

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 340/2013
MA 3429/2013
MA 3929/2014

Reserved on: 20.03.2017
Pronounced on: 24.03.2017

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

Mrs. Sagarika Das
40 Kapil Dev 368
Silver Oak Road
Ghitorni,
New Delhi-110030

.... Applicant

(Through Shri Abir Phukan, Advocate)

Versus

1. The Secretary to the Govt. of India
Ministry of Health & Family Welfare
Nirman Bhawan,
New Delhi-110001
2. The Central Institute of Psychiatry
Through its Admin. Officer Dr. D. Ram
Kanke, Ranchi
Jharkhand-834006
3. Dr. S. Haque
Director
Central Institute of Psychiatry
Kanke, Ranchi
Jharkhand-834006
4. Ms. Archana Samanta
Dy. Nursing Superintendent
Central Institute of Psychiatry,
Kanke, Ranchi,
Jharkhand-834006

.... Respondents

(Through Shri Manjeet Singh Reen, Advocate)

ORDERMr. P.K. Basu, Member (A)

The applicant is a Staff Nurse in the Central Institute of Psychiatry (CIP) Kanke, Ranchi. Her grievance is that she applied for the posts of Deputy Nursing Advisor (DNA) and Deputy Assistant Director General (DADG) in the Ministry of Health & Family Welfare (MoH&W) against an advertisement but the respondents, namely, CIP did not send relevant documents to the Ministry of Health. The reliefs sought for are as follows:

- (i) Direct Respondent No.1 to consider the applicant for the posts of DNA and DADG in the Ministry and to take necessary action to obtain the documents mentioned in Annexure A-1 (colly).
- (ii) Direct Respondent No.1 to take necessary action against Respondent Nos.3 and 4 for not forwarding the document sought by Respondent No.1 in Annexure A-1 (colly).

2. The advertisement for the posts of DNA and DADG was published in the Employment News dated 10-16th March, 2012. The posts were to be filled on deputation basis. The applicants were required to provide the following documents along with their applications:

- (i) Photocopies of the ACRs (five years)
- (ii) Integrity certificate
- (iii) Vigilance clearance certificate
- (iv) No penalty certificate

3. On the basis of the application directly received by the Ministry, the Ministry wrote to CIP on 2.11.2012 to furnish these documents. This was followed by another letter dated 19.12.2012. In reply to letter dated 19.12.2012, CIP vide its letter dated 31.12.2012 informed the Ministry as follows:

"In this connection, this is to inform that Smt. Sagarika Das, Staff Nurse, of this Institute has been absenting herself from duty since 15.01.2012 unauthorizedly. It is further to inform that she availed herself of Study Leave from 15.07.2009 to 14.07.2011 (two years) and after return from her study leave she joined her duty for namesake i.e. for one day and a half and again proceeded on maternity leave from 19.07.2011 to 14.01.2012. She was supposed to join her duty on 15.01.2012 but despite repeated instructions to join her duty she has not joined her duty till date. A Charge Sheet under Rule 14 of CCS (CCA) Rules, 1965 has been issued against her and the disciplinary case is pending. This is for information and needful."

4. The applicants were supposed to send their applications through proper channel i.e. the applicant should have sent her application through CIP. The respondents stand is that the applicant had not applied through CIP but had applied directly, as a result the Ministry had asked for the above four documents.

5. The learned counsel for the applicant referred to MA 3929/2014 filed on 1.12.2014 by the applicant and specifically to Annexure A-1, which is the inquiry report in the inquiry under Rule 14 of the CCS (CCA) Rules, 1965 against the applicant. There were three Articles of Charges. Articles I and II pertained to unauthorized leave and insubordination in as much as she did not resume her duties despite specific direction. Article III was

regarding her applying for the posts advertized by the Ministry, without permission of her employer. It was pointed out that in the inquiry report while Charges I and II were proved, charge III was held as not proved by the Inquiry Officer (IO). In this regard, the learned counsel for the applicant drew our attention to the following paragraph in the Inquiry Report:

"It is evident from the evidences that she had sent application to the Nursing Superintendent which was refused (Ex.-D2). The argument that she must know who the competent authority is, this does not hold good as it is within normal procedure that it should be sent to the immediate senior who must forward to the appropriate authority. The application was sent to the Director also and even received by the Director Office as shown by the postal tracking. (Ex.D3).This is proved by documentary evidences. So, there is preponderance of evidence which suggest that she has applied for new post as per rules and there is nothing to suggest that there has been any lack of integrity on the part of the charged officer."

6. It was stated that the above paragraph clearly shows that the applicant had sent her application to the Director and even received by the Director office as shown by the postal tracking and, therefore, it is wrong on the part of the respondents to state that the applicant did not forward her application to the Directorate.

7. On being asked, learned counsel for the applicant clarified that the applicant had finally joined back only in November 2013, which means that she was not working between the period 31.01.2012 till November 2013. Learned counsel for the applicant argued that the Institute has acted in a discriminatory

and arbitrary manner in gross violation of Articles 15, 16 and 21 of the Constitution of India.

8. We have heard the learned counsel for the parties and gone through the pleadings available on record.

9. The original advertisement was issued to fill up the posts on deputation. Period of deputation was indicated as ordinarily not to exceed three years. The application had to be forwarded through proper channel. The three year period is over in 2015. Therefore, in a sense, this OA has become infructuous. However, even if we look at the merits of the case, it is seen that the applicant was on unauthorized leave starting from 31.01.2012 till November 2013. For the unauthorized period of leave between 31.01.2012 till 31.08.2012, a Charge Memorandum was issued to the applicant. Therefore, there was a departmental proceeding pending against her. Obviously, she could not be considered for promotion or appointed on deputation in face of the fact that there was a departmental proceeding pending against her. The inquiry report does indeed sets at rest the dispute between the parties as to whether the applicant has sent the application to the Director's office or not. As is evident from the documentary evidence, it had been sent. However, that no longer remains relevant as the applicant was facing departmental inquiry for unauthorized absence for a long period. Therefore, there was no question of her being considered for any promotion or appointment.

10. Both the learned counsel had on 16.05.2016 agreed that decision of the Tribunal in OA 556/2013 filed by the same applicant is relevant. The Tribunal pronounced its decision in the aforementioned OA on 23.05.2016. That OA had been filed, *inter alia*, for the following reliefs:

"a) Direct Respondent Ministry to expeditiously dispose of enquiry pertaining to the grievances of the Applicant.

xxxx xxxx xxxx xxxx

c) Direct the Respondent Ministry and Respondent Institute to grant leave to the Applicant with retrospective effect from 15.01.2012 in accordance with Rule 43 (4) (b) of Central Civil Services (Leave) Rules, 1972.

xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx "

The OA was dismissed. Thus, this decision also does not come to the rescue of the applicant.

11. In totality of facts narrated above, the OA does not succeed and is dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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