

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-712/2015

Order Reserved on: 26.08.2016

Order Pronounced on: 15.11.2016

Hon'ble Mr. Sudhir Kumar, Member (A)

Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Kiran, 36 years (unemployed)

D/o Shri Mahadev Rao,

Flat No.88, Ground Floor,

Pocket IV, Sector 21,

Rohini, Delhi-110085.

-Applicant

(By Advocate: Shri G.S. Lobana &
Shri B.S. Gupta)

Versus

1. Govt. of NCT of Delhi through
The Principal Secretary,
Department of Health & Family Welfare,
Government of NCT of Delhi,
Delhi Secretariat,
I.P. Estate, New Delhi.

2. The Secretary,
Delhi Subordinate Services Selection Board,
Government of NCT of Delhi,
FC-18, Institutional Area,
Karkardooma, Delhi-92.

-Respondents

(By Advocate: Mrs. Rashmi Chopra)

ORDER

Per Sudhir Kumar, Member (A):

The facts of this case lie in a very narrow compass. The applicant, who belongs to SC category, has filed this OA impugning the Public Notice dated 30.12.2014, whereby her result list wherein she was declared qualified securing 62 marks at Sl. No.78, has been rejected,

under the category of **'List of Candidates whose qualification is acquired after cut-off date'** in spite of the fact that she was allowed to appear in the Examination for Staff Nurse (Post Codes 20/13 & 22/13) in response to the Advertisement Number 01/13 after issuance of Admit Card, after she had made her status clear by writing on the body of the application in the prescribed OMR Form as "Result Awaited" (Annexure A-1) .

2. In response to Advertisement No. 01/13 (Annexure A-2) of Govt. of NCT of Delhi, she had applied for the post of Staff Nurse (Post Codes 20/13 & 22/13) and appeared in the Examination conducted on 09.06.2013 by the Respondent No.2-Delhi Subordinate Services Selection Board (DSSSB, in short). The applicant having passed her Secondary Education in 1993, and Senior School Certificate from CBSE in 1995 + 6 months General Nursing & Midwifery (F) Final Year Examination having been held in January 2013 by the Haryana Nurses Registration Council, Chandigarh, she got her Diploma in General Nursing and Midwifery (F) in June 2013. She had received her marks sheet from the Haryana Nursing Registration Council on 05.07.2013, copies of the relevant mark sheets and Secondary Education Certificates having been annexed at Annexure A-3 (colly).

3. The applicant had appeared in final examination in January, 2013 for her Diploma in General Nursing and Midwifery (F), and was hopeful that the result would be out before the closing date, i.e., 20.03.2013. It

was in this backdrop that she had applied for the post of Staff Nurse (Post Codes 20/13 & 22/13), duly mentioning on the application form “Result Awaited”.

4. In pursuance to her application, the Respondent No.R-2 DSSSB issued her the Admit Card and allowed the applicant to appear and write her Staff Nurse Exam held on 09.06.2013. She appeared in the Examination and was declared qualified by securing 62 marks, at Sl. No.78, as mentioned above.

5. In response to the Public Notice dated 10.01.2014 (Annexure A-4) regarding collection of documents from the remaining candidates for the post of Staff Nurse (Post Codes 20/13, 21/13,22/13), the applicant submitted two sets of self-attested testimonials on 02.09.2014 in the Office of Respondent No.R-2 DSSSB for documents verification.

6. It was submitted that the applicant, after her having been allowed to appear and take the examination, and on being declared qualified securing 62 marks, cannot now be denied employment on the tenuous ground that she obtained her Diploma after the closing date.

7. The applicant has assailed the actions of the Respondent No.R-2 DSSSB on the ground that only because she had obtained her Diploma after the closing date, the cancellation of her candidature is not sustainable in law. It was submitted that the denial of employment to her, who belongs to SC category, particularly when she wrote the

examination clearly mentioning on the application form 'Result Awaited', is harsh, and contrary to the settled principles of law, when it was her legitimate expectation that her candidature would be considered, and not out-rightly rejected as per the impugned notice, particularly when she had been duly declared qualified in the said competitive Examination on merit, securing 62 marks.

8. The applicant has further taken the ground that she is legally entitled in law and in equity to be considered for appointment to the post of Staff Nurse (Post Codes 20/13 & 22/13) by relaxing the cut-off/closing date on the ground that she had taken her final examination much before the closing date, i.e., 20.03.2013. She had, therefore, prayed for the following Reliefs and Interim Reliefs:-

Reliefs:-

- “1) Quash and set aside the Public Notice wherein her candidature at S.No.78 has been 'REJECTED' in the category of 'List of Candidates whose qualification is after Cut-Off Date (20.03.2013);
- 2) Direct the respondents to consider the candidature of the applicant who has been declared qualified securing 62 marks in the SC category listed at S.No.78-Roll No.02006474 in the impugned Notice.
- 3) Direct respondents to pay the cost of this uncalled for litigation;
- 4) Pass such further or other order(s) in favour of the applicant as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

Interim Relief:-

“Applicant prays that respondents be directed to keep one SC post vacant for Staff Nurse (Code 20 and Code 22), as such has sanguine hope that she will succeed in the matter.

The applicant will suffer irreparable loss and injury if the relief is not granted as prayed for”.

9. It is seen from the order sheets that the prayer for interim relief was never granted to her.

10. The respondents filed their counter reply on 05.08.2015, wherein they had taken the preliminary objection that the OA is not maintainable, as the issue raised is no longer *res-integra*, having been put to rest by the Hon’ble Supreme Court in **Rakesh Kumar Sharma vs. Govt. of NCT of Delhi & Ors. (2013) 11 SCC 58**. It was submitted that Para-5 of the Advertisement No.01/13 had specifically provided the eligibility criteria as under:-

“ 5. **Eligibility Criteria:-**

1. The candidate must be citizen of India.
2. The education qualification, age, experience etc. as stipulated in advertisement shall be determined as on the closing date of submission of application”.

11. Therefore, it was submitted that the applicant having submitted herself to the conditions as stipulated for selection cannot assail them after rejection of her candidature, more particularly when she did not possess the eligibility criteria as on the closing date, i.e., 20.03.2013.

12. It was further submitted that it was made clear for the candidates in the said Advertisement itself that they should submit before the closing date the certificates relating to requisite qualifications, and caste certificate (issued before the cut-off date). The R-2 DSSSB had conducted the Examination on 09.06.2013 for the post of Staff Nurse,

Nurse 'A' Grade, and Nurse Grade 'A' (Post Codes 20/13, 21/13 & 22/13, respectively), and all those who had applied along with the applicant were provisionally allowed to appear. Subsequently, the marks obtained by the candidates were uploaded on the website of the Board in a combined list of 20027 candidates. But the applicant's candidature was later rejected, as she did not meet the eligibility criteria as on the cut-off date, i.e., 20.03.2013.

13. It was further submitted that the only fact that the applicant was allowed to appear in the examination lends no credence to her eligibility, as her qualifications had been scrutinized only after the declaration of the provisional result. It was further submitted that the Appointing Authority verifies and satisfies about the authenticity of the documents/certificates, and eligibility in terms of the Recruitment Rules, before finally appointing the candidates, and that the provisional selection of a candidate does not confer on her any right of appointment, unless the Competent Authority is satisfied in that behalf.

14. It was submitted that there cannot be any negative equality in law, as unless a candidate is qualified to be appointed, he/she cannot claim a right for appointment, as no estoppel operates against law. Hence, it was submitted that the applicant's candidature was rightly rejected, because of her not being qualified as on the cut-off date, i.e., 20.03.2013. It was, therefore, prayed that the OA deserves to be dismissed at the outset.

15. The applicant filed her rejoinder on 08.09.2016 more or less reiterating her contentions made in the OA. It was submitted that the judgment cited by the respondents is not applicable, because she had not mis-represented at the time of filling up the application form that she did not possess the educational qualification, and had clearly and unambiguously indicated that her result was awaited, by writing 'Result Awaited'. It was further submitted that rejection of her candidature is in violation of Articles 14 & 16 of the Constitution, inasmuch as it would differentiate between those who had acquired the educational qualification by 20.03.2013, and those who appeared in the relevant examination before the said date, but because of administrative reasons, their results were declared after 20.03.2013. It was further submitted that she had acquired the requisite qualification while the process of selection was still on, and such a classification is not based on any intelligible differentia, having no reasonable nexus with the object sought to be achieved. In support of this plea, she had relied on the decision of the Hon'ble Supreme Court in **Dev Dutt vs. Union of India (2008) 8 SCC 725**.

16. Heard. During the course of arguments, learned counsel for the applicant relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Orissa and Another vs. Rajkishore Nanda and Others (2010) 6 SCC 777**, and in particular Para-11 of that judgment, which reads thus:

"11. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified

vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide State of Bihar & Ors. Vs. The Secretariat Assistant S.E. Union 1986 & Ors. AIR 1994 SC 736; Prem Singh & Ors. Vs. Haryana State Electricity Board & Ors. (1996) 4 SCC 319; Ashok Kumar & Ors. Vs. Chairman, Banking Service Recruitment Board & Ors. AIR 1996 SC 976; Surinder Singh & Ors. Vs. State of Punjab & Ors. AIR 1998 SC 18; and Rakhi Ray & Ors. Vs. High Court of Delhi AIR 2010 SC 932).

17. The learned counsel for the applicant also relied upon the decision of the Hon'ble Supreme Court in **Rakhi Ray and Others vs. High Court of Delhi and Others** with connected matter **(2010) 2 SCC 637**, and in particular, Para-7 of that judgment, which we may reproduce as below:-

"7. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide Union of India & Ors. v. Ishwar Singh Khatri & Ors. (1992) Supp 3 SCC 84; Gujarat State Deputy Executive Engineers' Association v. State of Gujarat & Ors. (1994) Supp 2 SCC 591; State of Bihar & Ors. v. The Secretariat Assistant S.E. Union 1986 & Ors AIR 1994 SC 736; Prem Singh & Ors. v. Haryana State Electricity Board & Ors. (1996) 4 SCC 319; and Ashok Kumar &

Ors. v. Chairman, Banking Service Recruitment Board & Ors.
AIR 1996 SC 976).”

18. We have given our anxious consideration to the facts of the case. It is seen that the judgment in the case of **State of Orissa and Another vs. Rajkishore Nanda and Others** (supra) does not provide any sustenance to the applicant, because the present case is not on all fours with the facts of that case. That case had dealt with the legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised, as the recruitment of candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right of those who have acquired eligibility for the post in question subsequent to the date of Notification of vacancies, and who would have been eligible to apply for such excess vacancies notified later. It was, therefore, held by the Hon'ble Supreme Court that filling up of the vacancies over and above the vacancies notified was not permissible in law, as it deprives the rights of persons who had never been applicants, and who had acquired eligibility subsequent to the Notification of vacancies. The present case is entirely different.

19. The judgment in the case of **Rakhi Ray and Others vs. High Court of Delhi and Others** (supra) had also dealt with a similar situation, and that judgment is also not on all fours with the facts of the present case.

20. Here, in the instant case, in view of the large number of applications received by the respondents, as has been clarified in the counter reply, and is well known otherwise also, the academic

qualifications and credentials of all the candidates are checked only in respect of those who have been successful in the selection process, and not in respect of everybody who initially applies, which is a very very large number. Therefore, just because of the fact that the applicant had been issued an Admit Card for appearing at the process of selection, in spite of her having clearly indicated in the application form that her status was 'Result Awaited', it does not give rise to any right to the applicant to claim appointment, without possessing the necessary qualification as on the cut-off date.

21. In fact, allowing the applicant's prayer would amount to denial of rights to many others also, who had also acquired eligibility to the post in question after the cut-off date for receipt of applications, but who went strictly by the contents of the Advertisement No.01/13, and due to their not possessing the required qualifications as on the cut-off date, they had not applied. In that context, actually both the cited judgments in **State of Orissa and Another vs. Rajkishore Nanda and Others** (supra) and **Rakhi Ray and Others vs. High Court of Delhi and Others** (supra) actually operate against the plea of the applicant, as granting relief to her would amount to trampling upon the Constitutional rights under Article 14 read with Article 16 (1) of all those persons, who had acquired eligibility for the post in question in accordance with the Statutory Rules subsequent to the closing date of Notification indicated in the Advertisement, and had, therefore, not applied in response to the Advertisement, by strictly following its contents.

22. Therefore, we find no merit in the OA, and the OA is, therefore, rejected, but there shall be no order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Sudhir Kumar)
Member (A)

cc.