

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.821/2001

Dated this Friday the 24th Day of April, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastry, Member (Administrative).

Shri Satish Gundu Hiroji,
168/5434, Kannamnagar I,
Vikhroli (East),
Mumbai - 400 037.

.. Applicant.

(By Advocate Shri H.D. Parcholia)

Versus

1. The Dy. Drugs Controller (India),
CDSCO West Zone,
CGHS Dispensary No.8,
1st Floor, Antop Hill,
Kanenagar,
Mumbai - 400037.
2. The Drug Controller General (India),
Directorate General of Health Services
R.No.342 A Wing, Nirman Bhavan,
Maulana Azad Road,
New Delhi - 110 011.
3. Miss N.L. Ghadi,
Lower Division Clerk,
CDSCO West Zone,
Antop Hill, Kanenagar,
Mumbai - 400 037.

Respondents

(By Advocate Shri V.G. Rege)

ORDER (Oral)
{ Per : Smt. Shanta Shastry, Member (A) }

The applicant is challenging the selection of Respondent No.3, Miss N.L. Ghadi for the post of Lower Division Clerk ignoring non selection of the applicant. The case ~~is~~ in brief is as follows.

2. The applicant is working as Drug Sampler, as the

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applicant was offered the post of Drug Sampler vide order dated 10.1.1995 and was appointed vide office order dated 16.1.1995 on the recommendation of D.P.C. as Drug Sampler in the pay scale of Rs.950-1500 in the office of Dy. Drugs Controller (India), West Zone, Mumbai on probation for a period of 2 years from the date of appointment. The applicant was confirmed on the post of Drug Sampler by letter dated 13.9.2000 with effect from 1.4.2000. The Respondent No.3 was appointed as Drug Sampler on 7.10.1997 and was confirmed vide order dated 13.9.2000.

3. A post of L.D.C. fell vacant on account of transfer of one Shri V.T. Shinde in the office of Asstt. Drugs Controller (I), Mumbai Port, Mumbai. The post of L.D.C., as per recruitment rules in the office of Dy. Drugs Controller is to be filled, 90% by transfer of Drugs Sampler failing which by direct recruitment and 10% by promotion. The post of L.D.C. is a selection post which carries the pay scale of Rs.950-1500 i.e. that of the Drugs Sampler. For filling up of the post by transfer from amongst Drugs Sampler (Gr."C") from the respective Zonal Offices of the Central Drugs Standard Control Organisation those who have put in atleast 3 years of regular service in the grade and who have minimum speed of 30 words per minute in typewriting are

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held eligible. Accordingly the applicant alongwith Respondent No.3 was considered by the D.P.C. for selection to the post of L.D.C. A typing test was administered. Thereafter, Respondent No.3 was selected for the post of L.D.C. and the applicant could not be selected.

4. The applicant is aggrieved that inspite of having put in 6 1/2 years of service as a Drug Sampler, the applicant has been denied the appointment to the post of L.D.C. and has been superseded by the Respondent No.3 who was admittedly junior to the applicant as Drug Sampler. The applicant also has alleged that the Respondent No.3 was not eligible for the post, her appointment as Drug Sampler was not regular she had not worked as Drug Sampler she had not gone outdoors to do the sampling as is required of any Drug Sampler. This has been admitted also by Respondent No.3 in writing that she mostly worked in the office and knowing the job of L.D.C. and being a lady she was never sent out to test the drug samples. Further according to the applicant the Respondent No.3 was appointed on a temporary basis as Drug Sampler and no probation period was prescribed for that and then she was confirmed. Therefore, she was not really eligible for being considered to the post of L.D.C. by transfer. Accordingly the selection is vitiated and the applicant ought to have been selected

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rightly as he fulfilled all the requirements. The applicant's performance has also not been noted adversely at any time.

5. The learned counsel for the applicant also alleges that the DPC was also not properly constituted in the sense, one of the Members i.e. the Technical Member was not available and another Member had not signed the DPC proceedings. Therefore, the selection is not valid.

6. The learned counsel for respondents submits that DPC considered the applicant as well as Respondent No.3. ^{It is} being a selection post, the better of the two was selected. The Respondent No.3 performed better in the typing test as compared to the applicant who could not achieve the speed of 30 w.p.m. as prescribed for the post of L.D.C. Further the official respondents submits that the respondent No.3 was duly appointed as Drugs Sampler from 7.10.1997 and was confirmed in September, 2001 i.e. with effect from the date of her appointment. She thus had 4 years of regular service as on the date of D.P.C.. meeting, in the grade of Rs.950-1500/- i.e. as Drugs Sampler. The applicant had never challenged the appointment of the Respondent No.3 in the past when she was appointed and when she was confirmed. The recruitment rules also say that what is required is the

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regular service in the grade even though the Respondent No.3 has admitted that she had not done the test samples by going outdoors. As per the recruitment rules the Respondent No.3 is fulfilling the requirements she did the job that was assigned, though her appointment is as Drugs Sampler.

7. Coming^{to} the composition of the DPC, besides the Chairman, there were 4 other Members viz. Dr.K.V. Jogi, Director, C.D.T.L., Thane, Shri A.K. Sinha, Asstt. Drugs Controller of India, JNPT Nhavasheva, Shri K. Bhargava, Drugs Inspector, West Zone, Mumbai and Shri A. Ramakishan, Drugs Inspector, West Zone, Mumbai. According to the learned counsel for respondents it is not correct to say that one Member had not signed the Minutes of the D.P.C. Meeting. According to the respondents the selection was conducted properly and it cannot be faulted. The applicant failed to come up to the requisite standard in the typing test and Respondent No.3 being found to be a better candidate was selected.

8. We have heard the learned counsel for both the sides and have perused the proceedings of the D.P.C. as produced by the respondents. The applicant was considered for transfer to the post of L.D.C. by duly constituted DPC as per procedure alongwith Respondent No.3. The applicant's allegation is that the Respondent

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No.3 was not eligible as she had not actually worked as Drugs Sampler and she had not undergone any probation and that her appointment itself was not a regular one. We find that the Respondent No.3 was duly appointed from 7.10.1997, she had put in 3 years as Drugs Sampler. As per recruitment rule what is required is regular service in the grade and she fulfilled the prescribed criteria. Although according to the applicant the Respondent No.3 had not undergone probation, it is seen from the order dated 13.9.2000 whereby both the applicant and Respondent No.3 were confirmed as Drug Sampler, that it is mentioned in Para 2 of the letter that "confirmation of following staff members whose posts are permanent and those who have completed their **probation period** of two years may be considered for confirmation with effect from 1.4.2000. That would make it clear that even the Respondent No.3 was supposed to have undergone the probation. Therefore, these allegations that there was no probation prescribed for her does not appear to be borne out by facts. Coming to the composition of the D.P.C., according to the recruitment rules the D.P.C. consists of Chairman, who is the Deputy Drugs Controller of India with Assistant Drugs Controller of India - Member, Drugs Inspector Member and Technical Officer as Member, as against this the respondents had constituted the D.P.C. of the Deputy Drugs Controller of India as Chairman, Assistant Drugs Controller of India and two Drugs Inspectors plus a

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Director, CDTL, Thane as a Member. In fact the intimation had gone to the 4 Members including 2 Drug Inspectors. At the time of the meeting however, only one Drug Inspector was present. There is a Technical Officer supposed to be a Member and the Respondents had included the Director, CDTL, as a Member. He was definitely a Technical Officer. We cannot find any fault with the composition of this D.P.C. as it is as per the requirement. The learned counsel for the applicant submitted that Shri K. Bhargava the Member had not signed the D.P.C. proceedings. This is so. Shri K. Bhargava never attended the D.P.C. Therefore, his signature is not to be found on the Minutes of the meeting.

9. Finally in the typing test, we have seen that the Respondent No.3 has performed better than the applicant who could come up to the standard of 30 w.p.m. We are thus satisfied that there was no infirmity in the selection conducted for the post of L.D.C. and the applicant having failed in the test cannot be selected as the Respondent No.3 performed better. We also do not find any substance in the allegations made against the non eligibility of the Respondent No.3, in fact the applicant had not challenged the appointment of Respondent No.3 as Drug Sampler for past 4 years prior to

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the D.P.C. Under the facts and circumstances, we do not find any merit in the O.A., the O.A. is accordingly dismissed, without any order as to costs.

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(Smt. Shanta Shastri)
Member (A)

A. Dikshit

(Birendra Dikshit)
Vice Chairman.

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dt 24/4/02

Order ~~to~~ *dispatched*
to Appellant (s)
27/5/02

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