

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 494/91
~~T. A. No.~~

199

DATE OF DECISION 8.7.92

Mr. KK Sayed Mohamed Koya Applicant (s)

Mr. MV Thambhan Advocate for the Applicant (s)

Versus

Director of Health Services,
UT of Lakshadweep, Kavarathy Respondent (s)
and another.

Mr. NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI

VICE CHAIRMAN

The Hon'ble Mr. AV HARIDASAN

JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

SHRI SP MUKERJI, VICE CHAIRMAN

The short point in this application is whether the applicant who has been admittedly working as Nursing Orderly since 13.11.1970 and as Laboratory Attendant from January, 1987 should have precedence over Nursing Orderlies for promotion to the post of Theatre Assistant. The applicant's case is that in accordance with the Recruitment Rules for the post of Theatre Assistant which was created in 1986 and the Recruitment Rules for which were framed on 16.12.88, he is fully eligible for the post. However, according to him the Departmental Promotion Committee (DPC) considered him and other eligible candidates as against the seniority list of Nursing Orderlies and declined to promote anybody on the ground that the senior-most Nursing Orderly did not have 6 months experience in the Operation Theatre as per the Recruitment Rules.

2. In accordance with the Recruitment Rules, for the post of Theatre Assistant, a copy of which has been appended as at Annexure II, the post of Theatre Assistant has to be filled up by nonselection by promotion. The mode of promotion indicated at Column 12 of Annexure II reads as follows:-

"Promotion: Laboratory Attendant/Nursing Orderlies, with minimum 5 years regular service in the grade with at least 6 months experience in an Operation Theatre."

3. The respondents have admitted from the copy of the Recruitment Rules for the post of the Laboratory Attendant at Annexure R3, that the post of Lab. Attendant is filled up by promotion of Nursing Orderlies. It is also admitted that the applicant was promoted from the post of Nursing Orderly which he has been holding from 13.11.1970 to the post of Lab Attendant on a provisional basis in January, 1987 and regularised as Lab. Attendant w.e.f. 24.1.90. From ^{these} ~~this~~ bio-data it is clear that the applicant as Lab Attendant has to be considered senior to all Nursing Orderlies which is a feeder category for the post of Lab Attendant as on the date of the DPC meeting.

4. The contention of the respondents that he did not have 5 years regular service as Lab Attendant, and therefore, strictly speaking not eligible for the post of Theatre Assistant does not carry conviction. When two levels of posts are both feeder categories to the 3rd level, 5 years of regular service in either of the two levels, would qualify for promotion to the 3rd level. Since the applicant has admittedly put in more than

5 years combined service as Nursing Orderly and Lab Attendant, he should be considered to be satisfying the condition of 5 years of regular service in the feeder category for the purpose of promotion.

5. We had an occasion to go through certain communications as regards the proceedings of the DPC. From those communications as also from the counter affidavit it appears that the DPC which met on 15.2.90 considered the applicant and other eligible candidates for promotion as Theatre Assistant. However, from the documents shown to us it was clear, as accepted by the learned counsel for the respondents also, that only one Seniority List was placed before the DPC and the Seniority list was of Nursing Orderlies only in which the applicant who had already been promoted as Lab Attendant as far back as in 1987 was shown at Sl.No.13. No separate Seniority List of Lab Attendants which is an admittedly superior category of posts to which promotions are made from the category of Nursing Orderlies, was not placed before the DPC. Had it been done the applicant would certainly have figured in that list and that list had to be exhausted first before the DPC could consider the cases of Nursing Orderlies. Because of the non-consideration of the Seniority List of Lab Attendants the DPC misdirected itself by declining to recommend any ^{candidates from the} Nursing Orderlies' List on the ground that the seniormost Nursing Orderly did not have 6 months experience in Operation Theatre. As a matter of fact, such Nursing Orderlies/Laboratory Attendants were per se ineligible for being considered for promotion in accordance with the Recruitment Rules at Annexure 2. It is clear that the DPC did not consider the case of the applicant at all because his name figured way down

in the Seniority List of Nursing Orderlies whereas Lab Attendant he should have been considered before even the seniormost Nursing Orderly's case fell due for consideration.

6. The applicant has in this application challenged not only the Recruitment Rules at Annexure 2, but also the amended Recruitment Rules which came into force on 1.12.1990. So far as the amended Recruitment Rules are concerned since the DPC did not consider the cases of the candidates in accordance with those rules, those rules are not relevant to the application before us. In any case, since the post of Theatre Assistant came into existence in 1986 and the Recruitment Rules were notified in 1988 ^{and} when the applicant became eligible much earlier ^{in 1988}, his case has to be considered in accordance with the old Recruitment Rules which ^{were in} force ^{in 1988} and not by the amended Recruitment Rules which came into force on 1.XII.1990. ^{and}

7. As regards the applicant's challenge to the Recruitment Rules of 1988, in so far as they club two levels of posts of Lab Attendants and Nursing Orderlies for promotion to the post of Theatre Assistants, we do not see much force in the contention. It is for the administrative authorities to prescribe the mode of recruitment and identify the feeder categories from which promotions can be made. It is within their discretion to keep more than one streams of feeder categories even though one stream may be lower than the other feeder category. But, the fact remains that, if there are more than one feeder category, the candidates in the superior feeder category must en bloc be considered to be senior to the next lower feeder category for the purpose of consideration for promotion. In this view of the matter we do not see much force in the challenge of the Recruitment Rules of 1988.

8. In the above circumstances, we are not pronouncing the validity of the amended Recruitment Rules at Annexure 5 either.

9. In the conspectus of facts and circumstances we allow this application only to the limited extent of directing Res.2 to convene a meeting of the review DPC as on 15.2.90 and consider the applicant^{and} other eligible candidates strictly in accordance with the Recruitment Rules of 1988 in the light of the observations made above. The respondents are to prepare a Seniority List of Lab Attendants and ^{the} Seniority List of Nursing Orderlies and get the eligible candidates considered for promotion as Theatre Assistants by considering all Lab Attendants en bloc as senior to Nursing Orderlies. The DPC also should take into account the bio-data and certificates produced by the applicant and other candidates to verify whether they have six months experience in an operation theatre. We also ~~xxx~~ direct that ^{the} respondents should finalise the appointment to the posts of Theatre Assistant on the basis of the recommendations of the DPC by convening a meeting of the review DPC within a period of 2 months from the date of communication of this judgment and appointment if any, to the post of Theatre Assistant, within a period of one month thereafter. There will be no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

 8.7.92
(SP MUKERJI)
VICE CHAIRMAN

8.7.92.