

**Central Administrative Tribunal
Principal Bench**

**CP No.486/2015
in
OA No.3669/2013
MA No.2778/2013**

New Delhi, this the 23rd day of December, 2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

1. Shri Shiv Kumar (Aged about 35 years),
S/o Shri Balwan Singh,
R/o H.No.36, Mangalpuri Kalan,
Delhi-110085.
2. Shri Satish Kumar (Aged about 37 years),
S/o Shri Dharam Nath Thakur,
H.No.8, Alipur Block,
New Delhi.

...applicant

(By Advocate : Shri S.P. Chadha)

Versus

1. Shri Deepak Kumar, I.A.S.,
Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan,
CIG Road,
New Delhi.
2. Dr. A.K. Mhatana,
Director Medical Delhi,
Employees State Insurance Corporation,
Tilak Vihar, New Delhi.
3. Dr. Sant Ram Chauhan,
Medical Commissioner, HQ,
Employees State Insurance Corporation,
ESIC, HQ, CIG Road,
New Delhi.

...respondents

(By Shri Prateek Kumar for Shri Yakesh Anand)

ORDER (ORAL)**Mr. A.K. Bhardwaj, Member (J) :-**

The only direction issued by the Tribunal in terms of order dated 28.04.2015 passed in OA No.3669/2013 to the respondents was to hold DPC for promotion of the applicants within a period of two months from the date of receipt of a certified copy of this order.

Para 5 and 6 of the order reads thus :-

“5. Thus, even after amendment of Recruitment Rules, the vacancies existing prior to such amendment will have to be filled in accordance with the existing Recruitment Rules. Thus, no purpose would be served by postponing the DPCs. If the respondents feel that the existing Nursing Orderlies are not adequately trained to perform the duties of Dark Room Assistants, appropriate course of action for them would be to impart training to them to enable them to perform their duties adequately.

6. Under these circumstances, we allow this O.A. and quash the impugned order dated 25.07.2012 and direct the respondents to hold DPC for promotion of the applicants within a period of two months from the date of receipt of a certified copy of this order. No costs.”

2. In implementation of the order, the DPC was held to fill up four vacancies and since the applicant No.2 was not sufficiently senior for being included in the Select List, he could not get promotion. The position regarding steps taken by the respondents in implementation of the order passed by the Tribunal has been explained in para 3 of the reply which reads thus :-

“3. That I have utmost respect for the orders passed by this Hon’ble Tribunal. The Respondent Corporation submits that in compliance of the order dated 28.4.2015 passed by this Hon’ble Tribunal, the Departmental Promotion Committee (DPC) was held on 05.11.2015 to consider the promotion/ posting of official for the post of Dark Room Assistants. The eligibility of Applicants were also considered and examined in the aforesaid DPC meeting held on 05.11.2015. The Departmental Promotion Committee held on 05.11.2015, has approved the promotion of four employees) for promotion to the post of Dark Room Assistant, ESI Hospital, Basaidara Pur, New Delhi in the scale of pay of PBI (Rs.5200-20200) with Grade Pay of Rs.1900/- or the existing pay whenever is higher. The details are as follows :-

Sl. No.	Name of the employee (Sh./Smt./Kmr.)	Present designation & place of posting	On promoted post and place of posting
1.	Manoj Kumar, S/o Om Prakash	Stretcher Bearer ESI Hospital Rohini	Dark Room Assistant, ESI Hospital Basaidarapur
2.	Rajesh	Stretcher Bearer ESI Hospital Basaidarapur	Dark Room Assistant, ESI Hospital Basaidarapur
3.	Naresh Kumar	Stretcher Bearer ESI Hospital Rohini	Dark Room Assistant, ESI Hospital Basaidarapur
4.	Shiv Kumar, SC	Stretcher Bearer ESI Hospital Basaidarapur	Dark Room Assistant, ESI Hospital Basaidarapur

The DPC held on 05.11.2015 has considered the promotion of the eligible officials to the post of Dark Room Assistant on the basis of their seniority. It is submitted that there were only four posts vacant in the category of Dark Room Assistant are of the Applicant Shiv Kumar who belongs to SC category has been promoted to the post of Dark Room Assistant. The Departmental promotion committee also considered the eligibility of second applicant i.e. Satish Kumar, however, he could not be recommended for promotion as those

employees/officials who were recommended for promotion to the post of Dark Room Assistant by the committee were senior then Mr. Satish Kumar, I say that four vacant posts were filled up as per the seniority.”

3. Shri S.P. Chadha, learned counsel for applicant submitted that there were not only four but more vacancies pertaining to the period prior to amendment of the rules. Thus, the name of the applicant No.2 should also have been included in the Select List. Such was not a spirit of the directions issued in the Original Application. The only ramification of direction issued was that the respondents should convene a DPC to consider the applicants for their promotion as per the rule position prior to the amendment therein took place.

4. We are satisfied that there is no wilful disobedience in the order passed by the respondents. Accordingly, the CP is closed. Notices issued to the respondents stand discharged. It goes without saying that if the vacancies for the period prior to amendment in the Recruitment Rules are not correctly calculated, the applicant No.2 would be at liberty to work out his remedy in appropriate proceedings, if so advised. No costs.

(V.N. Gaur)
Member (A)

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(A.K. Bhardwaj)
Member (J)