

**Central Administrative Tribunal
Principal Bench**

**OA No.249/2015
MA No.182/2015**

New Delhi, this the 29th day of March, 2017

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Shri Nihal Singh, S/o Sh. Bula Ram,
Post – O.T. Technician,
Age 39 years,
R/o E-505, Street No.9,
West Vinod Nagar,
Delhi-110092.

...Applicant

(By Advocate : Mr. Sudarshan Ranjan with Mr. Ramesh Rawat)

Versus

Union of India through

1. Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi.

2. Pr. Secretary (Home),
Govt. of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi.

....Respondents

(By Advocate : Mr. Vijay Pandita)

ORDER (ORAL)

Hon'ble Mr. P. K. Basu, Member (A) :

The controversy in this case is that though the applicant participated in the examination in 2002 result for which were announced in 2003, he could obtain his appointment letter only in 2009, as the respondents could not decide whether the qualification possessed by the applicant was indeed as per the Recruitment Rules. The respondents could take a decision regarding this matter only in 2009 and therefore, the applicant was offered appointment in 2009.

The applicant said that seniority list though issued in 2011 was not circulated, therefore, he could have knowledge of it only in the year 2013, counting from which there is a delay of 80 days. The delay is, therefore, condoned. The only issue in this application is whether the applicant can get benefit from the year 2003 like the other batch mates or not. He has prayed for the following reliefs in the O.A :-

- “(i) to quash the seniority list dated 21.04.2011 qua the applicant and his name may be interpolated at the end of his batch mates who were appointed on 17.04.2003;
- (ii) the applicant may also be granted all consequential benefits w.r.t. notional increments and his pay may be fixed by adding the increments notionally to his pay and may also grant the arrears of the same as has been done in the case of Varun Kumar Shukla;
- (iii) may also same deemed just and proper to meet the ends of justice.”

2. Learned counsel for the applicant has also filed judgment of the Hon’ble High Court in WPC No. 1629/2010 in Lalit Kumar Vimal Vs. Secretary (Health) & Ors., in which the similar matter was considered by the Hon’ble High Court and the Hon’ble High Court has held as under :-

“38. We dispose of the writ petitions and the LPA as under:-

(1) WP(C) No.1629/2010 filed by Lalit Kumar Vimal is allowed with a direction to the Government of NCT Delhi to forthwith regularize him as OT Technician and since he has been working in a government hospital since November 2002 as an OT Technician on ad-hoc basis we direct that he would be entitled to the benefit of seniority with retrospective effect as per his seniority position in the select panel and noting that he has not been granted annual increments we direct that he would be granted annual increments from the deemed date of regular appointment which would be the date when the person immediately junior to him in the select panel was appointed. Arrears would be paid to him within 6 months from today.

(2) WP(C) No.18037/2006 filed by Sanjay Kumar is allowed with a direction to the Government of NCT Delhi to regularize his services as a Medical Laboratory Technician with effect from August 2003, the month in which he joined after he was selected. He would be entitled to seniority at par with Lalit Kumar Vimal and noting that he has been getting the benefit of the annual increments, we observe that he would not be entitled to any arrears.

(3) As regards petitioner No.3 of WP(C) No.5396-98/2005 and the appellants of LPA No.1653-58/2005 we direct that they be granted employment as Medical Laboratory Technicians and for purposes of seniority be placed as per their position in the select panel. They would not be entitled to any back-wages, save and except appellant No.3 who has been working at DDU Hospital and qua him we direct that he would be entitled to the same benefit as Lalit Kumar Vimal. Arrears would be paid to him within six months. Others would be issued formal posting orders within six weeks.”

3. In any case, since it was not the applicant's fault that the department took six years to decide whether he possesses the necessary educational qualification or not, the O.A deserves to be allowed.
4. The O.A is therefore, allowed with a direction to the respondents to grant him seniority along with his batch mates from 2003 with all consequential benefits. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/Mbt/