

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.1596 of 1988

4th day of November, 1993

Shri J.P. Sharma, Member(J)

Shri B.K. Singh, Member (A)

Shri Jai Chand,
S/o Shri Chandan Singh,
C/o Shri Sant Lal, Advocate,
C-21 (B), New Multan Ngr.,
Delhi-110056.

Applicant

By Advocate Shri Sant Lal.

Versus

1. The Union of India
through the Secretary,
Ministry of Health & F.W.,
New Delhi-110011.
2. The Medical Superintendent,
Dr. Ram Manohar Lohia Hospital,
New Delhi-110001.
3. The Chief Medical Officer,
Dr. R.M.L. Hospital,
New Delhi-110001.
4. Shri Surender Singh,
S/T Bearer,
C/o Administrative Officer,
Dr. R.M.L. Hospital,
New Delhi.
5. Mrs. Parveen Kalra,
L.D.C. Ad hoc,
C/o Administrative Officer,
Dr. R.M.L. Hospital,
New Delhi.
6. Shri Sat Pal, N/Attendant,
C/o Administrative Officer,
Dr. R.M.L. Hospital,
New Delhi.
7. Shri Yashbir Singh, Peon,
C/o Administrative Officer,
Dr. R.M.L. Hospital, New Delhi.

Respondents

By:

O R D E R

Shri J.P. Sharma

The applicant was initially appointed in Group 'D' Cadre in the R.M.L. Hospital, then known as Willingdon

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Hospital in 1970 and confirmed in his appointment in 1977. By an order dated 30th September, 1980, he was given an officiating ad hoc appointment as Telephone Clerk w.e.f. 26.9.1990. He was allowed to cross the Efficiency Bar in the grade w.e.f. 1.3.1985. He was appointed as a Receptionist on a probation for two years by the order dated 7.5.1985 w.e.f. 1.3.1985 in the same scale of pay, by protecting his pay. The respondents, however, subsequently, found that there was no provision in the Recruitment Rules of Receptionist of 1973 to post the applicant on transfer basis by the order dated 1st December, 1987, reverted the applicant to the parent post of Telephone Clerk, but he continued to work as Receptionist as there was no vacancy available at that time on the parent post of Telephone Clerk. The respondents, however, subsequently, by a circular of April, 1988 (Annexure A-3), called for the applications for filling up the two posts of Receptionist giving the eligibility condition and qualifications. The applicant did not apply. Subsequently, by the order dated 4.6.1988, four persons (Respondent Nos. 3-7) were approved for selection and joined as Receptionist. Aggrieved by this, the applicant made representations and thereafter, filed the present application on 22.8.1988. The matter came before the Tribunal and by the order dated 7.9.1988, the order of the status quo with regard to the post of applicant passed by the Tribunal on 26.8.1988, was made absolute. According to the learned counsel for the applicant, he is still working on the same post of Receptionist and also was allowed to cross the Efficiency Bar some time in 1990. The grievance of the applicant is that the impugned order of reversion and the subsequent order of selecting four persons (Respondents 4-7), be quashed as violative of Constitution of India, being arbitrary and illegal with a direction to the respondents to allow the applicant to continue to work in the post

of Receptionist. A notice was issued to the respondents, who contested the application and filed the reply, annexing a copy of the recruitment rules (R-1). The recruitment rules go to show that the post of Receptionist is to be filled up 100% by direct recruitment. It is further stated that it was under an erroneous impression and also de hors the rules that the applicant, who was only given ad hoc appointment as Telephone Clerk, was posted as a Receptionist and it was only when the mistake was realised, the impugned order of reversion dated 1.12.1987 was passed. The applicant has no case and the application be dismissed.

2. Respondent No.5, Shri Parveen Kalra, has also filed the reply, supporting her stand that she is duly selected candidate and was working as a daily-wager with the respondents in a Group 'C' post.

3. We have heard the learned counsel for the parties at length and perused the record. Undoubtedly, the recruitment rules lay down the source of recruitment and the eligibility for appointment to the post of Receptionist. The applicant does not fall in that category. However, the circular issued in April, 1988, only restricted the recruitment of the departmental candidates and since the applicant was also in the same department and was made to work as a Receptionist even after the order of reversion to the parent post of Telephone Clerk dated 1.12.1987, he should have also been considered. The learned counsel for the respondents referred to the fact that even after the circular issued earlier in September, 1987, and subsequently, in April, 1988, the applicant did not apply for the post of Reception though he must be very much aware as he was working on that post.

4. We have considered this aspect, but when the applicant was once appointed by the order dated 7.5.1988 on a probation of two years, it was also the responsibility of the Department, to sponsor ~~the~~ his name, as he was allowed to work even after 1.12.1987. The grade of the post of Receptionist and that of the Telephone Clerk is the same. In view of this, the applicant cannot be denied his earlier posting in 1985 only because there was some inadvertance knowingly or unknowingly by the office of the respondents. The appointment of the applicant therefore, shall be deemed to be, though on transfer, in relaxation of rules.

5. The impugned order dated 1.12.1987 also is violative of principles of natural justice in view of the fact that when the applicant has almost completed two years, the period of probation under which he was kept, was not issued any show-cause notice before reverting him to his parent post of Telephone Clerk.

6. From another angle also, the applicant has since been working from 1985 for all these years as a Receptionist and, therefore, cannot now be made to go to the parent post of Telephone Clerk. It is not disputed that the applicant does ~~not~~ have the requisite qualifications for the post.

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7. In view of the above facts, the present application is allowed. The impugned order dated 1.12.1987 is quashed, but the relief with regard to the quashing of the order dated 4.6.1988, is disallowed as not pressed. No costs.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

Date	Office Report	Orders
		<p>24.11.1993</p> <p>It was pointed out by the learned counsel Shri Sant Lal on 23.11.1993 that in the copy of the judgement received by him, in the last line of last but one para on the last page of the judgement word 'not' has been wrongly written. We therefore read the original judgement by getting the file from the Registry, reviewed the order suo moto to correct this typographical error.</p> <p>We therefore order that the word 'not' be deleted from the sentence 'the applicant does not have" to read as "the applicant does have...."</p> <p>The original judgement is, therefore, corrected and a corrected copy be sent to the parties.</p> <p> (B.K. Singh) Member(A)</p> <p> (J.P. Sharma) Member(J)</p> <p>*Mittal*</p>