

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 143/2006

THURSDAY THIS THE 26th DAY OF APRIL, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

Suny S, Nurse
Unit Run Canteen (URC) Polyclinic
NCC Group Head Quarters, Kollam
residing at Sruthi, Kacheri Mukku
Kundara PO, Kollam ..Applicant

By Advocate M/s S. Santhosh Kumar and Arun C.

Vs.

- 1 The Deputy Director General
NCC Directorate (Kerala & Lakshadweep)
Vazhuthacaud, Thiruvananthapuram.
- 2 The Group Commander/Chairman
NCC Group Headquarters
Thevally Palace, Thevally
Kollam.
- 3 Union of India represented by the
Secretary to Government
Ministry of Defence,
New Delhi. ..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC.

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application is filed by the applicant for re-employment
as Sales Assistant in the Unit Run Canteen under the NCC

Group Headquarters at Kollam..

2 Briefly the facts as stated in the Application are as follows:- The applicant is the wife of an Ex-serviceman. She was appointed as Female Nurse in the Polyclinic of the Unit Run Canteen functioning under the 2nd respondent. She was working as Nurse from 20.11.2003. She had completed 2 years and 3 months. Her service was confirmed granting her two increments. By Annexure A-4 notice dated 30.9.2005 it was intimated that the service of the applicant is likely to be terminated on the closure of the Polyclinic in view of the proposed setting up of a Polyclinic under the ECHS. The applicant had filed Annexure A-6 and A-7 representations dated 10.10.2005 before the respondents 1 and 2 respectively requesting alternate employment under the unit in the event of the termination of her service as Nurse. Vacancy of Sales Assistants, including Lady Sales Assistants would arise shortly in the sale outlets of the URC on the expiry of the contract period of the incumbent. None of the persons now holding those posts on contract basis are Ex- servicemen or dependent of ex-servicemen, the applicant is entitled to get preference in the matter of appointment to those vacancies. In Annexure A-8 letter dated 21.10.2005 the 2nd respondent had conveyed willingness to give re-employment to the applicant. But it is made clear in the said letter that they are proposing to re-employ the applicant in a temporary job, that too, outside Kollam. It is submitted that the applicant is entitled to get re-employment in Kollam if

vacancy is available at Kollam. Now the service of the applicant is going to be terminated on 15.3.2006. Since no steps are taken to re-employ the applicant either in Kollam or in any establishment outside Kollam as offered in Annexure A-8, this OA is filed for the following reliefs:

- (i) to issue an order directing the respondents to give re-employment to the applicant in the Unit Run Canteen under NCC Group Headquarters at Kollam in the event of her termination from service in pursuance of Annexure A-4 notice.
- (ii) to issue an order directing the respondents to reemploy the applicant in any establishment under NCC Directorate outside Kollam district as offered in Annexure A-8 and to give a posting back to Kollam as and when vacancy arises in Kollam under the 2nd respondent.
- (iii) to issue an order directing the 2nd respondent to consider and pass orders on Annexure A-9 representation and
- (iv) to grant all such other reliefs as this Hon'ble Tribunal may deem fit and proper to grant.

3 The respondents have filed a reply statement. They have averred that the applicant has suppressed and misrepresented many of the relevant facts before this Tribunal. The following are the facts which have not been revealed by the applicant:

- (a) The vacancies in the Unit Run Canteen are not exclusively reserved for ex-servicemen
- (b) Some of the persons whose names are mentioned in the O.A. are in fact ex-servicemen whereas it has been claimed that none of those employed on contract are ex-servicemen.
- © There is no rule stipulating preference to be given to wives of service/ex-service personnel.
- (d) She has no preferential claim over anyone.

4 The respondents have also contended that the subject matter does not come under the jurisdiction of the Tribunal as the applicant is not an employee of the Government. As a welfare measure for the ex-servicemen dependent on the Unit Run Canteen (URC), NCC Headquarters Kollam had started a Polyclinic w.e.f. 10.11.2003. The functioning of the Polyclinic is governed by the Standing Operating Procedure (SOP) copy of which is produced as Annexure A-3. The posts of Doctor, Nurse, Nursing Assistant and Lab Technician are not sanctioned by the Government and are created by the management as purely temporary and private in nature. The polyclinic is also not funded by the Government but from welfare funds at the disposal of the Group Headquarters. The applicant was appointed as a Nurse in the Polyclinic on a temporary basis and as per Para 36 of the SOP which was signed by all the employees it has been made amply clear that their service can be terminated at any time by giving one month's notice. The Ministry of Defence Government of India has introduced Ex-servicemen Contributory Health Service (ECHS) and polyclinics are being established w.e.f. 1.4.2006 to cater to the health related requirements of all Ex-Servicemen at Kollam, and hence running another polyclinic has become infructuous and redundant. The welfare work done by the polyclinic will now be done by more qualified and better organised and equipped staff hired by the Government. Therefore the stop-gap welfare measure is contemplated to be wound up on establishment of ECHS Polyclinic and the present staff members were given advance termination

notices as early as November, 2005 so that they can look for alternate employment. Based on her application at Annexure A-7 the management explored the possibility of recommending her for an employment as a Nurse in any of the Polyclinics at Kottayam, Trichur or Kozhikode. But it is found that they also do not have any vacancy, as ECHS are being established there too and their staff are also being rendered surplus. No appointment was ever promised as alleged by the applicant. The applicant is claiming that a vacancy of a Female Sales Assistant exists at the Unit Run Canteen is not correct. The work content of a female nurse is totally different from that of a Sales Assistant. More over the applicant has no established legal right or any preferential claim for alternative employment. In fact the applicant has no locus standi to approach the Tribunal and if her prayers are granted it will cause unprecedented and irreparable harm to the department and give rise to similar claims by other employees of the Polyclinic both at Kollam and other four Group Headquarters. It will also dissuade any of the Group Headquarters from carrying out any welfare measures such as one referred to above.

5 A rejoinder has been filed by the applicant stating that alternative employment is possible under the URC run by the NCC Group Headquarters, Kollam and the respondents cannot contend that the Tribunal have no jurisdiction in the matter of recruitment to the posts under the URC. According to the applicant, the Polyclinics are

being run by URC and it has no separate legal entity. It is further submitted that there are vacancies of Computer Assistant in addition to vacancies of Sales Assistant and the averment that no vacancies are available is not correct. The reliance is placed on the decision of the Hon'ble Supreme Court in UPLT department association Vs. Union of India (AIR 1988 SC 517) Jacob Vs. Kerala Water Authority (AIR 1990 SC 2228) in which it has been held that temporary and daily rated employees who are working for long years should be regularised.

6 Additional reply statement has been filed by the respondents reiterating the earlier averments regarding the status of the polyclinic which is a purely temporary and a welfare measure. They further submit that other three employees who were terminated from service along with the applicant have got employment elsewhere and it is understood that the applicant is also presently employed with a reputed hospital. Thus, the applicant has made a false claim of being jobless. The husband of the applicant is a person in receipt of military pension and in addition he is in the State Government service. They also relied on the order of the Hon'ble Supreme Court in Avas Vikas Sansthan Vs. Govt. of Rajasthan holding that employees of abolished posts cannot claim right for re-employment.

7 They have reiterated the position that the Polyclinic and URC are two different entities under the NCC Headquarters, Kollam and

have separate Rules and Procedures. The posts of Doctors, Nurses and Lab. Technicians do not find place in the staffing pattern of URC. Hence the applicant has no locus standi whatsoever and the O.A. is liable to be dismissed. The respondents have also produced Annexure R-1 dated 28.4.2003 which are the rules regulating the terms and conditions of service of the civilian employees of the URC.

8 The applicant's main prayer is for re-employment under the URC under the NCC Headquarters in the event of termination of her service in pursuance of Annexure A-4 notice given to her or in the alternative to re-employ her in any establishment under the NCC directorate outside Kollam. The applicant's services have since been terminated. The basis of putting forth such a claim is (i) that there is a preference for appointment of ex-servicemen and their dependents in the posts under the URCs and (ii) that since she has been working in the Polyclinic which is a part of the URC the respondents have a moral and legal obligation to provide her alternative employment. The pleadings on records would show that both these contentions are not correct. First of all it has been established from the records produced by the respondents that the polyclinic and URC are two separate legal entities and they are governed by separate rules and regulations - the Polyclinic by Standard Office Procedure at Annexure A-3 and URCs by Annexure R1 letter dated 28.4.2003 which are the rules stipulating the conditions of service of employees of URCs. It is clear from the reply statement that the Polyclinic was

established as a welfare measure by the respondents to cater to the needs of the ex-servicemen who are depending on the URCs and the function of the Polyclinics is governed by SOP according to which the posts created are purely temporary and the services of the incumbents could be terminated with one month's notice. Since the Ministry of Defence is introducing Ex-Servicemen Contributory Health Scheme, running of Polyclinic has become infructuous and redundant and therefore Annexure A-4 notice was issued to the applicant that her services are likely to be terminated. As Polyclinic is not run by the Government but by the Welfare Board from the welfare funds at the disposal of the NCC Group Headquarters. It is a purely private management and the applicant was governed by an agreement entered into by her under the SOP. Hence the applicant has no locus standi before this Tribunal as regards her termination from the employment under the Polyclinic.

9 The second question is whether after the termination from the above mentioned employment the applicant has any legal right to be absorbed in the URC. As already mentioned the employment in the Polyclinic was purely a temporary and contractual appointment and came to an end at the end of the contract. The judgment of the Hon'ble Supreme Court in Jacob Vs. Kerala Water Authority has made this case very clear in the following words:

" Daily wage/temporary appointment will come to an end when it is discontinued. A temporary employee cannot claim to be made permanent at the expiry of his term of appointment.

Such an employee is not entitled to any right to be absorbed in service."

10 The same position has been reiterated in AIR 1997 SC 1445

State of Himachal Pradesh Vs. Ram and Others. The Apex Court observed:

" it is seen from that when the project is complete and closed due to non-availability of funds, the employees have to do away with its closure. The High Court was not right in giving the direction to continue them in other places. No vested right is created in a temporary employment. The directions cannot be given to regularise their services in the absence of any existing vacancies nor can a direction be given to any State to create a post in a non-existing establishment."

11 Therefore since the polyclinic run by the URC as a welfare measure had become unnecessary and become infructuous it was closed down and the services of the employees were terminated, no vested right is created the applicant to demand that respondents shall provided alternate employment. Annexure A-8 is only an expression of the intention of the respondents to the applicant for exploring possibility of employment in some establishment or other and it does not create any legal obligation. The respondents have also submitted that since there were no vacancies in the other Polyclinics established in other parts of the Kerala State the applicant could not be accommodated.

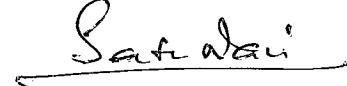
12 As regards the claim of the applicant for preferential treatment or appointment as Sales Assistant etc. in the URC it is clear from Annexure R-1 rules and regulations of URCs that there is no such

reservation granted for the dependents of ex-servicemen in employment. Employment in the URCs are governed by the rules and regulations and only preference to the ex-servicemen exist in the rules, the argument put forth by the applicant is purely creation of imagination. If at all there are any vacancies in these URCs the selection procedures as prescribed in the rules will have to be followed and the applicant can apply for the post if she is otherwise qualified and get selected. The respondents are not bound to absorb the applicant on preferential basis. In fact we find that equivalent posts of Nurse/Lab Assistant in which the applicant had been working are not available in URCs.

13 In our view the contentions of the applicant are totally baseless and have no merit. In the normal course we should have imposed costs on the applicant but considering the status of the applicant, we take a lenient view in the case and refrain from imposition of cost. The O.A. is dismissed. No costs.

Dated 26.4.2007


DR. K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN.

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