

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW DELHI

O.A. No. 1704/87
Q.A. No. 1710/87

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DATE OF DECISION 25/7/1990Employees State Insurance Corp. PetitionerSh.K.L.Bhatia Advocate for the Petitioner(s)Krishan Lal Dahiya and ^{Versus}
Ram Mehar RespondentSh.D.P.Malhotra Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K.Kartha, Vice Chairman (J)

The Hon'ble Mr.P.Srinivasan, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? 3 No
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGEMENTDELIVERED BY HON'BLE MR.P.SRINIVASAN, MEMBER (A)

Application No.OA 1704/87 and 1710/87 were originally disposed of by order of this Tribunal dated 12-9-1988. The issue raised in both the applications was that the applicants therein, namely, Sh.Krishan Lal Dahiya and Sh.Ram Mehar who had been working as ad-hoc Junior Radiographers for about 5 years, should be given an opportunity of in-service training for 3 years in order to secure the requisite qualification for regular appointment as Junior Radiographers. The aforesaid order dated 12-9-1988 was passed by a Bench consisting of the Hon'ble Sh.P.K.Kartha, Vice Chairman (J) and the Hon'ble Sh.Ajay Johri, Member (A) directing the respondents therein ^{M to undergo} to give an opportunity to both applicants ~~for~~ inservice training to attain the qualification of Diploma in Radiography. Thereafter, it appears that the respondents

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in both the applications approached the authorities of the Lok Nayak Jai Prakash Narain Hospital to provide training to both the applicants in radiography in order to acquire a Diploma in the subject. The hospital, however, declined to entertain the applicants for training as they did not fulfil the qualifications for the purpose. In view of this, the respondents in both the applications filed review application No.129/88. By this review application, it was prayed that this Tribunal should set aside its earlier common order dated 12-9-1988 and hear the matter afresh, since the original order had become unworkable.

RA 129/88 was disposed of by circulation by an order dated 31-3-1989 by the same Bench which delivered the earlier judgement dated 12-9-1988. By the said order of 31-3-1989, this Tribunal allowed the application for review in part and directed that the original applications be re-heard after giving notice to the authorities of the Lok Nayak Jaiprakash Narain Hospital. The original applicants were not to be reverted from their posts of Junior Radiographer till the matter was heard again and disposed of by this Tribunal. That is how, OA 1704/87 and 1710/87 have again come up before us for disposal, the Hon'ble ^{My retired} Sh.Johri having ~~referred~~ since.

RA 129/88 has been listed for hearing by us. But as stated earlier, the RA has already been disposed of. What we have to hear is OA 1704/87 and OA 1710/87

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and not the RA. Registry will carry out the necessary corrections in this regard.

When the case was called out, none appears for Lok Nayak Jai Prakash Narain Hospital. Sh.K.L.Bhatia appears for the two original applicants. Sh.D.P.Malhotra appears for the original respondents. They have been heard.

The hospital authorities have informed the respondents that it will not be possible for them to admit the two applicants in a training course because the eligibility conditions required for the purpose ~~are~~ ^{were} not fulfilled by them. Therefore, the respondents in both these applications are in no position to depute the applicants for in-service training. We decided to proceed to hear the counsel of both the original parties without insisting on the appearance of the representative of the hospital.

Sh.Bhatia submits that the first applicant Sh.Krishan Lal Dahiya has completed 7 years of service and the second, Sh.Ram Mehar has completed 4 years of service as Junior Radiographer and have carried out the functions of their post satisfactorily. What is required for regular appointment in that post is in-service training. The ^{Rules} Recruitment provide for relaxation and this is fit case for such relaxation.

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Sh. Malhotra opposes the contentions of Sh. Bhatia and submits that at this stage, the respondents are unable to help the applicants to acquire the requisite training qualification and as such they should be allowed to revert the applicants to the lower post as of Nursing Orderlies. The respondents have, moreover, not exercised their discretion to relax the qualification required for post of Junior Radiographer in the cases of the applicants.

We have considered the matter carefully. As we have already stated, though the applicants do not possess a two years' Diploma in Radiography, they were appointed as Junior Radiographers and have worked in that post for 7 years and 4 years respectively. When they were appointed, the rules of recruitment had not been announced. If on account of lack of diploma, they could not perform the duties of the post, they would not have been allowed to continue to work therein for so many years. The qualification of a diploma is prescribed to ensure that a candidate is able to handle the responsibilities of the post satisfactorily. The proof of ~~the pudding~~ ^{the pudding} of ~~putting~~ is in the eating. By having worked in the post for so many years, the applicants have shown themselves capable of performing the duties of the post. Normally, the requirements for regular appointment should be strictly fulfilled, but in this case, for no fault of the applicants, they were appointed to the post and continued in the post for a number of years and they have in this manner acquired the necessary practical in-service training. They are over-aged for service anywhere else.



In the peculiar circumstances of these cases we are inclined to agree with Shri Bhatia. It is not denied that the applicants have actually performed duties of Junior Radiographer satisfactorily for many years now. The respondents have the power to relax the requirements under the Recruitment Rules. The cases of the applicants are eminently suitable for exercising such power of relaxation in their favour, particularly since they were appointed to the post, albeit on adhoc basis, before the rules were announced.

In view of the above, we pass the following orders:

1. The cases of the applicants should be considered for regular appointment as Junior Radiographers relaxing the condition of holding a Diploma in Radiography. The requirement of a pass in 10+2 board, should also be relaxed because when the applicants were initially appointed the requirement was matriculation (10th standard pass).
2. We direct the respondents to pass orders after due consideration as above within three months from the date of receipt of this order.

The applications are disposed of on the above terms leaving the parties to bear their costs.


25/7/90
(P. SRINIVASAN)
MEMBER (A)


25/7/90
(P.K. KARTHA)
VICE CHAIRMAN (A)