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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 647/93

199

T.A.No.

32
DATE OF DECISION 18-11-99

R.C.Gupta

....Petitioner

Sh.G.D.Gupta

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent(s)

Sh.H.K.Gangwani

....Advocate for the
Respondents.

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? No.

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

Central Administrative Tribunal
Principal Bench

O.A. 647/93

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New Delhi this the 18 th day of November, 1999

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

R.C. Gupta,
S/o Shri Munshi Ram Gupta,
R/o House No. 120, Gali No. 1,
Swatantra Nagar, Narela,
Delhi-40.

... Applicant.

By Advocate Shri G.D. Gupta.

Versus

1. Union of India through
the Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.

2. Director General of
Health Services,
Nirman Bhawan,
New Delhi.

3. Director,
Dr. T. Verghese,
National Institute of Communicable
Diseases, 22, Sham Nath Marg,
Delhi-54.

4. Shri Prem Kumar,
Junior Hindi Translator,
National Institute of
Communicable Diseases,
22, Sham Nath Marg,
Delhi-54.

... Respondents.

By Advocate Shri H.K. Gangwani.

O R D E R

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

The applicant is aggrieved by the order dated 29.4.1992 reverting him from the post of Junior Hindi Translator (JHT) to the post of Laboratory Assistant in the office of National Institute of Communicable Diseases - Respondent 3 and in not regularising his services as JHT w.e.f. 3.8.1984. He has also challenged the appointment of Shri Prem Kumar, Respondent 4 as JHT by order dated 30.4.1992.

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2. We have heard Shri G.D. Gupta, learned counsel for the applicant and Shri H.K. Gangwani, learned counsel for the respondents and perused the pleadings and the relevant official records submitted by the respondents.

3. Admittedly, the applicant was appointed on ad hoc basis as JHT in August, 1984 which was initially for a period of six weeks but was continued from time to time till he was reverted to his substantive post as Laboratory Assistant by the impugned order dated 29.4.1992.

4. The applicant had earlier filed O.A. 858/90 which was disposed of by order dated 31.8.1990. In that order, the Tribunal had observed as follows:

"In our opinion, the mere fact that the applicant has officiated in the post of Junior Hindi Translator for about six years on ad hoc basis, does not confer on him any legal right to continue in the post. The appointment was subject to the condition that he would be replaced by the candidate selected by the Staff Selection Committee. Three candidates selected by the said Commission did not join for some reason or the other. In this background, the applicant was appointed on an ad hoc basis. The respondents withdrew the request from the Staff Selection Commission to nominate a suitable candidate in view of their decision to frame recruitment rules for the post of Junior Hindi Translator. The applicant does not fulfil the qualifications for appointment by transfer or transfer on deputation, in accordance with the recruitment rules to the extent that the pay-scale of the post of Laboratory Assistant is less than the pay scale that would make a person eligible. He has prayed for quashing the provisions of the recruitment rules. In our opinion, there is no merit in this prayer as it is for the respondents to decide on the question of the method of recruitment to a post, taking into consideration the larger interest of the Service and other administrative aspects".

The Tribunal further observed on the grievance made by the applicant on the question of relaxation that it is again a matter for the competent authority to decide. In the instant case, it was further observed that" the competent authority

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will have to consider this long period of officiation, his record of performance and the difficulty experienced by them in getting a suitable candidate from the Staff Selection Commission and take a view on the question of relaxation of the rules".

5. Shri G.D. Gupta, learned counsel for the applicant, has very vehemently submitted that the respondents have not reconsidered the case of the applicant in the light of the aforesaid judgement of the Tribunal. His contention is that the respondents ought to have relaxed the provisions of the Rules, taking into account the facts that the applicant had continued on ad hoc basis as JHT for six years, his experience and the non-availability of other suitable candidates, in order to regularise his services as JHT, which has not been done. He has submitted that the respondents have, in fact flouted the observations of the Tribunal in not granting relaxation of the conditions laid down in the Rules.

6. Admittedly, under the relevant Recruitment Rules as amended in 1988, for recruitment to the post of JHT by transfer on deputation/transfer, the prescribed qualifications are;

"Transfer on Deputation/Transfer
Central Government officers holding,

1. (a) Analogous posts;
- (b) Posts in the pay scale of Rs.1200-2040 or equivalent with three years regular service in the grades;
OR
- (c) Posts in the pay scale of Rs.950-1500 or equivalent with five years regular service in the grades;
- (d) Possessing educational and other qualifications laid down in Column 8 for direct recruits".

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The applicant has himself stated in the O.A. that he was employed as Laboratory Attendant in the scale of Rs.800-1150 and, therefore, he does not fulfil the condition of holding a post in the scale of Rs.950-1500 as prescribed in the Rules. According to the applicant, pursuant to the judgement dated 31.8.1990, the DPC had met on 25.3.1991 to make regular appointment of the applicant as JHT. The applicant has stated that the DPC had recommended his regularisation as JHT by taking up his case for relaxation of the Rules with the Director-General, Health Services and the Ministry of Health & Family Welfare/ Respondent 2. Learned counsel for the applicant has very vehemently submitted that this recommendation has, however, been rejected arbitrarily because of certain other vested interests. He has also very forcefully submitted that Shri Prem Kumar - Respondent 4, does not fulfil the requirements of the Recruitment Rules. Learned counsel has submitted that in any case, instead of taking up the applicant's case for relaxation of the Recruitment Rules, the respondents had gone ahead to fill up the post of JHT on regular basis by another candidate, thereby ignoring the rightful claim of the applicant which has been recognised by the Tribunal in its aforesaid earlier order.

6. We have carefully read the judgement of the Tribunal in OA 858/90. We are unable to agree with the contentions of Shri G.D. Gupta, learned counsel, that there is a direction in that order to the competent authority to relax the Rules and take a decision in the matter of regularisation of the applicant as JHT, taking into account his six years ad hoc service in that post. In fact, the Tribunal has come to the conclusion that the mere fact that the applicant had officiated in the post of JHT for about six years on ad hoc

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basis does not confer on him any legal right to continue in the post or there is any merit in his prayer to quash the provisions of the Recruitment Rules for appointment by transfer or transfer on deputation as he does not fulfil the conditions laid down in it. The decision of the Tribunal in Paragraph 11 of the judgement dealing with the question of relaxation of the Rules cannot be read in isolation or de hors the settled legal principles, namely, that relaxation of Rules cannot be resorted to unless the situation so warrants, for example, where no other candidate is found eligible under the Rules for appointment/promotion. In the instant case, this is not the situation. Admittedly, Respondent 4 was serving in the scale of Rs.950-1500 and we find from the records submitted by the respondents that there is a Certificate given by Dr. S.K. Sharma, Hindi Officer, National Malaria Eradication Programme, Delhi, to the effect that he is working as Hindi Typist and has been serving in the Institute from 8.6.1983, and he is also doing translation work from English to Hindi and vice versa. He is also a Graduate having Hindi and English as compulsory subjects. He also belongs to the Scheduled Caste as the applicant. Respondent 4 has also been recommended for appointment to the post of JHT by the Selection Committee. It has also been approved by the competent authority. In these facts and circumstances, the selection of a suitable candidate for the post of JHT, i.e. Shri Prem Kumar, who fulfills the conditions laid down in the Recruitment Rules cannot be faulted. The Department cannot be compelled to take a decision to grant relaxation of the Rules in order to accommodate the applicant's claim. No such direction has been given by the Tribunal in its order dated 31.8.1990, as contended by the applicant's counsel.

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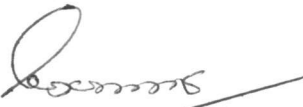
7. The applicant was also a candidate who had applied against the said post of JHT, referred to above. The contention of the applicant that the 1988 Rules cannot be applied to fill up the post on regular basis with retrospective effect cannot be accepted, as he was holding the post of JHT only on ad basis. After the selection of Respondent 4 by a duly constituted Selection Committee to the post of JHT in accordance with the Recruitment Rules, the applicant has been reverted to his substantive post of Laboratory Attendant by the impugned order dated 29.4.1992. In the facts and circumstances of the case, we find no illegality or arbitrariness in the action of the respondents in reverting him to his substantive post as he was holding the higher post only on ad hoc basis. Shri G.D. Gupta, learned counsel, had also very vehemently pleaded that we should also consider the facts sympathetically that the applicant being a SC candidate had struggled very hard to do his graduation and post-graduation and had been otherwise found fit by the respondents to hold the post of JHT from 1984. While this may be so, sympathy alone cannot override the provisions of statute law. (See observations of the Supreme Court in **LIC of India Vs. Mrs. Asha Ramachandra Ambedkar & Anr.** (JT 1994(2) SC 183). The respondents cannot be faulted that they have not followed the law either in holding the DPC proceedings in accordance with the Rules or in not relaxing the Rules when another Scheduled Caste candidate, fulfilling the conditions laid down in the Recruitment Rules, was available for consideration. ^{promotion.} In the circumstances of the case, the applicant has no right to be regularised in the post of JHT from 2.8.1984 i.e. the date when he was first appointed on ad hoc basis. In the light of the Tribunal's order dated 31.8.1990, we also do not find any illegality in the order dated 29.4.1992 reverting the applicant to his substantive post

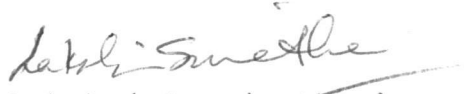
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of Laboratory Attendant on the appointment of Respondent 4 to that post on regular basis on the recommendations of the Selection Committee.

7. In the result, for the reasons given above, O.A. fails and is dismissed. No order as to costs.


(S.P. Biswas)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'