

97

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2622/2004

M.A.No.2173/2004

Hon'ble Mr.L.K. Joshi, Vice Chairman(A)
Hon'ble Mr.Mukesh Kumar Gupta, Member(J)

New Delhi, this the 22nd day of March, 2007

1. Mani Ram S/o Late Shri Khushali Ram,
Q.No.62, Type 1, L.B.S. Hospital Campus,
Khichadi Pur, Delhi-91
2. Udai Pal S/o Shri Man Singh,
R/o 60-A, L.B.S. Hospital Campus,
Khichadi Pur, Delhi-91
3. J.P. Mishra S/o Shri G.R. Mishra,
R/o 11, Bair Sarai,
New Delhi

..... Applicants

(By Advocate: Shri U. Srivastava)

Vs.

1. Govt. of N.C.T. of Delhi, through
The Secretary,
Health & Family Welfare Department,
9th Level, Delhi Secretariat,
I.P. Estate, New Delhi-02
2. The Director,
Directorate of Health Services,
F-17, Karkardooma,
New Delhi
3. The Joint Director (Admn.),
Directorate of Health Services,
F-17, Karkardooma,
New Delhi
4. The Medical Superintendent,
Lal Bahadur Shastri Hospital,
Khichdi Pur, Delhi-91
5. Mohd. Wasem, N.O.
6. Bhagwan Singh, S.C.C.,
7. Shiv Kumar Sharma, Attendant
8. Chander Bhan, Class-IV
9. Dharamvir Singh, Messenger

(The notice to the respondents 5 to 9 may be served through the

Shyishi

g

Respondent No.3)

.....Respondents

(By Advocate: Shri Ajesh Luthra, for respondents 1 to 4
Shri H.P. Chakravorty and Shri S.K.Arya, for respondents 6
and 9)

ORDER

Mr. L.K. Joshi, Vice Chairman (A)

The applicants are aggrieved by the selection made for the post of Dresser by the Director of Health Services, Government of National Capital Territory of Delhi (GNCTD) in September/October, 2004. The applicants have alleged several irregularities in the process of selection and have sought the following relief:

"(a) To quash and setting aside the selection proceedings taken place in terms of the advertisement issued by the respondents to fill up the post of Dresser and the selection/appointment/promotion of the respondents No.5 to 9 on the recommendations of Departmental Promotion Committee, after declaring the same is as illegal arbitrary and irregular also.

(b) And thereafter, direct the respondents to make a fresh selection for the posts of Dresser in accordance with the relevant rules and instructions on the subject.

© Directing the respondents to place the relevant records pertaining to the present application before the Hon'ble Tribunal for the proper adjudication in the matter."

2. The applicants are working as Nursing Orderlies in Lal Bahadur Shastri Hospital at Khichdi Pur under the Govt. of National Capital Territory of Delhi appointed on different dates. A circular was issued by the Director of Health Services to the Medical Superintendents of hospitals inviting names of eligible persons for promotion to the post of Dresser in the pay scale of Rs.2650-4000/- from group 'D' officials working in the pay scale of Rs.2550-3200/- with three years regular service by a communication dated 07.01.2004 followed by another communication dated 27.01.2004. The applicants also applied for the post of Dresser. Thereafter, they were informed by a circular dated 13.09.2004 about holding of a meeting of Departmental Promotion Committee (DPC) for the above selection by promotion, to be held on 21.09.2004 and 22.09.2004

L.K. Joshi

along with skill test. The applicants were not selected as per the order No.F.5(13)/98-DHS/Estt/HQ/35786-810 dated 13.10.2004.

3. The applicants have alleged the following irregularities in the selection process :

- (i) That respondent no.5 Shri Mohd. Waseem working in the Office of the Medical Superintendent, Lal Bahadur Shastri Hospital, Khichdi Pur did not have a valid certificate in First Aid, as per requirement, but was allowed to participate in the selection process and was selected as Dresser;
- (ii) That respondent no.6 Shri Bhagwan Singh did not participate in the selection process but his name figured in the list of persons selected as Dresser;
- (iii) Some of the candidates who did not have the requisite qualification as per the Recruitment Rules on the cut-off date of 05.02.2004, were considered and selected as Dresser. In this context, it is alleged that respondents no.7 and 8 Shri Shiv Kumar Sharma and Shri Chander Bhan, respectively have not completed three years regular service in the grade of Rs.2550-3200/- but were selected as Dresser; and
- (iv) Respondent no.9 Shri Dharamvir Singh, Messenger did not have three years experience as per the Recruitment Rules but was selected as Dresser.

4. It is also averred in the O.A. that the DPC also held an interview which is in violation of the procedure laid down for holding the DPC by O.M.No.22011/1/90-Estt(D) dated 12.10.1990 of DoP&T in which it is mentioned that interviews should not be held unless it has been specifically provided for in the Recruitment Rules for the post. It is averred that since no such requirement has been laid down, it was irregular practice to hold interview for the post of Dresser.

5. Learned counsel for the applicants has brought to our notice the circular issued by the Joint Director (Admn.) in the Directorate of Health

Khichdi

Services on 27.01.2004 in which the Medical Superintendents have been requested to send the particulars of Group 'D' employees who are willing for promotion to the post of Dresser and who possess the requisite qualifications and experience, to the Office of the Joint Director latest by 05.02.2004. He has argued that respondent no.5 Shri Mohd. Waseem did not have the requisite certificate on this date. He has brought to our notice the form filled by Mohd. Waseem for the post of Dresser (Ann. R-1) in which the column regarding holding of valid First Aid Certificate has been left blank and no copy of the certificate has been enclosed as required in the form. It has further been pointed out that the certificate has been issued to Shri Mohd. Waseem on 16.06.2004, which is after the last date of application i.e. 05.02.2004. In this context, the learned counsel has cited the case of **Ghanshyam Mishra v. Union of India and others**, 2005 I AD (DELHI) 444 in which the Hon'ble High Court of Delhi has held as follows :

"7. The question which arises for consideration is whether the Director and Chairman of respondent No.2 can be faulted with for not accepting the recommendation of the Selection Committee regarding the empanelment of the petitioner? It would be noticed that the empanelment made by the Selection Committee was subject to, "Clearance of NET for which he had appeared." In my view, respondent no.2 cannot be faulted with for taking a position that petitioner should not have been empanelled on the basis of a qualification, which he had yet to acquire. It may be noted that on the petitioner's own showing while this recommendation was made in March, 1998, petitioner only acquired a Degree of NET in December, 1998. While Dr.Devi Prasad Dwivedi was holding a Doctorate. Petitioner is stated to have acquired Doctorate only in December, 2000."

6. The judgment of the Hon'ble Supreme Court in **Municipal Corporation of Greater Bombay and others v. Dr. Sushil V. Patkar and others**, 1992 (19) ATC 269 has also been cited in which it has been held as follows:

"We need not go into that question because, in our view, it is not possible to sustain the decision of the High Court for the simple reason that a candidate who was given an opportunity even at the belated stage of interviews to show that he possessed the necessary qualification for selection, having failed to furnish the certificate showing acquisition of qualification, cannot be allowed to upset the selection and

Hysh

thereby interfere with the rights of third parties for his default."

Reliance has also been placed on the case of The District Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and another v. M. Tripura Sundari Devi, 1990 (4) SLR

237 wherein it has been held by the Hon'ble Supreme Court as follows :

"It is common knowledge that sometimes either by mistake or otherwise the notes put up before the Selection Committee contain erroneous data prepared by the office, and sometimes the Selection Committee proceeds on the basis that all those who appears before it, are otherwise qualified. However the second stage at which the documents are scrutinized is when the higher authorities go through them at the time the candidate concerned approaches them for resuming duties along with the original certificates. It is at that stage that the mistake was discovered in the present case and the respondent was not permitted to resume her duties. We see nothing wrong in this action."

Further reliance has been placed on the case of Dr. M.V. Nair v. Union of India and others, 1993 (2) SCC 429 in which the Hon'ble Supreme Court has held as follows :

"(9) In the above situation, it was necessary for the Tribunal to have recorded a finding on the correctness or otherwise of the above submission of the Union of India and Dr Nair. Without doing so, the tribunal could not have set aside the appointment of Dr Nair to the said post. The tribunal was also not justified in holding that Dr Bhatnagar was also equally qualified and eligible for the said post like Dr Nair when Dr Bhatnagar had himself come forward with the plea that he was not eligible and asked for grant of relaxation to make him eligible. The tribunal, in our opinion, was also not justified in statng, in the direction granted by it, that inasmuch as Dr Bhatnagar has by now become eligible in all respects under the recruitment rules, his suitability should be considered along with other eligible candidates and if he is found suitable for the appointment he should be appointed to the said post". It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."

7. It has further been argued for the applicants that they are eligible for the post of Dresser as per the Recruitment Rules and in fact, they had been working in the Operation Theatre also which, it has been argued,

Wizli

6

3

has enhanced their qualification. In this connection, the learned counsel for the applicants has brought to our notice an application given by the applicant Shri Mani Ram to the Medical Superintendent of Lal Bahadur Shastri Hospital (Ann. A-2) in which a request for grant of O.T. allowance has been made. However, we shall not consider this document because it does not show what work he was doing in the Operation Theatre and how it made him qualified in terms of the Recruitment Rules.

8. The learned counsel for the applicants has also reiterated that while the persons who did not even participate in the selection process had been selected, the applicants who had applied in time and who were eligible, were not selected. Further, he has pointed out that under the Recruitment Rules, there is no procedure of interview prescribed and yet interview was held during the meeting of the DPC.

9. Learned counsel for the respondents has pointed out that the averment made by the applicants in para 8 (a) of the O.A. that advertisement was issued by the respondents to fill up the post of Dresser is baseless because no advertisement was issued for such selection. He has pointed out that the DPC considered the names circulated by the authorities of various Hospitals as required by the circulars, which were issued for this purpose. He has pointed out that the first circular for forwarding the names of eligible and willing employees for the post of Dresser was issued on 07.11.2003 to Medical Superintendents/ CDMO/ CMO by the Joint Director (Admn.) in the Directorate of Health Services, Govt. of NCT Delhi. In this circular, no date for forwarding the applications has been prescribed. Subsequently, a circular was issued on 27.01.2004 in which the authorities of the Hospitals were requested to send the required information to the Joint Director by 05.02.2004. He has pointed out that the last circular was issued on 26.05.2004 by which many forms sent to the Directorate of Health Services were returned for correction. This has not been controverted by the applicants. He has contended that

Highly in view of the above, it would be wrong to say that 05.02.2004 was the

cut-off date for submission of the information. The learned counsel has further contended that no interviews were held and only skill test was held at the time of meeting of DPC as provided in the Recruitment Rules.

10. It has been argued for Respondent no.5 that in the absence of a specific date in the circular asking for forwarding of names, it would be difficult to argue that any cut-off date was provided. It has been contended that in view of this, the candidate should have prescribed qualifications before the date of the meeting of the DPC, which was on 21/22.09.2004 and the Respondent no.5 had acquired the requisite qualification in June, 2004. In this context, reliance has been placed on

Ashok Kumar Sharma and another v. Chander Shekher and another,

(1993) 24 ATC 798, in which the majority view taken by the Hon'ble Supreme Court is as follows :

"The appellants did pass the B.E. (Civil) Examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to appear in interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in public interest that the interview was made as broad based as was possible on the basis of qualification. It was in public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of interview and taking into account the generally followed principle of Rule 37 in the State of Jammu and Kashmir, too much technical view cannot be taken. Results announced by the recruiting authority have therefore to be upheld."

It has been further contended that M.V. Nair (supra) cited by the Applicants has not noticed this judgment, which is of three Judge Bench.

11. The learned counsel has further contended that respondent Shri Mohd. Waseem had produced a certificate dated 16.06.2004, which even if we consider 05.02.2004 as the cut-off date, is at most only a procedural irregularity. It has been argued that the appointment has not been made de hors the Recruitment Rules. Therefore, it would not be proper to disturb the appointment of Respondent no.5. In this context, reliance has

been placed on **Ram Sarup v. State of Haryana and others,** AIR 1978

SC 1536, in which it has been held by the Hon'ble Supreme Court as follows :

"3. The question then arises as to what was the effect of breach of Cl. (1) of R. 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularized as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of labour laws in any one of the three capacities mentioned in Cl. (1) of R. 4 or in any higher capacity, his appointment must be regarded as having been regularized."

Reliance has also been placed on Dr. M.S. Mudhol and another v. S.D.

Halegkar and others, (1993) 3 SCC 591 in which the Hon'ble Supreme

Court has held as follows :

"6. Since we find that it was the default on the part of the 2nd respondent. Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same."

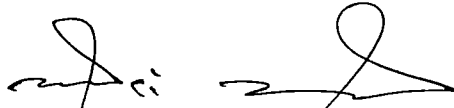
12. In so far as the allegation regarding non-participation of Respondent no.6 Shri Bhagwan Singh is concerned, it has been pointed out that he participated in the interview and signed the attendance sheet as produced before us in Annex. R-3. Shri Bhagwan Singh's name appears as the last but one candidate in the attendance sheet.

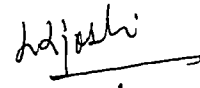
13. Countering the argument that Respondents no.5 to 9 did not have three years' experience in the grade, it has been argued by the learned

Shri

counsel for the respondents that the experience required as per the first circular issued on 07.11.2003 was three years' experience in dressing and not three years in the grade. In this context, reference has also been made to the Recruitment Rules for the post of Dresser in which in column 7, educational and other qualifications required for direct recruits have been mentioned as "Matric/10th Pass with 3 years experience and valid Certificate in First Aid."

14. Considering the rival contentions and on the basis of the above analysis, we find no merit in the application, which is accordingly dismissed. No order as to costs.


(Mukesh Kumar Gupta)
Member (J)


(L.K. Joshi)
Vice Chairman (A)

/dkm/