

13

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1394 OF 2004

New Delhi, this the 31st day of March, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

1. Sushil Kumar Sharma,
S/o Shri Mahaveer Sharma,
R/o V-241, Arvind Nagar,
Khajur Wali Gali,
Ghonda, Delhi.
2. Shri Atibal Singh,
s/o Shri Hari Bhan Singh,
R/o A/4649/134-B,
New Morden Shahdara,
Delhi – 110 032.
3. Smt. Archna Rai,
D/o Shri Harish Chand Rai,
R/o P-18, A-3, Pocket-P,
Dilshad Garden,
Delhi – 110 095.
4. Shri Anil Kumar,
s/o Shri Ranjeet Singh,
Plaster Assistant,
G.T.B. Hospital, Delhi.Applicants

(By Advocate: Shri Umesh Singh)

-versus-

1. Health Secretary,
Department of Health & Family Welfare,
Govt. of N.C.T. of Delhi,
9th Level, Delhi Secretariat,
I.P. Estate, New Delhi – 110 002.
2. Department of Health Services,
Govt. of N.C.T. of Delhi,
Through its Director,
Karkardooma, Delhi.
3. Medical Superintendent,
Guru Teg Bahadur Hospital,
Dilshad Garden, Shahdara,
Delhi – 110 095.
4. Delhi Subordinate Services Selection Board,
Karkardooma, Shahdara,
Delhi.Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

Justice V.S. Aggarwal, Chairman:

Applicants seek quashment of the recruitment rules for the post of Plaster Assistants and that respondents should be directed to fill up the post by direct recruitment.

2. Some of the relevant facts are that applicants were appointed as Plaster Assistants in Guru Teg Bahadur Hospital, Shahdara. They had applied in pursuance of an advertisement on contract basis. They were selected and were serving as such. Applicants had preferred O.A. No. 2444/2002 which was decided on 9.12.2002 by this Tribunal directing:

“(i) In case the respondents are considering appointments of candidates on regular basis and the applicants apply against those vacancies, they may be considered along with other eligible candidates, subject to fulfillment of the prescribed eligibility conditions, except giving them age relaxation, if necessary to the extent of their past service in that post;

(ii) Till regular appointments are made by the respondents, if the services of Plaster Assistants are required in the G.T.B. Hospital, the applicants may be continued. However, their services can be terminated by the respondents in accordance with the provisions of law and rules. No order as to costs.”

Thereafter, the applicants had preferred a Contempt Petition No. 52/2003. On 7.8.2003 the same was disposed of holding that it cannot be termed that there has been willful disobedience to the directions of this Tribunal. The rule was discharged.

3. According to the applicants, thereafter with malafide intention, the recruitment rules of the post of Plaster Assistants have been changed.

VS Agg

The Dressers have been made eligible to fill up the said post by providing the amendment in column no. 12, which reads as under:

"Promotion:

Dresser in the pay scale of Rs. 2650-4000 with 04 years regular service in medical institution under **Health & Family Welfare Department, GNCT of Delhi.**"

4. The Original Application is being contested.
5. Learned counsel for the applicants contended that the said amendment has been effected with a malafide intention. As per directions of this Tribunal, the applicants had a right to be considered for the post. By virtue of the amendment that has been effected, they have been deprived from ~~promotion~~ ^{appointments} and the rules are otherwise illegal because Dressers, who have been made eligible in the feeder cadre, have no experience to work as Plaster Assistants.
6. We have considered the said submissions because the petition as such is being opposed.
7. At the outset, it can yet be mentioned that it is not for the Tribunal to direct the Government to frame statutory rules or amend the existing statutory rules, as this is an area, which falls purely within the domain of the State. The Supreme Court in the case of ***Mallikarjuna Rao & Others vs. State of Andhra Pradesh & Others***, 1990(2) SCC 707 in this regard held:

"11. The observations of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution of India and as such the learned Judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue

ls Ag

directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice."

8. Similarly in the subsequent decision rendered in the case of **V.K. Sood vs. Secretary, Civil Aviation and Others**, 1993 Supp (3) SCC 9,

the Supreme Court held that it is for the expert body and not for the courts to frame the recruitment rules and further concluded that once the rules have been framed in exercise of powers under Article 309 of the Constitution, the concerned authority is entitled to prescribe the method of recruitment, qualifications both educational as well as technical etc. It should not be impeached on the ground of mala fides.

9. With this being the legal position, we can again revert back to the facts of the case.

10. So far as earlier litigation in OA No. 2444/02 is concerned, we have already reproduced above the operative part of the order passed by this Tribunal. It clearly provided that in case respondents were considering the appointments of candidates on regular basis, applicants could be considered along with other candidates subject to fulfillment of the eligibility conditions. Once the applicants do not fulfill the eligibility conditions as a result of the amendment of the rules, it cannot be termed that recruitment rules necessarily would become invalid.

11. It was highlighted that the applicants, by virtue of the amendment that has been effected, are being debarred from being in the zone of consideration and this has been done because applicants were litigating with the respondents.

As Ag

12

12. It is true that there has been some litigation. That, by itself, cannot be termed that it has resulted in ~~imputing~~ mala fides for the purpose. We have already referred to above that mala fides in this regard cannot clearly be so attributed. Be that as it may, mere allegations supported by past litigation itself is not a sufficient proof that so called mala fides are proved i.e. amendment of the rules was made to deprive the applicants of their right of being considered.

13. There is another way of looking at the matter. Applicants were not holding any civil post. They were working on contract basis. A person only has a right of being considered in accordance with rules. In the absence of applicants' holding a civil post and rules having been amended whereby feeder cadre is being provided, will not make the applicants as aggrieved persons. Necessarily, therefore, the application is without merit.

14. For these reasons, the Original Application being without merit must fail and is dismissed.


(S.A. Singh)
 Member (A)


(V. S. Aggarwal)
 Chairman

/na/