

Central Administrative Tribunal
Principal Bench

O.A. No. 2114 of 1994

(3)

New Delhi, dated this the 21st November, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Dhirender Kumar,
S/o Shri Rajeshwar Sharma,
R/o F-48, Lado Sarai,
Mehrauli,
New Delhi-110030.

... Applicant

(Applicant in person)

Versus

1. Govt. of NCT of Delhi
through the Secretary (Medical),
Delhi Administration,
5, Sham Nath Marg, Delhi.
2. The Medical Superintendent,
L.N.J.P. Hospital,
New Delhi-110002. ... Respondents

(By Advocate: Shri Ashwani Bhardwaj
proxy counsel for Shri Rajan Sharma)

ORDER

S.R. ADIGE, VC (A)

In this O.A. bearing No. 2114/94 applicant had prayed for quashing of the oral termination order dated 4.10.93 by which his name was struck off the rolls and had sought reinstatement with all consequential benefits.

2. O.A. No. 2114/94 was disposed of after hearing applicant's counsel, and in the absence of ^{ex parte} respondents' counsel, by order dated 22.7.99, by setting aside the oral termination order, and holding that applicant would be deemed to be in service; but leaving it open to the department to start a fresh departmental proceedings against applicant in

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accordance with law, if so advised.

3. Thereupon respondents filed RA No.234/99 seeking review of the Tribunal's aforesaid order dated 22.7.99 in O.A. No.2114/94. That R.A. was allowed by order dated 31.7.2000 and O.A.No.2114/94 was listed for fresh hearing.

4. Meanwhile applicant has now filed M.A.No.1763/2001 seeking to amend O.A.No.2114/94.

5. We have heard applicant who argued his case in person and Shri Bhardwaj for respondents. Applicant has also filed written submissions, which are taken on record.

6. Applicant's case is that he was initially engaged as a bearer on daily wages in LNJP Hospital Departmental Canteen w.e.f. August, 1991. In 1991 a regular vacancy of clerk became available consequent to the resignation of the incumbent one Shri Kanual Kumar. As applicant was enrolled in the Employment Exchange, ^{he was} served with Memo dated 1.7.91 (Annexure. P-1) asking him to appear before a selection board on 30.8.91. He claims that he was interviewed by the Members of the Managing Committee of the Departmental Canteen and upon being selected was appointed as Clerk vide Memo dated 23.9.91 (Ann.P-II) w.e.f. 1.10.91. He claims that he was performing his duties satisfactorily all along, when all of a sudden on 4.10.93, he was restrained from attending to his duties by the general manager and upon enquiry, was told orally that the Dy. M.S. had ordered on 4.10.93 to strike off his name from the rolls, which applicant

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claims is illegal and arbitrary. In this connection he has filed copies of various documents from 1991 onwards (pages 15, 17, 18 and 19 etc. of OA) in which he is described as clerk, and also asserts that he was paid wages of a clerk.

7. Respondents in their reply deny these contentions. They contend that Memos dated 1.7.91 and 23.9.91 are false and fabricated documents procured by applicant in connivance with the then G.M. V.N. Sharma who is himself facing a DE on various charges. Respondents aver that applicant was engaged on trial basis on leave vacancy, on purely adhoc basis on a vacant post of bearer in August, 1991 (Annexure-R-10), after applicant had himself applied for appointment as bearer on 2.8.91 (Annexure.R-12). It is further stated that applicant was one of the 6 cooks/bearers appointed on leave vacancy, whose names were struck off the rolls w.e.f. 4.10.93 (Annexure-R.4) 4 of those employees had filed OA No.2186/93 in CAT which was dismissed by order dated 6.1.95.

8. Applicant has filed rejoinder in which he has broadly reiterated the stand taken in the OA.

9. We have heard applicant who argued his case in person and Shri Bhardwaj for respondents. Applicant has also filed written submissions which are taken on record. We have considered the matter carefully.

10. The first question for adjudication is as to whether applicant was validly appointed as Clerk, as claimed by him. In this connection there is merit in respondents' contention that when as per applicant's own averments he was appointed as bearer in August, 1991, how was it that in Memo dated

1.7.91 his name is stated to have been sponsored by the Canteen Vidyut Bhawan for the post of Clerk. Furthermore the minutes of the meeting dated 30.8.91 in the chamber of the M.S. exactly on the date and time of the interview (Annexure-R1) make no mention of the selection of applicant or any other person. Furthermore as per entries in October, 1991 attendance register, applicant has been shown in place of Shri Kanwal Kumar who submitted his resignation on 1.10.91 (Annexure-R2), but it is surprising that the GM would have issued an interview letter on 1.7.91 for a post which fell vacant in October, 1991. Respondents also point out that the despatch number of the interview letter dated 1.7.91 is in 5 digits, whereas interview letter issued by the same authority i.e. the GM in the same context i.e. interview letter for appointment to the post of Cook, bearer etc. issued on 14.6.91 in regard to Smt. Kusum Sharma and Shri Satish (Annexure-R-3/A & B) have only 4 digits, that is within the period of barely 16 days there is a difference of 10,000 numbers which is practically impossible. Respondents further point out that the GM is not the appointing authority in the case of clerks, and it is the Hon'ble Secretary of Managing Committee who is the appointing authority and hence the appointment of applicant as clerk is illegal ab initio. It is further pointed out that applicant's name does not appear in Hospital Order Part II No.503 issued on 28.10.92 (Annexure-R5) and order Part II No.56 issued on 7.1.93 (Annexure-R6). Rather the comparative statement of Canteen employees

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prepared on 1.10.91 (Annexure R-7) shows applicant's name as Bearer and not clerk.

11. These specific and detailed averments of respondents in their reply have not been categorically and specifically denied by applicant in his rejoinder. His only defence is that "in any case the appointment was given by respondents' own officer the General Manager, who is neither related to applicant, nor has any link with him. Under what circumstances and why/how the appointment was given to him is now of applicant's concern." He also invites attention to the copies of various documents annexed with his OA in which he is described as Clerk.

12. In this connection, a perusal of CAT, P.B. order dated 6.1.95 in O.A.No.2186/93 in which one of us (Mr. S.R.Adige, Member(A) as he then was) was a party reveals that in that order the Bench has observed as follows:

"On the other hand the materials on record reveal that the direct recruitment was made by the Members of a Board nominated by Shri V.N.Sharma, G.M. at his own level, without a legal authority and without the inclusion of Chairman, Managing Committee and the Honorary Secretary..... In this connection it must be remembered that when the rules themselves have been violated in making appointments, it gives no enforceable right to the applicants in respect of such appointments, even if the appointee themselves were unaware that the appointments were made in violation of the rule."

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13. The aforesaid observations, which have not been shown to have been stayed, modified or set aside were made in the context of the order dated 4.10.93 terminating the services of applicant as well as five others as cook/bearer but they would be equally applicable in regard to applicant's claim to have been appointed as Clerk by the said V.N. Sharma. As pointed out above, respondents have stated in their reply that applicants so called appointment documents as clerk are false and fabricated and were produced in connivance with V.N.Sharma who had no authority to appoint applicant as Clerk. Applicant in his rejoinder has not denied that V.N. Sharma had no authority to appoint him as clerk. He only asserts that he was appointed as clerk by V.N.Sharma and worked as such continuously till he was terminated by oral orders on 4.10.93, but if as is clear, applicant's appointment as clerk was made by an authority not competent to appoint him and his appointment has thus been made in violation of rules, it gives applicant, no enforceable legal right to claim reinstatement.

14. It also needs to be mentioned that Vidya Nand Sharma had challenged his own dismissal from service consequent to a D.E., vide disciplinary authority's order dated 13.1.98 in O.A. No. 652/2000. That O.A. was dismissed by order dated 20.7.2000. Meanwhile he had separately filed O.A. No. 272/2000 seeking to challenge the Tribunal's

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order dated 6.1.95 in O.A.No.2816/93. That O.A. was also dismissed by order dated 20.7.2000 (copies of both orders taken on record).

15. In M.A.No.1763/2001 applicant has sought to amend the present O.A. after a period of 8 years on certain grounds. One of the grounds is that O.A.No.2800/91 was allowed to be withdrawn by order dated 30.9.93 because it was submitted to the Bench that during the pendency of that O.A. these applicants had got the relief. Applicant contends in the present M.A. that he was at S.I.No.23 in that O.A., and his consent for withdrawal of the O.A. was not taken, despite his not having been granted the relief. He also states that an Addl. ground he wants to take is in regard to O.M. dated 10.9.93 whereby temporary status is to be granted to casual labourers who have put in 240 days continuous service in a year.

16. Neither of the aforesaid grounds warrant amendment to the present O.A. If O.A.No.2800/91 was allowed to be withdrawn (in which applicant claims he was a party) without his consent, that cannot be made a ground to amend the present O.A., and applicant's remedies lie elsewhere. Similarly as the post of Clerk is not that a casual labourer the O.M. dated 10.9.93 has no application to the facts and circumstances of the present case.

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17. In the result the O.A. warrants no
interference and is dismissed along with
M.A. No. 1763/2001. No costs.

A.Vedavalli
21/11/2001
(DR.A.VEDAVALLI)
MEMBER (J)

Arulogin
(S.R.ADIGE)
VICE CHAIRMAN (A)

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