

Central Administrative Tribunal
Principal Bench
New Delhi

T.A.No.53/2012

Order Reserved on: 19.01.2017
Order pronounced on 01.03.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

1. Harish Chander

S/o Shri Ghanshyam Dutt Pokhriyal
R/o D-558, Kidwai Nagar (East)
New Delhi.

2. **Deleted vide order dated 17.08.2016**

3. Gulshan Kumar

S/o Late Shri Ram Chander
R/o 2/17, Nehru Nagar
New Delhi-110065.

4. **Deleted vide order dated 17.08.2016**

5. Ramesh Chand

S/o Shri Vijay Pal Singh
R/o Vill+Post: Jhajhar, Distt
G.B.Nagar (U.P.)

6. Jagjit Kumar Vashisht

S/o Santi Prakash Vashist
R/o House No.776/5
Patel Nagar Sector-15
Gurgaon, Haryana.

7. Brahamjeet Sharma

S/o Shri Dharampal Sharma

R/o G-11, Shri Niwas Puri
New Delhi-110065.

(By Advocate: Shri Bharat Singh)

Versus

1. The Director

All India Institute of Medical Sciences,
Ansari Nagar
New Delhi-110029.

2. The Sub-Dean (Exams)

All India Institute of Medical Sciences,
Ansari Nagar
New Delhi-110029.

(By Advocate: None)

O R D E R

By V. Ajay Kumar, Member (J):

The applicants, initially 7 in number (later on, the names of applicants No.2 and 4 were deleted vide order dated 17.08.2016) and working as Hospital Attendants in the Respondents-All India Institute of Medical Sciences (in short, AIIMS), filed the TA, seeking the following prayer(s):

"a) issue a writ in the nature of certiorari quashing the result notification 91/2012 declared vide office memo No.F.No.AIIMS/Exam. Sec/15-118/OTA/2012 dated 17.09.2012 issued by respondents which is based on illegal recruitment procedure conducted in view of advertisement dated 25.08.2010 issued by respondents, and

b) issue a further writ in the nature of mandamus directing the respondents to appoint the petitioners on the post of Operation Theatre Assistant at AIIMS, and

c) issue a further any other appropriate writ, order or directions to the Respondent to produce the entire record of the selection process in the present case, and

d) Pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The respondents-AIIMS vide Annexure P5, Advertisement, called for applications for filling up of the posts of Operation Theater Assistants, on deputation/direct recruitment basis, among other posts. The applicants have applied in pursuance of the same and participated in the selection process, however, having not selected, filed the present TA, questioning the final result Notification No.91/2012, dated 17.09.2012 (Annexure P8).

3. Heard Shri Bharat Singh, the learned counsel for the applicant. Though the TA pertains to the year 2012, there is no representation on behalf of the respondents' counsel, however, the counter filed on their behalf is perused and considered, and also perused the entire pleadings on record.

4. The main contention of the applicants is that as per the Recruitment Rules, 25% of the posts of Operation Theater Assistants should be filled up from the eligible Hospital Attendants but the respondents filled up all the vacancies by way of direct recruitment, though the applicants, who satisfy all the eligibility conditions and working as Hospital Attendants, are available.

5. The respondents vide their counter categorically submitted that the Annexure P5-Advertisement was issued only for the purpose of filling up of 166 posts of Operation Theater Assistants, exclusively meant for 75% vacancies required to be filled up by way of direct recruitment. Hence, the applicants having applied against the

Advertisement issued for direct recruitment, cannot contend that they should be selected by virtue of their service as Hospital Attendants.

6. A perusal of the Advertisement clearly indicates that the same was issued for filling up of the vacancies by way of direct recruitment. The applicants No.2 and 4 who joined with others in filing the OA, later withdrawn from the OA, as they were selected as Operation Theatre Assistants, in pursuance of the impugned selection, by way of direct recruitment. Hence, we do not find any merit in the contention of the applicants.

7. Though the applicants sought for quashing of the final select list dated 17.09.2012, but not made any of the affected parties as party respondents to the TA.

8. In **J.S.Yadav v. State of U.P. & Anr.**, (2011) 6 SCC 570, the Hon'ble Apex Court held that:

"32. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order I Rule 9, of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the plaintiff/petitioner may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail."

9. In the circumstances and for the aforesaid settled law, we do not find any merit in the TA, accordingly, the same is dismissed. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)