

Dharmender Kumar Vs. All India Institute of Medical Sciences, Ansari Nagar, New Delhi

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Court : Central Administrative Tribunal CAT Delhi

Decided On : May-01-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Mrs. Manjulika Gautam, Member (a)

Appeal No. : O.A. No. 2447 of 2011

Appellant : Dharmender Kumar

Respondent : All India Institute of Medical Sciences, Ansari Nagar, New Delhi

Advocate for Pet/Ap. : For the Applicant: M. Tarique Siddiqui, Advocate. For the Respondent: Mahmood Parcha, Advocate.

Judgement :

Mrs. Meera Chhibber, Member (J)

1. Applicant has sought a direction to the respondent to regularize the services of the applicant w.e.f. 4.5.2001. He has further sought a direction to the respondent to grant the applicant all the consequential benefits and seniority attached to the post of Laboratory Attendant Grade-II w.e.f. 4.5.2001.

2. The brief facts as stated by the applicant are he was appointed as Laboratory Attendant Grade-II under sports quota in All India Institute of Medical Sciences

(hereinafter referred to as AIIMS) on 4.5.2001 on ad hoc basis. The post of Laboratory Attendant Grade-II is a Group 'C' post and is a 100% direct recruitment post. The applicant is fully qualified and fulfills the requirement of the post of Laboratory Attendant Grade-II as per the Recruitment Rules of the respondent institute. The applicant had requested to be considered under sports quota but his request was declined on the false ground that the applicant has not won any national or international competition. The applicant submitted several applications to the respondent institute for regularization of his services for the post of Laboratory Attendant Grade-II under sports quota including applications dated 31.1.2002, 2003, 26.4.2005 and dated 5.10.2007. Applicant was not regularized though he was given special increment for achieving first position in the national Tug-of-War championship and PWFI international championship held in December 2004 and 2005. He has submitted Tug-of-War is an identified sport as it is recognized by Department of Youth Affairs and Sports, Government of India since 16.6.1999. Further the applicant has participated in the 'Power Lifting Championships' under the Indian Power Lifting Federation. The Indian Power Lifting federation is also recognized by the Department of Youth Affairs and Sports, Government of India yet he was not given regular appointment as LDC in 2003-04.

3. Being aggrieved, he had filed Writ Petition No. 5282/2007 which was renumbered as TA No. 39/2009 after being transferred to the Tribunal. The TA was disposed of on 15.5.2009 by directing the respondents to consider the claim of the applicant for regular appointment on the post of Laboratory Attendant under sports quota and to pass appropriate orders with a period of 3 months from the date of receipt of a copy of this order.

4. Pursuant to the directions given by the Tribunal, respondents regularized the applicant as Laboratory Attendant Grade-II under sports quota with effect from 24.10.2009.

5. It is submitted by the applicant that his services should be regularized with effect from 4.5.2001 and he should be placed above Shri Manoj Singh Gusain who is at Sl.No.10 in the seniority list issued on 18.6.2008.

6. Respondents have opposed the OA. They have explained that applicant was initially engaged as Daily Wages Assistant Pump Operator at this Institute was granted temporary status in the post of Khalasi w.e.f. 1.9.1996 in the pay scale of Rs.2550-3200. In the year 2000 the applicant participated in the Power Lifting Championship and got the trophy and also won the State Power Lifting Championship and got the Bronze Medal. He also won the trophy in the competition of Northern India Power Lifting Championship. On examination of his request for regularization of Group 'C' post under sports quota it was found that as per the rules, the sportsman must represent the country in the National/International competition, whereas in case of the applicant he had participated only at the level of Northern India, which was not up to the mark/national level game. As such, the request of the applicant for regularization of his services was refused by the competent authority. However, the competent authority considering his achievements in his field and the precedence of the Institute appointed him to the post of Laboratory Attendant Grade-II on ad hoc basis. Shri Dharmender Kumar Sharma had won the Gold/Silver/Bronze medals and won the trophies in the competition of 8th National Men Strength Lifting Championship/Tug-of-War competition and again requested for regularization of his service as Laboratory Attendant under sports quota at AIIMS. However, the same was regretted by the competent authority due to the fact that the India Strength Lifting Federation/Tug-of-War are not included in the list of Games/Sports which qualify meritorious sportsman for consideration for appointment to Group 'C' and 'D' posts recognized by the Department of Youth Affairs and Sports, Government of India.

7. They have further submitted that the orders issued by the Government of India, Ministry of Human Resource Development, Department of Youth Affairs and Sports addressed to the President, Tug-of-War Federation of India vide order dated 16.6.2009 recognized the said sports with certain conditions and the said rules have not been incorporated in the Establishment and Administration Rules, which are followed in all Government Organizations. Since the said sport has not been incorporated even after a period of approximately 11 years, the said sports is not recognized as yet. They have specifically stated that Shri Rajeev Uniyal and Shri Mahender Singh Bisht were appointed as LDC under sports quota in the year

2003 after fulfilling the requirements as laid down under the sports quota. The applicant as already stated above, did not fulfill the requisite criteria laid down for consideration of appointment to the post in Group 'C' and 'D' under sports quota, therefore, he could not be considered. In 2004 when selections were held for the post of Laboratory Attendant his name was kept in the wait list at Sl.No.76. However, the wait list was cancelled after a lapse of 1.1/2 years period as such his services were not regularized.

8. Applicant has now been regularized as Laboratory Attendant from the date he assumed the charge of the post of Laboratory Attendant Grade-II subject to the condition that the offer of regular appointment is subject to verification of documents from the concerned departments. Applicant assumed the charge of the post of Laboratory Attendant Grade-II accepting the terms and conditions mentioned in the OM No.20-29/2009-Estt.I dated 24.10.2009, therefore, this OA needs to be dismissed as it is an after thought.

9. We have heard both the counsel and perused the pleadings. When applicant had approached the court in the 1st round, his grievance was that he was being continued as Laboratory Attendant on ad hoc basis since 2001 and his services were not being regularized even though he was entitled to be regularized under the sports quota. There was some confusion whether he could be considered under the sports quota. It was only during the pendency of the 1st case that a certificate was issued by the Indian Power Lifting Federation that applicant had participated at National Level Championship. In view of above development, we had directed the respondents to consider the case of the applicant for regular appointment on the post of Laboratory Attendant under sports quota and to pass appropriate orders thereon within a period of 3 months from the date of receipt of a copy of this order under intimation to the applicant.

10. From above, it is clear that direction was for prospective appointment and not for regularization with a retrospective date. In view of above, respondents have rightly regularized the applicant as Laboratory Attendant Grade-II vide OM dated 24.10.2009 subject to verification of necessary documents (page 146). Applicant accepted the same and has joined meaning thereby he had acquiesced to the

situation. He is now seeking relief that his date of regularization should be antedated to 4.5.2001 and he should be given seniority from the said date. The relief, as claimed, is not sustainable in law because neither applicant has placed the basic advertisement on record we do not even know how the post was advertised, nor applicant has placed his application on record. Respondents have stated applicant was kept in wait list at Sl.No.76. He should be happy he has been regularized. Our earlier direction was absolutely clear. The said judgment was not challenged by the applicant. Moreover, applicant is seeking seniority above Manoj Kumar without impleading him as a party, therefore, the OA is liable to be dismissed on this ground also. In view of above, the OA is dismissed. No order as to costs.

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