

(6)

Central Administrative Tribunal  
Principal Bench, New Delhi.

O.A. No.1852/88

24th day of January, 1994.

Shri N.V. Krishnan, Vice-Chairman

Shri B.S. Hegde, Member (J)

Shri Rajinder Pal Chawla,  
C/o Shri K.L. Bhatia,  
Advocate,  
Bar Room, C.A.T.,  
New Delhi.

By Advocate Shri A.S. Dhupia

Versus

Applicant

the Union of India through

1. Director General of Health Services,  
Nirman Bhavan,  
New Delhi.

2. The Medical Supdt.,  
Safdarjang Hospital  
New Delhi.

Respondents

By Advocate: None.

O r d e r (Oral)

Shri N.V. Krishnan, Vice-Chairman (A)

The applicant is working as Assistant Laundry Supervisor in the Laundry Department of the Safdarjang Hospital, New Delhi, under the second respondent, the Medical Supdt. of that Hospital. He has sought the following reliefs in his application:-

(i) That the respondents may be directed to treat the applicant ~~as a regular appointee~~ as a regular appointee to the post of Assistant Supervisor (Laundry) with effect from the initial date of his appointment.

(ii) That the Respondents may be restrained from the proposed/apprehended reversion of the applicant from the post of Assistant Supervisor (Laundry) which he has been holding in a regular manner for the last 11 years.

(iii) That the applicant may be given ~~100~~ <sup>100</sup> % pay of Laundry Supervisor, under the provisions of F.R.49 as he has been holding full charge of this post since 1975 under the formal orders of the competent authority.

2. The circumstances in which he came to file this application are as follows:-

2.1 The applicant was working initially as a Boiler Attendant. He was appointed as Assistant Supervisor (Laundry) in the Hospital from 15.8.1977 by the order dated 20.8.1977 of the Administrative Officer of the Hospital "on ad hoc basis for a period of six months or till such time the post is filled up on regular basis whichever is earlier".

2.2 On 26.11.1980, the second respondent issued a circular for filling up the post of Assistant Supervisor (Laundry) on a regular basis. The applicant also sent his application on 27.11.80 (Annex.VII).

2.3 While so, the second respondent issued the Annex.I Office Order dated 5.9.1988, extending the ad hoc appointment of the applicant as Assistant Supervisor (Laundry) <sup>upto</sup> 30.9.1988.

2.4 It is on receipt of this order that this O.A. was filed as the applicant apprehended that from 1.10.1988, he would stand reverted as Boiler Attendant.

3. The applicant claimed that all along, the respondent had treated him as if he was a regular appointee. Hence, he prayed for reliefs reproduced above.

4. On 27.9.1988, when the O.A. was admitted, an interim order was also issued restraining the respondents from reverting the applicant from the post of Assistant Supervisor (Laundry) till further orders.

5. The respondents have filed a reply, making the following points:

5.1 It is contended that the applicant was promoted as Assistant Supervisor (Laundry) on 16.8.1977, pending notification of the Recruitment Rules, but according to the recruitment rules, he is not eligible for that post.

5.2 It is true that the applicant also applied for regular appointment in pursuance of the Annex. IV circular but he was not appointed on regular basis as he did not possess the trade certificate of Electrician from I.T.I., which is an essential qualification for the post.

5.3 The D.P.C. did not find the applicant fit for appointment to the post of Assistant Laundry Supervisor.

5.4 It is denied that no further action was taken to fill the post on a regular basis. The question of amending the recruitment rules was taken up with the Director General (Health Services).

6. On this basis, it is contended that this application has no merit and has to be rejected.

7. When the case came up for final hearing today, none appeared on behalf of the respondents. Hence, we heard the learned counsel for the applicant and this case is being disposed of after perusal of the records and hearing. <sup>u</sup> the applicant's counsel.

8. Admittedly, the Safdarjang Hospital (Group 'C' Posts) Recruitment Rules, 1977 which were produced for our perusal by the learned counsel, were notified in the Gazette of India on 22nd October, 1977 from which date they came into force. The post of Assistant Supervisor which is shown at serial No.7 of the Schedule to the Rules, is a selection post and is to be filled by promotion, failing which by direct recruitment. The promotion is from the Cadre of Boiler Attendant. For direct recruits, one of the essential qualifications is Trade Certificate as Electrician from the I.T.I. and col. 8 of the Schedule makes these qualifications applicable for promotees also. This is also made clear in col.11. Admittedly, the applicant does not have the certificate. The learned counsel, however, contends that he has got much better qualifications.

9. He also stated that the applicant was allowed to cross the Efficiency Bar in the pay-scale attached to the post of Assistant Laundry Supervisor. It is stated in para.6.12 of the application that the applicant also applied for the higher post of Laundry Manager, but one, Shri R.D. Skharm, was selected for that post, though he was not eligible and that this has

*Uz*

been challenged in OA-968/88. The learned counsel states in his arguments that this application was forwarded. He, therefore, contends that all along, the respondents have been treating him as if he has been regularly appointed as an Assistant Laundry Supervisor.

10. In support of his claims, the learned counsel also draws our attention to the decision of the Supreme Court in Narendra Chadha's case and Pyara Singh's case.

11. We have carefully considered the arguments put forth by the learned counsel for the applicant and perused the records. It is clear that the applicant was appointed on an ad hoc basis by the Annex. A-4 order as Assistant Supervisor (Laundry) on 20.8.1977, when the relevant recruitment rules had not been notified. The recruitment rules produced by him indicate that this is a selection post and holding a Trade Certificate as an Electrician from the I.T.I. is one of the essential qualifications.

Admittedly, he did not have this qualifications.

12. The respondents have contended that his case for regular promotion had been turned down by the D.P.C. because he was not found qualified for this post. They further state that a proposal to amend the recruitment rules further, has been made and hence, further steps for regular recruitment, have not been taken.

13. We find much substance in the averments made by the respondents. Undoubtedly, the initial appointment was on ad hoc basis with a specific stipulation that at any rate, it will be terminated when regular selection is made. Apparently, none was found fit for appointment in pursuance of the proceedings initiated by the Annex.VI circular dated 26.11.1980 though this has not been explicitly stated by the respondents. What is only clear is that the applicant was not found eligible for promotion due to lack of qualifications. The respondents have also apparently taken steps to further amend the recruitment rules. In the light of these facts, we cannot hold that the applicant was regularly appointed from the date of his ad hoc appointment, i.e., 20.8.1977.

14. The other limb of the argument of the applicant is that he has been holding this post for such a long time that he should be deemed to have been regularised by the respondents by exercising their powers of relaxation which they, undoubtedly, have under Rule 6 of the aforesaid Rules. In support of this argument, he has referred us to the decision in Narendra Chadha's case (1986 (1) SLR 437). We have carefully considered that judgement which is entirely distinguishable for the simple reason that those appointments were not made subject to making a regular appointment at a later date. Likewise, the judgement in Pyara Singh's case (A.T.R. 1982(2) SC 577) merely directs that if ad hoc appointments continue for a long time, the authorities must consider the ad hoc appointees for regularisation provided they are eligible and qualified according to rules and their service records are

(12)

satisfactory. In the present case, as the rules stand at present, the applicant does not have the qualifications. The respondents have already considered him once because a D.P.C. was held in pursuance of the Annex.VI circular. It is stated that the rules are being amended.

15. In the circumstance, the only direction this applicant is entitled to is that he shall not be replaced by an ad hoc appointee and he will be replaced only by another person who is regularly selected for this post. He is also entitled to a declaration that his case should also be considered when such regular selection takes place, provided he has the necessary qualifications as specified in the recruitment rules. In the circumstance, we dispose of this O.A. with a direction to the respondents that the applicant shall not be reverted from the post of Assistant Laundry Supervisor, except on the regular appointment of any person selected for that post in accordance with the recruitment rules and when such selection is made, the case of the applicant for regular appointment shall also be considered in accordance with those rules. No costs.

  
(B.S. Hegde)  
Member(J)

  
24.1.84  
(N.V. Krishnan)  
Vice-Chairman(A)