

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.862/2003 with OA No.554/2003

New Delhi, this the 3 day of December, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)OA No.862/2003Mrs. Yogita Sharma
Palam Colony 686/2, Raj Nagar Part I
New Delhi-110045

.. Applicant

(Shri G.D.Gupta with Shri S.K. Sinha, Advocates)

versus

Government of NCT of Delhi, through

1. Addl. Secretary
Delhi Secretariat
IG Stadium, IP Estate, New Delhi
2. Principal Secretary (Health)
Dte. of Health & Family Welfare
9th Level, Delhi Sectt. IP Estate
New Delhi

.. Respondents

(Shri Vijay Pandita, Advocate)

OA No.554/2003Bharat Bhushan
93, H Block, Karampura
New Delhi

.. Applicant

(Shri K.N.R.Pillay, Advocate)

versus

Government of NCT of Delhi, through

1. Principal Secretary (Health)
Dte. of Health & Family Welfare
9th Level, Delhi Sectt. IP Estate
New Delhi
2. Addl. Secretary-cum-Principal
Hospital Coordinator
Deptt. of Health & Family Welfare
Delhi Secretariat, IP Estate
New Delhi

.. Respondents

(Shri George Paracken, Advocate)

ORDER

Shri S.K. Naik

The challenge in both these OAs is to the Merit List of successful candidates for appointment to various posts (Annexure A-I) published by the respondents as the same does not contain the names of the applicants and the

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issues involved in both the OAs are identical. We, therefore, proceed to dispose of these two OAs by a common order.

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2. Applicant, Mrs. Yogita Sharma, is working as Laboratory Assistant in Dr. LNJP Hospital, New Delhi. When the Govt. of NCT of Delhi vide their Employment Notice dated 21.1.2002 advertised recruitment for a number of posts including ^{that is} of Technician Group IV, she had applied for the same. By the time she applied for the said post she had put in six years of service as Lab. Assistant and also fulfilled the eligibility condition of educational qualification and experience. Her application was duly considered and she was called for written test, which was held on 29.9.2002. She qualified in the written test and was declared successful in the results announced in October, 2002.

3. Meanwhile, the entire selection was challenged before this Tribunal in a series of OAs (starting from OA 2543/2002 filed by Paras Nath and others) and this Tribunal vide order dated 31.1.2003 disposed of the same by a common order with the following directions:

- (1) We deprecate the practice prevalent that the result is declared without drawing the merit list. Merit list must always be drawn before declaring the result;
- (2) The respondents are directed to pick up the loose threads and draw the merit list notifying the Roll Nos. of the successful candidates as per the merit list subject to the directions given hereunder. The merit list should be drawn as per rules and instructions on the subject;

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- (3) Applications regarding the posts other than Staff Nurses must fail and are dismissed subject to the directions given above;
- (4) In cases of Staff Nurses, only 37 general candidates and 37 candidates of reserved category shall be given the appointment letters. Of the 37 reserved category candidates, further distribution shall be made between the Scheduled Castes, Scheduled Tribes and other Backward Classes candidates as per the instructions on the subject;
- (5) The male candidates for Staff Nurses shall also be considered according to their merit and if they are meritorious, subject to the directions given above, they shall be appointed;
- (6) The balance of the vacancies for Staff Nurses may be filled up in accordance with the rules and the law on the subject;
- (7) The staff nurses who had been appointed on contract basis or otherwise on temporary basis subject to the availability of the vacancies should be allowed to continue till the regular appointments are made and till then their services shall not be terminated;
- (8) The other directions that had been given in OA No.2157/2002 need not be repeated.

4. In compliance with the directions of the Tribunal, the respondent-department drew up a merit in which the applicant found that her name was missing among the successful candidates even though as has been stated earlier she had been declared successful earlier. The ostensible reason in which her case has not been considered is on the ground of her being overaged. While in the original advertisement, the maximum age limit was prescribed as 27, applicant was over this limit as she was more than 28 at the time of submission of the application and therefore her case has not been considered.

5. The counsel for the applicant has contended that when the candidature of the applicant had earlier been accepted when she was called for appearing in the written test, which she had appeared and based on her performance

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she has been duly declared to have qualified, the respondents had no legal right to subsequently treat her as overaged. This is being done in the guise of the order passed by the Tribunal in the Singh's (supra) case even though the Tribunal has not washed the selection necessitating any fresh examination. As would be evident from the judgement, the limited issue as per the directions of the Tribunal was only drawing up of a merit list and not to reopen the entire case and scrutinise the papers de novo.

6. The counsel has further referred to para 5.2 of the Information Brochure issued by the Delhi State Service Selection Board in which it has been stated as under:

"For departmental candidates for the group C posts with 3 years of continuous service for recruitment to the posts which are in the same line or allied cadre, the age limit will be upto 40 years of age."

The counsel has, therefore, argued that the applicant being a departmental candidate, the age limit applicable in her case will be upto 40 years of age and on this count also, she is eligible for recruitment, treating the applicant as a departmental candidate.

7. As far as the respondents are concerned, it is argued that in the judgment of the Tribunal, it was held that the applicant was not eligible for recruitment to the posts in the group C cadre, the age limit will be upto 40 years of age. The respondents have argued that the applicant was not eligible for recruitment to the posts in the group C cadre, the age limit will be upto 40 years of age.

(14)

8. Respondents have filed their counter contesting the claim of the applicant. They have not considered her case on two counts. Their first argument is that the age prescribed in the advertisement is 27 years whereas the applicant was more than 28 years at the time of filing the application. She was therefore clearly overaged. The second leg of the argument is that as per Rules the departmental candidates were to forward their applications through proper channel, which has not been done in this case and therefore she cannot take the plea of being a departmental candidate and get the benefit from the clause of relaxation in age limit.

9. On a query as to how the Department treated her as an eligible candidate and allowed her not only to appear in the examination but based on her performance declared her successful, the counsel has no answer. Whereas the counsel for the applicant has stated that the applicant had duly informed the Director(Admn.), LNJP Hospital with regard to submission of her application for the post of Technical Group IV vide her letter dated 19.2.2002. The respondent-department at this point of time cannot take shelter behind this technical issue and deprive the applicant of her rightful place in the merit list.

10. After hearing the counsel for the parties and careful perusal of the records, we find that the action taken by the respondents in not considering the case of the applicant on the ground of her being overaged is based on erroneous interpretation of the directions of the Tribunal in Paras Nath's (supra) case in which one of us (Justice V.S. Aggarwal) was a member. The direction of the Tribunal was limited to drawing up of a merit list

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which had not been prepared earlier. It was not open to the respondents to re-open the case and start scrutinising the applications at this stage to ascertain whether a candidate was eligible or ineligible to appear in the already conducted examination. We are inclined to agree with the argument advanced by the learned counsel for the applicant that the respondents are not legally justified to reopen the case and remove applicant's name from the list of successful candidates. They were only to undertake an exercise to draw up a merit list as per the direction in OA No.2543/2003 (Paras Nath & Others case).

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11. Applicant, Shri Bharat Bhushan, in this case has applied for the post of Technical Assistant (Radiology). He appeared in the written test and was declared successful in the same as per the Notice issued by the respondents. However, pursuant to the judgement of Paras Nath (supra), respondents prepared a revised merit list deleting the name of the applicant. When the applicant approached the respondent-department he was informed that he was overaged for the said post and therefore his name was deleted from the revised merit list. Learned counsel for the applicant in this case has advanced his arguments on the same lines as that of applicant's counsel in the first OA and contended that the action of the respondents is not legally justified.

12. On the other hand, learned counsel for the respondents in this OA has submitted that the name of the applicant was deleted in the revised merit list not

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account of overage but on the ground that the applicant has already been working in the higher post of Senior Radiographer carrying the pay scale of Rs.5000-8000 whereas he has applied for the post of Technical Assistant (Radiology) carrying the lower pay scale of Rs.4500-7000. In support of his argument that a person cannot apply for a post carrying a lower scale of pay, the counsel has referred to para 2(a) on page 655 of Swamy's Compilation on Establishment & Administration which we notice pertains to registration of serving employee with Employment Exchange. It is not relevant to the facts of this case.

13. However, the counsel for the applicant has rebutted the aforesaid contention and submitted that the scale of pay of the post of Technical Assistant (Radiology) has since been revised to Rs.5000-8000 with effect from 1.1.1996 and he has drawn our attention to the order dated 2.8.2002 issued by the respondents themselves to this effect. He has therefore stoutly argued that the name of applicant should not have been removed from the revised merit list, particularly when there was no specific direction by this Tribunal to this effect in the judgement of Paras Nath (supra).

14. It is pertinent to note that the order for revision of pay scale is dated 2.8.2002 while the merit list has been issued sometime in the month of February, 2003. Therefore, we are of the view that the respondents are not legally justified in not considering the applicant's name in the said merit list taking shelter behind the plea that the applicant has applied for a post carrying a lower scale of pay.

Justice

15. In view of what has been discussed above, we set aside the grounds on which the respondents have declared the applicants as inelible and restore their earlier status in the selection list. However, we are not inclined to set aside the merit list as the respondents are yet to consider the case of the applicants in framing³ up the merit list as per direction of the Tribunal in the case of Paras Nath (supra). The respondents evidently will have to consider the case of the applicants for their placement in the merit list. If persons with lower marks than the one obtained by the applicants have been selected in their category/quota, in that event, applicants will be brought on the revised merit list.

16. Both OAs are disposed of in the aforesaid terms. No costs.

17. Copy of this order be placed in OA 554/2003.

(S.K. Naik)
Member(A)

(V.S. Aggarwal)
Chairman

/gtv/

C.T.C.

[Signature]
05/12/03
Sp. (J-I)