

Central Administrative Tribunal
Principal Bench

OA No. 235/95

Hon'ble Shri J.P.Sharma, Member (J)
Hon'ble Shri B.K.Singh, Member (A)

12/12/95

Miss Neeru d/o
Shri Mehar Chand,
R-2-C/28, Dabri Extension (East),
Behind Gopal Mandir,
New Delhi- 110 085.Applicant

(By Shri D.R.Gupta, Advocate)

Versus

Union of India through:

1. Director General of Health Service,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi.
3. Chief Administrative Officer,
Dr. Ram Manohar Lohia Hospital,
New Delhi.Respondents

(By Shri Madhav Panikar, Advocate)

O R D E R

By Hon'ble Shri J.P.Sharma, Member (J)

The Chief Administrative Officer (Admn.) Dr. Ram Manohar Lohia Hospital issued a requisition on 8.8.94 calling applications for 17 posts of Laboratory Assistant from candidates having matriculation or equivalent qualification from a recognized Board and diploma in Medical Laboratory Technology. Out of these 17 vacancies advertised 3 were reserved for scheduled castes; 2 for scheduled tribes; 4 for O.P.C. and 8 for general category. The scale of post is 975-1540/-. The Directorate of Employment, Delhi sponsored the names of 214 candidates and the applicant was also called

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for interview alongwith others as a general candidate and she was interviewed on 20th October, 1994. By the memo dated 4.11.1994 the applicant was issued an offer of appointment which she accepted. However, by the impugned letter dated 19.1.1995 the offer of appointment issued to the applicant was cancelled because she was not recommended for appointment to the post by the Selection Committee and the offer of appointment was issued to her in place of a candidate of the same name Ms Neeru, a scheduled caste candidate, resident of Krishna Nagar, Delhi who was actually approved by the Selection Committee for the post.

The applicant filed this application on 31.1.1995 stating that in pursuance of the offer of appointment dated 4.11.1994, she got herself medically examined on 14.11.1994 and reported for duty as Lab. Assistant on 15.11.1994 and worked till 20.1.1995. It is stated that after having been selected for the post and given appointment, the order of cancellation is illegal and, therefore, this order dated 19.1.1995 be quashed withdrawing the offer of appointment of the applicant without issuing of any show cause notice.

On notice the respondents contested this application and stated that the applicant was not recommended for the post of Lab. Assistant by the Selection Committee and the post was offered to her erroneously in place of one Ms Neeru, a scheduled caste candidate, who was actually selected for the post of Lab. Assistant by the Selection Committee and since he has worked from 14.11.1994 to 19.1.1995 on the basis of above offer of appointment erroneously sent to her, action is being taken to regulate the same. It is said that there was a list of 214 candidates sponsored by employment exchange for 15 posts of Lab. Assistants and the Selection Committee had on

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the basis of relative performance of candidates at the interview recommended Ms Neeru, a scheduled caste candidate, against one of the scheduled tribe vacancies, on purely ad/hoc basis till regular ST candidate became available. In no circumstances can a general candidate be appointed against a reserved post falling in direct recruitment quota. The selected SC candidate has since joined the post on 15.2.1995 and there is no violation of article 14 of the Constitution of India. The circumstances under which the services of the applicant were terminated by withdrawing the offer of appointment are detailed in the letter of cancellation itself dated 19.1.1995. The applicant, therefore, has no case.

The applicant has also filed the rejoinder reiterating the facts already taken in the original application. It is said that the respondents are governed by the Principle of promissory estoppel as the applicant did not make any false statement and she was given offer of appointment by the respondents themselves. It is further stated that only 7 persons have been shown as having been selected against 8 vacancies of general category.

We have heard the learned counsel for the applicant at length as well as Shri Madhav Panikar counsel for the respondents and perused the record. We have seen the original record and found that in September, 1994 the number of vacancies have been reduced from 17 to 15 and the employment exchange was also informed in that regard. The select list prepared on the recommendation of the Selection Committee is reproduced below:

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"Minutes of the Interview Board

The selection committee met on 19.10.94 under the Chairmanship of Dr. SC Sharma, Sr. Physician, to select candidates for the posts of Laboratory Assistant. Following members attended the Interview Board:

1. Dr. N.Chaturvedi	Member
2. Dr(Mrs) Madhuri Sharma	Member
3. Dr. J.C. Roy	Member
4. Dr. G.B.Bhatt	Member
5. Chief Administrative Officer	Member

The break-up of the vacancy position is as under:

Unreserved	- 7
S.C.	- 3
S.T.	- 2
0BC	- 3
Total	- 17

A total of 117 candidates were called for the interview, out of which 6 were absent. The Interview was held for 3 days w.e.f. 19th Oct. to 21st October, 1994.

On the basis of the performance in the interview, the Board found the following candidates fit for the post of Laboratory Assistant against the various unreserved and reserved categories.

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Unreserved: 1. Jhabbar Singh at s.n. 3 of the dept. candidate
at page 9.

2. Ms. Raj Bala Sr. No. 8
3. Sh. Kadam Singh Sr. No. 7
4. Sh. Bishan Swaroop at Sr. No. 1
5. Sh. Jagdish Chandra Pandey Sr. No. 2
6. Ms. Sapna Jain at Sr. No. 50.
7. Sh. Gyatri Prashad at sr. no. 53.

SC Candidate: 1. Ms. Satinderjeet at sr. no. 16

2. Sh. Manoj Kumar at sr. no. 27
3. Sh. Yash Pal Singh at sl. no. 8

OBC Candidate: 1. Jagdamba Pd. Yadav at sr. no. 63

2. Rajesh Kukra at sr. no. 88
3. Miss Sarita at sr. No. 83

Following is the panel for unreserved category:

1. Sh. Sanjay Kaushik
2. Ms. Neelam Saxena
3. Sh. Gopal Dutt
4. Ms. Seema Sharma
5. Ms. Leena Sharma
6. Ms. Reeta Rich

Panel for SC category :

1. Sh. Padam Singh sr. no. 21
2. Ms. Neeru sr. no. 6
3. Ms. Sunita sr. no. 7
4. Ms. Ruby Bhatt at sr. no. 11
5. Ms. Neelam at sr. no. 45

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The Board recommends the above candidates in various categories for appointment/panel (as specified above) for the post of Laboratory Assistants.

No ST candidate was found suitable. These vacancies may be filled up as per rules."

The above list shows that there is a select list and panel thereof and the name of the applicant i.e. Ms Neeru does not appear either in the select list or in the panel. It is the name of Miss Neeru, SC candidate, whose name appears in the panel. Since the vacancy was reserved for ST category so the SC candidate has been given adhoc appointment in that place.

Further we also got another chart prepared by the respondents duly signed by the Administrative Officer showing the actual position of the marks obtained and the requisite information given has been taken on record and a copy has also been given to the counsel for the applicant. This chart is quoted below:

"Dr. Ram Manohar Lohia Hospital New Delhi:

Appointment of Laboratory Assistants.

No. of posts	15
Unreserved	7
Sch. caste	3
Sch. tribe	2
OBC	3

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UN-RESERVED

	Marks obtained
1. Sh. Jhabber Singh	78
2. Mrs. Raj Bala	77
3. Sh. Kadam Singh	76
4. Sh. Vishan Saroop	75
5. Sh. Jagdish Chander Pandey	74
6. Mrs. Sapna Jain	73 offer sent but not joined
7. Miss Gyatri Parshad	72
8. Sh. Sanjay Kaushik	70 Taken from the waiting list against Sapna Jain.

SCH.CASTE

1. Miss Satvinder Jeet	70
2. Sh. Manoj Kumar	66
3. Sh. Yaspal	64

SCH.TRIBE : None of the candidate was selected as they
were not found suitable.

OBC

1. Sh. Jagdamba Parshad Yadav	45
2. Sh. Rajesh Kukra	43
3. Miss Sarita	40

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The following persons were appointed on ad-hoc basis from Sch. Caste Candidates against the posts reserved for Sch. Tribes, till candidates belonging to ST category became available.

1. Sh. Padam 63
2. Miss Neeru 60

Note: It is evident from the record that Miss Neeru (Unreserved) D/o Shri Mehar Chand was neither in the selection list nor in the waiting list. She scored 30 marks."

A persual of the above will show that the applicant is a general candidate category has got only 30 marks. Last candidate appointed from the panel in the seven vacancies due to non joining of Mrs. Sapna Jain is Shri Sanjay Kaushik who secured 70 marks. Thus the applicant was too below in merit either to be entered in the select list or in the panel. Further, we find that the name of Ms. Neeru, a SC candidate, appears and she secured 60 marks and other SC candidate Shri Padam Singh secured 63 marks, whose name also appears in the panel and both of them have been given the post reserved for ST candidates till such time ST candidates become available.

The above position is, therefore, clear that the offer of appointment issued to the applicant on 4.11.1994 was under a mistake of fact committed by the office of the Administrative Officer. There is no estoppel against the mistake which has crept inadvertently because of the similarity of name of general category candidate i.e. applicant and that of SC category candidate i.e. Ms Neeru. We have also seen the original record and the marks obtained by the applicant in interview. The contention of the

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applicant's counsel is that interview has gone for three days consecutively and as such a separate record should have been provided but the learned counsel for the respondents explained that one common list of the sponsored candidates i.e. 214 was prepared showing their bio-data and in the remarks column, the marks given to the candidates has been written.

We find that this record is duly maintained and does not show that it is not genuine or has been tampered with. The contention of the applicant's counsel that the members of the Selection Committee has signed on different dates has nothing to do that the Selection Committee as the members have signed subsequently on different dates but that does not mean that the list has been subsequently prepared or that it has been altered. Moreover, the applicant has not challenged the procedure adopted in selection. Here the grievance has been that the offer of appointment given to her on 4.11.1994 has been withdrawn without giving her a show cause notice. We find that in such a case where the applicant has no right to be appointed as she was not recommended by the Selection Committee so in such an event no notice was required and we are fortified in our view by the decision of the Principal Bench in the case of Rishi Pal Vs. UOI reported in 1991(1) SLJ page 216. The learned counsel for the respondents has highlighted para 9 of the report in which it is clearly mentioned that the principle of natural justice will not be attracted nor the provision of Article 307 of the Constitution of India. It was a mistake of fact and because of similarity in name, the offer of appointment was wrongly issued and the respondents are within their right to withdraw the same as if affected a selected person and that too of a reserved post.

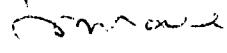
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Thus, we find that the impugned order does not call for any interference. The application is, therefore, dismissed leaving the parties to bear their own costs.


(B.K. Singh)

Member (A)


(J.P. Sharma)

Member (J)

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