

Central Administrative Tribunal
Principal Bench

O.A. 1490/2003
with
O.A. 844/2001

New Delhi this the 19th day of February, 2004

Hon'ble Mr. Bharat Bhushan, Member (J).

O.A. 1490/2003

1. Prabha Abbey
W/o Shri Sudesh Rampal,
Quarter No.3, Atul Groove Road,
Janpath, New Delhi.
2. Neelam w/o Shri Ved Prakash,
Gali No.1, House No. 34,
Goupuri, Ghaziabad (UP).....Applicants.

(By Advocate Ms. Rekha Palli)


Versus

1. Lt. Governor of Delhi,
6, Raj Niwas Marg, Delhi-54.
2. NCT of Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
3. NCT of Delhi,
PHC Cum Jt. Secretary (Health),
1, Jawahar Lal Nehru Marg,
New Delhi-2.
4. Delhi Subordinate Services
Selection Board through its
Secretary, III Floor, UTCS
Building behind Karkardooma
Court Complex, Vishwas Nagar,
Shahdara, Delhi-32.
5. LNJP Hospital through
its Medical Suptt.,
Jawahar Lal Nehru Marg,
New Delhi.....Respondents.

(By Advocate Ms. Jasmine Ahmed)

O.A. 844/2001

1. Raj Rani Chuchra,
C/o Dr. S.K. Bhateji
Gupta Nursing Home, Arya
Samaj Road, Uttam Nagar,
New Delhi-110059.

2. Mrs. Annakutty Stilvenson
R/o DDA LIG 771, Hastal
Uttam Nagar,
New Delhi.
 3. Mangrate Singh,
C/o Mr. Edwin Negburg
R/o 13, Raj Niwas Marg,
Delhi-54.
 4. Rekha Walter
Pres quter Cr. 33
Meerclard Road,
Delhi-2.
 5. Mary Lucas Vadakara
C/o Marg T.S. 580 Pocket-E,
Mayur Vihar Phase-11,
Delhi-91.
 6. Pushpapenithi Butta
H.A. 1526 Jahangirpuri,
Delhi-91.
 7. Madhu Khama Qr. No.
A-10, Lok Nayak Hospital
Campus New Delhi-2.
 8. Marg Kuriakar H.No.
488 DDA Flats Lado Sarai,
New Delhi.
 9. Kamla M. Lal r/o D-460,
Tagor Garden Extn.
New Delhi-28.
 10. Veena Dhingra r/o
1198/79, Tri Nagar Shanti
Nagar, New Delhi-35.
 11. Elizabeth Samuel
r/o B-288, Mohan Garden
Etc. Uttam Nagar,
New Delhi-59.
 12. Mrs. Elsamma Antony
r/o 85/C, Pocket-A2
Mayur Vihar, Phase-111,
Delhi-96.
 13. Sunita Voila
r/o H-15 MCD Colony
Kingsway Camp
Dhaka, Delhi-9.
 14. Roseline Narinder Singh
151/4, Air Force Station
Rajokri New Delhi-38.
 15. Ms. Lissy,
871, Janata Flats, Nand Nagri,
Dilshad Garden, Delhi-93.
 16. Ms. Sheila Masih,
630, Pocket-5, Phase-1,
Mayur Vihar, Delhi.
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17. Ms. Saroj Michael,
Pocket F, House No. 200/A,
GTB Enclave, Nand Nagri,
Delhi-93.
18. Ms. Amrita Wilson,
House No. 14/A, Mansarovar
Park, Shahdara, Delhi.
19. Ms. Anita Tyagi,
C/o Rampal Sharma,
A/22/13, East Babarpur,
Sanjay Gandhi Marg,
Delhi..... Respondents.

(By Advocate Ms. Rekha Palli)

Versus

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5. G.B. Pant Hospital
through its Medical Suptt.
Jawahar Lal Nehru Marg,
New Delhi-2.
6. Guru Teg Bahadur Hospital
through its Medical Suptt.
Dilshad Garden, Delhi-95.
7. LNJP Hospital through
its Medical Suptt.,
Jawahar Lal Nehru Marg,
New Delhi-2.
8. DDU Hospital through its
Medical Suptt. Hari Nagar,
New Delhi.
9. Guru Nanak Hospital through
its Medical Suptt. Ranjit
Singh Marg,
New Delhi..... Respondents.

(By Advocate Shri Ajesh Luthra)




O R D E R

Hon'ble Mr. Bharat Bhushan, Member (J).


Both the aforesaid O.As involving identical question of law and facts are being disposed of by one common order for the sake of convenience.

2. The applicants in both the cases have been working as Grade 'A' Staff Nurses on contract basis in various hospitals run by the Govt. of Delhi. They were recruited after an interview conducted by the Technical Recruitment Cell (TRC) in May, 1998 i.e. during the period an indefinite strike was declared by the permanent Staff Nurses of the Govt. Hospitals in Delhi. It is stated that they were recruited pursuant to the public advertisement issued in the leading newspapers (Annexure 'A') and around 400 Nurses were appointed and such Nurses were appointed after relaxing their age limit.

3. The applicants have further stated that Respondent No. 4, i.e. Delhi Subordinate Service Selection Board (hereinafter referred to as 'the Board') on or about 1.9.1998 had sent around 500 applications to Respondent No.3 as per their request to implement the decision of the Government of NCT of Delhi for absorption/confirmation of Staff Nurses who joined the duties during the strike period. On receiving the said application forms from the Board, the Respondent No.3 in turn distributed these forms to various hospitals like G.B. Pant, G.T.B, L.N.L.J, D.D.U, Sanjay Gandhi Memorial Hospitals, etc. run by the Govt. of NCT, Delhi with specific instructions to the effect that the application forms be supplied only to those Nurses who had worked during the strike period. Consequently, the application



forms were supplied to the applicants as also other similarly situated Nurses and such application forms were submitted to the Nursing Superintendent of the concerned hospital who in turn further forwarded these applications to the Board. The applicants contend that they were dismayed on coming to know, that their applications for regularisation of their services were not processed as they were found to have crossed the age bar of 30 years under the Recruitment Rules for being eligible for recruitment to the post applied for. And their request for regularisation of age limit was also not considered. The applicants initially filed a writ petition before the Hon'ble High Court of Delhi and the High Court while issuing Rule in Civil Writ Petition No. 2712/99 vide its order dated 20.5.1999 allowed the applicants to discharge their duties and the respondents were directed to pay their salaries until further orders were passed. However, when the matter finally came up for hearing on 26.3.2001, the applicants' counsel on an objection being raised by the counsel for the respondents withdrew the writ petition, with liberty to approach the Tribunal for the reliefs claimed in the writ petition. The applicants have contended that since the Recruitment Rules for Class III and IV posts in the Delhi Administration confer powers to relax any of the provisions of the said Rules, including the provisions restraining the upper age limit for such recruitment, such power should be exercised by the authorities in favour of the applicants because while initially calling for the applications, when the applicants were recruited the Government had invited applicants upto the age of 65 years, meaning thereby that they had relaxed the age limit at the time of their recruitment and the applicants had responded to the call




at the hour of the need and so now their threatened action to throw them out is against all canons of law and the principles of natural justice. Their further plea that even the Ministry of Health in the Govt. of Delhi in the Memorandum dated 4.8.1998 submitted by them praying therein for regularising their services and not terminating their services had given an solemn assurance that their services would be regularised. Hence, their prayer is for regularisation of their services in the posts in which they are already working in various Government Hospitals in Delhi. As regards the provisions containing relaxation of age, they have drawn my attention towards clause (III) of the Note in the Recruitment Rules in respect of such type of posts in the medical institution under the Delhi Administration which is stated to have been published in the Gazette dated 17.8.1967 which is reproduced as under:

Clause (III) - Where the Administrator is of the opinion that it is necessary or expedient to do so, it may by order, for reason recorded in writing relax any of the provisions of these Rules with respect to any class of persons.

Hence, their contention is that by virtue of the power vested in the Govt. as mentioned above, the Govt. is expected to relax the upper age limit whenever it is required to do so.


4. It is the case of the applicants that while responding to the call given by the respondents, they had legitimately expected that their services would be regularised in due course of time as promised by the respondents. Their contention is that they had joined the Service at a time when every difficult situation was prevailing and when even the casualty sections of various



Government Hospitals had to be closed down due to the defiant stand adopted by the striking Nurses and the redeeming feature was that the Govt. of NCT, Delhi had allowed them to continue to work in the Hospitals even after the strike was called off and to that effect the orders were issued from time to time.

5. While strongly refuting the claim of the applicants, the respondents have stated that the applicants were employed on contract basis of three months by the concerned hospitals in the interest of patient care during the strike declared by the regularly appointed Nursing Staff of Govt. of NCT of Delhi in May, 1998 and there was a clear written understanding that the qualified Nurses were required on a short term contract basis and that there was no implicit or explicit understanding about their regularisation. Their case is that regular appointments in all such like cases were made through the Board and since the petitioners were not eligible as per the Recruitment Rules, so obviously their regular appointments could not be made. As per their contention, the recruitment rules provided the age limit of such category being 18 to 32 years and since all the applicants had crossed the upper age limit of 32 years, so they were found ineligible for appointment as per the Recruitment Rules.


6. Heard the learned counsel for the parties and with their kind assistance have also perused the documents and other materials on record. Ms. Rekha Palli, the learned counsel for the applicants while very vehemently submitting her arguments has contended that the applicants are the persons who had come to the rescue



to the Govt. at the time of need and were bravely facing the threats and dangers and they had come to the forefront and responded to the call of the respondents. Repeling the contention of the respondents that the age for recruitment to the Nurses is 18 to 32 years, the learned counsel has argued that when the applicants had joined pursuant to the published advertisement issued in the newspapers, they had invited Nurses upto the age of 65 years, meaning thereby that the respondents had resorted to relaxing the upper age limit, so now at this stage when the applicants have served the respondents for fairly a long period and upto the entire satisfaction this relaxation of age in favour of the applicants deserves utmost consideration. The learned counsel submits that even otherwise when they have served the organisation for a long period of five years, then they deserve even human consideration for being regularised as they have spent the best part of their life with the respondents and now if they are thrown out, they would be jobless and their families would also die of hunger. To buttress her arguments regarding their request for regularisation for being in continuance in service for a long time, reliance has been placed upon Wali Ahmad Vs. State of Bihar and Ors. (1999 SCC (L&S) 734), the appellant had worked for long time as Gauge Reader, wherein it was observed as under:

.....keeping in view the performance of the appellant while he worked as Gauge Reader for the past 17 years and, if he is found suitable for such regularisation, he may be regularised by granting the necessary relaxation...

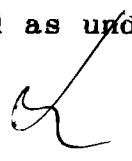
In Urmila Devi and Ors. Vs. State of Bihar and Ors. (1999 SCC (L&S) 642 where the voluntary workers in Health Service of State of Bihar were found working for long at



a pittance of Rs.50 per month. Even in the absence of any statutory right of regularisation, the Hon'ble Supreme Court directed that such persons be considered for regularisation on available posts as per rules and regulations. The learned counsel for the applicants has also placed reliance upon Delhi High Court judgement Vinod Kumar and Ors. Vs. Union of India & Ors. (Civil Writ Petition No. 3169 of 2000), decided on 7.8.2001 reported in 2001 V AD (Delhi) 717, wherein the petitioners had sought regularisation of their services on LDC/Stenographers posts, on the ground that they were initially appointed for a period of 120 days on ad hoc/daily wages through the Employment Exchange and they were allowed to work for a period of 10 years. So there also, the petitioners were granted relief under the following terms:


"Petitioners may make a representation to the competent authority for relaxing the rules and for regularisation of their services as one time exception. The concerned authority, on receipt of such representation, shall examine their case in terms of proviso to Rule 12 (1) (b) of Central Secretariat Clerical Service Rules and the identical provision in other set of rules and taking in regard peculiar facts and circumstances of the case and pass appropriate orders for regularisation of petitioners' services or alternatively for relaxing their age bar to enable them to take the SSC examination. Meanwhile, status quo shall be maintained in respect of their service status till such orders are passed and should these go against them, they shall be allowed to remain at their posts for one month to enable them to seek any further legal redressal."

In H.C. Puttaswamy and Ors. Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and Ors. (1991 Supp (2) SCC 421), in which case the applicants were stated to be in service for a period of about 10 years and they had become overaged for entry into any other service, it was held as under:



" There is good sense in the plea put forward for the appellants. The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitions. It may be recalled that the appellants are in service for the past 10 years. They are either graduates or double graduates or post-graduates as against the minimum qualification of SSLC required for Second Division Clerks in which cadre they were originally recruited. Some of them seem to have earned higher qualification by hard work during their service. Some of them in the normal course have been promoted to higher cadre. They are now overaged for entry into any other service. It seems that most of them cannot get the benefit of age relaxation under Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. One could only imagine their untold miseries and of their family if they are left at the midstream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection (See Lila, Dhar v. State of Rajasthan (1981 (4) SCC 159) .

7. On the other hand, the learned counsel for the respondents while strongly refuting the submissions made on behalf of the applicants has stated that regular appointments can be made only in accordance with the prescribed Recruitment Rules and not otherwise and no person can seek appointment de hors the Rules. His contention is that the applicants in the case have not been appointed in terms of the Recruitment Rules and once the applicants have not been appointed in terms of the Recruitment Rules, they have no right to claim regularisation de hors the Rules. In support, he has relied on the Delhi High Court judgement in CWP No. 7386 of 2000 Shri Sandeep and Ors. Vs. Delhi Subordinate Services Selection Board and Ors. decided on 23.7.2002. Reliance has also been made upon another Supreme Court Judgement reported in 2003 (3) SCC 485, Dr. Chanchal Goval (Mrs.) Vs. State of Rajasthan, wherein in the matter of regularisation of an ad hoc appointee, it was

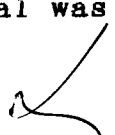


held that unless his initial recruitment is regularised through a prescribed agency, he cannot be granted regularisation.

8. The learned counsel has also countered the arguments of the learned counsel for the applicants regarding their legitimate expectation that they would be regularised soon after the strike is over or at a later stage. In this regard, he has referred to the following observations of the Hon'ble Supreme Court in the ruling referred to above; 2003 (3) SCC 485 (supra), wherein it had been laid as under:

On the facts of the present case, the principle of legitimate expectation has no application. It has not been shown as to how any act was done by the authorities which created an impression that the conditions attached in the original appointment order were waived. Mere continuance does not imply such waiver. No legitimate expectation can be founded on such unfounded impressions. It was not even indicated as to who, if any, and with what authority created such impression. No waiver which would be against requisite compliances can be countenanced. Whether an expectation exists is, self evidently, a question of fact. Clear statutory words override any expectation, however founded.

9. Another Supreme Court judgement relied upon by the learned counsel for the respondents is Union of India and Ors. Vs. Harish Bal Krishna Mahajan, reported in JT 1997 (10) SC 375, wherein the services of a Medical Officer appointed temporarily in the Central Government Health Scheme on August 10, 1982 during the strike of the Doctors was allowed to continue for 5 years before the same were ultimately terminated. And on being challenged, the Tribunal decided in favour of the Employees, but the Hon'ble Supreme Court held that the direction by the Tribunal was violative of Article 320.

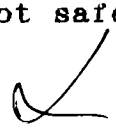


10. In order to support his submission that in respect recruitment to various services under the State, the State is bound to follow the relevant Recruitment Rules, the learned counsel has placed reliance upon a decision of the Apex Court reported in JT 1996 (2) SC 455, State of Himachal Pradesh Vs. Suresh Kumar Verma and Ors. wherein it has been laid down as under:

.....It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules.

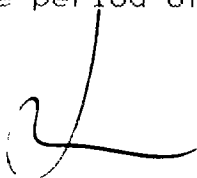
11. On applicants' plea for sympathy, compassion and equity, the learned counsel has submitted that where the recruitment in service is governed by statutory rules then there cannot be any room for equity and sympathy. In this respect, he has placed reliance upon Supreme Court judgement, Ahmedabad Municipal Corporation Vs. Virendra Kumar Javantibhai Patel and reported in JT 1997 (7) SC 14, wherein it has been held as under:

Under such circumstances, there is no room for sympathy or equity in the matter of such appointment specially where the recruitment in service is governed by the statutory rules. If the reasoning given by the tribunal is accepted, the statutory recruitment rules would become nugatory or otiose and the department can favour any person or appoint any person without following procedure provided in the recruitment rules which would lead to nepotism and arbitrariness. Once the consideration of equity in the face of statutory rules is accepted then eligible and qualified persons would be sufferers as they would not get any chance to be considered for appointment. The result would be that persons lesser in merit would get preference in the matter of appointment merely on the ground of equity and compassion. It is therefore not safe to bend the arms of law only

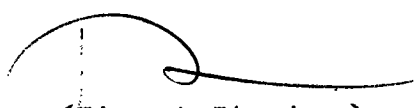


for adjusting equity. We, therefore, find that the reasoning given by the tribunal that sympathy demands the absorption of the respondent in the service of the Corporation suffers from error of law".

12. Heard the learned counsel for the parties, perused the records and have also gone through the rulings relied upon by both the parties. The observations made by the Apex Court in H.C. Puttaswamy's case (supra) as reproduced hereinbefore on page 10 of the judgment seem to be very much relevant for the case in hand as in the Hon'ble Supreme Court in the said case wherein too the applicants therein were similarly placed as in the instant case had been directed to be dealt with in a favourable manner. Obviously one could only imagine their untold miseries and of their family if they are left at the midstream. Though it is a fact that the Courts and the Tribunal have not to be swayed away by sentiments and sympathy yet the important fact cannot be lost sight of that the applicants herein have rendered the services to the Government hospitals at a time when everything was in a mess on account of the strike of the Nurses in the hospitals. Naturally such like applicants at that point of time had acted as Angels to the suffering patients and on account of that reason too they deserve sympathy and consideration. Under these circumstances, in my view, this is a case where I deem it necessary to observe that the respondents would endeavour to consider the candidature of the applicants favourably against the available vacancies by according them age relaxation for the period of service they have rendered



with them since the period of their joining with the Government hospitals and they be also accorded preference over outsiders and fresh candidates in case it is proposed to make appointments in future. With these observations, the O.A. is disposed of. No costs.


(Bharat Bhushan)
Member (J)

GRD