Secretary (Medical) Govt. of N.C.T. of Delhi, Delhi Sachivalaya ITO, New Delhi : 110 002
4. Sh. Soni
5. Ms. Ritu Jain,
6. Ms. Kanchan Rawat
7. Mr. Dinesh Kumar,
8. Sh. Balwant Singh,
9. Ms. Hina
10. Mr. Sudhir Kumar
(Respondents No.4-10 are working in Lok Nayak Hospital as Lab. Technicians Group III & be served through Medical Superintendent, Lok Nayak Hospital, New Delhi)
11. Ms. Rajni Bhatnagar
12. Ms. Nirupama
13. Ms. Nitu Darewaria
14. Ms Sujata Bholia

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15. Mr. Ajau Sahni
(Respondents No.11-15 are working in Guru Teg Bahadur Hospital, Sahadara, as Lab. Technicians Group-III & be served through Medical Supdt., Guru Teg Bahadur Hospital, Delhi.)
16. Mr. Sanjay Kumar
17. Mr. Shiv Kumar
18. Mr. Randhir Singh, Ex-Serviceman
19. Ms. Seema
20. Mr. Rohit Kumar
(Respondents No. 16-20 are working in Deen Dayal Upadhyay Hospital as Lab. Technicians Group-III and be served through Medical Supdt., Deen Dayal Upadhyay Hospital, Delhi)

... Respondents
(By Advocates : Sh. Vijay Pandita for official respondents 1 to 3

Sh.P.P. Khurana & Ms. Rekha Aggarwal for private respondents 5, 6, 8 & 9

Sh. S.K. Sinha for private respondents 7, 10, 12, 13, 14 & 16 to 20

None for respondents 4, 11 & 15)

OA No.2868/2001 :

Balwant Singh,
S/o Late C.S. Rawat,
Designation: Lab Technician Gr.III
A-3/36, East Vinod Nagar,
Delhi - 92

..... Applicant
(By Advocate : Shri P.P. Khurana and Ms. Rekha Aggarwal)

Versus

1. Govt. of NCT, Delhi
Through Lt. Governor,
Raj Niwas, Delhi
2. Secretary, Health
Delhi Sachivalaya,
I.P. Estate, New Delhi
3. Medical Supdt.
Lok Nayak Hospital
New Delhi

..... Respondents
(By Advocate : Shri Ajesh Luthra)

O.A. NO. 2869/2001 :

Ms. Arti Varshney,
W/o Mukund Singhal,

Designation: Technical Assistant Gr-III
67, Gali No.4, Kishan Kunj Extn.
Part I, Delhi

..... Applicant

(By Advocate : Shri P.P. Khurana and Ms. Rekha Aggarwal)

Versus

1. Govt. of NCT, Delhi
Through Lt. Governor,
Raj Niwas, Delhi
2. Secretary, Health
Delhi Sachivalaya,
I.P. Estate, New Delhi
3. Medical Supdt.
Lok Nayak Hospital
New Delhi

..... Respondents

(By Advocate : Shri Ajesh Luthra)

O.A. 2870/2001 :

1. Hina Kausar Rizvi,
J-302, Taj Enclave,
Link Road, Gita Colony
Delhi
2. Kanchan Rawat,
House No. 874, Pocket-6-I
Sector-2, Rohini,
Delhi
3. Ms. Ritu Jain
Wife of Shri Sandeep Jain
139, Sector-5, R.K. Puram,
Delhi-12

..... Applicants

(By Advocate : Shri P.P. Khurana and Ms. Rekha Aggarwal)

Versus

1. Govt. of NCT, Delhi
Through Lt. Governor,
Raj Niwas, Delhi
2. Secretary, Health
Delhi Sachivalaya,
I.P. Estate, New Delhi
3. Medical Supdt.
Lok Nayak Hospital
New Delhi

..... Respondents

(By Advocate : Shri Ajesh Luthra)

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O R D E RBY S.A.T. RIZVI. MEMBER (A) :

Applicant in OA No.141/2001 was an applicant for appointment to the post of Lab Technician Gr.III in one of the hospitals under the Government of N.C.T. of Delhi, but was not selected even though she was qualified for the post. By this OA she has challenged the appointment of 17 others who were selected for the said post in pursuance of the advertisement issued on 1.3.1999 notifying 18 vacancies (A-1), after having been recommended by the Delhi Subordinate Services Selection Board (DSSSB). According to her, none of the aforesaid 17 candidates was ~~not~~ qualified for the post. The institution of this OA has provoked filing of OA Nos. 2868/2001, 2869/2001 and 2870/2001 by five candidates including four out of the aforesaid seventeen, who have in turn questioned the qualifications of the applicant in OA No.141/2001 and also her ability to clear the interview held by the DSSSB. They have also raised the issue of her locus standi in the matter. They have also contended that they are fully qualified for the said post and have been appointed after a proper selection made by the DSSSB (after due scrutiny of the particulars of their experience etc.) and on the basis of the Govt. of N.C.T. of Delhi's satisfaction in this regard. Some judgements delivered by this Tribunal and the Supreme Court have also been cited by these five applicants in support of their case. For these reasons these OAs, though filed on different occasions, being in the nature of cross cases,



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have been clubbed together and we proceed to pass this common order dealing with all of them.

2. We have heard the learned counsel at great length and have perused the material placed on record. We have perused the judgements of various Courts placed before us by the learned counsel as also the departmental files dealing with the grant of relaxation of the rule regarding experience in relation to the applicants in OA No. 2668 - 2870/2001 and some others and its revocation in another case.

3. Before we proceed to deal with the various contentions raised on behalf of the applicants as well as the respondents in these OAs, we would like to recapitulate, as briefly as possible, the facts contained in these OAs in the following paragraphs. To the extent possible, the OA No.141/2001 has been treated by us as the lead case for the purpose of recapitulating the facts relating to all the cases. Incidentally this OA (No.141/2001) was filed before any of the other three.

4. DSSSB notified 18 vacancies in the post of Lab Technician Gr.III for hospitals under the Government of N.C.T. of Delhi (A-1). The following educational qualification and experience were prescribed in the aforesaid Notification:-

- "1) B.Sc. desirable with one year experience as Lab Asstt in any of these groups of laboratories. OR Matric/Hr.Sec./10+2 with science and 6 years experience in any of these groups of Laboratories as Lab. Asstt. OR Matric/Hr. Sec./10+2 with science having M.L.T. Course with 3 years

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experience in any of these groups of Laboratories as Lab. Assistant." 29

It is implicit in the aforesaid Notification read with the relevant Recruitment Rules placed at pages 14-19 of the paper book that the experience referred to in the above extract was to have been acquired by working in Gr-III Laboratories which are the one pertaining to Cardiology/CTS/Neurology/Neuro-Surgery/Respiratory Lab /ECG/CMG/ERG/CCU/ICU/POW/CCI.

5. Around April 2000, the official respondents discovered, presumably on the basis of a letter (page 44 of the paper book) that the five applicants in the aforesaid ^{2 (Nos 2268/2869/2870) 2} 3 OAs along with others had been wrongly and inadvertently selected and appointed despite the fact that they did not possess the requisite experience. Accordingly, on 20.4.2000 notices were issued, inter alia, to the applicants in the three OAs under consideration asking them to show cause as to why their services be not terminated on the ground of lack of experience prescribed in the Recruitment Rules. This led to the filing of OA Nos. 742/2000 and 747/2000 by these applicants. The matter was decided by the Tribunal on 25.10.2000 (Annexure-6 in OA No.2868/2000) with a direction to the respondents to consider the representations filed by the applicants and to pass a detailed and reasoned order thereon. Soon thereafter, in pursuance of the aforesaid direction, the services of these applicants were terminated by an order passed by the official respondents on 30.12.2000. Aggrieved by the aforesaid termination order, representations/appeals were filed by the applicants in January 2001. Almost simultaneously these applicants approached this Tribunal

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also by filing OA Nos. 220/2001, 221/2001 and 222/2001. These OAs were decided on 25.1.2001 with an order to the official respondents to pass a speaking order in the matter. In the circumstances, the termination order dated 30.12.2000 was kept in abeyance but the services of the aforesaid three applicants were subsequently terminated by the official respondents' speaking order dated 26/28 February, 2001. Lack of requisite experience in Gr-III Laboratories was the only ground advanced in these orders.

6. Meanwhile, Lt. Governor also considered the representations/appeals filed by the aforesaid applicants, amongst others. After an examination of the various issues involved and taking into account the fact that these applicants did not fulfil the experience criterion in accordance with the Recruitment Rules, the Lt. Governor made a specific relaxation in their favour by terming it as a one time exemption. The rule based requirement of possession of 3 years' experience of working in Gr-III Laboratories was thus dispensed with in respect of these applicants along with a couple of others.. By an order passed on 24.3.2001 (R-1) the Lt. Governor allowed the representations/appeals filed by the aforesaid applicants against the termination of their services vide orders earlier issued on 30.12.2000. Since the experience related qualification stood relaxed in respect of the aforesaid applicants, the subsequent service termination order dated 26/28 February, 2001 also stood quashed. The said orders were set aside and the

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applicants were directed to report for duty at the Lok Nayak Hospital.

7. The matter regarding relaxation of the rule relating to experience came up for the consideration of the Lt. Governor once again later in the case of one Ms. Susamma Thankachan who was denied appointment as Technical Assistant Gr-III. After considering the representation filed by the aforesaid Ms. Susamma Thankachan, the Lt. Governor passed an order in the following terms:-


"Some have not been appointed because they did not possess the requisite experience. Some have been appointed without any verification on this account. To some appointment has been denied because they were found to be not possessing the requisite experience. In one case the appointment has been regularized by relaxing the requirement of experience. All this is most unsatisfactory and iniquitous. Those who do not possess the requisite qualifications and experience must not be given appointment, period. Such persons as have joined may be immediately dispensed with. The relaxation of the requirement of experience given for "one person" has to be revoked."

(emphasis supplied)

8. On the basis of the aforesaid order passed by the Lt. Governor, the Secretary (Health), Govt. of NCT of Delhi (respondent No.2 herein) proceeded to pass an order on 9.10.2001 (A-1) by which the earlier order dated 24.3.2001 has been revoked and the Medical Superintendent, Lok Nayak Hospital directed to terminate the services, amongst others, of all the five applicants in these three OAs. (Nos. 2868, 2869 and 2870 of 2001). Hence & the grievance.

9. At the outset, we are tempted to observe that after a perusal of the departmental file in which the Lt. Governor has passed orders regarding Ms. Susamma Thankachan, we find that the said order was passed only in respect of the post of Technical Assistant Gr-III, and the same could not be said to include in its sweep the posts of Lab Technician Gr-III as well. The aforesaid Ms. Susamma Thankachan was an aspirant for the post of Technical Assistant Gr-III, while only one of the five applicants herein, namely, Ms. Arti Varshney (OA No.2869/2001) was appointed as Technical Assistant Gr-III while the other four applicants in OA Nos. 2868/2001 and 2870/2001 were appointed as Lab Technician Gr-III. Thus, the order passed by the Lt. Governor in the case of Ms. Susamma Thankachan would, if at all, apply only in relation to Ms. Arti Varshney (OA 2869/2001) who presumably was the "one person" Lt. Governor had in mind at the time he passed the aforesaid order of revocation. It could not at all affect the other four applicants. Viewed thus, the relaxation/exemption granted by the Lt. Governor and conveyed vide order dated 24.3.2001 would remain unaffected in the absence of a successful challenge based on rules and instructions or case law which held the field at the material time except perhaps in relation to Ms. Arti Varshney (OA No.2869/2001)

10. Based on the aforestated facts and circumstances, the applicant in OA 141/2001 has sought a writ of quo-warranto to be issued in the matter of appointment of private respondent Nos. 4 to 20 in that OA and, at the same time, has sought her own appointment as Lab.



Technician Gr.III. All the other applicants in OA Nos. 2868, 2869 and 2870 of 2001 seek annulment of the respondents' order dated 9.10.2001 by which the relaxation in the experience related qualification granted by the Lt. Governor vide respondents' order dated 24.3.2001 is sought to be revoked, thus terminating the services of these applicants.

10-A. After hearing of this case on 12.7.2002 the learned senior counsel appearing on behalf of the applicants in OA Nos. 2868, 2869 and 2870 of 2001 was permitted to file written submissions in a week's time. However, while the learned senior counsel has not filed any written submissions in the matter, Ms. Rekha Aggarwal, learned counsel also appearing on behalf of the aforesaid applicants has filed written submissions belatedly ^{in Aug. 2002.} ~~in Aug. 2002.~~ We have considered the aforesaid submissions along with the other material placed on record.

10-B. We now proceed to deal with various contentions raised and the merits of applicants' cases in the OAs under consideration.

OA Nos 2868, 2869 and 2870/2001:

11. The learned counsel appearing on behalf of the applicants other than ⁱⁿ OA No.141/2001 ⁱⁿ has submitted that in view of the Supreme Court's ruling in State of Punjab & Others vs. Sumaniata, 1999 SCC (L&C) 1065, which has been relied upon by this Tribunal also in its order dated

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25.10.2000 passed in OA Nos. 742 and 747 of 2000, the services of the candidates selected by the DSSSB in accordance with the procedure and after due scrutiny of the record of each candidate with regard to his educational qualification and experience cannot be terminated in the manner in which the services of the present applicants have been terminated. There was no malafide on the part of the applicants. They had supplied all the documents relating to their qualifications and experience to the DSSSB who must have scrutinized them in detail and must have satisfied themselves with regard to the educational qualifications and experience of the applicants before recommending their candidature for appointment. Subsequently, at the time of their appointment, the Govt. of NCT of Delhi must also have scrutinised the papers and are supposed to have satisfied themselves with regard to the qualifications and experience of the applicants. In the circumstances, according to him, termination of their service was improper and illegal.

12. Further, each of the applicants (other than OA 141/2001) was called for interview for the post of Lab Technician Gr-IV also. It is not disputed that each one of them possessed the educational qualifications and experience in respect of Lab Technician Gr-IV posts. They also had the necessary length of experience of working in Gr-IV Laboratories. Posts also then existed in Gr-IV Laboratories. Despite this position, the applicants were dissuaded from appearing at the interview for posts in Gr-IV Laboratories to be held the day

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following the next on which they were interviewed for Gr-III posts on the plea that they had already been selected for the aforesaid posts in Gr-III Laboratories. They took the advice given to them by the respondents and did not appear at the interview held for posts in Gr-IV Laboratories. At the material time, the applicants also had the option to continue in their existing employment or to seek employment elsewhere. The applicants had to give up their respective jobs in order to join ~~the~~² as Lab Technician-III in the LNJP hospital. The applicant in OA No. 2868/2001 (Shri Balwant Singh) also had interview call letters from several places which he did not pursue on account of the job of Lab. Technician-III in the LNJP hospital coming his way.

13. The Notification issued on 1.3.1999 inviting applications did not in so many words make a clear distinction between the Gr-III and Gr-IV Laboratories so that the applicants could not become aware that for posts in Gr-III Laboratories, experience only in Gr-III Laboratories would be required. Moreover, the posts whether in Gr-III Laboratories or in Gr-IV Laboratories carried the same pay scale. In view of this position, the applicants joined the posts (in Gr-III Labs) offered to them and started performing their duties (in Gr-III or Gr-IV Labs as assigned) without any apprehension in their minds.

14. Further, after their appointment to posts in Gr-III Laboratories some of them have actually been posted to work in Gr-IV Laboratories only ^{and it is there that they have worked} all along and

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✓ continue to do as 2

to date and these include one of the applicants in OA No. 2870 and the lone applicant in OA No. 2868 of 2001. Those who were posted to work in Gr-III Laboratories have since acquired considerable experience in Gr-III Laboratories which cannot be over looked at this juncture. The work and conduct of each one of the applicants have both remained satisfactory and no complaints have been made specifically against any of them.

15. ^{✓ learned counsel for the} These applicants have alleged that while the applicants in these three OAs (2868 - 2870/2001) and a number of private respondents in OA No. 141/2001 are sought to be noticed off on the ground of non-fulfilment of experience related basic qualification, three TAs Gr-III in G.B. Pant hospital, one TA Gr-III and one Lab. Tech. Gr-III in DDU hospital continue to be retained in service even though they are also similarly disqualified. The correctness of this allegation has not been seriously and categorically disputed by the respondents. Likewise, the further fact that six persons are working in the MAMC on the strength of relaxed basic qualifications in Gr/IV Labs, ~~also~~ also not seriously disputed, has been pressed into service on behalf of the applicants to promote their cause. Again, four more persons of Class IV/NO category have been shown as working in ECG/Cardiology Lab (A-4 of OA 2868/2001) without being in possession of the basic qualification.

15-A. A set of 44 vacancies in Gr-IV Laboratories have been notified once again for fresh recruitment in January 2002. Earlier in October 2000 another set of 28

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vacancies had been announced. No appointments in pursuance of the aforesaid notifications have reportedly been made. In addition, some more vacancies in Gr-IV Laboratories would also need to be filled up in due course.

16. Since the applicants were found fit by the DSSSB/Govt. of N.C.T. of Delhi for appointment against posts in Gr-III Laboratories which admittedly require higher skills, it will have to be presumed that they would have been found fit, in any case, for appointment to posts in Gr-IV Laboratories as well particularly since there is no dispute about the applicants possessing the requisite qualifications and experience for Gr-IV Labs. In the appeals filed by them, as early as in January 2001, each one of the five applicants had petitioned the Lt. Governor to consider him/her for regularisation/appointment against vacancies available in Gr-IV Laboratories. Besides, in the meantime the applicants have become over age for the purpose of regular employment anywhere. In the circumstances, according to the learned senior counsel appearing on behalf of the five applicants in question, the applicants must be considered even at this stage for appointment against posts in Gr-IV Laboratories for which they are duly and properly qualified. For this purpose, there should be no need in the aforesaid circumstances to ask/expect them to appear for interview once again. They should be appointed, according to him, straightaway against posts available in Gr-IV Laboratories, if necessary, by granting relaxation to this limited

category of persons by invoking the relevant rule of the Recruitment Rules. The learned senior counsel has stressed that a relaxation so granted will be entirely legally sustainable.

17. Before we proceed any further, we would like to note in passing that after final hearing in these OAs, it is not in dispute that the applicant in OA No.141/2001 possessed the educational qualification as well as the experience in the manner prescribed above. It is also not in dispute that the applicants in the other 3 OAs did not possess the requisite experience inasmuch as none of them was found to possess the prescribed length of experience of working in Gr-III Laboratories. Applicant in OA No. 141/2001 appeared at the interview held by the DSSSB, but her name was not recommended. On the other hand, the applicants in the other three OAs who also appeared at the said interview were cleared and their candidature was recommended by the DSSSB. In result, while the applicant in OA No.141/2001 was not appointed and is aggrieved by her non-appointment, the five applicants in the other three OAs were appointed and started working as Lab-Technician Gr-III and in some cases as Lab. Technician Gr-IV with one of them as Tech. Assistant Gr-III in LNJP Hospital in and around October 1999, even though all of them were appointed as Lab-Technician Gr-III only excepting one who was abinitio appointed as Tech. Assistant Gr-III (OA no. 2869/2001). d

18. To be precise, while the applicant in OA No. 2869/2001 (Ms. Arti Varshney) was selected/appointed as

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Tech. Assistant Gr-III and has been working as such, out of the remaining four applicants in the aforesaid three OAs, two, namely, Sri Balwant Singh (lone applicant in OA No.2868/2001) and Smt. H. Kausar (one of the three applicants in OA No. 2870/2001 have been working as Lab. Tech. Gr-IV even though all these four applicants were appointed as Lab. Tech. Gr-III.

19. Shri Ajesh Luthra, learned counsel appearing on behalf of the official respondent has made a categorical assertion that since experience of working in Gr-III Laboratories is part of the essential/basic qualification required for the post of Lab Technician Gr-III, the official respondent, namely, the Lt. Governor, did not have the power to grant relaxation/one time exemption in the manner done by him vide order dated 24.3.2001. In support of this contention, the learned counsel has placed reliance on P. Sadagopan & Ors vs. Food Corporation of India Zonal Officer (South Zone) represented by its Zonal Manager & Anr. decided by the Supreme Court on 20.3.1997 and reported at JT 1997 (4) SC 411. The Supreme Court had, in that case, held as under:

"In view of the fact that the statutory Regulations require that experience of three years is a pre-condition to consideration for promotion to Category II post from Category I post, it would be obvious that any relaxation was in defiance of the above Regulations. The Division Bench, therefore, was not right in upholding the power of the Board in directing relaxation of the statutory Regulations xxxx"

According to the learned counsel, executive instructions cannot be issued in derogation of statutory Regulation.

The Lt. Governor has no power to issue such instructions insofar as the essential/basic qualifications are concerned. In State of M.P. and Others v. Shyama Pardhi and others decided by the Tribunal on 16.11.1995 and reported in (1996) 32 Administrative Tribunal Cases 789, certain persons not possessing the requisite qualifications prescribed by statutory rules were wrongly selected and, after successful completion of training, were appointed as Auxiliary Nurse-cum-Midwives. The initial selection of such persons was held by the Tribunal to be illegal. It was also held that the termination of their appointment will not attract the principles of natural justice.

20. In yet another case, namely, that of K.S. Mathew and Ors v. Govt. of NCT, Delhi and Ors decided by the Delhi High Court on 13.8.2001 reported as AISLJ II 2002 (1) 229, it has been held that there was no justification in granting relaxation when qualified persons were available for promotion. Such a relaxation could not be said to have been made to mitigate hardship nor the same could be said to have been made in public interest. Incidentally, Shri M.K. Gupta, the learned counsel for the applicant in OA No. 141/2001 also strenuously argued that duly qualified persons like this particular applicant being available, the appointment of unqualified candidates was illegal. In the aforesaid judgement, reliance was in turn placed on the Supreme Court's judgement in M. Venkateswariu and Ors v. Govt. of A.P. and Ors., (1996) 5 SCC 167 wherein the Court has

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"It is settled law that the Government cannot relax the basic qualifications but in an individual case they can relax, in an appropriate case, the conditions of service."

Relying on this, Shri Ajesh Luthra, the learned counsel for the respondents has submitted that vide his decision conveyed in official respondents' order dated 24.3.2001, the Lt. Governor has clearly relaxed the basic qualification of experience which, he reiterated, the Lt. Governor had no right to do. The Lt. Governor, according to him, could relax only the conditions of service.

21. In the back-ground of the above discussion, the learned counsel has most vehemently argued that the Lt. Governor having no authority to relax the basic qualification of experience for posts in Gr-III Laboratories, the official respondents' letter dated 24.3.2001 is bad and is illegal. That being so, according to him, the services of the five applicants in OA Nos. 2868, 2869 and 2870/2001 are required to be terminated and it will be wholly in order to do so.

22. In regard to the subsequent order revoking the relaxation in question, passed by the Lt. Governor and to which we have already adverted in paragraph 9 above, Sri Ajesh Luthra, learned counsel for the respondents, has submitted that the same has been correctly relied upon by the Secretary, Department of Health, Government of NCT of Delhi for issuing the termination order dated 9.10.2001 in respect of all the five applicants in OAs 2868 to 2870 of 2001. We do not fully agree with this

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contention for the reason we have already spelt out in paragraph 11. However, our disagreement is only in respect of the four applicants in OA Nos. 2868/2001 and 2870/2001. We have already noticed in the aforesaid paragraph 11 that the Lt. Governor's subsequent order in question would indeed cover Mrs. Arti Varshney (OA No. 2869/2001) because it is in respect of her, ^{also,} appointed as Tech. Asstt.III, that relaxation was earlier given on 24.3.2001. Thus, in our judgement, the impugned order dated 9.10.2001 could be treated as valid insofar as the applicant in OA No.2869/2001 is concerned.

23. The plea advanced by the learned senior counsel for the applicant in OA Nos.2868 to 2870 of 2001 that the Lt. Governor could not review his own decision earlier conveyed through official respondents' order date 24.3.2001 is found by us to be untenable. The power to relax includes the power to withdraw relaxation on valid grounds. This is what has been held by the Supreme Court in State of M.P. & Ors v. Mahesh Kumar & Ors. etc. decided on 29.4.1997 and reported as 1997 (2) SCSLJ 267. The relevant extract taken therefrom runs as under:

"8. Admittedly, this relaxation was only in relation to Jabalpur zone. In all other zones, no such relaxation had been given. Consequently, the question arises whether the action taken by the DGP in granting relaxation to the Head Constables who appeared in the examinations held in Jabalpur zone is correct? In view of the fact that no uniform rule applicable to all the Head Constables throughout the State has been issued, obviously, realising the mistake committed by him, the DGP had withdrawn the relaxation granted earlier on February 9, 1994 by proceedings dated December 2, 1994. It is true that if any vested right is created in favour of a person, the same cannot be deprived of or

denied without affording to him an opportunity of hearing on the principle of violation of audi alterem partem. In this case, the Head Constables, who had written the examination, but failed to secure 50% or 40% in the general category and reserved category respectively, had no vested right for further grant of 15% and 10% grace marks respectively. The reason being that if the DGP grants for only one zone, they would scale a march over others who are similarly situated, namely, who failed in other zones in the examination, but were not given the same relaxation. In view of the above situation, the D.G.P. realising the mistake, has rightly withdrawn the relaxation and the 51 Head Constables belonging to general candidates and 15 Head Constables belonging to reserved category had no vested right in that behalf. The power to relax would include the power to withdraw on valid grounds. Thereby, the principle of natural justice was not violated. The Tribunal, therefore, was clearly in error in allowing the O.As on the ground that it is violative of principles of natural justice." (emphasis supplied)

24. Shri M.K. Gupta, learned counsel appearing on behalf of applicant in OA No.141/2001, has vehemently argued that his client-applicant was an aggrieved person not because she was not selected by the DSSSB but because while she has not been selected despite having all the prescribed qualifications, others, namely, the private respondents in OA No.141/2001, including the four applicants in OA Nos. 2868 and 2870 of 2001 who did not fulfill the prescribed experience related qualification have been selected. He has also contended that the Lt. Governor proceeded to grant relaxation conveyed vide official respondents' letter dated 24.3.2001 only after the OA No. 141/2001 had been filed. He has also put forward the plea that such exemptions/relaxations, even if within his competence, cannot be given retrospectively in the manner granted by the Lt. Governor in the present case. Relaxations/exemptions of

a permitted nature can and should be made ^{if} ^{argued} if at all, within the four corners of law and in any case before the recruitments are made, and the relaxation to be given should be in respect of a category of person or a category of posts, and further that such relaxation orders should be passed only in the public interest. Relaxation of the basic qualification of experience is, according to him also, not permissible for those very reasons which have been advanced by Shri Ajesh Luthra, learned counsel for the official respondent. In this view of the matter, according to Sri M.K. Gupta, learned counsel, the appointment of each of the private respondents who did not fulfil the prescribed qualification including the experience related qualification and who were later wrongly exempted by the Lt. Governor, deserves to be quashed and set aside.

25. In order to reinforce the argument advanced by him in the previous paragraph, Shri M.K. Gupta has also relied on ^{several} ~~the~~ judgements. One of these is dated 9.3.1994 delivered by a single Judge Bench of the Himachal Pradesh High Court in Shri Harnam Singh, Clerk R&I Branch H.P. Secretariat, Simla and another vs. State of H.P. and Others reproduced in SLR (Vol.2) 1974 350. In that case, in the absence of recruitment rules framed under the proviso to Article 309 of the Constitution, a written test as well as an interview was held for appointment in accordance with a Circular/administrative instructions issued by the Department laying down the rules of recruitment. The petitioners appeared in the written test and were placed in high positions. They appeared at

the interview also along with the others. However, later the result of the written test was ignored and the performance at the interview/viva-voce alone was relied upon for the purpose of selection/appointment. In result, the petitioner was not selected/appointed. There was no provision in the aforesaid circular for relaxation of qualification and, therefore, ignoring of the written test altogether was held as bad and the result of the selection was set aside. The aforesaid relaxation (by ignoring the result of written test) in the prescribed recruitment rules contained in the aforesaid circular was, it needs to be pointed out, granted in the aforesaid case before the result of selection was made known. In the case at hand, proper Recruitment Rules were in place with a provision for relaxing the rules in appropriate situations. The relevant rules for recruitment/appointment have not been changed nor ignored. However, the Lt. Governor, making use of the rule regarding grant of relaxation, decided to relax the experience related qualification in favour of five candidates and this was done by him much after the appointments had been made and only after the administration discovered that the aforesaid candidates had been inadvertently appointed without being in possession of the experience related qualifications. Shri Harnam Singh's case (supra) therefore, finds limited application in the present situation inasmuch as the L.G. has exceeded the authority vested in him by relaxing the basic qualification of experience. The fact that the L.G. granted the relaxation in question after the appointments had been made is not of great consequence, however.

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26. The learned senior counsel appearing for the applicants in OA Nos. 2868 - 2870/2001 has, on the other hand, relied on several judgements of the Supreme Court in respect of issues relating to ^{the} locus standi of the applicant in OA No. 141/2001 and the writ of quo-warranto etc sought to be issued. We will deal with these in the following.

27. In Jagram vs. Gwalior T. & C. Development Authority decided by the Supreme Court on 24.7.1985 and reported in AIR 1987 MP 11, it has been held that a writ of quo-warranto shall not be issued against a person who does not hold a public office, created under a statute or the Constitution. According to the learned senior counsel ^{appearing for them,} ~~the~~ the aforesaid applicants (other than the applicant in OA No. 141/2001) cannot be said to be holders of public office and, therefore, a writ of quo-warranto cannot be issued against them. Moreover, the prayer for a writ of quo-warranto is herein mixed with the prayer for her own appointment. The aforesaid OA (No.141/2001) therefore, according to him, deserves to be dismissed on this ground alone.

28. In Piare Lal vs. Union of India and others decided by the Supreme Court on 4.2.1975 and reported as AIR 1975 (Vol.62) SC 650, the petitioner challenged various orders passed by the State Government promoting officers junior to him. Subsequently President of India passed promotion orders superseding the earlier orders of promotion. The name of the petitioner did not find place

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in these subsequent orders either. The petitioner did not amend his petition under Article 226 by including the challenge to the subsequent orders of the President. The petition was dismissed by the High Court. In the appeal filed before the Supreme Court, the petitioner-appellant did not apply for the amendment of the petition during the pendency of the appeal and wanted to do so only after the hearing in the appeal had been concluded. The petitioner was not allowed to do so. In the case at hand the applicant in OA No.141/2001 has not challenged the respondents' order dated 24.3.2001 by which the relaxation granted by the Lt. Governor has been conveyed by seeking amendment in her pleadings contained in the OA. She has not, ~~however~~, challenged the respondents' subsequent order dated 9.10.2001 either by which the aforesaid earlier order of 24.3.2001 is stated to have been revoked, even though the aforesaid revocation has not resulted in her own appointment as Lab. Technician Gr-III. She has, however, taken advantage of the aforesaid revocation order dated 9.10.2001 at the stage of hearing in order to assert ~~that~~ that, according to the respondents themselves, the five applicants in the other three OAs being OA Nos. 2868 - 2870 of 2001 were, in any case, unqualified and were wrongly appointed. Irrespective of this position, the rule laid down by the Supreme Court in Piare Lal's case (supra) is good enough, in our judgement, ^{for} preventing the applicant in OA No. 141/2001 from challenging the aforesaid relaxation and ~~the~~ ⁵ revocation orders, in any way.

29. The argument that the applicant in OA No.141/2001

has no locus standi to challenge the appointment of applicants in OA Nos. 2868 - 2870 of 2001 or the other private respondents in OA No. 141/2001 is sought to be sustained by relying on the case of Madan Lal and Others v. State of J&K and Others reproduced in (1995) 3 SCC 486. In that case, the petitioners as well as the contesting successful candidates, being respondents in that petition, were all found eligible in the light of marks obtained in the written test so as to be eligible to be called for interview. Upto this stage there was no dispute between the parties. The petitioners also appeared at the interview before the members of the commission who interviewed the petitioners as well as the contesting respondents. The petitioners thus took the chance to get themselves selected at the said interview. Merely because they did not find themselves to have emerged successful as a result of their combined performance both in the written test and the interview, they had filed the said petition. The Court held that -

"It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair xxxxxx"

It is clear from the above that the applicant in OA No.141/2001 has no locus standi to file the aforesaid OA which deserves to be dismissed on this ground as well.

30. In Dr. Durvadhan Sahu and Others v. Jitendra Kumar Mishra and Others decided by the Supreme Court on 25.8.1998 and reported in (1998) 7 SCC 273, it has been

held that the Tribunal is not competent to entertain a PIL. The applicant in OA No.141/2001, having no locus standi in the matter as indicated in the previous paragraph dealing with the case of Madan Lal & Ors v. State of J&K and Ors, the OA filed by her is evidently in the nature of a PIL. The same cannot, therefore, be sustained.

31. The learned senior counsel appearing for the applicants in OA No.s. 2868 - 2870 of 2001 relied on R.T. Rangachari v. Secretary of State decided by the Privy Council on 8.12.1936 and reported in AIR 1937 Privy Council 27 to contend that the order granting relaxation issued on 24.3.2001 could not have been revoked by the same authority, namely, the Lt. Governor and, therefore, the subsequent order dated 9.10.2001 stands vitiated. On a perusal of the aforesaid judgement, we find that the same will not find application in relation to the case at hand. In the aforesaid case decided by the Privy Council, the Govt. servant concerned was granted invalid pension by the competent authority and accordingly he had ceased to be in service. The officer succeeding the said authority, however, reconsidered the matter and removed the State Govt. servant from service. The Privy Council held as follows:-

"In a case in which after Government Officials, duly competent and duly authorized in that behalf, have arrived honestly at one decision, their successors in office, after the decision has been acted upon and **is in effective operation**, cannot purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision".

(emphasis supplied)

In the instant case, it is not the successor in Office who has revoked the relaxation earlier granted on 24.3.2001 but the same person acting as Lt. Governor who has done so on realising the error committed at the time of granting relaxation. In this view of the matter, the aforesaid ruling cannot be cited in support of the applicants in OAs No. 2868 - 2870/2001.

32. The learned senior counsel appearing on behalf of the applicants in OA Nos. 2868 - 2870 of 2001 has also placed reliance on Dr. M.S. Mudholi & Another v. S.D. Halegkar and Others decided by the Supreme Court on 13.7.1993 and reported in (1993) 3 SCC 591 to submit that the aforesaid applicants, even though wrongly appointed, will have to be allowed to continue. In that case, the petitioner was appointed as a Principal of a higher secondary school without possessing the prescribed educational qualifications. He continued to hold the post of Principal for over nine years when a petition was filed challenging his appointment. It was held that -

"When despite disclosing the qualification possessed by the respondent selection committee wrongly selected him and Director of Education acquiesced in the appointment and thereafter respondent continuing in the post for 9 years xxxxxxxx his appointment could not be disturbed at that late stage."

Clearly the facts and circumstances obtaining in that case were different from the facts and circumstances prevailing in the case at hand. In the present case the challenge to the wrong appointment of the aforesaid applicants came within six months of their appointment from the side of the respondents themselves when they

issued show cause notices. The present case cannot, therefore, be said to be a case in which the services of persons wrongly appointed are sought to be terminated after they have continued for a long time. The aforesaid rule laid down by the Supreme Court will, therefore, not assist the applicants in OA Nos. 2868 - 2870/2001.

33. The learned counsel for the applicants in OA Nos. 2868 - 2870 of 2001 has sought to rely on the State of Punjab and Others vs. Suman Lata decided by the Supreme Court on 31.3.1999 and reproduced in 1999 SCC (L&S) 1065 to contend that the aforesaid applicants having been selected by the DSSSB by following the prescribed procedure and after due scrutiny of record will have to be retained in service even if it is found that the aforesaid applicants did not possess the experience related basic qualification under the relevant Recruitment Rules. We have perused the aforesaid judgement and find that in that case the petitioner had applied for the post of Arts & Crafts teacher. Matriculation with two years' diploma in Arts & Crafts was the qualification laid down for the said post. She was interviewed along with other candidates and was selected. On being appointed, she reported for duty in November 1994. On 6.12.1994, when the Head Master of the School noticed that the respondent did not have the requisite qualification for appointment to the post of Arts & Crafts teacher, he reported the matter to the District Education Officer who cancelled her appointment.

That order was challenged in the the writ petition before

the High Court. The High Court noticed as follows:-

"After having heard the learned counsel for the parties, perusing the paper-book and the written statement, we find that the petitioner possesses the requisite qualifications which could make her eligible for appointment. As such there was no justification in withdrawing the appointment letter"

On that basis the High Court allowed the writ petition. When the matter came up before it, the Supreme Court held as follows:-

"When the selection committee which consists of persons with sufficient experience in that field with the knowledge of job requirements and necessary qualifications in this regard having examined the qualification possessed by the respondent selected the respondent as Arts and Crafts Teacher, the District Education Officer ought not have cancelled that appointment."

The aforesaid judgement was relied upon by the Tribunal also when orders were passed in OA Nos. 742 and 747 of 2000 (filed by the applicants in OA Nos. 2868 - 2870/2001) on 25.10.2000.

34. The learned counsel for the official respondents has vehemently argued that the aforesaid rule laid down by the Supreme Court will not find application in the facts and circumstances of the case at hand. According to him the law laid down by the Supreme Court in J&K Public Service Commission & Others v. Dr. Narinder Mohan & Others decided by the Court on 7.12.1993 and reported as (1994) 2 SCC 630 which held the field when the Court decided the case of State of Punjab & Others v.

Suman Lata (supra) is to be applied and should be allowed to prevail. We have perused the aforesaid judgement of the Supreme Court. Certain persons appointed on ad-hoc basis in violation of statutory rules were regularised in service by purportedly relaxing the rules. The aforesaid action was held to be ultra vires the rules. It was also held that relaxation of rules is permissible only in relation to the conditions of service, and basic qualifications cannot be relaxed.

35. We have carefully perused the order passed by the Hon'ble Supreme Court in the case of State of Punjab & Others vs. Suman Lata (supra). It appears that in that case, the High Court had already noticed that the petitioner (Suman Lata) before that High Court possessed the requisite qualifications which rendered her eligible for appointment. As such, the High Court had also held that there was no justification in withdrawing the appointment letter issued to the petitioner before the High court. Further, in that case, two different kinds of posts had been advertised. Different qualifications were prescribed for the aforesaid posts. The respondent before the Supreme Court (Suman Lata) had applied for the post of Arts & Crafts Teacher. She was interviewed along with other candidates and was selected for the post of Arts & Crafts Teacher. The Head Master of the School in which the aforesaid respondent (Suman Lata) was appointed, soon after her appointment, discovered that she did not possess the requisite qualification for appointment as Arts & Crafts Teacher. On the matter being reported to the District Education Officer, the said Officer cancelled the appointment of the aforesaid respondent (Suman Lata). In these

circumstances the Supreme Court had made an observation which is reproduced below:-

"When the selection committee which consists of persons with sufficient experience in that field with the knowledge of job requirements and necessary qualifications in this regard having examined the qualification possessed by the respondent selected the respondent as Arts and Crafts Teacher, the District Education Officer ought not have cancelled that appointment."

The aforesaid observation, in our judgement, does not lay down a proposition of law. Moreover, the same appears to have been inspired by the finding recorded by the High Court that the petitioner (Suman Lata) before them did possess the requisite qualifications and was accordingly found by the High Court as eligible for appointment. Viewed thus, the aforesaid case will not assist the applicants in OA Nos. 2868, 2869 and 2870 of 2001. On the other hand, the law laid down by the Apex Court itself in J & K Public Service Commission & Others versus Dr. Narinder Mohan & Others (supra) will be more relevant in the context of the present case. We also hold that apart from the aforesaid case, the ratio of the judgements of the Supreme Court in P. Sadagopan & Ors. Versus Food Corporation of India etc. (supra), State of M.P. & Others Versus Shyama Pardhi & Others (supra), K.S. Mathew & Others. Versus Govt. of N.C.T. Delhi & Ors. (supra) as well as the ruling given in the Supreme Court's judgement in M. Venkatswarlu & Ors versus Govt. of A.P & Others (supra) are far more relevant and apt in the facts and circumstances of the present case. The rulings of the Supreme Court in the aforesaid cases have

already been discussed by us at appropriate places in the preceding paragraphs.

We will now deal with the contentions raised on behalf of the applicants in OA Nos.2868, 2869 and 2870 of 2001 in the written submissions filed in August 2002. The official respondents' order dated 9.10.2001 has been called in question on the ground that it is based on a misinterpretation of the order actually passed by the Lt.Governor. It has also been argued that the deficiency in the length of service could always be cured and, therefore, the appointment of the aforesaid applicants ought not to have been terminated on account of deficiency in work experience. The mistake in the selection of the aforesaid applicants committed by the DSSSB/official respondents cannot be allowed to lead to the termination of their services. The order passed by the Lt.Governor, which has been reproduced in the official respondents' order dated 9.10.2001, has also been termed as vague and, therefore, liable to be ignored and set aside. According to the learned counsel, the order of cancellation of the relaxation earlier granted in favour of the aforesaid applicants should instead have been based on germane considerations. We have considered these submissions and find that none of these can be sustained in view of the law laid down by the Supreme Court in the various cases referred to by us in the preceding paragraphs. Further, the official respondents' order dated 9.10.2001 can be said to be based on a misinterpretation of the Lt.Governor's minutes reproduced in the body of that order only to the extent that the same could not be made to

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apply to the aforesaid applicants other than the lone applicant in OA 2869/2001. At the time the Lt. Governor passed the aforesaid order, the matter regarding the appointment of a Technical Assistant Gr-III was under his consideration. The proposal before him was for the grant of relaxation in qualifications. The Lt. Governor declined the proposal and, after recording his reasons in support of the same, proceeded to direct that relaxation already given in favour of "one person" should be withdrawn. That "one person" evidently is the lone applicant in OA 2869/2001, who was one among the five applicants, who were granted relaxation by the Lt. Governor by the official respondents' order of 24.3.2001. The order passed by the Lt. Governor reflected in respondent (official)'s order dtd. 9.10.2001 in our view, contains good reasons which are germane. His order aforesaid cannot be said to be vague. Insofar as the relaxation given to the other four applicants (OA 2868 and 2870 of 2001) is concerned, we have already seen that the Lt. Governor had no authority to grant relaxation as the same is hit by the ratio of several judgements delivered by the Supreme Court. In regard to the deficiency in the length of experience in the written submissions, the applicants have relied on the case of M. Venkateswarlu & Ors. Vs. Govt. of A.P. & Ors (supra). We have perused the aforesaid judgement and find that that case is entirely distinguished. The Supreme Court had, in that case, dealt with a case of promotion. The relevant service rules prescribed a certain length of service for rendering a candidate eligible for promotion. The case before the Supreme Court related to a reserved category candidate. The State Government, by having regard to the

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fact that the candidate was a reserved category candidate, exercised the statutory power vested in it to relax the aforesaid rule prescribing a certain length of service for purposes of promotion. In result, the reserved category candidate gained in seniority over his erstwhile seniors in the lower grade and got promoted. In the present case, the circumstances are entirely different. The relaxation in the experience related qualification has been given in the instant case at the stage of direct recruitment and that too only after the candidates/applicants stood appointed. In the written submissions, the learned counsel has also advanced the plea that the findings arrived at by this very Tribunal in OA Nos. 742 and 747 of 2000 have been ignored by the official respondents. The aforesaid findings, as noticed by us earlier, related to the case of State of Punjab & Ors. Versus Suman Lata (supra). We have already examined the aforesaid case and recorded our finding that placing of reliance on the aforesaid case will not assist the applicant in any way.

37. Insofar as the private respondents in OA-141/2001 are concerned, four of them are covered by the OA Nos. 2868 & 2870 of 2001. We have already dealt with their cases along with the case of the applicant in OA 2869/2001 in the preceding paragraphs. Of the other private respondents in the aforesaid OA, those at Sl.Nos. 7, 10, 12-14, 16, 17 and 19 are graduates in Science. In their case, according to the recruitment rules, one year's experience has been described as 'desirable' and not 'essential'. No fault can, therefore, be found with their appointment in Lab. Gr.III. Private respondent

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No.18 in the aforesaid OA is stated to be a qualified ex-army personnel. His appointment cannot, therefore, be questioned. The name of the private respondent at Sl.No.20 has been withdrawn as she has not been appointed in Gr.III Labs. The remaining three private respondents have not filed any replies and have not been represented by any counsel before us.

38. In the background of the detailed discussion contained in the preceding paragraph, the position is summed up as follows :-

- i) OA No. 141/2001 cannot be sustained on any of the grounds advanced by the learned counsel appearing on behalf of that applicant. The same is accordingly dismissed.
- ii) The appointment of the applicants in OA Nos.2868, 2869 and 2870 of 2001 cannot be sustained either in view of the judgments of the Apex Court in various cases. The relaxation order communicated vide official respondents' letter of 24.03.2001 is bad in law and thus stands quashed and set aside. The subsequent impugned order dated 9.10.2001, being not strictly relatable to the order dt. 24.03.2001, is valid only in respect of the applicant in OA 2869/2001 and in respect of none else.

39. In result, for all the reasons, facts and circumstances of a peculiar nature noticed by us in paragraphs 11 to 16, we find it just and proper to dispose of this case by directing the respondents as follows:-

- (a) The lone applicant in OA No. 2868/2001 (Shri Balwant Singh) and one of the three applicants in OA No. 2870/2001 (Smt. H.K.Rizvi), though appointed in Group-III Laboratories were actually posted in Group-IV Laboratories and have been working in Group-IV Laboratories from the respective dates of their joining the LNJP Hospital. Both of them are qualified to hold the post in Group IV Laboratories. However, the DSSSB cleared their cases for Group-III Laboratories and accordingly they were both given appointment letters for Group-III Laboratories. Vacancies are available in Group IV Laboratories. The respondents will, therefore, refer the cases of both these applicants to the DSSSB for consideration for appointment in Group IV Laboratories. On the basis of the DSSSB's recommendations, they will be considered for regular appointment in Group-IV Laboratories. Since both of them have, in their respective appeals, made a prayer for absorption in Group IV Laboratories and also because both of them claimed to be duly and fully qualified to hold posts in Group IV Laboratories, it is hoped that the consideration

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of their cases [✓]by[✓] the DSSSB will be a mere formality to be observed in pursuance of the Recruitment Rules.

- (b) If on a proper verification of documents and record it is found that either or both of the aforesaid applicants were deficient in the experience related qualification for Group IV Laboratories at the time of their appointment in the LNJP hospital, the experience acquired by them during the course of performance of their duties and responsibilities in the LNJP Hospital will be taken into account by the DSSSB at the time of consideration of their cases in pursuance of the direction given in (a) above.
- (c) The services of the aforesaid applicants will be continued until DSSSB's recommendations as above have become available and a decision thereon taken by the respondents.
- (d) In the event of a favourable decision being taken by the DSSSB/respondents, the aforesaid applicants will be entitled to all the consequential benefits in matters of seniority [✓]~~and~~, promotion and pay [✓]as per rules. [✓]
- (e) The other two applicants, namely, Kanchan Rawat and Ritu Jain in OA No. 2870/2001 and the lone applicant, namely, Ms. Arti Varshney in OA No. 2869/2001, who ostensibly did not possess the

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experience related qualification for Gr-III Laboratories and who, after their appointment in Gr-III Laboratories have been working therein all these months and years will be continued in service till they complete the prescribed length of experience by about November/December, 2002 and will soon thereafter be referred to the DSSSB for reconsideration for appointment in Gr-III and alternatively in Gr-IV Laboratories; for the latter (Gr-IV Labs) only if they fulfilled the experience related qualification for Gr-IV Labs at the time of their initial appointment in the LNJP Hospital.

- (f) In the event of a favourable decision being taken by the DSSSB/respondents in respect of Gr-III Laboratories or Gr-IV Laboratories the aforesaid three applicants will be entitled only to fresh appointment in Gr-III Laboratories or as the case may be in Gr-IV Laboratories.

40. The OA Nos. 141/2001 and 2868, 2869 and 2870, all of 2001 are disposed of in the aforesaid terms. No costs. *dr*

S. Raju

(SHANKAR RAJU)
Member (J)

S.A.T. Rizvi

(S.A.T. RIZVI)
Member (A)

/pkr/