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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2577/90

New Delhi this the 12th day of December, 1994

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

Shri C.J. Roy, Member(J).

Smt. Veena Rani Nigam
W/o Dr. M.C. Nigam,
R/o 245/5-A, Panchkuian Road,
New Delhi-1. Petitioner.

By Advocate Shri R.K. Kamal, Counsel with Shri S.K. Gupta,
Counsel.

Versus

1. Union of India through
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, Maulana Azad Road,
New Delhi.
2. Director General of Health Services,
Nirman Bhavan, Ministry of Health
and Family Welfare, Maulana Azad Road,
New Delhi.
3. The Principal and Medical Supdt.,
(formerly known as Member Secretary),
Lady Harding Medical College and
Kalavati Saran Children's Hospital,
New Delhi. Respondents.

None for the respondents.

ORDER (ORAL)

Shri N.V. Krishnan.

The grievance of the applicant is that though she was appointed as Psychologist in the Kalavati Saran Children's Hospital as early as on 6.11.1967. She has not been confirmed on this post and she has prayed for declaration that she stands confirmed on the post of clinical Psychologist in the year 1969 when her period of probation (maximum two years) was successfully over.

2. The brief facts are as follows:

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2.1. The applicant sent an application for appointment to the post of Psychologist in pursuance of the Annexure A-1 advertisement issued by the Kalavati Saran Children Hospital - hospital for short. She was given an offer of appointment on 16.10.1967(Annexure A-2) in which, among other things, it was stated that the post has been sanctioned by the Government of India, Ministry of Health and Family Welfare upto 29th February, 1968 in the first instance but it is likely to be continued for indefinite period. It does not state anything about the applicant being appointed on probation. However, the applicant has produced extracts of the rules as Annexure A-5 which indicate that there should be a probation for fresh entrants of two years.

2.2 The applicant has also produced at Annexure A-8 a letter of the hospital dated the 20th February, 1985 addressed to the second Respondent, the Director General of Health Services (DGHS) in which the hospital furnished copies of the recruitment rules at the time of appointment of the applicant along with integrity certificate and a self contained note for DPC. The enclosure thereto indicates that the applicant and one more person were appointed in the year 1967 and the applicant was due for confirmation on 6.11.1969 and the other person Mr. Naresh Kumar Ahuja on 1.2.1979. In respect of the applicant, it is stated that a permanent post was available for confirmation whereas for Mr. Naresh Kumar Ahuja no such post was available. An integrity certificate was also enclosed. The note for the Departmental Promotion Committee reads as under:

"NOTE FOR THE DEPARTMENTAL COMMITTEE.

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Certified that there is one permanent post of Psychologist in the scale of Rs.650-1200 which is Group 'B' post. Mrs. V.R. Nigam is the only incumbent in this post appointed w.e.f. 6th November, 1967 and thus no other officer is holding any lien against this post. It is a clear vacancy.

Mrs. V.R. Nigam possessed the qualification and experience as required at the time of appointment. She is M.A. B.Ed. D.M. & S.P. (Diploma in Medical and Social Psychology).

The Directorate General of Health Services is the appointing authority. It is, therefore, requested that confirmation of Mrs. V.R. Nigam against the permanent post of Psychologist in this Instt. w.e.f. 6th November, 1969 may kindly be considered and necessary order issued at an early date".

2.3 The hospital appears to have reminded the second respondent on 6.9.1985 and 30.5.1988. Lastly, on 10.5.1990, the hospital again took up the matter with the second respondent (Annexure A-10) by enclosing an application dated 12.4.1990 of the applicant requesting for confirmation. It was mentioned therein that no vigilance case was pending or contemplated against her.

2.4 As no reply was received in this regard, the applicant filed this O.A. on 7.12.1990 seeking the following reliefs:

"(i) Declare that the applicant stands confirmed on the post of clinical Psychologist in the year 1969 when her period of probation maximum two years was successfully over command the respondents to pay the applicant the emoluments, benefits and other allowances retrospectively from the year 1969 to which she would have been entitled and stands entitled if officially confirmed in time i.e. 1969 by the authorities.

(ii) Further direct the respondents to consider the applicant for the post of clinical Psychologist at De-addiction clinic Lady Harding Medical College (Dept. of Psychology) at New Delhi..."

3. The respondents have filed a reply dated 25.2.1991. It is contended that the application is not maintainable being stale and barred by time. It is also contended that the application is bad for misjoinder of Respondents 2 and 3. It is further stated that the applicant has no cause of action as confirmation is an executive function and the court would not like to interfere in the same.

4. We have seen the reply. In so far as the reply to the averments made in paras 1 to 4.6 is concerned, we notice that the respondents have said that they are matters of record and they need no reply/ subject to preliminary objections. In reply to para 4.7 it is stated that no application was received from the applicant. We notice that para 4.7 of the O.A. does not allege that the applicant had sent any application. In reply to para 4.8, it is stated that as per office record only one representation was received during 1990 which has been forwarded to DGHS. We notice that the reply has been filed on behalf of the respondents by the Principal and Medical Superintendent of the Hospital on 25.2.1991. There is no denial of the letters stated to be sent by the third respondent to the second respondent as mentioned in the O.A. These have not been specifically denied by this respondent. For example, Annexure-8 is a letter of the Principal i.e. the third respondent dated 20.2.1985. The Annexure A-9 dated the 30th May, 1988 is by the Deputy Medical Superintendent of the hospital on the same subject. This respondent has not cared to deny the authenticity of these letters.

5. The only other point raised by the respondents is in reply to para 4.9 of the wherein the applicant claimed that his services are governed by the rules applicable to the Central

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Government Gazetted Personnel and that the conditions of probation, its continuation and confirmation are laid down in the Hand Book for Personnel Officers issued by the Ministry of Personnel, Public Grievances and Pension. It is stated in reply that this is not mentioned in the letter of appointment.

6. For the aforesaid reasons, it is contended that the application should be dismissed.

7. We have heard the learned counsel for the applicant. He states that, admittedly, the applicant has been in service since 1969 but still not confirmed. His only request is that the applicant's confirmation should be ordered by us.

8. We have carefully considered the prayer made in the O.A. We are of the view that merely because the applicant did not move the matter earlier, it does not mean that she cannot raise the issue of confirmation at all. The applicant does not appear to be confirmed so far. She has a right to be considered for confirmation. In the circumstance, so far as the question of limitation is concerned, we are of the view that there is no merit except that in regard to the final relief this matter will be taken into account.

9. The contention that there is a 'misjoinder of parties' is astounding. The applicant has alleged that the third respondent has initiated letters for confirmation which were addressed to Respondent No.2. Therefore, the applicant has rightly impleaded these two respondents in the O.A., though these respondents have not specifically denied any of the letters and actions attributed to them.

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10. We are of the view that this is a case where the respondents ought to have taken early decision as to whether the applicant is entitled to be confirmed in accordance with the rules and a reply ought to have been given. We are further of the view that as it is established by the Annexure A-10 letter dated 10.5.1990 of the hospital to the second respondent that an application for confirmation was made by the applicant on 2.4.1990, the applicant is entitled to be considered for confirmation at least from that date by the respondents, if not from an earlier date, if they so choose. We notice from the note for the Departmental Promotion Committee that the Director General of Health Services is the appointing authority is competent authority for ordering confirmation.

11. We, therefore, direct the second respondent to consider the question of confirmation of the applicant, in accordance with law, within a period of two months from the date of receipt of this order and in case the second respondent finds the applicant fit for confirmation, he should indicate the date from which the applicant should be confirmed. We declare that the latest date with effect from which the applicant is entitled to be confirmed would be 12.4.1990, which is the date on which the applicant made representation to the hospital in this regard, unless the respondents choose to confirm her from an earlier date. We make it clear that it is open to the applicant to seek further relief in case he is aggrieved by any order that may be passed by the second respondent.

9. The O.A. is disposed of, as above.

W.S.R.
(C.J. Roy)
Member(J)

'SRD'

N.V. Krishnan
12.12.84
(N.V. Krishnan)
Vice Chairman(A)