

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 2877/2001
IA No.

23-5-2002

Date of Decision

(11)

Mrs. Sunita Dahija ... Petitioner (s)
Shri T. Venkata Ramani ... Advocate for Petitioner (s)

V E R S U S

Govt. of NCT of Delhi ... Respondents
Sh. Vijay Pandita ... Advocate for respondents

Coram :-

Hon'ble Shri/Smt.
Hon'ble Shri Govindan S. Tamai, Member (A)

1. To be referred to the Reporter or not ? YES
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO

GOVINDAN S. TAMPI
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 2877/2001

NEW DELHI THIS THE 23rd DAY OF MAY 2002

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

Mrs. Sarita Dahiya, W/o Sh. Jai Bhagwan,
R/o J-86/D, Phase-I, Ashok Vihar,
New Delhi

.....Applicant

(By Shri K. Venkataraman, Advocate)

VERSUS

1. Department of Health & Family Welfare,
through its Secretary,
Govt of NCT of Delhi, IP Estate,
Players Building,
New Delhi
2. Deptt of Health & Family Welfare,
Through PHC cum Addl. Secretary,
Govt of NCT of Delhi, IP Estate,
Players Building, New Delhi
3. G. T. B. Hospital,
Through its Mdical Superintendent,
Govt of Nct of Delhi, Shahdara, Delhi
4. Delhi State Subordinate Service Selection Board,
through its Secretary, 3rd floor, UTCS Building
Behind Karkardooma Court Complex,
Vishwas Nagar, Shahdara , Delhi

.....Respondents

(By Shri Vijaya Pandita Advocate) *for R-1-3*
None for R-4.

W O R D E R

Reliefs sought by the applicant in this OA are as
below:-

- a) declare that the impugned office order dated 16.10.2001 issued by respondent No. 3 is illegal, arbitrary and liable to be quashed and;
- b) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

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2. During the oral submission Shri K Venkataraman learned counsel appeared for the applicant, while Shri Vijaya Pandita represented the respondents.

(B)

3. The applicant after passing Senior School Certificate Examination in 1992, obtained a Certificate of Radiological Assistant from Maulana Azad Medical College, New Delhi, on qualifying Radiographer Examination, worked from 18.10.94 to 8.12.95 in Sunder Lal Jain Charitable Hospital and thereafter from 15.2.96 functioned as Radiographer in Rajiv Gandhi Cancer Institute and Research Centre, attending to Radiography, special investigations, mammography and training of students in Radiography. While responding to the Advertisement published by DSSSB, on 1.3.99 for the posts of Senior Technical Assistant, Senior Radiographer and Junior Radiographer, the applicant furnished proof of her academic qualification as well as professional experience. She was called for the interview for the post of STA (Radiology), though she was short-listed for the other posts as well. On being recommended by the Board she was offered appointment as STA (Radiology) in the scale of Rs. 5000-8000/- on 12.10.99 which she accepted. The GTB Hospital officially confirmed her appointment on 21.1.2000 w.e.f. 21.1.99 indicating that she would be on probation for two years. Having been selected for the post of STA (Radiology), she did not appear in the interview for other posts i.e. Senior and Junior Radiographers. Delhi Radiographers Welfare Association, thereafter filed a Writ Petition No. 5460/99 before the Hon'ble High Court of Delhi, alleging among others that the applicant did not have the requisite experience for being appointed as STA (Radiology). While disposing of the petition on 13.1.2000 the Hon'ble High Court directed that

Dept. of Health and Family Welfare, NCT should make verification of the authenticity of the documents submitted by the applicant. Thereafter on 14.5.2001 a Notice was issued to the applicant proposing termination of her service on the ground that she did not have the requisite qualification for the post of STA (Radiology) when she had applied for the same. The same was replied on 26.5.2000. Another Show Cause Notice was issued on 7.8.2001 which was duly replied on 8.8.2001. Certain queries were raised on 17.9.2000 which were duly answered on 29.9.2001. Still by impugned order dated 16.10.2001, the services of the applicant were terminated under Rule 5 of the CCS(Temporary Service) Rules 1965 and she was asked to exercise her option for being appointed as Junior Radiographer on regular basis. Hence this O.A.

4. The grounds raised in the OA are stated as below:

- i) the impugned order dated 16.10.2001, has been issued by the Respondent No. 3 without taking the concurrence of Respondent No. 4, DSSSB, who had effected the selection and recommended the applicant's name;
- ii) the selection having been made by Committee of Experts, under the directions of respondent No. 4, it could not have been nullified by Respondent No. 3, unilaterally;
- iii) directions of the Hon'ble Delhi High Court was only to verify the authenticity of the certificate of professional experience, filed by the applicant and the same having been undertaken, nothing further was required to be done;
- iv) reasons furnished by the Respondent No. 3 in the impugned order are illegal, baseless and frivolous ; illegal
- v) the against the required qualification, for the post of STA (Radiology), specified as 3 years professional experience with Teaching as desirable, the applicant had 4 years experience as Radiographer and 3 years experience in Teaching. It was on account of the above that her case was considered

by the selection committee and the same cannot be overlooked without a review by the Board;

- vi) the applicant was not guilty of any suppression with regard to her qualification or professional experience;
- vii) the impugned order had indicated that the appointment to the post of Sr. Radiographer was to be 100% by promotion while the advertisement had shown the said post also to be capable of being filled by direct recruitment;
- viii) as there was nothing on record to question the qualification and professional experience of the applicant for the post to which she was selected by a expert body i.e. DSSSB, Respondent No. 3 could not have cancel the same and;
- ix) asking the applicant , who had performed for 2 years as STA (Radiology) , after being selected by the Expert Body , to accept the lower post of Junior Radiographer was improper and incorrect.

The OA, in the above circumstances, deserved to be allowed with full consequential benefits, pleads applicant.

5. In the reply filed on behalf of the respondents it is pointed out that the applicant did not fulfil the requisite legibility conditions , as prescribed by the RRs and she had also exercised her option vide her letter dated 6.11.2001 to accept appointment to the post of Junior Radiographer, though without prejudice to her rights and contentions , raised in her OA. The applicant's services as STA (Radiology) was terminated as she did not have the experience of 3 years as Technical Assistant (Radiology). She was however, offered the post of Junior Radiographer , keeping in view her academic qualification/experience. In the advertisement dated 1.3.99, for the post of STA (Radiology) , it is indicated that the applicants should have had matriculation or higher secondary with science along with

2 years certificate in Radiography or 2 years Diploma in Radiography or B.Sc. (Radiography) or 2 years Radiography Technology. 3 years experience as TA (Radiology) was also required, while 3 years experience of teaching Radiographer Trainees was felt desirable. The applicant had no experience at all as TA (Radiology), Respondent No. 4 had entertained her application for their own reasons. Respondent No. 3 was informed on 20/8/99 by Department of Health and Family Welfare of her selection as TA (Radiology) in the pay scale of Rs. 4500- 7000/- and her appointment order was accordingly issued. On her making a representation that she should have been appointed as STA (Radiology) for which post she was interviewed, the matter was referred to Technical Recruitment Cell, in response to which the Department ^{W.M} ~~informed~~ indicated that the applicant had in fact been recommended for the post of STA (Radiology) and that the word "Senior" had been inadvertently left out. Therefore, fresh offer of appointment was issued on 12.10.1999 for post of STA, which post she joined on 21.10.99. Following the receipt of a complaint about wrongful selection of the applicant, the matter was scrutinised when it was found that she did not have 3 years experience as TA (Radiology) on the scale of Rs. 4500-7000/-. Therefore, Show Cause Notice was issued ^{to} ~~to~~ her on 7.8.2001. Her reply was incomplete, so was her response to query raised on 21.9.2000. Accordingly, the impugned order was issued on 16.10.2001, terminating her services as STA (Radiology) but by another Memo, she was offered the post of Junior Radiographer in the pay scale of Rs. 3200-4900/- subject to approval by DSSSB. It was also worth mentioning that the Hon'ble High court had not asked GTB Hospital (Respondent No.3) not to scrutinise the qualification of the applicant in terms of RRs. The respondents' action in terminating the applicant's services, was proper and legal and

the fact that DSSSB Respondent No. 4 had entertained her application does not alter the position in law. The wrong recommendations of the applicant by Respondent No. 4, does not vest in her any right for being appointed to a post for which she did not have essential qualification. The applicant herself has indicated that her experience amounted to 4 years and 3 months as Radiographer and not as TA (Radiology) ^{hers}, ^L she is not eligible for being appointed as STA (Radiology) but only as Jr. Radiographer. In fact even while filing their application, the applicant knew that she did not have the requisite qualification for the post of STA (Radiology), Still she had applied for the same and had got the appointment manipulated. She cannot be permitted to take advantage of her mistake or mischief, not being detected in time by the recommending authority and claim that she should be continued in the post of STA (Radiology), inspite of her not being qualified for the post. OA therefore has to fail, is what the respondents urge.

6. In the rejoinder the applicant contests the arguments raised by the respondents. According to her the Expert Committee of DSSSB had found her to be possessing the requisite qualification for the post of STA (Radiology) and recommended her case. Though originally she was offered the post of TA (Radiology), the matter was referred to the Technical Recruitment Cell, who had clarified that she was indeed recommended for the post of STA (Radiology), which led to the issue of a fresh appointment letter of 12.10.99. The CWP No. 5460 of 1999 filed by Delhi Radiographers Welfare Association was dismissed by the Hon'ble Delhi High Court on 13. 1.2000, with directions to DSSSB to verify the authenticity of the documents submitted by the applicant and it was nobody's case that the documents filed by the

applicant were not genuine. According to the applicant the respondents are trying to circumvent and over-reach the decision of the Hon'ble High Court by raising the issue of her qualification in terms of RRs. All the allegations made by the respondents and the imputation that the applicant had manipulated the appointment were mischievous, incorrect and improper. It would thus ^{be} evident that the impugned order deserved to be set at naught, in the interest of justice.

7. During the oral submissions, both the counsel strongly reiterated the points already raised in their respective written pleas. According to Shri Venkataraman, learned counsel for the applicant, her having been recommended by the authority meant for the purpose- DSSSB- who had found her to be eligible for consideration and the said selection having been reiterated / clarified by the Technical Recruitment Cell, the respondents cannot unilaterally take a decision to terminate her services, on the alleged ground of her not fulfilling the requisite qualification. The orders passed by the Hon'ble Delhi High Court was also to check the authenticity of the documents produced by her, while filing the application. It has not been found that the documents were anything other than genuine. That being the case the action of the respondent in terminating her services had to be partly set aside, according to Shri Venkataraman. On the other hand, Shri Vijaya Pandita, learned counsel for the respondents submits that DSSSB was only a recommendatory authority and it was for the appointing authority to check the eligibility of the individuals with reference to the recruitment rules etc., a point stressed by them to the Department on 5.2.2002. It is only on such checking /scrutiny that the competent authority found that the applicant did not have the requisite

qualification for being appointed as STA (Radiology). Therefore, they have correctly terminated her services as STA (Radiology), that too after giving her a specific Show Cause Notice indicating the proposed action and after obtaining her response. There is no reason whatsoever for any interference in this matter by the Tribunal, prays Shri Pandita.

8. During the pendency of the OA, the Tribunal had, by its order dated 2.1.2002 directed the respondents to consider appointing the applicant as Jr. Radiographer with the approval of DSSSB, within one month from that date. Thereafter the Department had issued an Employment Notice for the said post and intimated the applicant for the same. As the applicant had already crossed 27 years of age, Tribunal gave age relaxation keeping in mind the fact that she had already put in more than 1 1/2 years service.

9. I have carefully considered the matter and perused all the documents brought on record. The facts are not disputed. This application is directed against the action of the respondents, terminating the services of the applicant as STA (Radiology), to which post she was appointed after being recommended for the same by the DSSSB, as the respondents subsequently found that she did not have the requisite qualification of professional experience for being selected to that post. The applicant states that once selection has been made and her case recommended for appointment by the DSSSB, on the basis of which order of appointment was issued to her as STA (Radiology), the respondents could not have unilaterally dispensed with her services. All the more so as the Technical Recruitment Cell had clarified that the applicant was indeed selected for STA (Radiology) and the decision of the Hon'ble Delhi High court

in CWP 5460/99 filed by Delhi Radiographers Welfare Association, was only to verify the authenticity of the documents produced by the applicant, which in fact are not in dispute. On the other hand, the respondents state that her not having fulfilled the necessary qualification of professional experience in terms of the relevant recruitment rules, the recommendation of DSSSB was immaterial and it was for the appointing authority, who are competent in this case, to take an appropriate view and follow it up, which is what exactly they have done.

10. In the above context it would be necessary to refer to the Advertisement dated 1.3.99 in Hindustan Times given by the DSSSB, the recommendatory authority. The qualifications prescribed for the post of STA (Radiology), in the Health and Family Welfare Dept. of GNCT reads as below:

- i) Matriculation or Higher Secondary or Sr. Secondary (10+2) with science;
- ii) Certificate in Radiography (2 years)/ Diploma in Radiography (2 years) or B.Sc. (Radiography) or Radiography Technology (2 years);
- iii) At least three years experience as Tech. Asst. (Radiology) in recognized Institute / Hospital.

Desirable:

- i) Three years experience of teaching to the Radiographer Trainees.

Evidently therefore a person applying for the post of STA Radiology should have in addition to the Academic qualifications specified, at least 3 years experience as TA (Radiology). Nothing has been brought on record to show that the recommendatory authority has been vested with any specific powers to relax the above essential conditions or that they have done in this case. Therefore, it follows that only an applicant with the requisite academic qualification

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and the professional experience for 3 years as TA could have been called for the interview. It is not or it cannot be the applicant's case that she has experience of having worked as Technical Assistant (TA- Radiology) in recognised institute/hospital. In the OA itself she has stated that she had worked as Radiographer from 1994 to 8.12.95 in Sunderlal Jain Charitable Hospital and thereafter from 15.2.1996 in the same capacity in Rajiv Gandhi Cancer Institute and Research Centre. Obviously therefore, she did not have the experience as TA(Radiology) at all and was not eligible to be considered for the post of STA(Radiology). The fact that the recommendatory authority (DSSSB) called her for interview, recommended her name to the respondent No. 3 for appointment, and even clarified the same through its Technical Recruitment Cell, does not alter the position that she could not have been so considered. As fairly conceded by the DSSSB, in their letter No.F(23)(16) (29)/98/Rect. dated 5.2.2002, they are only functioning as a recommendatory authority and it was for the user department to check the eligibility etc. once again with reference to the Recruitment Rules before giving appointment to any candidate. The respondents had every right to scrutinise and verify the academic qualification/professional experience of the candidate and to take a decision, if the candidate was in fact not qualified for being considered. Even the fact that the applicant on the basis of wrong recommendation as well wrong clarification was permitted to function as STA (Radiology), a post she was not eligible for being considered does not at all vest in her any right to continue to function

as such even after the respondent have taken action to rectify the position. The applicant cannot have any grievance as she had been put on notice and her reply was taken and considered before the termination of her services as STA(Radiology) was ordered.

11. Learned counsel for the applicant Shri Venkataraman was at considerable pains to explain that her case should merit acceptance as the CWP 5460/99 filed by Delhi Radiographers Welfare Associations was dismissed and Respondent No. 4 were directed to verify the authenticity of documents and the same were not found to be manipulated or forged. Nothing much turns on this argument. What is to be decided by the competent authority was whether the applicant and necessary qualification of professional experience, declared as essential in the RRs or not. And as it is found that the applicant did not at all have the said qualification of professional experience, the authenticity or otherwise of the documents produced by her is not of any specific relevance. The applicant cannot take any assistance from such a plea and assail the action of the respondent in terminating her services as STA (Radiology).

12. Incidentally I observe that the respondents have considered / are considering the case of the applicant for appointment against the post of Jr. Radiographer for which she is qualified and the necessary relaxation of age also has been granted. The applicant therefore has not been put to any irreparable loss.

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13. In the above view of the matter, I am fully convinced that the applicant had not made out any case for the Tribunal's intervention. The OA, being devoid of any merit, fails and is accordingly dismissed. No costs.



(GOVINDAN S. TAMRI)
MEMBER (A)

Patwal/