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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

1. O.A.NO.2393/2003
M.A.No.2440/2003
2. O.A.NO.2184/2003
M.A.No.2454/2003
3. O.A.NO.2362/2003
M.A.No.2455/2003
4. O.A.NO.2680/2003
M.A.No.2327/2003

(16)
New Delhi, this the 17th day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

1. O.A.NO.2393/2003:

1. Kanchedmal
2. Puran Chand
3. Pawan Kumar
4. Rajendra Singh
5. Jitendra Kumar
6. Rohtas Kumar
7. Rakesh Baniwal

All C/o Kanchedmal
s/o Sh. Sumer Singh
R/o 9/141, Khichripur
Delhi - 91.

... Applicants

Versus

1. Govt. of NCT of Delhi
through Secretary (Health)
I.P. Estate, Delhi Secretariat
Delhi.
2. Director of Health Services
Govt. of NCT of Delhi
F-17, Karkardooma, Delhi.
3. Medical Superintendent
Baba Saheb Ambedkar Hospital
Rohini Sector 6
Delhi - 110 085. Respondents

2. O.A.NO.2184/2003:

- a. Bhupinder Singh
s/o Shri Laturi Singh
R/o N-9, A/31, Lal Bagh
Azad Pur, Delhi - 33.

b. Phool Kumar
 s/o Shri Balram
 r/o Village Rithala H.No.98
 Sector-IV, Delhi.

c. Shiv Kumar
 s/o Shri Man Singh
 r/o C.12 Begam pur
 Delhi - 41.

d. Dilip Kumar
 s/o Shri Ramadhar Parsad
 r/o C/o Sh. Laturi Singh
 R/o N-9, A/31, Lal Bagh
 Azad Pur, Delhi - 33.

.. Applicants

Versus

1. Govt. of NCT of Delhi
 through Secretary (Health)
 I.P.Estate
 Delhi Secretariat
 Delhi.

2. Director of Health Services
 Govt. of NCT of Delhi
 F-17, Karkardooma
 Delhi.

3. Medical Superintendent
 Baba Saheb Ambedkar Hospital
 Rohini Sector 6
 Delhi - 110 085.

.. Respondents

3. O.A.NO. 2362/2003:

1. Jagdish Kumar s/o Sh. Mohan Chander
 H.No.BB 277, Ashok Basti, Nabi Kareem
 Paharganj, New Delhi.

2. Rajesh Kumar s/o Sh. Mani Ram
 H.No.BB-277, Ashok Basti, Nabi Kareem
 Paharganj, New Delhi.

3. Rishi Pal s/o Sh. Lal Chand
 H.No.585, Village, Isapur, Delhi-73.

4. Ajay Kumar s/o Sh. Ram Bir Singh
 Flat No.223, Type II Baba Shaib Ambedkar
 Rohini, Delhi.

5. Parsuram s/o Sh. Shivji Pandey
 r/o 163/5, Mahavir Enclave, Part II
 Delhi - 54.

6. Dharam Singh s/o Sh. Kishan Singh
 H.No.73, Gulabi Bagh, Type I
 Delhi - 7.

7. Anil Kumar Dixit s/o Rajender Kumar Dixit
 H.No.204, Nahar Pur, Sector 7, Rohini.

8. Anil Kumar s/o Shri Shisupal Singh
r/o Gali No.1 B-79, Rajender Colony
Ghonda Delhi - 96.
9. Chander Nan Singh
H.No.42, Amrita Sher Gill Marg
New Delhi.
10. Shiv Kumar s/o Sh. Rohtas Singh
r/o Village Bagrola P.O. Palam
New Delhi - 45.
11. Dharmaender s/o Sh. Ratan Singh Yadav
r/o Village Bagrola P.O. Palam
New Delhi - 45.
12. Durga Parasad Tiwari,
s/o Sh. Bhawani Baksh Tiwari
H.No.A-61, Shayam Colony
Budh Vihar, Phase II
New delhi.
13. Manoj Kumar s/o Sh. Garib Das
r/o A-2/162, East Gokul Pur
Loni Road Shahadra, Delhi-94.
14. Nafeez Chauhan s/o Raghubir Singh
Village and PO Mazara Dabas
Delhi - 81.
15. Pawan Kumar s/o Lal Bhadur Sharma
H.No.250, Pitam Pura (U) Delhi - 34.
16. S. Rajesh s/o Ram Singh
H.No.642, Village P.O. Karala
Near Valmiki Chopal Karala
New Delhi - 81.
17. Mukesh Shukla s/o Ishwar Lal Shukla
r/o S.K.58, Sindhora Kalan
2 No.Chowki, Bharat Nagar Road
Delhi - 52.

..... Applicants

Versus

1. Govt. of NCT of Delhi
through its Secretary (Health)
I.P.Estate
Delhi Secretariat
Delhi.
2. Director of Health Services
Govt. of NCT of Delhi
F-17, Karkardooma
Delhi.
3. Medical Superintendent
Baba Saheb Ambedkar Hospital
Rohini Sector 6
Delhi - 110 085.

... Respondents

4. O.A.NO.2680/2003:

1. Vikas Sharma
s/o Sh. Ramesh Chand Sharma
H.No.E.456, Main Road Jagjit Nagar
Delhi - 53.
2. Rajesh Kumar
s/o Sh. U.Alexander
H.No.7, Type II DCB, Staff Quarter
Sadar Bazar, Delhi Cantt.
3. Khem Chand
s/o Sh. Khacharu Singh
H.No.4210, Gali No.11 Ajit Nagar
Gandhi Nagar, Delhi -31.
4. Arvind Kumar
s/o Sh. Dilawar Singh
r/o 290/90, Village Gazipur
Delhi. ... Applicants

Versus

1. Govt. of NCT of Delhi
through Secretary (Health)
I.P.Estate
Delhi Secretariat
Delhi.
2. Director of Health Services
Govt. of NCT of Delhi
F-17, Karkardooma
Delhi.
3. Medical Superintendent
Baba Saheb Ambedkar Hospital
Rohini Sector 6
Delhi - 110 085. ... Respondents

Presence: Ms. Maninder Acharya with Sh. Sachin Chauhan
Advocates for the applicants.

Shri Vijay Pandita, Advocate for the
respondents.

O R D E R (Common)

Justice V.S. Aggarwal:-

By this common order, we propose to dispose
of the following Original Applications:

- (1) **O.A.NO.2393/2003**
- (2) **O.A.NO.2184/2003**
- (3) **O.A.NO.2362/2003**
- (4) **O.A.NO.2680/2003**

VS Ag

2. The questions involved in the aforesaid Original Applications are identical. Therefore, for the sake of convenience, we are taking the facts from Original Application No.2393/2003 in the case of Kanchedmal and Others v. Govt. of National Capital Territory of Delhi & Others.

3. The applicants challenge the selection for the post of Nursing Orderlies. They are working since 1999. Their grievance is that the respondents had issued an advertisement dated 16.9.2003 inviting applications for filling up more than 300 posts of Nursing Orderlies in different Government Hospitals. They were not called for the interview and in this process they were not considered.

4. Some other facts would precipitate the issue. The applicants had filed OA No.1251/2001. It came up before a Single Bench of this Tribunal and on 17.5.2001, at the thereshold it was disposed of with the following directions:

"2..... He has not shown, however, as to how the applicants are entitled to be so considered. The relevant Recruitment Rules have also not been placed on record. If juniors to the applicants have been invited to attend the interview, it should have been possible for the applicant to name at least some of them. No such junior has been named by the applicants in the OA. The applicants also had the obvious option of making a representation in the matter before the respondents. No such representation appears to have been made. At least, no copy of any such representation has been placed on record. In the event, I do not find any convincing case in support of the applicants for appointments on a regular basis. They will be entitled, no doubt, to be considered for appointment on daily

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wage basis in future also if the respondents decide to appoint Nursing Orderlies on daily wage, in preference over freshers and juniors to the applicants.

3. In the aforesaid circumstances, I am inclined to take the view that the ends of justice will be adequately met by disposing of this OA at this very stage even without issuing notices with a direction to the respondents to re-engage the applicants as Nursing Orderlies on daily wage basis in preference over their juniors, freshers and outsiders. They are directed accordingly.

4. The OA is disposed of in the aforesaid terms."

5. Thereafter, Original Application No. 2803/2002 had been filed by the applicants and on 10.7.2003 this Tribunal had disposed of the same directing:

"7. Therefore, I dispose of this OA with the direction that respondents may favourably consider the case of these ten applicants only for being regularised against the available vacancies, for filling up the posts for which advertisement has already been issued in accordance with rules. It also made clear that in the event of such regularisation, in accordance with law they are only be treated as fresh appointees like others who would have responded to the advertisement. This order is being issued keeping in mind the special circumstances of the applicants only and the fact that they have been working with the hospitals for nearly two years. No costs."

6. On behalf of the applicants, it has been contended that despite the said order, they had not been considered. They have already served with the respondents for such a long time and even their experience has been totally ignored. So much so, most of them even were not called for the interview.

Ms Ag

7. Respondents have contested the Original Applications. It has been pleaded that the applicants were engaged as Nursing Orderly for a period of 45 days in the month of June, 1999. When the earlier order was passed by this Tribunal in OA 1251/2001, the applicants were re-engaged. Their services were being utilised in Baba Saheb Ambedkar Hospital (in short BSA Hospital) on daily wage basis and thereafter it is not denied that subsequent application was disposed of, namely, OA 2803/2002 to which we have referred to above.

8. Respondents plead that in accordance with the directions in OA 2803/2002, the case of each of the applicants is required to be considered for regularisation against the vacancies. An advertisement has already been issued. Respondents plead that applicant No.1 did not apply for BSA Hospital. Applicant No.2 had applied but was not selected. Applicants No.3 to 7 also did not apply in BSA Hospital. The other applicants who had applied were selected. It is denied that the respondents have discriminated the applicants.

9. In the rejoinder filed, it has been reiterated that despite the posts being available, some of the applicants have not been regularised. They contend that in response to the Advertisement of September, 2002, the applicants had applied for the post of Nursing Orderlies. Except applicant No.2, all

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had applied for the post under Director, Health Services and not with BSA Hospital and despite the said applications, they have not been considered.

10. The principle in law is not in dispute. A person does not have a right to be appointed but certainly can insist because he has a right to be considered.

11. It is true that in OA 2803/2002, the directions were confined to the applicants therein but even if certain other similarly situated persons had not filed any application but had applied for the posts, we are of the considered opinion that like a model employer, the respondents should not differentiate. It is in the fitness of things that they are treated alike when they are having similar claims and similar grievance.

12. On behalf of the respondents, it had been contended that some of the applicants had not applied in BSA Hospital. As already pointed in the rejoinder, we were informed that they applied to the post with the Director, Health Services. Copy of the Advertisement is at Page 37 of the record and is Annexure-A5. Certain posts of Nursing Orderlies had been advertised, some in BSA Hospital and more under Director, Health Services. In the Advertisement, it has been clearly mentioned that only one application per candidate for one of the Hospitals will be entertained. Therefore, if some of the applicants applied for the posts in the Director, Health Services, their claim could not be ignored merely because respondents chose to consider them in BSA

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Hospital. Therefore, it is obvious that their rights have not been considered and were being denied.

13. In OA No.2184/2003, the respondents have pleaded that in case the applicants apply in the next Advertisement, they shall be considered.

14. At this stage, it has been pointed that the persons who have since been selected have not been arrayed as parties. Since the selected persons are not arrayed and interest of the third party accrue, it would be improper to quash the selection.

15. We can make it further clear that those persons who are considered after they had applied and not selected, cannot have a grievance in this regard. At the risk of repetition, we may mention that their right is only for consideration.

16. The plea that the applicants were to be regularised, the said contention at the threshold requires to be rejected because regularisation can only to be after following the due process of selection.

17. No other arguments have been advanced.

18. For these reasons, we dispose of the present applications holding that in the next Advertisement, the applicants who had applied and were not called for the interview, may apply again and they shall be considered for the post of Nursing Orderlies in accordance with law.

(S.K.Naik)
Member (A)

(V.S. Aggarwal)
Chairman

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