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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2940/2004
M.A. NO.1140/2006

This the 28th day of August, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J)

Babu Ram S/O Munshi Ram,
R/O 114, Sunder Park,
Shastri Nagar, Delhi-31.

... Applicant

(By Shri Yatender Sharma, Advocate)

versus

1. Lok Nayak Jai Prakash Narain Hospital,
through its Medical Superintendent,
Maulana Azad Medical College,
1, Jawahar Lal Nehru Marg,
New Delhi.

2. Government of NCT of Delhi
through its Secretary,
Department of Health Services,
Secretariat, Delhi.

... Respondents

(By Shri Ajesh Luthra, Advocate)

ORDER (ORAL)

Hon'ble Shri V. K. Majotra, Vice-Chairman (A):

By virtue of this OA applicant has challenged the alleged arbitrary cancellation of offer of appointment for Group 'D' post of Mate in Lok Nayak Jai Prakash Narain Hospital, New Delhi vide impugned orders dated 5.10.2004 (Annexure A-2).

2. Applicant's earlier OA No.2087/2004 on the subject was disposed of vide order dated 27.8.2004 directing the Medical Superintendent to consider applicant's notice dated 17.8.2004 and to inform applicant why his appointment letter had been withdrawn. Impugned order

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dated 5.10.2004 has been passed by respondents in pursuance of Tribunal's aforesaid directions stating that the post of Mate is reserved for ST category while applicant belongs to SC category. The offer of appointment was as such issued inadvertently and was, therefore, withdrawn.

3. Applicant has sought quashing of respondents' order dated 28.7.2004 whereby his appointment was cancelled as also Annexure A-2 dated 5.10.2004 whereby reasons for cancellation of applicant's appointment have been conveyed.

4. Briefly stated, the facts of the case are that 96 vacancies including Group 'D' posts were advertised in September, 2002. Applicant was interviewed for the post of Mate in Group 'D' vide Annexure A-3 dated 10.9.2003 whereby he was also directed to furnish among other documents a caste certificate. On 26.7.2004 applicant was declared successful in interview and was offered appointment to the post of Mate in scale Rs.2550-55-2660-60-3200 (Annexure A-4), however, this appointment was cancelled vide Annexure A-5 dated 28.7.2004.

5. The learned counsel of applicant, on the basis of the advertisement, contended that 53 Group 'D' posts (20-UR, 3-ST, 3-SC, 27-OBC) were advertised by respondents. While 3 posts were reserved for SC category to which applicant belongs, applicant's offer of appointment has been cancelled as he did not belong to ST category. The learned counsel of applicant relied on order dated 31.1.2006 in OA No.2682/2004 – *Sanjay Kumar Gupta v Lt. Governor, Delhi & Anr.* This order also relates to respondents' action with regard to recruitment made on the basis of the same employment notice as in the present OA. It was found that there were discrepancies in the recruitment which could not be explained by

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respondents. In that case, posts required to be filled from General candidates were filled from SC category, as was noticed from the documents of respondents. The matter was remitted with a direction to consider discrepancies and to pass speaking order how the posts meant for General candidates were filled up by SC candidates and why applicant therein was not considered against other post of Group 'D' category in Lok Nayak Hospital. Respondent No.2 therein was directed to consider all these aspects and to pass a reasoned and speaking order.

6. By MA No.1140/2006 a prayer has been made that this OA may be disposed of in terms of the decision dated 31.1.2006 in the case of *Sanjay Kumar Gupta* (supra).

7. Respondents, on the other hand, maintained that the offer of appointment of applicant was issued inadvertently as while the post of Mate belonged to ST, applicant belonged to SC, and as such, his appointment was cancelled in order to rectify the mistake.


8. We have considered the respective contentions of the parties and also perused the record. Respondents have not been able to prove that the post of Mate that was offered to applicant belonged to ST category. 53 posts of Mate, Khalasis, Chowkidar, Stretcher Bearer, Bearer, Cook and Masalchi in scale Rs.2550-3200 had been advertised. Of these 20 were unreserved and 3 each were reserved for SC and ST categories, while 27 were reserved for OBC. Respondents have failed to explain how and with whom the 3 posts reserved for SC category were filled and how the post of Mate that was offered to applicant belonged to ST category. Obviously, the post relating to a particular category seems to have been offered to another

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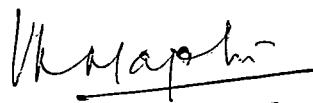
category and these discrepancies have not been explained by respondents properly.

9. In this view of the matter, the impugned orders are quashed and set aside and we remit the matter to the authorities with a direction to pass a speaking order how posts meant for SC candidates were filled up by ST candidates as also why applicant was not considered against the post of Mate in Group 'D' category as SC candidate. We direct respondents to consider all these aspects and to pass a reasoned and speaking order and in case they find that illegality has been committed in cancellation of applicant's offer of appointment inasmuch as though the post claimed by applicant was required to be filled up by an SC candidate and it was denied to him stating that it pertained to ST category, justice be done to applicant and appropriate orders passed following due process of law by even terminating the services of last person who has wrongly been given appointment in place of applicant. We are giving these directions because merit list has not been produced. Further respondents shall pass such orders expeditiously and preferably within a period of two months from the date of receipt of a copy of this order, under intimation to applicant.

10. With the above directions, the OA is disposed of. No costs.


(Mukesh Kumar Gupta)
Member (J)

/as/


(V. K. Majotra) 28.8.06
Vice-Chairman (A)