

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

OA 2644/99

(9)

New Delhi this the 6th day of July, 2000

Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Shiv Bhagwan Sharma
9/711, Subash Road
Pt.Kishan Datt Street,
South Gandhi Nagar,
Delhi-31

.. Applicant

(By Advocate Ms.Richa Goel)

versus

1. Govt.of NCT of Delhi
through Secretary(Medical)
5,Sham Nath Marg, Delhi.

2. Director,
G.B.Pant Hospital,
Jawahar Lal Nehru Marg, New Delhi.

3. Medical Superintendent
G.B.Pant Hospital,
Jawahar Lal Nehru Marg,
New Delhi.

.. Respondents

(By Advocate Sh.Rajinder Pandita)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The applicant has impugned the order passed by the respondents, which according to him, has been passed orally by the respondents to reject his case for regular appointment to the post of Nursing Orderly, on the ground that he was overaged on 31.10.1998.

2. According to the applicant, his date of birth is 16-10-1970. His name was sponsored by the Employment Exchange. After being interviewed, he was initially engaged on 16.8.1995. According to him, he had completed 240 days of continuous service in one year with the respondents and he became entitled for conferment of Temporary Status and be absorbed him on regular basis. Applicant has stated that

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he was disengaged by the respondents in March, 1997 by a oral order against which he had filed earlier application (OA 2047/97) which was disposed of by Tribunal's order dated 12.3.98 (Ann.A.1). In this order, after referring to the facts, including the fact mentioned above about the applicant's claim that he had served for 240 days which has been controverted by the respondents who have stated that he had rendered only 86 days of casual service in the year 1997, further direction was given in Paragraph 3 of the order which reads as follows:-

However, the applicant having served with the respondents, on casual basis, even for a shorter period, is entitled for consideration along with others who have been sponsored by the Employment Exchange. The learned counsel for the applicant submits that the applicant was not even called when recruitment were made, in the past."

In the circumstances of the case, the OA 2045/97 was disposed of with a direction to the respondents that the applicant should also be called for consideration as and when they make regular appointments to the post of Nursing Orderly.

3. In pursuance of the above order, admittedly, the applicant was called for interview for the post of Nursing Orderly but he could not be selected. This action has been challenged in the present OA.

4. The main contention of the applicant in the present OA is that as he was within the age limit prescribed under the rules when he was first appointed in the year 1995 and was disengaged illegally in 1997, he is entitled for obtaining the benefits for the entire period in respect of age relaxation. Ms. Richa Goel,

learned counsel has relied on the order dated 18.2.2000 in

Smt. Pushpa Sharma and Ors Vs. Govt. of NCT of Delhi and Ors

(OA 2586/99), copy placed at page 39 of the paper book.

5. Shri Rajinder Pandita, learned counsel, on the other hand submits that taking into account the earlier order of the Tribunal passed in OA 2586/99, the respondents have already implemented the same and called him for interview on 30.8.99 and granted him the relaxation in respect of age for the period of service he has rendered with them i.e 86 days. He has also submitted that the present OA is barred by the principles of res-judicata as the applicant could have raised the question of age relaxation, if any, ^{if 18} he had wanted to in that OA. He further submits that this OA is barred under Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985. He has also relied on the Tribunal's order dated 11.5.2000 in Krishna Nand Vs. Govt. of NCT of Delhi and Ors (OA 2643/99), copy placed on record. Learned counsel for the parties have referred to the various relevant facts of the aforesaid judgements of the Tribunal ¹⁸ to support their own averments.

6. After careful consideration of the submissions made by the learned counsel for the parties and the order passed by the Tribunal dated 12.3.1998, the action of the respondents which has been impugned here cannot be held to be either arbitrary or against the provisions of law. The applicant has been called for interview for the post of Nursing Orderly. The respondents have also categorically stated that as he had worked only for 86 days and nothing has been placed on record to contravert

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this, the benefit of that period has also been given to him. As the applicant's date of birth is 16.10.70 and in 1999 he would be about 28 years and 10 months, for the purpose of relaxation of age upto the period he has worked with the respondents, will not assist the applicant in the facts and circumstances of the case. The order of the Tribunal in Krishna Nand's case (Supra) is also on similar facts. Apart from that, it is relevant to note the portion of the order which has been reproduced in Paragraph 2 above, wherein it has been noted that the applicant, has served with the respondents as casual labourer "even for a shorter period" which in this case has to be taken as 86 days, instead of 240 days, as claimed by the applicant. As this question has already been discussed in the previous order filed by the applicant, the same cannot be raised before a coordinate Bench. In the facts and circumstances of the case as the respondents have already granted him age relaxation, he is till over age in accordance with the Recruitment Rules for the post of Orderly Nursing on the cut off date 31.10.1998 it is not possible to direct further to grant him age relaxation as claimed by the applicant.

7. In the result for the reasons given above, OA fails. The same is accordingly dismissed. No costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)