

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1446/1990

DATE OF DECISION: 25.9.1991

SHRI MAHA SINGH

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI B.T. SINGH, COUNSEL

FOR THE RESPONDENTS

MISS ASHOKA JAIN, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

The applicant, Shri Maha Singh, ex-Service man has filed this Original Application on 9th July, 1990 under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly the facts of the case are that the applicant was appointed in Lok Nayak Jai Prakash Narain Hospital on 16.2.1988 on the basis of the selection held by the Selection Board on 18.11.1987. His name was sponsored by the Employment Exchange. He does not belong to Scheduled Caste (SC) nor did he make such claim even in the antecedent verification form. The applicant had not declared himself to be a SC candidate. He claims to have been completed his probation period of one year successfully, as no intimation in regard to his extension of probation was ever received by him. Notwithstanding, the applicant was shown as belonging to SC in the seniority list of Havaldars, working in the medical institutions under Delhi Administration issued on 12.4.1989. The applicant sent his objection against his being shown as SC in the seniority list and followed it up by a representation dated 21.4.1989, addressed

to the Medical Superintendent of the Hospital. Thereafter the applicant received a memo dated 9.4.1989 (Annexure E page 20 of the paper book), directing the applicant to produce the original SC certificate and other relevant testimonials within three days of the receipt of memo, failing which necessary action will be taken against him as per rules. The applicant submitted his explanation to the Medical Superintendent on 13.9.1989. Besides the facts indicated above, he also stated in the representation that in the hospital order part-2 No.1086 dated 8.3.1988 he is not mentioned as SC. Even in the police verification report he had not mentioned as belonging to SC. He, therefore, submitted that the demand of SC certificate is an after-thought and is illegal, malafides and misconceived. Accordingly, he prayed that the demand of producing SC certificate should be withdrawn. Another representation was made by him to Secretary Medical on 18.4.1989 (Annexure 'G'). The applicant did not hear any thing further from the authorities instead his services are said to have been terminated by the respondents vide order dated 16.7.1990 under rule 5 of CCS (TS) Rules, 1965. The applicant has further submitted that the order of termination has not been served on him, as he is on medical leave from 16.7.1990 to 22.7.1990.

By way of relief the applicant prays that the order dated 16.7.1990, purported to have been passed by the respondents under rule 5 of CCS (TS) Rules, 1965 be declared illegal and quashed with the further direction to the respondents to treat the applicant as a regular employee and that the operation of the alleged order be stayed.

3. The respondents 1 & 2 in their written statement have submitted that the order, terminating the services of the applicant was sent to him under registered post acknowledgement due. They further submit that the vacancies for the posts of Havaladar were for SC/ST candidates and

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names of SC/ST candidates only were called from the Employment Exchange. They maintain that he was employed against SC/ST vacancy, deeming him as a SC candidate and since the applicant did not produce the SC certificate, there was no alternative but to terminate his services.

4. In his replication the applicant has maintained his earlier stand and has asserted that there was no question of deeming him to be a SC candidate when he neither claimed to be a SC candidate nor were the names of SC/ST candidates alone called from the Employment Exchange. The respondents have filed a photo copy of the requisition form dated 20.4.87 placed on the Employment Exchange for sponsoring candidates to fill up the vacancies of Havaladar. Against column 6 of the requisition dated 20.4.87 the number of posts to be filled indicated are five, three posts are reserved for SC, two posts are for ST. Against column 9 of the requisition form the following statement is made:-

"9. Any other information considered relevant: In case suitable S/C & S/T candidates are not available N.A.C. may please be issued."

From the ordersheets of the case we find that on 4.4.1991 the Tribunal passed ad interim order that "While it is not possible for us to agree to the request to reserve a vacancy for the applicant, we make it clear that the selection held and the consequent appointments made shall be subject to the out-come of this O.A. The respondents shall make this condition manifest in the order of appointment, if any made, before the next date of hearing."

As it was a short matter which could be resolved by the perusal of the record, the respondents were directed on 1.5.1991 to make available the relevant records regarding applicant's appointment to the post in question on the next date for perusal of the Court. On 21.5.1991, none

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appeared for respondents while on 15.7.1991 the departmental representative asked for time to produce the relevant record. On 25.7.1991, Miss Ashoka Jain, the learned counsel for the respondents prayed for two weeks' more time to produce the relevant records. Finally, a photo copy of the requisition form, sent to the Employment Exchange alone was filed by the respondents, to which we have referred to above.

5. We have perused the record and heard the learned counsel for both the parties. From the copy of the requisition form, sent to the Employment Exchange, it is observed that the Employment Exchange was authorised to sponsor names of other than SC/ST candidates, if suitable SC/ST candidates were not available, but the Exchange was required to send the N.A.C. in that case. From the pleadings it is clear that the applicant does not belong to SC nor did he make any such claim. In fact when in the seniority list he was shown as a SC candidate, he requested the concerned authority to set right its record. He has not, therefore, suppressed any information from the respondents. His name was sponsored by the Employment Exchange but the list of candidates, sponsored by the Employment Exchange has not been produced before us. It is nobody's case that he was sponsored as SC candidate by the Employment Exchange. In absence of the relevant documents which despite our direction the respondents have not produced, there is no alternative but to draw the adverse inference and to form the view that the Employment Exchange had sponsored the applicant in absence of non-availability of SC/ST candidates and he was employed by the respondents as such. The applicant has also completed his period of probation of one year. The applicant had not suppressed any material information to seek employment from the respondents. If the vacancy was to be filled only by a SC candidate, the applicant should not have been selected for employment by the Selection Board and appointed, as he had not produced any certificate of

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belonging to SC/ST, as he did not meet the requirement of paragraph-11 (e) of the appointment letter (page 16 of the paper book). The termination of his services in such circumstances under Rule 5 of CCS (TS) Rules, 1965 would be violative of the principles of natural justice, particularly when he had completed his probation period of one year and rendered over two year's service.

In the facts and circumstances of the case, the order dated 16.7.1990, terminating the services of the applicant under Rule 5 of CCS (TS) Rules, 1965 is violative of the principles of natural justice and is, accordingly, set aside and quashed. The applicant shall be deemed to be in service from the date his service was terminated. We further direct that the applicant shall be taken back on duty by the respondents against an existing vacancy or by discharging the juniormost person, appointed in terms of Tribunal's interim order dated 4.4.1991. He will, however, be not entitled to any back wages. The period from the date of discharge to the date he resumes duty shall be treated as 'dies-non' and shall count as qualifying service for confirmation and other benefits.

There will be no order as to costs.

(Signature)
(I.K. RASGOTRA)
MEMBER (A) 25/9/91

(Signature) 25.9.91
(T.S. OBEROI)
MEMBER (J)

'SKK'