

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 17/5/2000

OA 222/98

Dr. Bharti Merani d/o Shri Sajandas Merani r/o 2/425, Jawahar Nagar, Jaipur.

... Applicant

Versus

1. Union of India through General Manager, Northern Railway, New Delhi.
2. Sr. Dvl. Personnel Officer, Northern Railway, Bikaner.
3. Chief Medical Director, Northern Railway, Baroda House, New Delhi.

... Respondents

CORAM:

HON'BLE MR. S. K. AGARWAL, JUDICIAL MEMBER

HON'BLE MR. N. P. NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr. S. K. Jain

For the Respondents

... Mr. Hemant Gupta, proxy counsel for
Mr. M. Rafiq

O R D E R

PER HON'BLE MR. S. K. AGARWAL, JUDICIAL MEMBER

In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant makes a prayer to direct the respondents to allow her to join duties on the post of Physiotherapist at Bikaner in the pay scale of Rs. 1400-2300 and fixing her pay accordingly with all consequential benefits of seniority, pay fixation etc.

2. In brief the facts of the case, as stated by the applicant, are that the applicant is a qualified Post Graduate in Physiotherapy with diploma in Physiotherapy. It is stated that the applicant submitted an application in response to a notification issued by the Northern Railway, Bikaner, for appointment on the post of Physiotherapist at Bikaner. The applicant was called for interview after qualifying in the written test and thereafter the applicant was selected. It is stated that respondent No. 2 issued a letter dated 27.10.93 for appointment of the applicant on the post of Physiotherapist in the pay scale of Rs. 1200-2040 and the applicant intimated to respondent No. 2 to seek two months' extension for joining because of her father's illness. Thereafter, a request was made for extension and respondent No. 2 issued a letter dated 27.4.94 to join her duties before 10.5.94 but the applicant sent a registered letter to respondent No. 2 for correcting the order of appointment in the grade of Rs. 1400-2300 followed by a reminder dated 8.12.95 but no intimation was given regarding correction of the grade. Vide letter dated 3.6.97 respondent No. 2 asked the applicant to

join before 24.6.97 but the applicant submitted her joining report to respondent No.2 on 23.6.97 under protest. It is also stated that respondent No.2 intimated the applicant orally that after police verification the applicant shall be intimated to join the duties and respondent No.2 issued a letter to the District Collector, Jaipur, on 28.6.97 for police verification of the applicant. The police verification was done in September, 97 but respondent No.2 did not issue any letter intimating the applicant to join duties. It was learnt that the respondents have requested to the headquarters for extending the currency of the panel but the applicant was not called to join duties without any reason and rhyme. It is stated that the post of Physiotherapist has been shown in the grade of Rs.1400-2300 in the IREM and the applicant is entitled to the salary in the pay scale of Rs.1400-2300, therefore, the applicant filed this OA for the relief as mentioned above.

3. Reply was filed. It is admitted by the respondents that the Railway Recruitment Board, Ajmer, issued a notification for appointment on the post of Physiotherapist in the pay scale of Rs.1200-2040 and in response to that notification the applicant submitted an application for the post and she was selected for appointment on the post of Physiotherapist in the pay scale of Rs.1200-2040. It is also stated that offer of appointment was sent to the applicant in the grade of Rs.1200-2040 but the applicant did not join. However, the applicant was given six months' time to join the post vide letter dated 27.4.94. It is denied that the post of Physiotherapist, for which the applicant is seeking employment, was in the pay scale of Rs.1400-2300. It is also stated that in the office of the Divisional Railway Manager, a post of Physiotherapist was created by the order of the headquarters, New Delhi, dated 30.5.88 and on this basis requisition was sent to the Railway Recruitment Board for selection on the post of Physiotherapist and a notification was also issued to this effect. On the basis of the requisition for appointment on the post of Physiotherapist Grade-III in the pay scale of Rs.100-2040 it is stated that the applicant was given repeated opportunities to join the post but she did not join and the panel has already been expired. In the reply it is mentioned that one more chance was given to the applicant to join vide letter dated 3.6.97 and in response to that letter the applicant appeared in the office of respondents on 23.6.97 and accepted the offer on the post of Physiotherapist under protest and the applicant submitted an attestation form duly filled in for police verification, which was sent to the District Magistrate on the same day. It is also stated that the applicant was offered the post of Physiotherapist on 27.10.93 but she did not report for duty and as such, she has no right to claim the salary and consequential benefits of seniority etc. In view of the averments made in

the reply, the respondents have requested to dismiss this OA with costs.

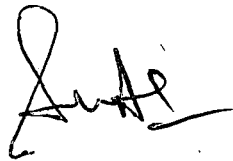
4. A rejoinder was also filed reiterating the facts stated in the OA.

5. Heard the learned counsel for the parties and also perused the whole record including the written submissions filed by the learned counsel for the respondents.

6. on the perusal of the averments made by the parties it becomes abundantly clear that the Railway Recruitment Board had issued a notification for selection on the post of Physiotherapist in the grade of Rs.1200-2040 (RPS) and the applicant also submitted an application for selection on the post in response to the notification issued by the Railway Recruitment Board. Later on, the applicant has claimed the grade of Rs.1400-2300 on the basis of the provisions contained in Rule-161 of the IREM but in the reply it has been categorically stated that the post of Physiotherapist Grade-III was created in the office of the DRM Bikaner by the headquarters' order New Delhi dated 30.5.88 in the pay scale of Rs.1200-2040 and on the basis of such creation the requisition was sent to the Railway Recruitment Board for recruitment of a candidate on the post of Physiotherapist in the pay scale of Rs.1200-2040 (RPS) and the applicant also furnished his application for selection on the post of Physiotherapist Grade-III in response to that notification only. The applicant was selected after qualifying the written test and interview. Therefore, claim of the applicant in view of the clearcut statement of the respondents in the reply is not sustainable in law and in view of the foregoing, we are of the considered opinion that the applicant is not entitled to the pay scale of Rs.1400-2300 for the post of Physiotherapist.

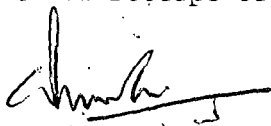
7. The learned counsel for the respondents in his written submissions emphasised that revision of pay scale is not the domain of the Tribunal as these are policy decisions of the Government and court/tribunal cannot interfere unless there is discrimination or arbitrariness. In support of his contention, he has referred the cases of Shiba Kumar Dutt v. Union of India, reported in (1997) 3 SCC 545, and Union of India and Others v. Makhan Chandra Roy, reported in (1997) 11 SCC 182.

8. We have given anxious consideration to the rival contentions of both the parties and perused the whole record. In view of the extension given by the respondents and the legal position, as cited by the learned counsel for the respondents, the claim of the applicant for the pay scale of Rs.1400-2300 on the post of Physiotherapist is not sustainable in law.



9. As regards other prayer, the applicant was given offer of appointment but he sought extension, which was given to him for six months to join the post vide letter dated 27.4.94. It is also evident from the pleadings of the parties that a chance was given to the applicant to join latest by 24.6.97 vide letter dated 3.6.97 and in response to that letter the applicant reported in the office of the respondents on 23.6.97 and accepted the offer of appointment on the post of Physiotherapist under protest. It is not disputed that on 23.6.97 the applicant submitted an attestation form duly filled in for police verification, which was sent to the District Magistrate on the same day. The applicant was offered the post of Physiotherapist vide letter dated 27.10.93 but he sought extension for six months and thereafter reported to the respondents to complete the pre-appointment formalities. The applicant was never given an order of appointment and, therefore, reporting of the applicant on 23.6.97 cannot be treated as joining report on the post of Physiotherapist as no order of appointment was ever been issued to the applicant to join/work on the post. Therefore, the applicant is not entitled to salary w.e.f. 23.6.97. However, the respondent department on selection of the applicant on the post of Physiotherapist issued a letter offering the appointment and thereafter extended the period for six months vide letter dated 27.4.94. It is also evident that the letter for character verification of the applicant was sent to the District Magistrate on 23.6.97 and the department received the verification report in the month of September, 1997 but thereafter no steps have been taken by the respondent department to appoint the applicant on the post. Therefore, in the facts and circumstances of this case, the applicant is entitled to appointment on the post of Physiotherapist Grade-III in the grade of Rs.1200-2040 subject to medically found fit and the contention of the respondents that the panel has expired, is not tenable in the eye of law as process for appointment had already been started and no order to cancel the panel has yet been issued.

10. On the basis of the foregoing, we allow this OA in part and direct the respondents to issue the order of appointment to appoint the applicant on the post of Physiotherapist Grade-III in the pay scale of Rs.1200-2040 (RPS), subject to the applicant being medically found fit, within two months from the date of receipt of a copy of this order. No order as to costs.


(N.P.NAWANI)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)