

76

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O. A 671/2003

New Delhi this the 24th day of April, 2009

**Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Mr. Shailendra Pandey, Member (A)**

Moni Singh Krotia,
S/o Shri Ramesh Chandra,
R/o 16/357, Kalyan Puri,
Delhi-110091. ... Applicant.

(By Advocate Shri Rohit Minocha)

Versus

1. Govt. of NCT of Delhi,
Through the Secretary,
Health and Family Welfare,
Dept., 9 Level, A-Wing,
Delhi Sectt, I.T.O.,
New Delhi-110 002.
2. The Director,
Directorate of Health & Family Welfare,
E-Block, Saraswati Bhavan,
Connaught Place,
New Delhi-110 001.
3. The Medical Superintendent,
Lal Bahadur Shastri Hospital,
Khicharpur, Delhi-110 091.
4. Shri Om Prakash,
(selected for the post of O.T. Technician
under SC Category) – to be served
through the Respondent No.1. ... Respondents.

(By Advocates Shri Vijay Pandita for respondents 1-3, Shri Hari Prakash for Respondent No.4)

O R D E R

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (j).

The applicant had participated in a process of selection
where under the Department of Health and Family Welfare, New
Delhi

Delhi had advertised 27 posts for selection in the cadre of OT Technician in the pay scale of Rs.5000-8000. The last date of receipt of the application was 18.02.2002. A copy of the advertisement has been produced as Annexure A-6. Although it does not appear to be a true copy but only extracts, in the reply statement, it has been conceded as a true representation. Qualification for the post had been shown in the Notification as High School + Course. It has come out that seven posts were reserved for members of Scheduled Castes. A written test preceded selection and by Annexure A-8 (colly) the applicant substantiates that he was one of the persons declared successful in the test, his number being 03010094. Six candidates have been named as successful and he was at item No. 6. Notifications in the Hindustan Times and The Times of India dated 12.10.2002 have been produced. A month later, the Employment News also published the results showing an identical position. In addition, it may also be mentioned that a copy of the official publication made by the Department disclosing the results of the test held for various categories of employment had been produced as Annexure R-2 (colly) at page 77 of the paper book at the instance of the Principal Hospital Coordinator/Additional Secretary.

2. It is the case of the applicant that his name and number had been deleted without any further notice to him and the name and number of the fourth respondent had been substituted thereto at some later point of time. Coming to know of the same, he had made representation to the Additional Secretary

on 11.11.2002. Mr. Om Prakash, the fourth respondent, had never been declared as a successful candidate, and, therefore, according to him, the substitution, pushing him away, was an act of favoritism. It is stated that since no favourable response was forthcoming, Original Application had been filed. The relief sought is that his name should be included and recognized as a successful candidate for selection to the post of O.T Technician and the name of the fourth respondent be deleted. There were ancillary reliefs incorporated which are not very relevant.

3. In the reply statement, the respondents had attempted to justify their action on the basis that the fourth respondent was older in age than the applicant. Their respective dates of birth being 25.6.1975 and 18.11.1975, and since they had secured equal marks of 26, on the basis of governing instructions, the older of the two required to be included in the panel. The first list had been published without noticing the above discrepancy and that was the reason why subsequently a corrected list was attempted to be operated. It was stated in Paragraph 1 that the applicant is at serial No. 1 in the panel list and as and when vacancy arises, he will be given offer of appointment subject to his fitness.

4. Unfortunately, when the case had been taken up on 28.11.2003, there was nobody to represent the applicant and the OA had been dismissed finding that the stand taken by the respondents could not have been described as irrational. However, a Division Bench of the High Court in WPC 17679 of

2004 on 29.07.2008 had held that since the matter was decided on merits in the absence of the applicant, the case was being remitted for reconsideration on merits. Although the application had been again dismissed for default by the Tribunal on 12.11.2008, it had been restored. Additional documents have been made available through an additional affidavit, dated 05.02.2009. The counter reply filed by the Government before the High Court in the writ petition had been appended thereto. The applicant also had presented two documents, issued under RTI Act.

5. Learned counsel for the applicant submits that unlawful interference was per se noticeable since the applicant had been shown as a successful candidate in the selection process. The fourth respondent was nowhere there. His name has been smuggled in, and the respondents have not been able to produce any documents to show that the fourth respondent had obtained 26 marks, or that he was equal in merit with him. The plea that he was senior in age is only a pretext for extending unmerited benefit to him. The records produced later on, namely, the Notification of result of written test (page 77) also discloses the position that the fourth respondent was nowhere in the field. If he had secured 26 marks, definitely he would have been included in the list forwarded by the Educational Consultants India Limited, who conducted the examinations. It would not have escaped the notice of the Department of Health and Family Welfare who had arranged for publication of the results.

Adverting to the argument in the counter affidavit filed in the

High Court that the applicant was not qualified for selection on the basis of Division Bench judgment, in CWP 5396-98/2005, it is brought to our notice that such a hurdle may not be there since the Bench decision has been overruled by the Supreme Court in Civil Appeal No. 1697-1699 of 2009. It is also pointed out that in the counter statement the plea was that in addition to the applicant and fourth respondent, four SC members had been selected for the posts.

6. The counsel also had made available a copy of the communication issued by the Research Officer, Govt. of NCT, Delhi, of course, in favour of the fourth respondent, dated 02.06.2003, which had indicated that he did not possess the required experience. That was one of the reasons for not finding him eligible for selection to the post notified. This was in response to a query made by him under the Right to Information Act. The fourth respondent has no cause that he has challenged it. Proceedings of the Medical Superintendent of GTB Hospital, Shahdara dated 08.05.2003 also had been made available, which show that the fourth respondent did not have the prescribed experience for appointment at the time of submitting the application. In fact, the Additional Medical Superintendent had by his letter dated 08.05.2003 requested the Government to fill the vacant post at the earliest in the interest of patient care. Thus, the applicant had attempted to support his claim on the ground,

(1) that he had been duly selected, whereas the fourth respondent had not been selected;

(2) that there was definite communication showing that the fourth respondent was not eligible for appointment.

7. We may notice that the applicant had proceeded on the basis that the fourth respondent had been appointed to the post of O.T Technician, and perhaps that was the reason why there was request for deletion of his name from the list.

8. The first respondent had submitted that the fourth respondent had never been appointed, and the fourth respondent also submitted before us that no appointment orders have been issued to him so far. Therefore, we may proceed only on the basis as to whether the applicant has made out a claim for positive orders.

9. It is conceded in the affidavit filed before the High Court that the answer sheets showing the marks of the candidates have been irrevocably destroyed. Affidavit also disclosed that the files relating to the selection of staff, including the original list of results is misplaced and is not available. Therefore, there is nothing to show that the fourth respondent had indeed obtained marks equal to the applicant and his name is required to be substituted. Even as on this date, the fourth respondent has not put up any claims on a grievance that he had not been conferred with appointment.

10. We feel that the applicant will be justified in suggesting that when a list of successful candidates is published, it would

ensure as a practice to include the name of all persons who happen to obtain the same marks. A weeding out at that point was not to be expected. Therefore, the non-inclusion of the name of respondent per se indicated that he did not obtain the pass marks. He points out that the gravity of the situation is attempted to be eased by claiming that it happened by an oversight. The plea is too brittle to be accepted. This is because the attendant circumstances that answer sheets are not available, the marks list have been misplaced and the files including the notings are not traceable, etc, cannot all happen simultaneously and together by any accident. There has been evidently an effort to substitute the name of the applicant, who had been adjudged as eligible for appointment or a later date. He was, therefore, entitled to be indignant justifiably. His grievance as highlighted in the OA, therefore, cannot go unnoticed.

11. On a consideration of the relevant aspects, the stand requires to be upheld. The objections about his qualifications and attainments are later creations. It is not pointed out that the other persons who got selection had any different diplomas or qualifications than that had been in possession of the applicant. It is also significant to note that on an ad hoc basis the applicant has been carrying out the job of O.T. Technician for years now, on consolidated pay. If he was not qualified, he would not have been initially engaged and continued (albeit with breaks) for so long.

27

12. The cumulative results of these discussions compel us to hold that the applicant has been given a raw deal and his grievances are required to be redressed. We direct that since the applicant has come successful in the written test, without any further formalities, he should be conferred with appointment, as the Medical Officers were clamouring that existing posts required to be filled up expeditiously. The concerned respondent should ensure that appointment order should be issued to the applicant as O.T Technician, within three weeks from today. However, it may not be possible for us to take note of his claim that he has a right to get appointment retrospectively, in these proceedings; he may represent in the matter.

13. Nothing stated in this order should also be taken as frustrating the right of the fourth respondent, if any, as we have not independently discussed about his credentials than what was essential for disposal of this Original Application alone. No costs.



(Shailendra Pandey)
Member (A)

'SRD'



(M Ramachandran)
Vice Chairman (J)

24/4/09