

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

O.A. No.243 of 2014

This the 16th day of April, 2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

1. Sh. Charan Singh,
S/o Sh. Prem Chand,
r/o C-17, Hanuman Road,
Connaught Place, New Delhi-110001.
2. Sh. Vilesh Chander
s/o late Sh. Gurucharan Lal
R/o Flat No.39, Sec. 5,
Pushp Vihar, New Delhi-110017

.... Applicants

(By Advocate : Shri N.U. Ahmed with Mr. Manzr Anis)

VERSUS

1. Union of India
Through the Secretary (Health Services),
Nirman Bhavan, New Delhi-110108.
2. The Director General,
Directorate General of Health Services,
Nirman Bhavan, New Delhi-110108.
3. The Director,
Lady Harding Medical College,
Bangla Saheb Road, New Delhi-110001.
4. The Additional Medical Superintendent,
Kalawati Saran Children Hospital,
Bangla Saheb Road, New Delhi-110001.

..... Respondents

(By Advocate : Shri Subhash Gosai)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

By filing this OA, the applicant is seeking the following
reliefs:-

- “a) To set aside/quash/cancel the office order dated 10/8/2011 bearing No.KSCH/ADMIN/2011-12/4196 of the Respondents.
- b) To give the salary to the Applicants as per law of land from the date of joining.
- c) To regularize the Applicants on the post of Operation Theatre (Assistant) with all back wages and consequential reliefs from the date of joining.
- d) To promote the Applicants on the post of Operation Theatre (Technician).
- d) Pass any other orders or relief which this Hon'ble Court may deem fit and proper.”

2. Brief, relevant facts of the case are that the applicants were appointed to the post of Nursing Aid on 15.9.89 and 1.3.1986 respectively against the regular posts of Kalawati Saran Children Hospital. Both these applicants were transferred to OT Department of the said Hospital as Nursing Aid. Both of them have done their Operation Room Assistant Course (ORA) from the Safdurjung Hospital for which the concerned respondent has given permission to them and on their request, after completion of said course, they were posted in Operation Theatre in the year 1996 to perform the duties of Nursing Aid.

2.1 Four temporary posts of O.T. Assistant have been created vide order dated 1.5.2000 for a period of one year, after that no continuation of this post has been received till date.

2.2 Both the applicants were promoted to the post of OT Assistant (purely on ad-hoc basis) in the pay scale of

Rs.3050-75-3950-80-4590 vide order dated 24.11.2005 and the pay has been given as per rules. The pay of the applicants was fixed after awarding them financial upgradation under the Scheme of MACP. The matter of their pay fixation was under consideration. A draft proposal for notification of Recruitment Rules for the post of OT Assistant has been sent to DGHS already, but neither recruitment rules have been notified nor has continuation been received till date.

3. During the course of hearing, learned counsel for the applicants submitted that the applicants being Nursing Aid, who have been posted in OT department of the hospital since 1996 and discharging the duties of OT Assistant, were promoted to the post of OT (Assistant) on ad-hoc basis on 24.11.2005 and they were also paid salary of OT Assistant till 31.7.2011. However, despite the fact that draft recruitment were prepared and sent for approval but later on the same were withdrawn by the respondents vide letter dated 15-18.12.2001 till further communication from them as the said decision had been taken at the appropriate level to withdraw the draft Recruitment Rules concerning the categories of O.T. Staff, including O.T. Assistant. He also submitted that on 21.6.2005, the Deputy Director Admin. (DGHS) wrote to the Principal & Medical Superintendent, LHMC and Associated hospitals for providing the copy of notified recruitment rules for the post of OT (Attendant) notified on 14.12.1993 but the

respondents had not put any efforts for the notification of the recruitment rules for the post of OT (Assistant). Counsel further submitted that the applicants were promoted to the post of OT Assistant on ad hoc basis w.e.f. 24.11.2005 and they immediately joined the same and they continued to receive the salary of the said post till 31.7.2011.

3.1 Counsel for the applicants further submitted that since the applicants have been discharging the duties of the said post for almost 6 years and the respondents have failed to take conscious effort to notify the Recruitment Rules for the said post, rejection of applicants' request for regularization of their service is against the land of law as also against the settled principle of law of service rules.

3.2 Counsel also submitted that if the respondents had regularized the services of the applicants on the said promoted post, i.e., OT (Assistant) from the date of their promotion, they would have also become eligible for promotion to the next post, i.e., OT (Technician) but because of inaction of the respondents in the matter of regularization of services to the post of OT (Assistant) despite their repeated requests, they have suffered a lot in the matter of their career prospects.

4. On the other hand, counsel for the respondents submitted that the applicants were posted in the OT department as a Nursing Aid as per the request made by them and the department has not given any order to perform

the duties of OT Assistant until they were promoted to the said post on ad-hoc basis in the year 2005. As such they were drawing the salary of Nursing Aid. He further submitted that four temporary posts of OT (Assistant) have been created vide order dated 1.5.2000 for a period of one year, after that no continuation of the same has been received till date.

4.1 Counsel further submitted that respondents administration prepared the proposed Recruitment Rules for the said Posts and sent them to DGHS for notification which is still under process. He admitted that request was made by the respondents for withdrawal of the aforesaid proposed RRs of OT Staff for re-examination in the light of notified RRs of Dr. RML Hospital and Safdarjung Hospital for maintaining uniformity. The respondents' administration is continuously making correspondence with DGHS to notify the recruitment rules for the OT staff.

4.2 Counsel further contended that only two candidates, i.e., applicants have been promoted as OT Assistant on ad-hoc basis in the interest of patient care. He further submitted that notified recruitment rules were not available and no continuation has been received from the concerned department in respect of the post in question. The promotion of the applicants to the said post was done only for patient care.

4.3 He also submitted that the pay of the applicants was fixed after awarding them financial upgradation under the

Scheme of MACP. He further submitted that matter of their pay fixation was under consideration. The matter of pay fixation has been sent to the Pay and Account Office for checking but the matter was returned by the PAO with the remarks to call the internal audit party to check the same and other similar cases for which a letter already sent to DGHS.

4.4 Lastly counsel submitted that applicants being promoted to the said post on adhoc basic for patient care and the respondents have made their conscious effort to get the RRs for the said posts notified. However, since the RRs for the said posts were not finalized, the applicants' services cannot be regularised on the said posts dehors the rules.

5. We have heard learned counsel for the parties and have perused the pleadings available on record.

6. It is an admitted fact that the applicants were promoted to the post of OT (Assistant) on adhoc basic on fulfilling the eligibility conditions mentioned in the draft Recruitment Rules for the post of O.T. Assistant forwarded to DGHS for notification vide order dated 24.11.2005 and the fact the efforts for notifying the RRs for the said post were made but the same have not yet been finalized and therefore, their promotion to the said post was dehors the rules. As such it is a settled legal position that adhoc promotion granted to the applicants to said post does not confer any right on them to claim such post as the said promotion was purely provisional

and adhoc and the period of adhoc promotion will not be counted towards seniority and will not confer any right on the person(s) concerned for regular promotion on a subsequent date.

7. It is pertinent to refer to the decision of the Hon'ble Supreme Court in the case of **P.U Joshi & Ors v. The Accountant General, Ahmedabad & Ors.** (2003) 2 SCC 632, wherein the Supreme Court has reiterated the well settled legal position that questions relating to constitution pattern, nomenclature of posts, cadres etc., pertain to the field of policy and are within the exclusive discretion and jurisdiction of the State. In the case of **P.U. Joshi (supra)**, the Supreme Court in para 10 observed as under:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or

amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

8. In view of the above facts and circumstances of this case, when the applicants were promoted as OT Assistant on adhoc basis and they were allowed to continue as such for certain number of years but the fact that no RRs for the said post were finalized, this Court is of an opinion that request of the applicants to regularize their services on the said post from the date of their joining or otherwise cannot be sustainable in view of the fact that they are claiming the same dehors the rules as no RRs of the said posts have yet been finalized and therefore, they are not entitled for regularization in view of the legal principles settled by the Apex Court. It is pertinent to mention that they have already been granted MACPs.

9. We also note the submission of the respondents that the pay of the applicants was fixed after awarding them financial upgradations under the Scheme of MACP and the matter of their pay fixation was under consideration and had been sent to the Pay and Account Office for checking but the matter was

returned by the PAO with the remarks to call the internal audit party to check the same and other similar cases for which a letter already sent to DGHS. Hence, we direct the respondents to take a final decision on this aspect of the matter as stated by them within a period of 90 days from the date of receipt of certified copy of this Order.

10. In the result, for the foregoing reasons, the present OA is liable to be dismissed and the same is accordingly dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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