

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00065/2019

Dated Monday the 4th day of February Two Thousand Nineteen

**CORAM: HON'BLE MR. R. RAMANUJAM, Member (A)
HON'BLE MR. P. MADHAVAN, Member (J)**

S.Sivaramane,
Plot No. 8, Manakula Vinayagar Street,
Jayam Nagar, 100 Feet Road,
Mudaliarpet, Puducherry 605004.Applicant

By Advocate M/s. M. Ravi

Vs

1.Union of India, rep by Secretary to Govt.,
Ministry of Health & Family Welfare Department,
Nirman Bhavan,
New Delhi 1.

2.Director General of Health Service,
New Delhi 2.

3.Jawaharlal Institute of Post Graduate
Medical Education & Research (JIPMER),
Rep by the Director
Dhanwantari Nagar,
Puducherry 605006.Respondents

By Advocate Mr. M. T. Arunan

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA seeking the following relief :

"To call for the records issued by the 3rd respondent in Advt No.-1/DR/1(2)/2018 dated 28.12.2018 and quash the same with the limited extent of inclusion of the post of Technical Assistant (Nuclear Medicine) therein and to issue appropriate directions to the respondents herein to include appointment by promotion as one of the mode of recruitment along with Direct Recruitment for appointment to the post of Technical Assistant (Nuclear Medicine) in the Recruitment Rules and to consider the candidature of the applicant for regular appointment to the said post and pass such further or other orders as deemed fit and thus render justice."

2. The OA was admitted on 25.01.2019 and the respondents were directed to file a short reply on interim relief which has not been filed till date. Today when the matter is called, learned counsel for the applicant produces a copy of the office order dt. 30.01.2019 in compliance of the order of this Tribunal in OA 1528/2018 dt. 12.11.2018. It is seen therefrom that the competent authority had rejected the claim of the applicant to be appointed as Technical Assistant (Nuclear Medicine) as the post was a direct recruitment post which could only be filled through direct recruitment by following the constitutional scheme of selection.

3. Learned counsel for the applicant would allege that in reply to an application made under the RTI Act, the applicant had been informed that there were no recruitment rules for the post of Technical Assistant (Nuclear Medicine). Accordingly, the applicant's representation had been rejected relying on a non-existing rule and, therefore, the order was liable to be quashed, it is contended.

4. We have considered the matter. The relief sought in this OA is to direct the respondents to include appointment by promotion as one of the modes of recruitment along with direct recruitment for appointment to the post of Technical

Assistant (Nuclear Medicine) in the Recruitment Rules and to consider the candidature of the applicant for regular appointment to the said post accordingly. It is not for this Tribunal to dictate how Recruitment Rules would be framed and what should be the mode of recruitment thereunder. Even if it is assumed that there are no Recruitment Rules as on date, it is not possible to dismiss lightly the statement contained in the Office order dt. 30.01.2019 that the post of Technical Assistant (Nuclear Medicine) is a Direct Recruit post and it could only be filled through Direct Recruitment by following the constitutional scheme of selection, as it is possible that a policy decision or executive orders may exist therefor. In any case, the question of directing the respondents to frame Recruitment Rules in a particular manner does not arise. No directions could be issued by this Tribunal on policy matters either.

5. In the absence of recruitment rules or policy directions that contain an enabling provision to consider the applicant's claim, no right of the applicant is violated. The OA is misconceived and is accordingly liable to be dismissed. The applicant shall however be at liberty to challenge the office order dt. 30.01.2019 in a fresh OA, if any evidence of discrimination against him in terms of decisions in similar and precedent cases comes to light.

6. OA dismissed in the light of the above observations.

(P. Madhavan)
Member(J)

(R. Ramanujam)
Member(A)

04.02.2019

SKSI