

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2006/200D

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Wednesday, this the 2nd day of May, 2001

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. Rajender Kumar
son of Shri Suberaimanium,
Resident of House No.45, Anand Gram,
Tahirpur, Sahadara, Delhi-95.
2. Suman Rani
Daughter of Kalicharan,
Resident of 369/96, Type-II,
Mirdard Road, LNJP Hospital,
New Delhi.

...Applicants

(By Advocate: Shri K.K.Tiwari for Shri Apurb Lal)

Versus

1. Delhi Administration
through the Chief Secretary,
Old Secretariat, Delhi.
2. PHC-Cum-Additional Secretary (Health),
Technical Recruitment Cell,
Government of NCT, Delhi
Jawahar Lal Nehru Marg, New Delhi.
3. The Medical Superintendent,
Lok Nayak Jai Prakash Hospital,
Jawahar Lal Marg, New Delhi.
4. Director (Administration)
LNJP Hospital,
Jawahar Lal Nehru Marg, New Delhi.

...Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (ORAL)

Aggrieved by the respondents' letter dated 2.11.1999 (Annexure A-1) in which it has been shown that the applicants worked as daily wage Lab. Attendants from 28.7.1999 to 23.10.1999, the applicants have filed the present OA praying that they should be allowed to continue against the vacant posts of Lab Attendant (for short LA). They also seek a direction to the respondents to consider the applicants for regularisation in accordance with the settled proposition of law.

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2. Shri K.K.Tiwari who appeared as proxy counsel to the learned counsel for the applicants sought adjournment on the ground that the learned counsel was busy elsewhere in another court. I have, however, thought it fit to decide this matter after hearing the learned counsel for the respondents who pressed for an early decision in the present case.

3. The applicants, I find, have approached this Tribunal in this very same matter on several occasions. They first approached the Tribunal in OA-2667/99 which was decided on 10.12.1999. Two other applicants had joined them in the said OA. That OA was decided in terms of the ratio arrived at in OA-2278/98 decided on 18.11.1999. Accordingly, a direction was given to the respondents to continue the applicants in their existing capacity on the same terms and conditions as were applicable to them, till such time as regularly selected LAs are appointed. In compliance of the aforesaid order, the applicants were offered the post of Nursing Orderly (for short NO) on 31.12.1999. The applicants in the present OA refused to join. The two others, also applicants in OA-2667/99, however, accepted the offer and joined as NO. The applicants instead went in for a Contempt Petition, being CP-136/2000, decided by this Tribunal on 19.9.2001. The decision rendered in the aforesaid CP did not record a finding on the main dispute in the present OA which is with regard to the actual designation of the post on which the applicants had been working. According to the applicants, they were employed as LAs and were working as such with the respondents upto

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23.10.1999. The respondents, on the other hand, claim that they have all along worked only as NOs. The aforesaid CP was thus disposed of giving liberty to the applicants to institute a fresh OA. The present OA has consequently been filed by the applicants on 25.9.2000, i.e., within the time frame stipulated in the aforesaid order disposing of the CP.

4. While no doubt LA has been shown as the designation given to the applicants in the impugned letter of 2.11.1999, the learned counsel appearing for the respondents has produced for my perusal a number of office orders passed by the respondents appointing the applicants as well as several others as NOs. Some of the orders he has produced and which are taken on record are dated 18.1.1999, 17.3.1999, 20.7.1999, 22.7.1999, 12.8.1999, 14.10.1999, 5.11.1999 and finally the order dated 13.12.1999 by which the post of NO was offered to the applicants as also the two others.

5. The learned counsel has also produced for my perusal the applications both dated 16.3.2000 filed by the applicants showing their readiness to accept the post of NO. In fact, one of the applicants, namely, Rajender Kumar has in his aforesaid application shown his designation as NO. In both these applications, I find, the applicants have taken the plea of illness of their parents contending therein that the offer of NO's post was not accepted by them only due to the ongoing illness of their parents. On the other hand in para 4.13 of the OA, they have gone on say that the other two persons had

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accepted the post of NO under compulsion as they were both then unemployed, whereas the present applicants had refused to join as NO on the ground that they were never appointed as NO. Thus, there is a clear contradiction between what they have stated in the aforesaid applications dated 16.3.2000 and the averment made by them in the present OA. The learned counsel appearing on behalf of the respondents has submitted that the other two persons, who accepted the post of NO, were also similarly appointed as the present applicants but they joined the post of NO readily, whereas the present applicants refused on a ground which they could not take as they were appointed not as LAs but as NOs as shown in the various office orders produced by him and taken on record.

6. The learned counsel appearing for the respondents has also drawn my attention to the recruitment rules for the post of LA. I have perused the same and find that the post of LA is a promotional post to be filled in 100% by promotion. The entry level is that of NO. The applicants could, therefore, never be considered for appointment directly at the level of LA. He has further stated at the bar that all the vacancies in the rank of NOs and LAs have since been filled up and no vacancies in these ranks are currently available. The applicants, according to him, were appointed purely as a temporary arrangement to tide over the problem given rise to by a brief period of strike. However, due to the exigencies of the situation, they were continued for some time. They could not, in the circumstances, acquire any vested

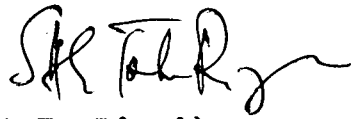
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right for appointment in regular vacancies whether in the rank of NO or in the post of LA, except in accordance with the relevant recruitment rules.

7. For all the reasons mentioned in the preceding paragraphs, I find that the present OA is totally devoid of merit and is accordingly dismissed. No costs.


(S.A.T. Rizvi)
Member (A)>

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