

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.2941/2003

New Delhi, this the 11<sup>th</sup> day of August, 2004

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

1. Rajendra Singh Negi  
H.No.60-A, Block D  
Sector 2  
Kamna, Vaishali  
Distt. Ghaziabad (U.P.).
2. Shambhu Nath  
s/o Shri Ganesh Nath  
r/o House No.D-  
Vivek Vihar, Phase I  
Delhi - 110 095.
3. Dushyant Kumar Garg  
s/o Sh. Vinod Kumar Garg  
H-28, Balaji Garments  
Mansarovar Park  
Near Man Singh Ki Bathek  
Shahdara  
Delhi - 32. ... Applicants

(By Advocate: Sh. Pradeep Gupta)

Versus

1. National Capital Territory  
through its Secretary  
Department of Health & Family Welfare  
9th Level, A-Wing, Delhi Sectt.,  
I.P.Estate, New Delhi - 110 002.
2. Mr. M.P.Saini  
Research Officer  
Department of Health & Family Welfare  
9th Level, A-Wing, Delhi Sectt.  
I.P.Estate, New Delhi - 110 002. .. Respondents

(By Advocate: Sh. George Parackin)

O R D E R

Justice V.S. Aggarwal:-

Applicants, by virtue of the present application, seek quashing of the impugned orders whereby their claim for appointment has been rejected. They further seek direction to the respondents to issue the appointment letters to them on the basis of their successful results in the competitive examination.

*18 Aug*

-2-

2. The posts concerned are of Technical Assistant - Group 'II' and Group-IV for the Hospitals being run by Respondent No.1. The applicants had passed one year Diploma Course in Operation Theatre Technology from Institute of Health and Hygiene, Mahipalpur, New Delhi.

3. Respondent No.1 had published an advertisement in The Times of India in which ten posts of Technical Assistant, Group-II were advertised. The applicants had applied for the same. The result that was published showed the applicants in the Column of successful candidates. After that the applicants were informed that they had been found ineligible/disqualified for the said appointment. The reason given was that Diploma certificate from the Institute of Public Health and Hygiene, Mahipalpur, is not a recognised Institute of Government of National Capital Territory of Delhi. The applicants contend that similarly situated other persons had been so appointed, namely, those who had obtained the certificate/Diploma from the said Institute. In any case, they are entitled to be appointed. Needless to state that the order which is under the gaze of this Tribunal had been passed after a notice to show cause had been issued.

4. In the reply filed, the application has been contested.

A handwritten signature in black ink, appearing to read "18 Ag".

5. We have heard the parties' counsel and have seen the relevant record. Admittedly, Recruitment Rules for the post of Technician Group-IV and Technical Assistant Group-II as notified reads:

"The R.R. for the post Technician Gr.-IV:

- (i) B.Sc (Medical Lab Technology) OR  
Matriculation/Hr. Secondary/Senior Secondary with Science
- (ii) Diploma in MLT from recognised institution.
- (iii) Three years experience as Lab Technicians in any group of these Laboratories of Medical Institution/Hospital.

R.R. for the post of Technical Assistant Gr.II:

- (i) Matriculation/Hr. Secondary/Senior Secondary (10+2 with Science) from recognized Institution/Board.
- (ii) Operation Room Assistant Course from recognized Institutions.
- (iii) 5 years experience as O.T. Technician in Operation Theatre CTS/Neuro Surgery/Astro Surgery CSSD/Anesthesia/Gas Plant/Anesthesia Workshop/ICU Surgical Resuscitation in a recognized hospital/institution

OR

- (1) B.Sc from a recognized University
- (2) 3 years experience as a Technician in Operation Theatre including OT CTS/Neuro Surgery/Gastro- Surgery CSSD/Anesthesia/Gas Plant/ Anesthesia Workshop/ ICU Surgical Resuscitation in a recognized hospital/institution."

6. From the aforesaid, it was not in dispute at either end that the concerned persons should have obtained the abovesaid Diploma from recognised Institution.



7. Learned counsel for the applicants was not able to produce any order or communication to show that Institute of Public Health and Hygiene, Mahipalpur, New Delhi is recognised by the Govt. of National Capital Territory of Delhi. In that view of the matter, it cannot be stated that the said criteria prescribed was satisfied.

8. The learned counsel referred to the certificate that was granted to Dushyant Kumar Garg (Applicant No.3) by the Institute of Public Health and Hygiene which indicates that the abovesaid Institute is recognised/approved by Central and several State Governments. That by itself is delightfully vague. It does not indicate that the Government of National Capital Territory of Delhi has recognised the same. In the absence of any other material brought to our notice that the abovesaid Institute is a recognised institute, the contention of the applicants must fail.

9. The main submission made was that certain other persons who got Diploma from the same Institute, have been given the appointment. The applicants are being refused the same and they cannot be discriminated.

10. It was fairly conceded by the learned counsel appearing on behalf of the official respondents that certain orders in certain other cases had been passed. But according to the respondents' learned counsel, that was a mistake which cannot be allowed to be repeated.

*MS AG*

-5-

11. Obvious question, therefore, was as to whether if such a mistake had been committed unintentionally or inadvertently, it could be allowed to be perpetuated.

12. We have already held above that the Diploma held by the applicants is not a recognised one and, therefore, they do not get any vested right to be appointed. If certain other persons have been appointed on the basis of ~~illegal~~ <sup>10A(e)</sup> qualifications which were not upto the prescribed qualifications in the recruitment rules, whether it would become precedent for all times or permits somebody to invoke Articles 14 and 16 of the Constitution of India. In our opinion, the answer would be in the negative.

13. Whenever a writ in the nature of mandamus is sought, a person must show existence of an enforceable legal right in himself and a corresponding legal duty on the respondents. Article 14 does not envisage discrimination where an illegality has been committed. By reason of invoking Article 14, no Court can perpetuate illegality.

14. The Supreme Court in the case of STATE OF HARYANA & OTHERS v. RANI KUMAR MANN, (1997) 3 SCC 321 has held:

"Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that

*MS Ag*

there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right. Under these circumstances, the High Court was clearly wrong in directing reinstatement of the respondent by a mandamus with all consequential benefits.

15. The Delhi High Court in the case of UNION OF INDIA v. LEKH RAJ AND OTHERS, CWP No.3121 of 1997 decided on 18th May, 2002 had also considered the same controversy and held:

"13. .... It is trite that no legal right is created by reason of an illegal order passed in favour of a third party. Article 14 of the Constitution of India is a positive concept. No equality can be claimed on the basis of illegality. It is also trite that illegality cannot be perpetuated. A civil post must be filled up in accordance with the procedure laid down in the recruitment rules framed in terms of the proviso appended to Article 309 of the Constitution of India. Before such a civil post is filled up the requirements of Articles 14 and 16 of the Constitution of India must also be complied with. In a country governed by rule of law back door entry in a civil service cannot be countenanced."

16. Therefore, there is no ambiguity in this regard. There is no legal right that can be conferred on the applicants if any illegal orders had been passed in favour of certain other persons. They cannot invoke Articles 14 and 16 in this backdrop.

*As Ag*

(14)

-7-

17. For these reasons, the Original Application being without merit must fail and is dismissed.

~~S. A. Singh~~

(S. A. Singh)  
Member (A)

~~V. S. Aggarwal~~

(V. S. Aggarwal)  
Chairman

/NSN/