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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2004/2003
MA No. 2287/2003

New Delhi, this the 14th day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member(A)

1. Lini James
W/o James Sam
142, KG-III,
Near Kerala School,
Vikaspuri, New Delhi-18.
2. Jagat Singh,
S/o Shri Mahavir Singh,
V & P.O. Dulehra
(Distt. Jhajjar)
3. Anand Swaroop Mandia,
S/o Shri K.L. Mandia,
C-65, Shiv Gali,
Basti Nanak Chand,
Kotla Mubarak Pur,
New Delhi-3
4. Ashok Kumar,
S/o Late Shri Ram Kanwar,
FA-320, Mansarovar Garden
New Delhi.
5. Susan Thomas,
D/o M. Thomas,
B/3, 6 DDU Hospital,
Hari Nagar, New Delhi
6. Sangeeta Sharma,
W/o Shri Bhawani Shankar Sharma
Sector 11-805/806,
Vasundhara, Sahibabad (U.P.).
7. Mohinder Pratap Singh Kinker
S/o Shri Panchoo Ram
H-1/75, Sec. 16,
Rohini, Delhi-85
8. Suman Singh
D/o Shri Ishwar Singh
RZ-36, Lokesh Park Extn.,
Najafgarh, New Delhi
9. Harsh Miglani,
D/o R.C. Miglani,
17A-Dayal Sar,
Uttam Nagar,
New Delhi-59
10. Alphonsa S.
D/o Y. Daniel,
D-87, CN-105
Madhu Vihar,
Papan Kalan, New Delhi.

11. Seema Saini,
Shri Rattan Lal Saini,
WZ-76, Basai Dara Pur,
New Delhi-15

12. Vimal Sharma
Shri Om Prakash Sharma
Plot No.1
213-F, W.No.2
Mehrauli,
New Delhi-30

.. Applicants

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

versus

1. Secretary Medical,
Govt. of NCT of Delhi,
I.P. Sachivalaya,
New Delhi.

2. Medical Superintendent,
Deen Dayal Hospital,
Hari Nagar,
New Delhi.

.. Respondents

(Shri Vijay Pandita, Advocate)

ORDER

Justice V.S. Aggarwal

MA No.2287/2003

We are satisfied with the grounds mentioned in the
Misc.Application No.2287/2003 seeking condonation of delay
in filing OA No.2004/2003. MA is granted.

OA No.2004/2003

The applicants are working as Technical
Assistants/Laboratory Technicians/Laboratory Assistants
in Deen Dayal Upadhyay Hospital run by the Directorate
of Health Services, Government of National Capital
Territory of Delhi. In pursuance of an advertisement

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that had appeared, the applicants had been appointed by the said Hospital. They claim that they fulfilled the requirements of the recruitment rules. In the appointment letters, it was mentioned that their appointments were purely on short term contract basis till regular vacancies are filled up. The appointments were made after proper medical examination.

2. The applicants even had filed OA Nos. 247/2002 and 346/2002. They challenged the artificial breaks in service and denial of equal pay for equal work. The same had been disposed of by this Tribunal on 11.9.2002 with the following directions:-

"(i) Respondents are directed that in the event of appointing candidates on regular basis to the posts of Technical Assistants/Lab. Technicians/Lab. Assistants and Junior Radiographers, the claim of the applicants herein for the said posts should also be considered. While doing so, their experience of service already rendered should be taken into account and proper weightage should be given to the same. Age relaxation may be made as per DoPT guidelines and judicial pronouncements on the subject. Till regular appointments are made, applicants' services should not be terminated."

In the meantime, the respondents decided to dispense with the selection through the Delhi Subordinate Services Selection Board and allowed the Department of Health and Family Welfare to hold selection for the posts which the applicants were already holding. The applicants had also taken the test. The selection was held in August 2002.

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The applicants grievance is that the directions given by this Tribunal were not complied with.

3. By virtue of the application, the applicants seek setting aside of the action of the respondents whereby they have not complied with the orders of this Tribunal and they should be deemed regular employees. The respondents should evolve a scheme for regularisation of the applicants and should not terminate their services.

4. The application has been contested. It is denied that the applicants are entitled to the reliefs claimed.

5. The record reveals that the advertisement had appeared for selection to the post of Laboratory Technical Grade IV. It was clearly stated that this recruitment was purely on short term contract basis for 89 days or till regular vacancies were filled up by the Delhi Subordinate Services Selection Board whichever is earlier. It is in pursuance of the same that the applicants had applied. Even their appointment letters indicate that their appointment was on short term basis. The same was being extended from time to time.

6. To contend, therefore, at this stage that the applicants were regularly appointed would be totally incorrect. It is the advertisement that had made it very clear. There are not the trappings of a regular appointment herein. Even if the applicants were

A handwritten signature in black ink, appearing to read "MS Ag" followed by a stylized line.

educationally qualified for applying for the posts and were selected for short-term appointments, the same were on contract basis and not on regular basis. The appointments had been made by the Medical Superintendent who is not the appointing authority.

7. There is another way of looking at the matter. Admittedly the applicants had filed OA No.247/2002. We have already reproduced above the order that was passed by this Tribunal at that time. There was no order passed to regularise the applicants. The applicants cannot claim the same relief that had been granted by this Tribunal on earlier occasion in a subsequent application.

8. In that event, it was contended that in the earlier OA No.247/2002, it was directed that till regular appointments are made, the services of the applicants should not be terminated and taking cue from the appointment letters that had been issued to some of the selected candidates in pursuance of the test that was held, it is alleged that still their appointment is on ad hoc basis and, therefore, the services of the applicants cannot be terminated. Once such appointment letter dated 26.4.2003 has been placed on the record.

9. Perusal of the same clearly shows that merely because if in one para it is written that the appointment is purely on ad hoc basis will not imply that the appointments of those persons are not regular. They had

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been selected in pursuance of a test and on the top of the letter it has clearly been mentioned:-

"Consequent upon the recommendations of the Delhi Subordinate Services Selection Board and nominated by the PHC/Cum-Additional Secretary (H), T.R.Cell, New Delhi vide letter No.F12(7)/PHC/TRC/02/985 dated 6.3.03 Shri/Smt/Miss eligible is hereby offered the post of Technician Group -II in the pay scale of Rs.4500-7000 plus usual allowances as admissible under the rules from time to time on regular basis on the following terms and conditions."

They had also been placed on probation. We have no hesitation in concluding that the appointments were on regular basis and, therefore, if regularly selected persons are appointed to join and replace the applicants now, they can have no grievance.

10. Yet another argument advanced was that this Tribunal had directed that the claim of the applicants should be considered when regular appointments are made. Their experience and the service rendered should be taken into account. This question has already been considered by this Tribunal in OA No.2543/2002 in the case of **Paras Nath and others vs. Directorate of Health Services and others** decided on 31.1.2003 and a similar argument as in the present case had been raised. It was disposed of with the following findings:-

"16. However, the applicants' learned counsel still insisted that this Tribunal while disposing the earlier Original Application No.2157/2002 in the case of **Shashi Kala and Ors. v. Directorate of Health Services and Ors.** (supra) decided on 24.9.2002 had directed that the claim of the applicants, and their experience should be

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considered and proper weightage should be given to them in addition to age relaxation. We have already reproduced the above order that had been passed by this Tribunal in the aforesaid Original Application, perusal of which clearly show that a direction had simply been given to give preference or relaxation in accordance with the judicial pronouncement and the Department of Personnel and Training guide-lines. Our attention has not been drawn to any such departmental instructions or other pronouncements wherein regular appointments can be awarded de hors the rules. In that event, when there are no guide-lines or instructions that special credit has to be given for such contract posts/ad hoc service, the said part of the order referred to above will not come to the rescue of the applicant."

We have, therefore, no hesitation in rejecting the said plea.

11. Otherwise also, this decision of this Tribunal which the applicants rely upon is dated ~~on~~ 11.9.2002. The test that was held had already been advertised before the said decision. The written test was listed for 29.9.2002 and the result had been declared on 12.10.2002. There is nothing on the record to indicate that the applicants at that relevant time had applied or sought any relaxation. At this late stage, therefore, they cannot be permitted to raise this plea.

12. In fact, admittedly the applicants had taken the test without ~~pretest~~ ^{prejudice}. When not selected, they are taking recourse to the abovesaid facts which we have already negatived. There is no equity also in favour of the applicants.

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13. The applicants rely upon the decision of the Supreme Court in the case of **Dr.(Smt.) Rekha Khare v. Union of India and Others** in Civil Appeal No.2969 of 1997 rendered on 21.4.1997. In the cited case, Dr.Rekha Khare had been appointed on ad hoc basis. Her application had been dismissed by the Allahabad Bench of this Tribunal. She had applied for direct recruitment on the post held by her in response to an advertisement but was not selected. The Supreme Court took note of the fact that similar applications had been dismissed by this Tribunal and, therefore, simply directed that the claim of Dr.Rekha Khare should be considered for regular appointment keeping in view her suitability etc. It is obvious that the cited case is totally distinguishable because in the present case, the written test had been held in which the applicants failed to make the mark. It is, therefore, patently distinguishable.

14. In the absence of any other plea having been raised, we find that the present application is without merit and accordingly the same is dismissed. No costs.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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