

Central Administrative Tribunal, Principal Bench

Original Applications Nos.742 & 747 of 2000

New Delhi, this the 25th day of October, 2000

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Mr.V.K.Majotra, Member (A)

(1) Original Application No.742 of 2000

1. Balwant Singh, 373, Delhi Administration Flats, Phase-IV, Ashok Vihar, Delhi-52.
2. Ms.Hina Kausar Rizvi, J-302, Taj Enclave, Link Road, Geeta Colony, Delhi-31.
3. Ms.Kanchan Rawat, 1341, Gulabi Bagh, Delhi-07.
4. Mrs.Ritu Jain, 139, Sector-V, R.K.Puram, Delhi.
(Working as Lab Technicians Group-III in Lok Nayak Hospital) - Applicants
(By Advocate Mrs.Meera Chhibber)

Versus

1. N.C.T. of Delhi, Through the Chief Secretary, Government of N.C.T. of Delhi, 5,Sham Nath Marg, Delhi.
2. Delhi Subordinate Services Selection Board, Through its Chairman, UTCS Building, Shahdara, Delhi.
3. Medical Superintendent,Lok Nayak Hospital New Delhi. - Respondents
(By Advocate Shri Ajesh Luthra)

(2) Original Application No.747 of 2000

Ms.Arty Varshny, D/o Sh.P.C.Gupta, R/o 40, New Krishna Nagar, Delhi-51 (Working as Technical Asstt. Group-III, Lok Nayak Hospital) - Applicant
(By Advocate Mrs.Meera Chhibber)

Versus

1. N.C.T. of Delhi, Through the Chief Secretary, Government of N.C.T. of Delhi, 5,Sham Nath Marg, Delhi.
2. Delhi Subordinate Services Selection Board, Through its Chairman, UTCS Building, Shahdara, Delhi.
3. Medical Superintendent,Lok Nayak Hospital New Delhi. - Respondents
(By Advocate Shri Ajesh Luthra)

Common Order

By V.K.Majotra, Member(A) -

As the facts are identical and issues involved in both the afore-mentioned OAs are the same, they are being disposed of by this common order.

2. The applicants are aggrieved by notice dated 20.4.2000 whereby the respondents have sought to cancel the appointment of the applicants on the alleged ground that "it has been observed that the said official does not fulfil the requisite recruitment rules. His/ her experience has been in the Gr.-IV Lab. while the experience of Gr.-III Lab. was required for appointment ^{to} the said post.. The applicants have submitted their reply to the said notice but have alleged that the respondents have made up their mind to terminate their services. On 1.5.2000 this Tribunal passed an ad-interim order restraining the respondents from terminating the services of the applicants as the balance of convenience lies in favour of the applicants.

3. The applicants in OA 742/2000 were selected to the post of Lab.Technician Group-III in Lok Nayak Hospital, New Delhi, in response to an advertisement no.002/99 dated March 1, 1999 (Annexure-A-2) published by the Delhi Subordinate Services Selection Board (for short 'DSSSB'. Applicant Ms.Arty Varshney in OA 747/2000 joined as Technical Assistant Group-III in response to the same advertisement. The educational qualification and experience prescribed for these posts are as under:-

Technician Group-III

(Cardiology/ Neurology/ Respiratory/ Lab. EEG. EMG./ERU/CCU/POW/CCI) - Health and Family Welfare Dept. Govt.of N.C.T. of Delhi.

I.B.Sc. desirable with year experience as Lab. Asstt. in any of these groups of laboratories. Or Matric/ Hr.Sec./ 10+2 with Science and 6 years experience in any of these group of Laboratories as Lab. Asstt. OR Matric/ Hr.Sec./ 10+2 with Science having Medical Laboratory Technology Course with 3 years experience in any of these groups of Laboratories as Lab Asstt.

Technical Assistant Group -III

(Cardiology/ Neurology/ Respiratory/ Lab. EEG. EMG./ERU/CCU/POW/CCI) - Health and Family Welfare Dept. Govt.of N.C.T. of Delhi.

B.Sc. with at least 3 years experience as Lab.Technician in any of these Groups of Labs. of any Medical Institute/ Hospital; Matric Hr. Secondary/ 10+2 with M.L.T. with 3 years experience as Lab.Technician in any of these Groups of Labs. of any Medical Institute/ Hospital; Matric/ Hr.Secondary/ 10+2 with science having 5 years experience as Lab Technician in any of these Groups of any Medical Institute/ Hospital".

As regards applicant Balwant Singh, an Ex.Serviceman he is a matriculate with science; 10+2 (Intermediate) with science; passed Laboratory Assistant Class-II, Course from Command Pathology Laboratory Western Command, Delhi; and he has been awarded a graduation certificate by Armed Forces Services which is recognised for any service requiring graduation qualification as per the Gazette of India Notification No.9 dated March 1, 1986 (Annexure-A-3 to OA 742/2000). The other applicants fulfil the prescribed educational qualifications for the respective posts in any case.

4. According to the applicants they were selected by the DSSSB which is a body of experts and in which a departmental representative is also present. On the basis of the recommendations of DSSSB the respondents satisfied themselves as to the eligibility of the applicants for the said posts and issued appointment letters in their favour. The applicants resigned from their posts and joined the new posts. It is after they have been working for a period of over 5 months that the respondents have issued the impugned notices stating that the applicants are not qualified. According to the applicants nowhere there are such qualification as Group-III and Group-IV Labs. and the applicants' cases having been scrutinised at several stages the respondents are estopped from cancelling their

appointments, particularly when the applicants joined after resigning from their previous employment and not availing of several other opportunities of employment.

The applicants have submitted their reply to the notice and ^{by} the respondents have not yet taken any action thereon. The applicants have sought quashing of the impugned notices dated 20.4.2000 for cancellation of appointment to the posts of Lab. Technician Grade-III/ Technical Assistant, and a direction to the respondents not to take any action pursuant to the said notices. (12)

5. In their counter the respondents have taken a preliminary objection that the OAs are not maintainable under the provisions of Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the AT Act') as the applicants have challenged the show-cause notices and not any final orders.

6. We propose to deal with the question of maintainability presently. The learned counsel of the respondents contended that the applicants have impugned show-cause notices and not any final orders. They are still working and their services have not yet been terminated. Similar notices were issued against two other candidates as well which were considered by the respondents and the same were cancelled. The respondents proposed to consider the replies of the applicants dispassionately and impartially and take a final view. If the applicants are aggrieved by the final orders on their replies to the impugned notices, only then they can approach the Tribunal. Thus, the OAs in the present form are not maintainable under provisions of Section 19 ibid. The learned counsel of the respondents referred to the case of Gyan Chand Vs. Govt. of NCT and another, O.A. No..431/1999 decided on 7.5.1999 wherein the OA filed before the final orders

were passed, was held to be non-maintainable. The learned counsel of the applicants drew our attention to Section 20 of the AT Act stating that 'ordinarily' the Tribunal may not admit an application unless it is satisfied that the applicants had availed of all the remedies available to them under the relevant service rules as to redressal of grievances. According to her the applicants are facing extra-ordinary circumstances when notices have been issued to them for termination of their services on the ground that they do not fulfil the eligibility conditions for the posts in question. Obviously the respondents have made up their mind as to the ineligibility of the applicants for holding present posts and would ultimately pass orders of termination of their services. In such extra-ordinary circumstances it is not necessary to wait for the final orders of termination of their services and the applicants can seek redressal of their grievances from the Tribunal. The learned counsel has drawn our attention to the case of Shri Kishore Chandra Pattanayak Vs. Shri R.N.Das, I.A.S., 1987 (4) SLJ 414. In that case the allegation was that the applicant had rushed to the Tribunal against his supersession without waiting for department's consideration of his case. It was held that each case has to be dealt with on its merits. There being no absolute bar on its powers, Tribunal can entertain cases in emergent situations without exhausting other remedies. Hence application was entertained. Similarly, we also feel that in the present cases having been involved with emergent situation we would use the word 'ordinarily' in favour of the applicants and would hold that Section 20 ibid does not create a bar for entertaining the applications of the applicants in the peculiar facts and

13

circumstances of the case.

7. As regards applicant Balwant Singh in OA 742/2000, the respondents have stated that he does not possess prescribed qualification and experience. As regards the other applicants in both the OAs the respondents have contended that these applicants have experience of Group-IV laboratories whereas the experience of Group-III laboratories was required i.e. Cardiology/ Neurology/ Respiratory/ Lab. EEG. EMG./ ERU/CCU/ POW/ CCI. According to the respondents the Group-III lab requires more specialisation than Group-IV lab. due to the nature of laboratory tests involved.

8. We have heard the learned counsel of both sides and considered the material available on record. Relying on the case of State of Punjab & others Vs. Sumanlata, 1999 SCC (L&S) 1065 the learned counsel of the applicants contended that since the qualifications of the applicants were examined by the DSSSB which is a body of experts, having representative from the department as well, who have sufficient experience in the field and knowledge of job requirements as well as of the requisite qualifications, the respondents cannot cancel the appointment of the applicants. The applicants were holding certain posts prior to joining on the present ones ~~on~~ selection by the DSSSB and also after consideration by the respondents. They have not availed of certain opportunities of other employment because they were already gainfully employed by the present respondents. The applicants had submitted all their particulars and documents before their selection and it is not their fault that they were selected by the Government. If the respondents take an adverse view of the matter and terminate their services, they will be put to undue hardship due to unjust and illegal

approach.

9. As regards applicant 1 Balwant Singh, he is an ex-serviceman holding to following qualifications:-

15

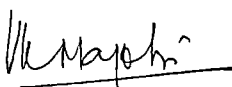
- (i) Matric with science;
- (ii) 10+2 (Intermediate) with science;
- (iii) passed Laboratory Assistant Class-II, Course from Command Pathology Laboratory Western Command, Delhi Cantt-10. This course is recognised equal to DIPLOMA by Central Govt. Ministry of Health O.M.No.F-28-67/6 ML dated 20th December, 1964. This course has been recognised by Central Government of India as equal to DIPLOMA Awarded by Civil Institution. (Authority:- A.H.Q. Letter No.10982/ 1/ MS3(D) dated 6&7th November, 1975 and minute S.No.27/75 of National Employment Service Employment Exchange E.E.No .1.11.75;
- (iv) Attended and passed Laboratory Asstt. Class-One Course from Armed Forces Medical College, Pune.

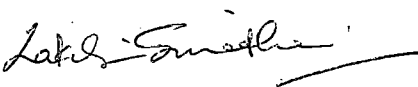
He has also experience of working in various Army Hospitals for a period of 16 years pursuant to which he was awarded a graduation certificate by Armed Forces Services which in terms of Govt. of India, Ministry of Personnel, Public Grievances and Pension (Dept of Personnel & Training) letter No.15012/8/82/Est (D) dated 12.2.1986 has to be considered for appointment to the posts for which essential qualification prescribed is graduation. A perusal of the relevant ~~adv~~ does not make any distinction between experience as Lab.Assistant in Group-III and Group-IV Labs.

10. We are in agreement with the learned counsel of the applicants that DSSSB, which is a body of experts had considered the qualifications of the applicants vis-a-vis job requirement and found them suitable for appointment to the present posts. Normally, the respondents cannot retrace and cancel the appointments of the applicants who had placed all their particulars and qualifications for consideration before the DSSSB and the respondents. We find that the applicants have submitted their replies to the impugned notice dated

20.4.2000 Annexure-A-1 to which the respondents have not yet responded.

11. In the facts and circumstances of the case, we find fit and proper that the respondents should consider the replies of the applicants to the show-cause notices dated 20.4.2000 and pass detailed and reasoned orders thereon within a period of three months of the receipt of a copy of this order. In case of any adverse orders against the applicants, the respondents are restrained to act upon the same for another month so that the applicants get a reasonable opportunity to approach the appropriate forum to redress their grievance. No costs. 16


(V.K. Majotra)
Member (A)


(Mrs. Lakshmi Swaminathan)
Member (J)

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