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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. No.1409/94 and O.A. No.1606/94

New Delhi, dated this 24th day of October 1994.

HON'BLE MR. J.P. SHARMA, MEMBER (J)

HON'BLE MR. B.K. SINGH, MEMBER (A)

O.A. No.1409/94

Mrs. Kamlesh Bajaj,
w/o Shri Arjan Dass Bajaj,
R/o BJ-85, Poorvi Shalimar Bagh,
Delhi-110052.

... Applicant.

O.A. No.1606/94

Mrs. Sushil Puri,
w/o Shri J.L. Puri,
R/o 1-B/94-95, Lajpat Nagar,
New Delhi-110024.

... Applicant.

By Advocate: Shri R.K. Kapoor,
Shri M.K. Singh,
Shri P. Varma.

(For both the applicants.)

Versus

1. The Secretary (Medical)
Govt. of National Capital Territory of Delhi,
5, Sham Nath Marg,
Delhi.

2. Ministry of Health through Secretary,
Ministry of Medical, Public Health,
Law, Justice, Legislative Affairs,
Govt. of National Capital Territory of Delhi,
Old Secretariat,
Delhi.

3. Ms. S. Sama,
w/o Shri Ram Murti,
R/o A-29, Kirti Nagar,
New Delhi.

... Respondents.

By Advocate: Shri Surat Singh,
Mrs. Shyamla Pappu,
Shri Jog Singh,
Shri Anil Amrit.

(For Respondents in both the OAs.)

ORDER



Hon'ble Mr. B.K. Singh.

This D.A. No.1409/94 by Mrs. Kamlesh Bajaj and D.A. No.1606/94 by Mrs. Sushil Puri have been filed against Order No.F/89/12/94/317 (Annexure A-I) dated 9.7.1994 and Order No.F/89/12/94/LNJP/229/7470 (Annexure A-I-A).

2. The admitted facts of these cases are that the respondents 1 & 2 have appointed Ms. Surekha Sama [✓] [✓] via their aforesaid orders as the Principal of the College of Nursing, Lok Nayak Jai Prakash Narain Hospital. This College, before upgradation was a School of Nursing since 1936. The school was upgraded into a College of Nursing as per the decision of Lt. Governor taken in 1992. In order to implement the decision, the College started functioning since March 1993.

The admission started from August 1993 for B.Sc. (Hons.) in Nursing. Mrs. Kamlesh Bajaj, who is the applicant in

D.A. No.1409/94 was appointed in the School of Nursing as Sister Tutor on 6.9.1971 and Mrs. Sushil Puri was appointed in the School of Nursing as Sister Tutor on

8.12.1972. In the Seniority List of the Sister Tutors teaching in the Nursing School, who were brought on the

staff of the College as Sister Tutor were Mrs. Kamlesh Bajaj, Mrs. Sushil Puri and Ms. Surekha Sama, and the College runs

B.Sc. (Hons.) in Nursing. In the list of teaching staff, the name of Mrs. Kamlesh Bajaji is at Sl.No.4, the name of

Mrs. Sushil Puri is at Sl.No.5 and that Ms. Surekha Sama is at Sl.No.11. The College proposed to have one Principal and 2 Senior Lecturers/Lecturers pending sanction/approval

of the Government for creation of these posts. In the meanwhile, it was decided in the exigencies of public service, to fill up the post of Lecturers/Senior Lecturers

in the College of Nursing. The cases of all the 3 candidates viz. Mrs. Kamlesh Bajaj, Mrs. Sushil Puri and Ms. Surekha Sama were considered by the respondents and Ms. Surekha Sama was appointed as a Lecturer and the first order under challenge is her appointment as a Lecturer. Subsequently, she was appointed as Principal after having been appointed earlier as a Lecturer in the College of Nursing. The applicants in the present OAs have challenged the aforesaid 2 orders passed by the respondents on the ground that these are violative of Article 14 and 16 of the Constitution and that the respondents were not justified in cancelling the orders of the Additional Medical Superintendent, LNJPN Hospital, who appointed Mrs. Kamlesh Bajaj as Principal only after 24 hours. According to him, the respondents have acted in bad faith. The relief prayed for in 2 OAs are the same and the same arguments have been taken by the applicants against the appointment of Ms. Surekha Sama and therefore, these 2 OAs have been clubbed together, since the issues involved are identical and the same orders have been challenged by both the applicants.

The relief prayed for in both the OAs are that the Tribunal should quash the impugned order at Annexure A-I and Annexure A-I-A.

3. A notice was issued to the respondent, who have filed their reply and contested the application and grant of relief prayed for. We heard the learned counsels for the parties at great length and perused the records of the case and departmental file produced before us.

4. We heard the learned counsel Shri R.K. Kapoor for the applicants and the arguments continued on several dates. We heard Mr. R.K. Kapoor on 29.7.94 and for the respondents we heard Shri Surat Singh for Respondents 1 & 2

9 and Mrs. Shyamla Pappu and Shri Jog Singh for Respondent No.3 i.e. Ms. Surekha Sama. We again heard them on 5.8.94 when Shri M.K. Kapoor appeared for the applicant and, Shri Surat Singh and Shri Jog Singh appeared for the respondents 1, 2 and 3 respectively. Shri R.K. Kapoor, Shri P. Verma and Shri M.K. Singh appeared for the applicants on 8.9.94 in O.A. No.1606/94 with O.A. No.1409/94 and Shri Surat Singh, Mrs. Shyamla Pappu, Shri Jog Singh and Shri Anil Amrit appeared on behalf of the respondents 1, 2 and 3 respectively. The arguments were concluded on 27.9.1994, when Mr. R.K. Kapoor with Shri M.K. Singh argued for the applicants and Shri Jog Singh, _____ and Shri Surat Singh argued on behalf of the respondents 1, 2 and 3 respectively. The learned counsels for the applicants have argued that Mrs. Maklesh Bajaj and Mrs. Sushil Puri were the senior most Sister Tutors appointed in 1971 and 1972 respectively and subsequently they obtained their Masters Degrees also, which is the requisite qualification for appointment as Lecturer/Principal and that they were over-looked in the appointment of Lecturers/Principal in comparison to Ms. Surekha Sama, who is appointed on 21.1.1988 and according to the learned counsel, she does not come within the zone of consideration for the post of Lecturer/Principal. He further argued that the applicants Mrs. Kamlesh Bajaj and Mrs. Sushil Puri were not even considered by the respondents 1 & 2 while making the appointment of Ms. Surekha Sama to the post of Lecturer and subsequently to the post of Principal, and since they did not get any response from the respondents on their representation, they have approached this Hon'ble Tribunal for redressal of their grievances.

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5. These applicant^s were filed on 11.7.94. It was further argued that no show cause notice was issued to the applicants because it amounted to their supersession, as result of the orders made on 9.7.1994. Therefore, there was clear violation of Principle of Natural Justice in cancelling the order issued by the Additional Medical Superintendent appointing Mrs. Kamlesh Bajaj as the Principal of the College of Nursing, LNJP Hospital. The applicants Mrs. Kamlesh Bajaj and Mrs. Sushil Puri both have been superseded and ignored. It was further argued that no DPC was held for the purpose of regular appointment for the post of Principal and as such the impugned order is against all norms and procedures and that it is without jurisdiction, because respondents No.1 & 2 are not competent to make such adhoc appointment without holding DPC meeting for the same.

6. It is further alleged that the respondents have acted malafide and on the principle of pick and choose in order to show favouritism to Ms. Surekha Sama with prejudice to all the rights and entitlements of the applicants 1 & 2. He further argued that even for the purpose of officiating appointment, adhoc appointment, temporary appointment, the senior most person should have been considered eligible to hold the post of Lecturer/Principal. It was further argued that both the applicants in the 2 QAs are having M.Sc. (Nursing) and they have the experience of 23 years and 22 years respectively; whereas Ms. Surekha Sama, though M. Phil in Nursing is having only 6 years experience as Sister Tutor. In the absence of any rules and criteria for appointment, the respondents had adopted the method of pick and choose in an arbitrary and malafide

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manner and on the aforesaid ground, all the learned counsels appearing for the applicants in the 2 OAs wanted the orders to be quashed and wanted ~~the~~ appointment of any of them i.e. Mrs. Kamlesh Bajaj and Mrs. Sushil Puri to the post on the basis of their seniority.

7. The learned counsels appearing for the respondents 1, 2 and 3 filed the Recruitment Rules of AIIMS for direct recruitment of Senior Lecturer/Lecturer/Principal. The post of Principal and Lecturer are Group 'A' posts and these have not been created yet for want of sanction from the Ministry of Home Affairs. No extra remuneration is admissible to the incumbent for holding the post of Lecturer or Principal till the post is regularly created by the Ministry of Home Affairs in consultation with the Department of Expenditure, Ministry of Finance. The Rules, according to them, is still under finalisation and they propose to adopt the recruitment rules of AIIMS for Recruitment of Lecturer/Senior Lecturer/Principal of the Nursing College under the LNJPN Hospital. After the posts are created and regular pay scales sanctioned and the recruitment rules are finalised, UPSC will be asked to advertise the post and to select a regular incumbent to hold the post of Principal/Lecturer. Pending sanction of the Government of India, the respondents 1 & 2, after due deliberation, as is reflected from the files produced before the Honble Court, they made adhoc appointment on the basis of the proposed recruitment rules and the orders of the Minister of Health and Medical Education were obtained before Ms. Surekha Sama was appointed as Lecturer and subsequently when she was appointed as Principal. A copy of the Notings dated 10.5.94 alongwith the due approval of the Minister had been annexed as Annexure-A to the Counter reply. When the School of Nursing was upgraded to the College of Nursing, Smt. S. Wasan, who was the Principal of the School of Nursing, was appointed on an

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officiating basis as Principal, College of Nursing and the orders were issued under the signature of the then Joint Secretary (Medical), after the same had been approved by the Chief Secretary. They have also annexed a copy of the letter dated 24.11.1992 as Annexure-C to support their contention. They have argued that it is not the Additional Medical Superintendent, LNJPN Hospital, who is competent to make this appointment, but the competent authority is the Government of the National Capital Territory, Delhi to make such appointment of Senior Lecturer/Lecturer/Principal in anticipation of formal recruitment by UPSC to these Grade 'A' posts. A rejoinder has also been filed by the applicants reiterating the averments made in the 2 OAs.

8. After hearing the learned counsels, we have come to the conclusion that both Mrs. Kamlesh Bajaj and Mrs. Sushil Puria are senior to the Respondent Ms. Surekha Sama as Sister Tutor, but if we go by the Draft Recruit Rules proposed to be adopted by the Government of the National Capital Territory, Delhi, the requisite qualifications for Principal in the grade of Rs.51700-50000 is a Master's Degree in Nursing with advanced specialisation in Nursing, and for Lecturer the requisite qualification is a Master's Degree in Nursing from a recognised Institution/University and for both 5 years total experience of Nursing including two years teaching experience.

9. We do not rely on the extracts of relevant notes but we perused the relevant records in this regard.

The matter regarding filling up of Group 'A' post in the College of Nursing is only to run the affairs of the College in a smooth manner till the posts are regularly created and sanction received from the Government of India, Ministry of Home Affairs in consultation with the Department of Expenditure, Ministry of Finance. The recruitment rules, which are in the process of finalisation, are also expected

to take time in consultation with UPSC and DoPT, therefore, stop gap arrangements have to be made. It is true that in the relevant file, the Hon'ble Minister of Health and the Secretary (Medical) have observed that the seniority should be strictly adhered to in making adhoc appointments. While dealing with the subject, we also noted that Mrs. S. Wesan Sama was officiating as Principal since December 1992 and was due to retire on 30th June 1994 and as such it was absolutely necessary to make appointment quickly of a suitable candidate from amongst available candidates to fill up the vacancy due to superannuation of Mrs. S. Wesan. It has also been made clear in the file that no extra remuneration would be made ~~available~~ to the incumbent. There are 2 posts of Lecturers and according to them there were 3 claimants viz.

a) Ms. Surekha Sama, Master of Nursing (1986), M. Phil. in Nursing (1988); 5 years teaching experience as Sister Tutor.

b) Mrs. Sushil Puri, Master of Nursing (1987); 20 years experience as Sister Tutor.

c) Mrs. Kamlesh Bajaj, Master of Nursing (1993); 21 years experience as Sister Tutor.

10. While examining the 3 cases, they took into account the Recruitment Rules followed by AIIMS wherein the essential qualification was 5 years experience in all with minimum of 2 years teaching experience in Nursing, after obtaining the prescribed Post-graduate qualification. By implication, the respondents inferred that the seniority could be counted from the date the Master's degree was obtained in Nursing by the candidates. The upper age limit prescribed by AIIMS is 50 years and of the 3 candidates available, only Ms. Surekha Sama was found to be below 50 years and both Mrs.

Kamlesh Bajaj and Mrs. Sushil Puri were above 50 years of age. It was also found that Ms. Surekha Sama had obtained the Masters Degree in Nursing in 1986; whereas the other 2 candidates obtained their degrees in 1993 and 1987 respectively. In addition, the respondents also found that Ms. Surekha Sama had done M.Phil also in Nursing, which the other candidates did not possess. Therefore, on these considerations, Ms. Surekha Sama was the only candidate found eligible for recruitment as Senior Lecturer and after her appointment as Senior Lecturer, she automatically became eligible for appointment as Principal on adhoc basis.

We have carefully gone through the rival contentions in this regard.

11. The Recruitment Rules are still in the process of finalisation and the same is likely to take some time.

The posts of Senior Lecturer/Lecturer/Principal have not yet been sanctioned by the Government of India, Ministry of Home Affairs. In the absence of any Recruitment Rules, and in the absence of regular sanction for creation of these posts, the respondents, after due deliberation, found that

Ms. Surekha Sama is senior on the basis of her having obtained the Masters Degree in earlier than the two, i.e.

1986; whereas Mrs. Sushil Puri obtained the degree in 1987 and Mrs. Kamlesh Bajaj obtained the same in 1993. If we

go strictly by the year in which the Masters Degree is obtained and we go by 5 years total experience of which

2 years should be teaching one and that, the candidates

should be 50 years or below, we find that Ms. Surekha Sama is the only candidate eligible to hold the post of Senior Lecturer/Principal.

12. A grievance can only arise, if there is violation with respect to recruitment rules, tenure and

other conditions of service. It is admitted by both the parties that the posts are not yet sanctioned and that no extra remuneration is provided for holding the charge of the post of Senior Lecturer/Principal. The Recruitment Rules are under process of finalisation. The respondents propose to follow the Rules of the AIIMS for direct recruitment of Principal/Senior Lecturer/Lecturer, when the posts are regularly sanctioned and.... The rules laid down for eligibility have been followed by the respondents as is indicated by the departmental files placed before us. The notings on the file are clear and un-ambiguous. On the basis of the criteria laid down by the AIIMS, the respondents have conclusively established that Ms. Surekha Sama is the only eligible candidate for the post of Senior Lecturer/Lecturer/and also for Principal and that is the reason why she was first appointed as Senior Lecturer and subsequently as Principal. The crucial date of determining the inter-se seniority is the year of obtaining the Masters Degree, 5 years total experience including 2 years teaching experience and 53 years of age. The net result has been that the 2 candidates, who are above 50 years, who are junior to Ms. S. Sama so far as the degree is concerned, were considered, but were found ineligible. The contention of the learned counsel for the applicant is not correct that they were not considered. The files indicate that the candidature of Mrs. Kamlesh Bajaj and Mrs. Sushil Puri was considered first for appointment of Senior Lecturer and both were found ineligible and that is how Ms. Surekha Sama was appointed as Senior Lecturer. Once she was a lone candidate eligible, she was eligible to appoint as Senior Lecturer, and once she got the berth of Senior Lecturer, she could easily be appointed as Principal to fill up the vacancy caused as a result of the super-annuation of Mrs. S. Wasan. When no Recruitment Rules exist, there is no

violation of any statutory rules mandatory or directory.

The Government of the National Capital Territory of Delhi at the highest level has taken a decision, after due deliberation, to appoint Ms. Surekha Sama, who according to them is the only eligible and most qualified candidate to hold the post of Principal ~~and~~ in the exigencies of public service without any extra remuneration till the Group 'A' posts are created after receiving sanction from Ministry of Home Affairs in consultation with Ministry of Finance, Govt. of India and in the meanwhile, the draft recruitment rules also could be finalised and UPSC would then be requested to advertise the post and select a candidate, who fulfils all the qualifications. Till this is done, though Ms. Surekha Sama fulfils the qualifications, but the appointment is made only on a temporary/adhoc basis till the regular incumbent joins, after the post is created on receipt of sanction from the Government of India. The stop gap arrangements made is on the basis of merit and on the basis of Ms. Surekha Sama being the only eligible candidate against the other 2 i.e. Mrs. Kamlesh Bajaj and Mrs. Sushil Puri being ineligible to hold even the post of Senior Lecturer, leave aside the post of Principal. The balance of convenience is in favour of the respondents, since they are the best judges of the situation, and they have taken a conscious decision strictly following the rules of seniority incorporated in the Rules of AIIMS, which they propose to adopt. The candidate appointed by them is not only eligible but is the most qualified also and the respondents 1 & 2 have the power to appoint a suitable candidate till the posts are created, till the UPSC advertises and makes direct recruitment to fill up the post of Principal/Senior Lecturer/Lecturer. The rules of transaction of business also confer the power on the Government of National Capital Territory of Delhi i.e. Minister and the Secretary

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to cancel an irregular appointment made without any jurisdiction by the Additional Medical Superintendent of LNJPN Hospital and the same rules of business also vest them with full powers to make appointment after selecting the most qualified candidate amongst of 3 available candidates.

The Additional Medical Superintendent is not at all competent to make even an adhoc appointment to any Group 'A' post; whereas the Minister and Secretary Incharge of Health and Medical Education are fully competent to do so. There is a bonafide exercise of discretion and powers vested in the Minister and Secretary and they have followed the procedures for deciding the seniority on the basis of the AIIMS Rules for appointment of Senior Lecturer and subsequently for appointment of Principal and Ms. Surekha Sama for the post of Principal. The Minister assisted by his Secretary is the competent authority in terms of the rules of transaction of business to make adhoc appointments in anticipation of regular appointment by UPSC. We do not find any defect or irregularity in warranting judicial intervention. We

are fortified in our view by ~~xxxxxx~~ the Hon'ble Supreme Court decision in the case of Rangaswamy as Appellant vs. Government of AP as a respondent, - AIR 1990 - SC - 535.

It was laid down that it is not for the courts to adjudge the suitability of the candidates or to scrutinise the relevancy of qualification, and recruitment rules, unless they are un-reasonable or violative of any Article of

Constitution or in-consistent with any statutory rules.

It falls within the domain of Executive to frame recruitment rules, to prescribe qualification for selection of

suitable candidates to fill up the vacancy by promotion or by direct recruitment. In case of any grievance, in

that respect, the appropriate authority must be moved
by the State Government to the concerned authority
for review of prescribed qualification. Courts must
be guided by the principle of non-interference and
refrain from assessing the relevancy and suitability of
qualification of the candidates.

13. During the course of argument and in the OA they

have raised and taken the plea of malafide. The onus
lies on the applicants to prove by concrete instances
and proper pleadings that there was an ulterior motive
to eliminate Mrs. Kamlesh Bajaj and Mrs. Sushil Puri.

While going through the pleadings on record, we do not
find that the applicants have cited a single instance to
establish any sort of malafide on the part of either

Joint Secretary or on the part of secretary or on the
part of the Minister. As observed by the Chief Justice

of Andhra Pradesh in Mr. Chandra Chud in K. Nagraj vs. State of A.P. (1985)

SC 523 (36), "the burden to establish the malafide is a
heavy burden to discharge. Vague and casual allegations

suggesting that a certain act was done with an ulterior

motive cannot be accepted without proper pleadings and
adequate proof". We do not find any pleadings or evidence
to prove malafide on the part of the respondents. All the

contentions raised by the learned counsels for the applicants
are baseless and untenable. However, Ms. S. Sama will not be entitled to
any pay, allowances for these posts i.e. Lecturer as well as
Principal nor this stop gap arrangement would give any weight-
age in selection for both these posts as well as for seniority
in both the grades.

14. We do not find any mis-use or abuse of power
conferred by Rules of transaction of Government business
and therefore, judicial intervention is totally un-called

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for and the OA is dismissed in limine as devoid of any merit or substance leaving the parties to bear their own cost. A copy of this order may be placed in both the OAs.

(B.K. SINGH)
MEMBER (A)

(J.P. SHARMA)
MEMBER (J)

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Attested

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