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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BEHCH**

OA No. 2682/2004

New Delhi this the 31st ~~8~~ day of January, 2006

**Hon'ble Mr. V.K.Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)**

Shri Sanjay Kumar Gupta,
S/O Shri C.P.Gupta,
House No. 448, Block-9,
Khichripur, Delhi-91

(By Advocate Shri P.Chakravorty)

..Applicant

VERSUS

1. Lt.Governor, Delhi
Through Principal Secretary (Health),
New Secretariat, Govt. of NCT of Delhi,
ITO, New Delhi-2
2. Medical Superintendent,
Lok Nayak Hospital,
Jawaharlal Nehru Marg, New Delhi-2

..Respondents

(By Advocate Mrs. Renu George)

O R D E R

(Hon'ble Mrs. Meera Chhibber, Member (J))

By this OA, applicant has sought the following reliefs:

“(i) An order directing the respondents to produce the records pertaining to the merit list and the actual number of Category ‘D’ post



with various designations available as on 28.1.2003 and number of Category 'D' post that fell vacant thereafter in LNJP Hospital.

(ii) To issue a direction to the respondents to appoint the applicant to any of the Category 'D' post in LNJP Hospital or any other hospital under the Govt. of NCT of Delhi for which he has the requisite qualifications.

(iii) In the alternative, it is prayed that the interview for the post of Category 'D' post in LNJP Hospital and other hospitals on 11.9.2003 or any earlier or subsequent dates, be quashed.

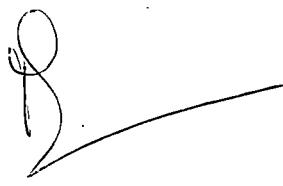
(iv) To quash and set aside the office order dated 28.1.2003 appointing 81 candidates to Category 'D' post".

2. It is stated by the applicant that Govt. of NCT of Delhi in the month of August, 2002 had published an employment notice in the newspapers inviting applications for filling up category 'D' posts in various hospitals. The posts available in each hospital were given separately and candidates were required to submit one application for any of the hospitals/medical institutions. They were also required to give their preferences for category 'D' posts. He applied for Lok Nayak Hospital and his preferences were for the posts of Mate/Khallasai/Chowkidar/Cook. No details however, were given in their advertisement as to how many posts were available in each category. Separate Boards were constituted for each hospital who interviewed the candidates and merit list was prepared in respect of the successful candidates. As per applicant's information, his name appeared at Serial No. 74 in the merit list, whereas there were 95 vacant posts in Lok



Nayak Hospital. Therefore, he was expecting that he would be issued appointment letter. However, on 28.1.2003 an office order was issued appointing 81 persons to various categories in 'D' posts which included the candidates at Serial nos. 75,76,77,80,81,82,85 and 86 who were below the applicant but his name was missing in the said office order. He met the Administrative Officer of Lok Nayak Hospital who informed him that the number of posts of Khalasi in LNJP Hospital had been reduced. However, he would be offered a category 'D' posts as per his other preferences for category 'D' posts but no appointment letter was issued to him. Being aggrieved he gave a representation to the Medical Superintendent, Lok Nayak Hospital on 7.8.2004 but no reply was given to him. Therefore, he had no other option but to file the present OA.

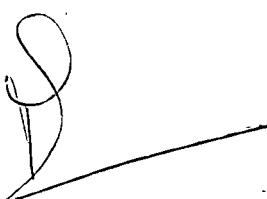
3. Respondents have opposed this OA. They have submitted that applicant was considered for the post of Khallasi as per the merit list. Though initially 95 posts were advertised for Lok Nayak Hospital but subsequently two posts of Khallasi were abolished. As such number of posts were reduced from 95 to 93. Applicant could not get the appointment being down in the merit list. No persons junior to applicant have been selected as alleged on the post of Khallasi. They have thus prayed that the OA may be dismissed. With the additional affidavit they have filed letter dated 5.9.2002



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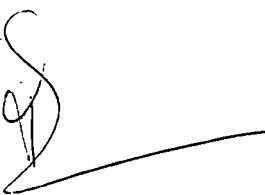
to show that the posts of Khalasi which were initially required to be advertised were 4, out of which 3 posts were for unreserved and one for OBC category. However, after the posts were advertised, 2 posts were abolished. Therefore, only 2 posts were required to be filled as per the advertisement.

4. In rejoinder applicant has reiterated that he had given preferences as Mate/Khalasi/Bearer, therefore, if due to any reason, he was not found suitable for Khalasi due to less number of vacancies, he should have been considered as such for other posts as he had already given his preferences as per the advertisement. It is also submitted by the applicant that once posts were published, it could not have been reduced without issuing any Corrigendum. He has also stated that even though some candidates had applied for a particular posts, but they were appointed in a different category. For example, there is only one name of stretcher bearer in the merit list i.e. Jasveer Singh but Shri Tariq Iqbal S/O Mohsin Ameer had applied for the post of Strecher bearer but he was appointed for the post of bearer. Similarly Shri Ashok Kumar Manji S/O Kuleshwar Manji though applied for the post of mate but he was appointed as Chowkidar. One Shri Surender Singh S/O Jai Pal Singh applied for the post of mate but he has been appointed as Chowkidar which clearly show that respondents have



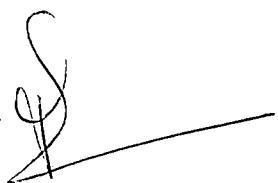
considered some candidates for other posts even though they had not applied for it because all these posts were Group 'D' in same pay scale. Therefore, applicant should also have been considered for other posts, since he is shown in the merit list at serial No. 74.

5. We have heard both the counsel and perused the pleadings as well. Admittedly there were 95 posts advertised for Lok Nayak Hospital and as per the advertisement only one application was to be given by the candidate for any one of the hospital/medical institutions. However, the applicants were eligible for applying more than one posts in that Hospital in case he/she was eligible for such posts. However, preferences were to be indicated in case candidates were eligible for more than one posts in that particular hospital (page 17 para 4). It is thus clear that applicant could have applied for more than one post provided he was eligible for the same by giving his preference. It would be relevant to note that in para 4.3 applicant has specifically stated that he had applied only under Lok Nayak Hospital and his preferences were for the post of Mate/Khalasi/Chowkidar /Cook in the scale of Rs. 2550-3200. In the counter affidavit respondents have merely stated that contents of these paragraphs need no reply being matter of record, meaning thereby that this averment has not even been controverted, therefore, it stands admitted in law. It is also not controverted



by the respondents that applicant's name figured at Sl.No.74 in the merit list prepared by them even though he has specifically stated so in para 4.5. He has further stated that persons below him in the merit list belonging to general category, out of which 2 persons belonging to general cagtegory have been appointed as Khalasi. Even though this averment had not been controverted by the respondents specifically, counsel for the respondents orally submitted, the list annexed is not merit list but is prepared alphabetically. In counter reply they have merely stated that applicant was considered for the post of Khalasi but since he was below in the merit list, he could not be appointed as Khalasi. They have, however, stated that no junior to the applicant has been selected on the post of Khalasi.

6. We tried to find out from the respondents' counsel, as to why applicant was not considered for other posts, for which preferences were given by him in the same hospital, as was allowed in the advertisement itself and as stated by applicant in para 4.3 of his averment but neither counsel could explain it ^{therefore B} nor it has been explained in the counter. We would ^{also, B} agree with the applicant's counsel that if preference was given by the applicant, he ought to have been considered for other than Khalasi category ^{not even B} because he was one of selected candidates upto 95. Respondents have explained the position of those 2 candidates in the merit list, who have been given appointment as

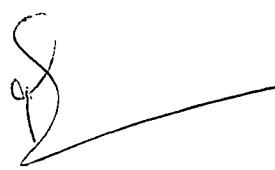


Khalasi. Moreover, on perusal of documents filed by respondents themselves, (for submission of break-up post wise and category wise vacancies) which was given to the Tech. Recruitment Cell on page 5, it is seen that 4 posts of Khalasi were to be advertised out of which 3 were to be filled from unreserved candidates while 1 was to be filled from OBC category, whereas both the persons who have been finally selected and posted as Khalasi belong to SC category. Respondents have not explained even this in their counter. Similarly from the list of selected candidates annexed by the respondents themselves at page 7, it is seen that 35 genl. candidates were found suitable for appointment as Group 'D' whereas on the basis of advertisement given by Tech. Recruitment Cell also 37 posts of group 'D' were marked for genl. candidates. Even if we accept the contention of respondents that after issuance of the advertisement, 2 posts of Khalasi were abolished still 1 post ought to have been filled in category of Khalasi from unreserved candidate while the other was required to be filled from OBC category whereas both posts of Khallasis have been filled as per order dated 26.2.2004 (annexed at page 11 of the additional affidavit) by Shri Panchan Chaudhary and Shri Harish Kumar at Serial Nos. 19 and 20 and both these candidates are shown to be belonging to SC category in the final list of selectees at Serial nos. 52 and 26 respectively, meaning thereby



that the posts which were required to be filled from genl. candidates have been filled from SC category which is a blantant mistake noticed by us from the documents filed by the respondents themselves. Counsel for respondents could not explain these discrepancies at all, nor could it be explained by the respondents as to why applicant was not considered for other category of group 'D' posts if he was within the number of 35 gen. candidates found to have been selected in the select list. It is also seen that even though applicant had given representation to Medical Superintendent, Lok Nayak Hospital on 7.8.2004 but it has not been replied till date.

7. In this view of the matter, we remit the matter back to the authorites with a direction to consider the discrepancies as mentioned in para 6 above and to pass a speaking order as to how the posts meant for genl. candidates have been filled up by SC candidates as also why applicant was not considered against other posts of Group 'D' category in Lok Nayak Hospital when he had already given his preferences for other posts as well, which was admissible under the advertisement. We direct respondent No.2 to consider all these aspects and to pass a reasoned and speaking order and in case he finds that illegality has been committed by the Hospital and justice has to be done to the applicant, he should pass an appropriate order after following due process of law by even terminating the services of last person who has



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wrongly been given appointment in place of applicant. We are giving these directions because merit list has not been produced but it is only list of selected candidates prepared alphabetically. He shall pass a reasonable order within a period of 2 months from the date of receipt of a copy of this order under intimation to the applicant. It goes without saying that if it is found injustice has been done to the applicant, applicant should be considered against other posts of preferences and appropriate orders shall be passed in accordance with law.

8. With the above directions, this OA is disposed of. No order as to costs.

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31/1/06
(Mrs. Meera Chhibber)
Member (J)

V.K.Majotra
(V.K.Majotra)
Vice Chairman (A)

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