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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2694/2004
with
OA 2929/2004

New Delhi this the 31st day of January, 2006

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

OA 2694/2004

1. Poonam Sharma
D/o Ashok Kumar,
R/o 2718, Chatta Pratap Singh,
Kinakari/Kindri Bazar Delhi - 6
2. Pramod Kumar S/o Pritam Singh
R/o Vill. Sabhapur, P.O.Gokulpur
Delhi
3. Umesh Manjhi S/o Rattan Manjhi
R/o 429, Type -1, Gulabi Bagh,
Delhi
4. Tara Chand Joshi S/o Ram Dutt Joshi
R/o KS-33 A. St. No.13
West Ghonda Delhi

.... Applicants

(By Advocate Shri Saurabh Ahuja)

VERSUS

1. GNCT of Delhi
Through its
Principal Secretary, Health & Family Welfare,
Deptt. 9th Level, A-Wing,
Delhi Secretariat, I.P. Estate,
New Delhi.



2. The Director Administration
Lok Nayak Hospital,
Near Delhi Gate,
Delhi.

..... Respondents.

(By Advocate Mrs. Renu George)

OA 2929/2004

1. Devender Kumar,
S/o Shri Kishan Lal
2. Munesh Kumar
S/O Shri Phool Singh
3. Sushil Ahalavat
S/O Shri Baljit Singh
4. Vinod Kumar,
S/O Shri Beerpal
5. Harjesh Kumar
S/O Shri Khem Chand
6. Sanjay Sharma.
S/O Shri Mange Ram
7. Uttam Singh Rawat,
S/O Shri Budhi Singh
8. Devdutt,
S/O Shri Lekh Ram
9. Jitender Kumar
S/O Radhey Shyam
10. Naveen Kumar
S/O Kewal Ram



11. Asha Devi,
S/O H.N.Shah
12. Ravi,
S/O Shri Jagroshan
13. Kapil Dev,
S/O Shri Suresh Chander
14. Pawan Kumar
S/O Shri Madan Singh
15. Sunil Kumar
S/O Shri Sunder Lal
16. Rakesh Sharma
S/O Shri K.K.Sharma

(C/O 311-A Western Wing, Tis Hazari, Delhi)

..Applicants

(By Advocate Shri Sachin Chauhan)

VERSUS

1. Government of NCT of Delhi
Through its Chief Secretary
I.P.Estate, New Delhi
2. Secretary
Health & Family Welfare Department
9th Level, Delhi Secretariat
I.P. Estate, New Delhi.
3. The Director (Admn.)
Lok Nayak Hospital, Near Delhi Gate.

...Respondents.

(By Advocate Shri Vijay Pandita)



ORDER

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

In both these OAs, the facts are common and also the grievance as well as the reliefs raised by the applicants are similar, accordingly these OAs are being disposed of by a common order. For the purpose of considering the facts, OA 2694/2004 is being taken up as a leading case. There are four applicants in OA 2694/2004 while there are 16 applicants in OA No. 2929/2004.

2. The brief facts as stated by the applicants are that they had applied for Group 'D' posts in Lok Nayak Hospital in response to Employment Notice published in Newspaper in May 2001. All these applicants were subjected to interview in October, 2003 and after they were selected, their names were kept in waiting list for appointment to Group 'D' posts, subject to the condition of falling of vacancy.

3. It is stated by the applicants that they were on the following serial numbers in the wait list.

1.	Poonam Sharma	45
2.	Pramod Kr.	22
3.	Umesh Manjhi	10
4.	Tara Chand Joshi	02



5.	Devender Kumar	SC	24
6.	Devdutt	Gen	21
7.	Vinod Kumar	SC	22
8.	Jitender Kumar	Gen	06
9.	Uttam Singh Rawat	Gen	18
10.	Naveen Kumar	Gen	39
11.	Sushil Ahalavat	SC	14
12.	Harjesh Kumar	OBC	04
13.	Munesh Kumar	SC	03
14.	Md.Zakir	Gen	24
15.	Sanjay Sharma	Gen	04

4. The applicants sought certain information/details of the vacant posts under the Right to Information Act, in response to which it was admitted by the respondents that the cases of applicants were taken up for filling up the vacant posts from the panel but the same had been rejected by the Govt. of NCT of Delhi vide their reply dated 23.8.2004 (page 19).

5. It is on the basis of this letter that counsel for applicants strenuously argued that it is evident from this letter that there are still as many as 116 posts of Group 'D' lying vacant. Therefore, so long that panel was alive, respondents ought to have filled up these vacancies from the persons who



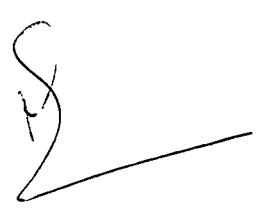
were selected and put in the wait list. He further submitted that respondents have scrapped the wait list panel arbitrarily. Counsel for applicants relied on the judgments of Hon'ble Supreme Court in the case of UOI and Ors. Vs. Ishwar Singh Khatri reported in 1992(21) ATC 851 and also 2002 (4) SCC 726 in the case of Vinod T. And Ors. Vs. University of Calicut and Ors. in support of his argument that the wait listed candidates should have been appointed against the vacancies which arose within 1 year i.e. the life of the panel.

6. OA is opposed by the respondents. They have submitted in the additional affidavit that number of posts of Group 'D' employees category wise, in Lok Nayak Hospital was submitted to the Technical Recruitment Cell vide their letter dated 5.9.2002 for being advertised in the Employment Notice of the Health and Family Welfare Department, Govt. of NCT of Delhi, They had notified total 95 vacancies out of which 2 were abolished. So 93 posts were required to be filled which were further sub-divided amongst, Gen./S.C/S.T/OBC etc. Accordingly a list of combined selected candidates was prepared (Annexure R-III). All the candidates who were selected were posted in their respective places vide Annexure R-IV. 4 more persons joined duties vide order dated 13.5.2004 after they were declared medically fit (Annexure R-V). Since all the posts of Group 'D' were already

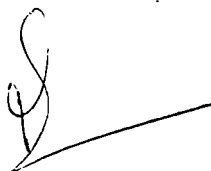


filled by the Hospital/Medical Institutions by the selected candidates, therefore, there was no occasion to appoint the persons from the wait list. All the applicants were in the wait list. Accordingly, it was intimated to all the Medical Superintendents/Head Of Department that since all the posts have already been filled, the panel /waiting list is not valid as number of vacancies existed at the time of advertisement had already been filled up by Hospital/Medical Institutions of the Govt. of NCT of Delhi. They were further requested to advise the number of vacancies fallen vacant/created after publication of the said employment notice so that they may be advertised in the employment notice again (page VI). Counsel for respondents orally submitted on instructions from departmental representative that 8 posts meant for ST are left open in view of orders passed by the Court. They have thus prayed that there is no merit in the OAs. The same may accordingly be dismissed. They have relied on JT 1995(2) SC 291 and 1998(7) SCC 469).

7. We have heard both the counsel and perused the pleadings as well. Admittedly as per applicants' own case, all the applicants were in the wait list as per their own averment and as stated by respondents. The only claim, made by them is, that they should have been considered for appointment even for the vacancies which arose after the notified vacancies for a period



of one year as the life of panel is for one year. They relied on the case of Ishwar Singh Khari (supra) but perusal of Khatri's case shows that in that case the panel was displayed on the notice board wherein it was clearly stated that the appointment will be made from the select list till the last candidate is appointed and even in the minutes of the meeting, it was recorded that the panel of selected candidates will remain valid till all the candidates were offered appointments. It was in those peculiar circumstances, it was held by Hon'ble Supreme Court that since conscious decision was taken by the Selection Board to prepare a larger panel and to keep life of panel alive within one year even for subsequent vacancies, such of the candidates would have right to get appointment. However, in the present case neither any such panel was declared nor there was any such note appended thereto as was specifically mentioned in the case of Ishwar Singh Khatri. Therefore, that judgment is not applicable in the present set of facts. Counsel for the applicants next relied on 2002(4) SCC 727 but not only the facts of that case are absolutely different but even in that case it was confirmed that mere selection for a post does not give any right to the persons to seek appointment. In fact the claim of appellants was rejected so this judgment cannot come to the rescue of applicants.



8. In fact this cannot be said to be a case of scrapping the panel but it comes to an end automatically once notified no of vacancies are filled from the select list.

9. Now the settled law is that even selected candidates have no indefeasible right to seek appointment and persons cannot be appointed beyond the notified vacancies otherwise it defeats the rights of all others who may become eligible in the meantime for next vacancies. In JT 1994(3) SC page 559, it was explained by the Hon'ble Supreme Court that waiting list is prepared in an examination conducted by the Commission only for the contingencies that if any of the selected candidates does not join, then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency, the Government may as a matter of policy decision pick up persons in the order of merit from the waiting list. In 1996(1) SCC 283 in the case of **Ashok Kumar & Ors. Vs. Chairman, Banking Service Recruitment Board and Ors.** it was held by Hon'ble Supreme Court that recruitment of candidates in excess of notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution for all other eligible candidates who may apply when fresh vacancies are advertised. Therefore, the procedure adopted in appointing the persons from the waiting

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list prepared by the respective Board, though vacancies had arisen subsequently without being notified for recruitment is unconstitutional. It was thus clarified that no appointment can be made in excess of the notified vacancies. Similarly, in JT 1997(3) SCC 537 in the case of **Surinder Singh and Ors Vs. State of Punjab and Ors.** it was held by the Hon'ble Supreme Court that candidates in waiting list have no vested right to be appointed except when a candidate selected does not joins and waiting list is still operative. It was further held that waiting lists cannot be used as a perennial source of recruitment for filling up the vacancies not advertised. The candidates in the waiting list have no vested, right to be appointed except to the limited extent as mentioned above. The candidates included in the waiting list cannot even claim appointment on the ground that the vacancies were not worked out properly. In 1997(4) SCC 283) in the case of **Sanjoy Bhattacharjee Vs. UOI & Ors** the petitioner's position in merit list was 779 while the notified vacancies were 480. His contention was that fresh recruitment could not be resorted to unless he had been appointed. Rejecting his contention, it was held by Hon'ble Supreme Court, that merely because the petitioner has been put in the waiting list, he does not get any vested right to appointment. Moreover, it is not his case that anyone below his ranking in the waiting list has been appointed which alone could give him



cause for grievance. Thus he cannot seek any direction for his appointment.

It was also held that for subsequent vacancies, everyone in the open market are entitled to apply for consideration in accordance with law and their right would be violated if direction is given to give him appointment from the waiting list. Similar view was reiterated by Hon'ble Supreme Court in 2001(2) SC SLJ wherein it was held that candidates in waiting list have no indefeasible right to be appointed. In the case of Rani Laxmibai Kshetriya, Gramin Bank Vs. Chand Behari Kapoor and Ors. reported in 1998(7) SCC 469 the Hon'ble Supreme Court reiterated that mere inclusion of name in the panel or select list does not confer any indefeasible right to be appointed. In this case also some of the members in the Screening Committee had expressed their view that panel should be extended till the last candidate is absorbed by the Bank. However, it was held by the Hon'ble Supreme Court that even such agreement did not confer any right on the respondents to be appointed.

10. In this case it is not even the case of applicants that any one below them in the wait list has been appointed which alone could have given them any cause of action.

11. In view of the above judgments, it is by now settled by Hon'ble Supreme Court that even a person in the select list has no indefeasible right




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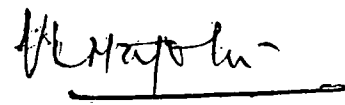
to be appointed, therefore, a person in the wait list would have no claim whatsoever, to seek appointment after notified vacancies have already been filled from the select list. Accordingly, the applicants before us have no right to claim appointment on the subsequent vacancies which might have occurred in Group 'D' posts. However, as and when further vacancies are advertised, applicants would have liberty to apply again in accordance with law if they are eligible as per the Recruitment Rules.

12. In view of the above discussions, these OAs are found to be devoid of any merit. Accordingly both the OAs are dismissed. No order as to costs

13. Let a copy of this order be placed in OA 2929/2004 also.


21/1/06.

(Mrs. Meera Chhibber)
Member (J)



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

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