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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

OA.No.2603/91

Date of Decision:30.03.92

Shri Azad Singh	Applicant
Shri V.P. Trikha	Counsel for the applicant
Vs.	
ESI Corporation & Ors.	Respondents
Shri D.P. Malhotra	Counsel for the respondents

CORAM:

The Hon'ble Shri P.K. Kartha, Vice Chairman(J)
The Hon'ble Shri A.B. Gorthi, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporters or not? *NO*

JUDGEMENT (Oral)
(of the Bench delivered by Hon'ble Mr. P.K. Kartha)

The applicant who has worked as a Nursing Orderly on daily wages basis in the ESIC Hospital has prayed in this application that the respondents be directed to absorb him as Nursing Orderly on regular basis against the regular existing vacancies and that he should be paid the same scale of pay as that of the regular employees. He has also sought for a direction to the respondents not to recruit new persons as Nursing Orderly till he is absorbed on regular basis.

2. On 07.11.91, the Tribunal passed an ex parte interim order directing the respondents to maintain status quo as regards continuance of the applicant as Nursing Orderly on daily wages basis.

3. The applicant has stated that he was sponsored by the Employment Exchange and was called for an interview for the post of Nursing Orderly by the Selection Committee constituted for this purpose.


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The Selection Committee selected him and he was appointed as Nursing Orderly on daily wages basis from 10.05.90 to 30.09.90 and thereafter from 08.05.91 to 08.11.91 when his services were terminated by oral orders. (6)

4. According to the respondents, the applicant has worked on daily wages basis only for 146 days from 08.05.91 to 31.10.91. According to them, this period is lesser than 240 days.

5. We have heard the learned counsel for both parties. The applicant has alleged that after terminating his services, the respondents have engaged many persons as Nursing Orderly. During the hearing, he has produced before us a list of persons selected to the post of Nursing Orderly on regular basis to whom orders of appointment have already been sent.

6. The contention of the respondents is that the Selection Committee has only considered the suitability of the applicant for appointment on daily wages basis and that the Selection Committee was not constituted in accordance with the relevant Recruitment Rules. This is being denied by the learned counsel for the applicant.

7. The respondents have not stated that the work and conduct of the applicant during the period of his engagement as Nursing Orderly on daily wage basis have not been 'satisfactory' or were 'not up to the mark'. 

8. The applicant has produced along with the application a copy of the ESIC (Recruitment Regulations, 1977 for Group 'C' and 'D' Paramedical Posts).

9. The engagement as Nursing Orderly on regular basis is in accordance with the provision of the said Regulation.

10. In our opinion, the applicant who has worked as Nursing Orderly on daily wages basis will have preferential claims over other persons with lesser length of service and outsiders in the matter of appointment as Nursing Orderly on regular basis.

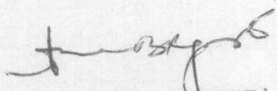
11. In the facts and circumstances of the case, the application is disposed of with the direction to the respondents to consider the appointment of the applicant as Nursing Orderly on regular basis in accordance with the relevant Recruitment Rules. For this purpose, the respondents shall dispense with the requirement of the name of the applicant being again sponsored by the Employment Exchange. They should also give to the applicant relaxation in age to the extent of the service put in by them, provided the applicant was within the age limit at the time of his initial engagement as Nursing Orderly on daily wages basis. Till the applicant is considered for regularisation as mentioned above, he shall be accommodated as Nursing Orderly on daily wages basis.

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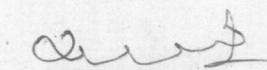
12. The interim order passed on 07.11.91 directing the respondents to maintain statue quo as regards continuance of the applicant as Nursing Orderly on daily wages basis is hereby made absolute, subject to the aforesaid observations and directions.

13. In case the applicant is found suitable for the appointment to the post of Nursing Orderly on regular basis, the respondents shall pass appropriate orders accordingly.

The application is disposed of accordingly.


(A.B. GORTHI)

MEMBER(A)


(P.K. KARTHA)

VICE CHAIRMAN(J)