

35

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. No.99 of 2002
C.P. No.104 of 2002
IN
O.A. No.782 of 2000**

New Delhi, this the 6th day of September, 2002

**HON'BLE SHRI M.P. SINGH, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Pramod Kumar
Village Paprawat
P.O. Najafgarh,
Delhi-110043.

.....Applicant

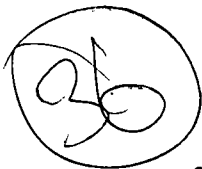
(By Advocate : Dr. K.S. Chauhan)

VERSUS

1. Smt. Shailaja Chandra, I.A.S.,
Chief Secretary,
Govt. of NCT of Delhi.
I.P. Estate,
New Delhi -110002.
2. Smt. Adarsh Mishra, I.A.S.,
Principal Secretary,
(Health & Family Welfare)
Delhi Secretariat,
I.P. Estate,
New Delhi -110002.
3. Dr. L.L. Aggarwal
Drug Controller &
Medical Superintendent
Aruna Asaf Ali Government Hospital
Rajpur Road,
Delhi-110054.

....Respondents

(By Advocate : Mrs. Avnish Ahlawat)



ORDER (ORAL)

Hon'ble Shri Shanker Raju, Member (J):

This common order disposed of RA 99/2002 as well as CP 104/2002 in OA.

2. The applicant being aggrieved of non-appointment to the post of either Peon or Nursing Orderly, in view of the advertisement of six posts (two Peons and four Nursing Orderly (one OBC, two General, one ST) to which he has applied and whereupon he was called for interview on 13.1.2000, approached this Tribunal by filing OA No.782/2000.

3. All the contentions of the applicant have been taken into account and the respondents have been directed to furnish the file relating to selection process. On going through the original record, it was found that a merit list of 20 candidates for the post of Nursing Orderly had been prepared by the respondents where the name of the applicant appears at Sl. No.15 and in view of 30 newly created posts which have been advertised and the vacancies were available on the basis that only 14 candidates out of the said merit list have been filled up as per the marks obtained and, therefore, vide order dated 14.12.2001 in OA the directions were issued to the respondents to consider for giving appointment to the applicant in the grade of Nursing Orderly against one of the available vacancies.

4. When the directions have not been complied with by the respondents, the applicant has filed CCP 104/2002 alleging contumacious and willful disobedience and also highlighted the interim order passed by the Tribunal on 29.5.2002 in OA that "keep one post of Peon (Class IV) vacant till the next date".

5. RA 19/2002 has been filed by the respondents in the OA and have contended that there is an error apparent on the fact of record inasmuch as that the Tribunal while going through the merit list of the post of Nursing Orderly seen the name Pramod Kumar at Sl. No.15



presumed him to be the same person and issued aforesaid directions to the respondents which is not correct because a person whose name is similar to the applicant, who is figuring at Sl. No.15 and who belongs to SC category and his call letter number is 537 as mentioned in the said merit list whereas the applicant's call letter number is 923 and belongs to OBC category.

6. By producing the original record, it is contended that though there is interpolations in the available document, i.e., merit list for the post of Nursing Orderly, but the same will not alter the position of Pramod Kumar, who is son of Late Shri Amar Singh and belongs to SC category and whose name has been enlisted at Sl. No.15 in the said merit list, as the applicant could not have qualified and was not placed in the said list, he has to be considered on the basis of the final assessment and the same has to be rectified. Mrs. Avnish Ahlawat, learned counsel for the respondents contended that Pramod Kumar, who is at Sl. No.15 and who also belongs to SC category, has assailed his grievance of non-inclusion of his name in the select panel and appointment by filing OA No.1475/2002 and vide order dated 31.5.2002, the respondents were directed to consider the representation/legal notice which was preferred by the applicant therein and to pass a reasoned and a speaking order thereon within a specified period and the liberty was granted to the applicant therein to get himself impleaded in the CP No.104/2002 filed by the present applicant. In this view of the matter, it is contended that till now no order has been passed on the aforesaid representation/legal notice.

7. On the other hand, Dr. K.S. Chauhan, learned counsel for applicant contended that there is no error apparent on the fact of record. It is stated that the Tribunal after meticulously going through the records found the name of the applicant at Sl. No.15 and issued the aforesaid directions to the respondents. It is further stated that admittedly the record of the respondents regarding selection is forged

238

and full of interpolations and the same cannot be placed reliance. No other material is on the record to indicate that the applicant is not Promod Kumar, who was to be at Sl. No.15 in the select list. However, it is stated that his contention regarding illegality in the selection process and non reporting of vacancies through Employment Exchange and other grounds taken in the OA have not been dealt with, as such he may be given an opportunity to re-argue the case.

8. We have carefully considered the rival contention of the parties and perused the material on record.

9. It is a settled law that new material cannot be re-agitated and re-argued as the same would be the province of a court of appeal. In view of the decision of the Apex Court in the case of Chandra Kanta & Anr. Vs. Sheik Habib (AIR 1975 SC 1500) wherein the Apex Court has ruled that a review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility and also in the case of Meera Bhanja Vs. Nirmala Kumari Choudhury (AIR 1995 SC 455) wherein the Apex Court has held that Review - "Error apparent on face of record" means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivable be two points, the review is permissible in the interest of justice.

10. If one has regard to the aforesaid ruling, we have not hesitation to state here that there exists an error apparent on the face of record, which has to be rectified through this review.

11. Earlier while the records were produced to this Tribunal on the basis that one Pramod Kumar is figuring at Sl. No.15 of the select list of Nursing Orderly and concluding that this has been prepared on the basis of marks obtained as per categories, directed the respondents to consider the case of the applicant for appointment to one of the posts



of Nursing Orderly. Although it is not disputed that only record which is available is the merit list prepared and the panel of 20 candidates for the post of Nursing Orderly.

12. Mrs. Avnish Ahlawat, learned counsel for respondents, during the course of hearing had drawn our attention to Sl. No.15 in the merit list where the name of Pramod Kumar's figures his call letter number is 537 in the attested photocopy and 587 in the original (tempered) merit list and also drawn our attention to the category where the post is meant for SC candidate as per the roster maintained in accordance with the instructions. We also find from the record that the applicant was issued call letter No.923 and belongs to OBC category whereas other Pramod Kumar, who had approached this Tribunal by preferring original application being OA No.1479/2002 and contended to be the real Pramod Kumar, who had figured in the select list and his father name is Shri Amar Singh, was issued call letter No.537^h and being SC candidate and the Tribunal vide order dated 31.5.2002 in OA No.1479/2002 issued directions to the respondents to consider his representation/legal notice. But the same has yet not been disposed of by the respondents.

13. Though there are interpolations in the original record. But as this fact is taken earlier by the department and Mrs. Avnish Ahlawat contended that the record has been tempered with later on for which necessary liability would be fixed and an appropriate action would be taken against the person responsible for it. However, from the perusal of the merit list, the claim of the applicant cannot be countenanced^h because the call letter which was issued to Pramod Kumar is 537, which was later on interpolated as 587 in the original merit list, as he was not selected and being a OBC candidate, he could not be put in the select list against the SC vacancy. The call letter No.537 corresponds to the person who is at Sl. No.15. But no stretch of imagination, the applicant could have been at Sl. No.14, it could be co-

incidental that the applicant's name is identical to that with the candidate who figures at Sl. No.15 in the said merit list. As this Tribunal has not gone into the corresponding category and the call letter number and came to the conclusion only because of the identical name of the applicant as the candidate figuring at Sl. No.15 of the merit list. In this view of the matter, we came to the conclusion that there exists error apparent on the fact of record, which is, therefore, to be rectified. We do so accordingly.

14. Having regard to the above, we find that the person who is figuring at Sl. No.15 of the merit list is not the applicant, as he has not been placed in the merit list by the board he has no ^{wide reasonable} right to be appointed to the said post and, therefore, to the extent the directions as given in the OA are recalled. Respondents have file MA 836/2002 along with RA for condonation of delay in filing review application, which on perusal of the justifiable reasons, we allow the same.

15. Having regard to the reasons recorded above, we allow the RA and recall the order dated 14.12.2001 passed in OA No. 782 of 2000. As regards the contention of the applicant's counsel that his other grounds have not been dealt, with regarding interpolation of record and unfair select list as well as non-reporting the vacancies to the Employment Exchange, are concerned, the same has already been dealt with and as the applicant^{is} failed to establish that he has any place in the said merit list and as such he has no right to be considered for appointment to the post of Nursing Orderly. OA is accordingly dismissed on merits. In so far as CP is concerned, as the OA is dismissed, CP is also not maintainable and is accordingly dismissed. Before parting with, we are ^{constrained} to observe ^{the} the way the official record, i.e., the selection process for the post of Nursing Orderly has been maintained by the Govt. of NCT of Delhi, as we find from the perusal of attested photocopy of merit list that the original merit list

has been interpolated at various places and possibility of mixing up of some officials in tampering the records cannot be ruled out. For this, we direct the respondents to take appropriate steps and to ensure that in future this should be avoided.

16. With these observations, we dispose of RA, OA as well as CP.

S. Raju
(Shanker Raju)
Member (J)

M. P. Singh
(M. P. Singh)
Member (A)

/ravi/