

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1398/92
T.A. No.

199

9-12-97

DATE OF DECISION

Sh.N.B.Masih & Ors.

Petitioner

Sh.B.S. Charya

Advocate for the Petitioner(s)

Versus

Safdarjung Hospital and

Respondent

UOI.

Sh.K.R.Sachdeva

Advocate for the Respondent(s)

CORAM

The Hon'ble

Smt.Lakshmi Swaminathan, Member(J)

The Hon'ble

Shri S.P.Biswas, Member(A)

1. To be referred to the Reporter or not? *yes*2. Whether it needs to be circulated to other Benches of the Tribunal *X*

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 1398/92

16

New Delhi this the 9 th day of December, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

1. N.B. Masih,
S/o Shri B. Masih,
Sr. Lab. Technician (Blood Bank),
Safdarjung Hospital,
New Delhi. (Died)
2. Shri Mohinder Singh,
S/o Shri Atma Singh,
Lab. Technician (Blood Bank),
Safdarjung Hospital, New Delhi.
3. Shri K.C. Dey,
S/o Shri P.C. Dey,
4. Shri N.V. Jose,
5. Shri J.D. Sharma,
S/o Shri Naim Lal.
6. Shri D.S. Chiller.
7. Shri Jit Ram,
S/o Shri Prithi Singh, ... Applicants.

By Advocate Shri B.S. Charya.

Versus

1. Safdarjung Hospital,
New Delhi through
its Medical Supdt.
2. Union of India,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhawan, New Delhi through
its Secretary ... Respondents.

By Advocate Shri K.R. Sachdeva.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants have impugned the action of
Respondent 1 in omitting the Applicant 1 for
consideration for the post of Laboratory Technical
Supervisor and the other applicants for promotion to the

8/11

17

post of Sr. Laboratory Technician in the Diagnostic Laboratory Service of Safdarjung Hospital. They have also stated that the respondents are not providing them proper avenues of promotion despite the fact that they have put in considerable long tenure of service.

2. The applicants are working in various posts in the Blood Bank section. According to them, certain new posts which were sanctioned should have been allocated to the Blood Bank section to provide them the avenues of promotion. Shri Charya, learned counsel, has referred to the letter dated 18.3.1992 from the Director (ME) to the Director General of Health Services in which it has been stated that sanction has been obtained for creation of 153 posts of Technical/Para-Medical Staff which had become operational w.e.f. 1.4.1992. He also relies on the Note dated 6.4.1992 (Annexure P-6) in which it has been stated that the Hospital Administration has decided that all laboratory posts irrespective of specific department and functioning will have equal and common channel of promotion from the similar scale of pay in the Recruitment Rules and all the Recruitment Rules will be amended accordingly. The applicants claim that they have been denied the equal opportunity for consideration in the matter of promotion as even the ratio of 20% posts allocated to them is being ignored and they were being filled up from amongst the candidates working as Laboratory Technicians. They submit that the proposed set up also involves the work of specialised nature and they should be filled up by persons, including Lab. Technicians (Blood Bank). They rely on the judgement of the Tribunal in Zaidun Vs. Delhi Administration (1990(13)

Ys

18

ATC 182). Raizada Vs. Union of India (1991(18) ATC 363). Dr. Ashok Chopra Vs. Lt. Governor (1991(16) ATC 308), Dina Nath Dogra Vs. Union of India & Ors. (1992(20) ATC 156 and the judgement of the Supreme Court in CSIR Vs. K.G. Bhatt & Ors. (1989(4) SCC 665). The learned counsel for the applicants has, therefore, submitted that since the applicants did not have promotional avenues and have got the requisite experience, Respondent 1 should be directed to give them proper promotional avenues and to take steps to fill up the posts of Lab. Technicians (Blood Bank) in equal ratio allocated to all the 5 Sections of Diagnostic Lab. Service.

3. The respondents in their reply have submitted that the applicants have not established any prima facie case. They have stated that the recruitment rules for the post of Lab. Technicians (Blood Bank) and Lab. Technicians were different. As per the relevant recruitment rules for Lab. Technicians (Blood Bank) they have to be filled up by 50% by direct recruitment and 50% by promotion with 3 years experience in the Blood Bank. They have also submitted that there is no post of Lab. Assistant in Blood Bank in Safdarjung Hospital and so far all practical purposes, this post is filled up by 100% direct recruitment. They have submitted that the Applicant I was initially recruited as Lab. Technician (Blood Bank) on 30.7.1962 and was promoted as Sr. Lab. Technician (Blood Bank) w.e.f. 29.8.1982. In the case of Applicant 2, they have stated that he is not stagnating in the scale of Rs.1320-2040. They have stated that the job description of Lab.

js

19

Technicians (Blood Bank) and Lab. Technicians are different and the recruitment rules are also different for these posts. They have, however, not denied the fact that in taking certain decisions regarding promotional avenues, their willingness was asked for, as submitted by the applicants who have given their consent to be amalgamated with the common cadre of Lab. Technicians. However, it appears that a decision in this regard has not been taken so far. The learned counsel has submitted that as and when such a decision is taken, the employees will be able to take the benefits of the promotion on the posts sanctioned for Lab. Diagnostic Services. The respondents have also contended that the newly created posts in Safdarjung Hospital have been created for Lab. Diagnostic Services and not for Blood Bank and they have to be filled according to the existing recruitment rules for the post of Sr. Lab. Technicians, Lab. Technicians and Lab. Assistants and not as per the recruitment rules for the Lab. Technicians in Blood Bank. In the circumstances, they have submitted that the application may be dismissed.

4. We have seen the rejoinder of the applicants in which they have more or less reiterated their stand as in the main application. In the additional rejoinder filed by the applicants, they have stated that in Safdarjung Hospital two separate cadres of Blood Bank Technicians and Lab. Technicians have been set up without any justification. According to them, no promotions have actually taken place in the Blood Bank Section for the last several years, hence the prayer for relief claimed in this application.

82

20

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We have also carefully considered the judgements relied upon by the applicants. In this case, the respondents ~~themselves~~ have submitted that presently in Safdarjung Hospital there are two separate cadres of Lab Technicians (Blood Bank) and Lab. Technicians. These are technical posts which are governed by separate set of recruitment rules and as contended by the respondents their duties and job description are also different. The main contention of the applicants is that since they are stagnating, they ought to be given avenues of promotion in the newly created posts for Diagnostic Services. From a careful perusal of the facts and circumstances of the case, it is seen that the issue involved in this case is a policy matter, namely, whether the Lab. Technicians in the Blood Bank Section should form part of the Laboratory Diagnostic Services or not. From the facts also it is clear that the applicants, for example Applicant 1, has already got a promotion in his career and, therefore, it cannot be stated that he is stagnating in the very post where he was appointed ~~in~~ decades back. It is settled law that in such policy matters, the Court/Tribunal should not normally interfere unless the rules or scheme are totally arbitrary, perverse, mala fide and irrational. (See **Tata Cellular Vs. Union of India** (1994(6) SCC 651) and **Prabha Devi Vs. Union of India** (AIR 1988 SC 902)). In another recent judgement of the Hon'ble Supreme Court in **Tech. Executive (Anti Pollution) Welfare Association Versus Commissioner of Transport Dept. & Anr.** (Civil

9/

21

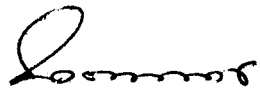
Appeal Nos.1988-1990) (copy placed on record). the Supreme Court has held that the Tribunal is not competent to give directions to lay down the policy or to issue directions to create promotional avenues. Such a direction would amount to entrenching upon area of policy making which is exclusively within the purview of the appropriate Government. In the present case, it is seen that the recruitment rules for the post of Lab. Technicians (Blood Bank) and Lab. Technicians are different and the posts in Blood Bank Section in Safdarjung Hospital are filled up by direct recruitment. Some of the applicants have also got promotions in their own cadre. We cannot also ignore the fact that the job descriptions of these posts are different and are covered by different set of rules. The contention of the applicants that they should be allowed to be inducted in the posts which were being created for the Lab. Diagnostic Services as they perform similar duties is a technical matter which involves ~~the~~ policy decision. The applicants have prayed that the respondents should be asked to fill up 25% of the posts in the Diagnostic Services from amongst the applicants on the basis of the recruitment rules applicable in the Blood Bank Section and to provide them promotional avenues. In the facts and circumstances of the case and having regard to the observations of the Supreme Court, referred to above, we are of the considered view that it will not be appropriate for the Tribunal to give directions, as prayed for. The question of addition in the cadre and bifurcation of the cadre is essentially a

js

22

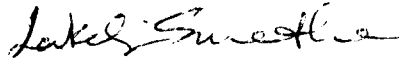
matter of policy and in the present case it cannot also be stated that the applicant had not received any promotions at all.

6. In the result, the application fails and is dismissed. No order as to costs.



(S.P. Biswas)
Member (A)

SRD



(Smt. Lakshmi Swaminathan)
Member (J)