

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/359/2015

Date of Reserve:18.12.2018
Date of Order: 04.01.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Chinmayee Dash, aged about 25 years, dauther of Rajendra Prasad Dash, At-Hariharpur, PO-Fatepur, PS-Khaira, Dist-Balasore

...Applicant

By the Advocate(s)-M/s.B.P.Satapathy
B.K.Nayak
A.K.Shoo

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Health & Family Welfare, New Delhi.
2. All India Institute of Medical Science, Bhubaneswar, At-Sijua, PO-Dumuduma, Bhubaneswar-751 019, Dist-Khurda represented by its Director.
3. Administrative Officer, All India Institute of Medical Science, Bhubaneswar, At-Sijya, PO-Dumuduma, Bhubaneswar-751 019, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.M.R.Mohanty
ORDER

PER MR.SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs:

- i) Let the withdrawal of the offer of appointment issued in favour of the applicant vide the impugned notice dated 12.09.2014 under Annexure-A/5 be declared as illegal and as such liable to be set aside.
- ii) Let the respondents be directed to allow the applicant to join in her post of Staff Nurse Grade-II(Sister Grade-II) in terms of Annexure-3 forthwith.
- iii) Let any other appropriate order/orders, direction/directions may be passed which would be deemed fit and proper in the facts and circumstances of the case.

2. The short facts of the case are that in response to an advertisement dated 13.07.2013 for filling up the post of Staff Nurse Grade-II(Sister Grade-II), the applicant had submitted her application. Accordingly, she appeared in the written test that was held on 17.11.2013 and on her coming out successful, she was called for appearing in the personal interview that was scheduled to be held between 01.12.2013 and 06.12.2013 and the applicant did appear the said interview on the date fixed. Consequent upon her getting through the personal interview, the applicant was issued with an offer of appointment vide letter dated 08.09.2014(A/4). While the matter stood thus, applicant was issued with a notice dated 12.09.2014 withdrawing the offer of appointment as Staff Nurse (Sister Grade-II). Hence, aggrieved with the above action, the applicant has approached this Tribunal seeking for the reliefs as mentioned above.

3. Applicant has urged that she having been selected through a due process of selection was hopeful to join the post in question after completing the necessary formalities and at this juncture, withdrawal of offer of appointment is arbitrary, whimsical and does not stand to judicial scrutiny, particularly when the cancellation notice does not make a mention the reason behind such cancellation albeit, there has been a mention on administrative reasons.

4. On the other hand, opposing the prayer of the applicant, respondents have filed a detailed counter. It has been submitted that the AIIMS, Bhubaneswar had issued an advertisement dated 13.07.2013 for recruitment of 150 numbers of Staff Nurse Gr.II(Sister. Gr.II). Even though 150 posts were advertised, the selection Committee recommended the names of 200 candidates to the appointing authority for consideration. They have submitted

that the Minister of Health & Family Welfare, Government of India being the President of the Institute and the Appointing Authority as per the AIIMS Regulations is the Appointing Authority in so far Staff Nurse Gr.-II (Sister Grade-II) is concerned. The Ministry of Health & Family Welfare, Government of India vide their letter dated 16.01.2014 communicated approval of the President for appointment of 200 numbers of candidates (UR-96, OBC-53, SC-30, ST-15 & PH-6) in the post of Staff Nurse, Gr.II. In the above backdrop, the Institute issued offer of appointment in favour of 200 selected candidates as approved by the appointing authority. In response to the offer of appointment, 179 candidates joined the posts and 03 sought extension of joining. According to respondents, due to inadvertence, 18 candidates from the remaining merit list were issued offer of appointment. Subsequently, it was been found that as against 150 posts advertised to be filled up, the appointment authority had only approved 200 candidates to be appointed. It was also found that no wait-list had been approved by the Appointing Authority. On detection of the said inadvertent error, the offer of appointment as issued to those additional 18 candidates including the applicant was withdrawn vide notification 12.09.2014. They have therefore, submitted that the O.A. being devoid of merit is liable to be dismissed.

5. Heard the learned counsels for the parties and perused the records. We have also gone through the written notes of submissions filed by the parties.

6. Admittedly, the advertisement was made for filling up of 150 nos. of posts of Staff Nurse-II(Sister Grade-II) by the AIIMS authorities. It is also an admitted position that the Selection Committee recommended the names of 200 candidates for appointment to the post in question which too was approved by the appointing authority as communicated vide Ministry of

Health & Family Welfare letter dated 16.01.2014. In this connection, we have also gone through the select list in respect of UR candidates since applicant belongs to UR category. It is seen that the names of 96 candidates selected therein find place whereas the name of the applicant does not figure. The respondents by filing their written notes of submission have also corroborated this stand by stating that inadvertently 18 candidates those are not in the recommended list of 200 candidates (UR-96) were issued offer of appointment which on being detected later on was immediately withdrawn. As regards filling up more vacancies than 150 as advertised, it has been submitted by the respondents that in the advertisement against "No of Posts" one asterisk mark was there and in the bottom, referring to this "*", it has been clearly mentioned that the number of posts is tentative and is liable to change based on the Institute's requirements. Nowhere the applicant has stated that she was the selected candidate having her name placed within 96 UR candidates, which had the approval of the appointing authority for appointment. We have also gone through the decisions of the Hon'ble Supreme Court in M.S.Gill vs. Chief Election Commission (AIR 1978 SC 851) and of the Hon'ble High Court of Orissa in Sasmita Manjari Das vs. State of Orissa & ors. (2015, Vol.II OLR 752) cited by the applicant to fortify her stand point. The facts of those cases being different from the facts of the present case, the decisions so cited are of no help to the applicant.

7. For the discussions held above, we do not find any justifiable reason to interfere in the matter. Accordingly, the O.A. being devoid of merit is dismissed, leaving the parties to bear their respective costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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