
(2022) 06 CAT CK 0012

In the Central Administrative Tribunal

Case No : Original Application No. 797 Of 2015

M. Rajesh & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 01-06-2022

Acts Referred:

Citation : (2022) 06 CAT CK 0012

Hon'ble Judges : Manjula Das, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : S.M. Arif, P.S Bhullar, Abhishek Kishore, Subhash Gosain

Final Decision : Disposed Of

Judgement

Manjula Das, J

1. The applicants were initially appointed as Nursing Attendant on various dates between 1995 and 2008, and have since been upgraded from Group-D to Group-C in accordance with the recommendations of 6th Central Pay Commission. It is stated that the applicants have earned no promotion till date. It is further stated that the recruitment rules provide the post of Medical Record Technician [hereinafter referred to as 'MRT'] to be filled up 100% by promotion from the feeder grade of Nursing Attendant, failing which by direct recruitment, subject to fulfilling the eligibility criteria, which reads as under:-

"Promotion: Lower Division Clerk with eight years regular service in the grade and having five years' experience in medical record work and other Group C* staff with eight years regular service with six months training of Medical Record Technicians.

Note: Preference will be given to those Gr. C who possess Bachelor degree from a recognized University.

*The employee who has been upgraded from Gr. D to Gr. C will be considered for promotion as per recommendations of 6th CPC."

2. The applicants have averred that they successfully completed the requisite six months training of MRT in the month of June, 2014 and became eligible to be considered for promotion to the post of MRT.

3. It is the case of the applicants that the respondents issued advertisement dated 19-25 July, 2014 for filling up one un-reserved post of MRT in PB-I, Rs.5200-20200+2400/-GP through direct recruitment, which, as per the applicants, was against the recruitment rules as the post of MRT is required to be filled 100% by promotion failing which by direct recruitment. It is alleged that the respondents straightway resorted to the second mode of recruitment, without exploring the first mode, i.e. promotion. Hence, the applicants, who could not apply for the said post, preferred representations to the respondents in this regard. The respondents, in consideration of the representations of the applicants and realizing the mistake, cancelled the aforesaid advertisement on 14.10.2014 on administrative grounds, and issued another circular of even date inviting applications for filling up the sole post of MRT on promotion basis from eligible candidates possessing the essential qualifications and experience for the said post. It is averred by the applicants that in response to the aforesaid circular dated 14.10.2014, they applied for the post of MRT, but the respondents, without considering their candidature, resorted to the advertisement dated 19-25 July, 2014 which had already been cancelled, to fill the post of MRT on direct recruitment basis, that too without reviving the said advertisement, and issued a list of 26 candidates calling them for interview on 27.02.2015. Hence, the applicants have filed the instant OA seeking the following reliefs:-

"a) To consider and appoint the applicants on the post of Medical Record Technician as the post is 100% promotional post;

b) Not to appoint any person on Direct Recruitment basis on the post of Medical Technical, till such time any eligible person is available for appointment from the Feeder Cadre on the said post;

c) Such other or further orders, which this Hon'ble Tribunal may deem fit and necessary may also be passed in favour of the applicants;

d) The respondents may further be directed to pay the Cost to the applicants."

4. The respondents have filed their counter affidavit. It is not disputed that in accordance with the recruitment rules, the post of MRT is to be filled 100% by promotion failing which by direct recruitment. However, it is stated that though the applicants had completed their requisite training of six months on 30.06.2014, they were awarded certificate to that effect only during August, 2014, hence, they were not eligible to be considered for the said post.

5. The respondents have further stated that two posts of MRT in SJH became available after being revived by Dte. GHS vide letter dated 03.06.2013 to be filled by promotion failing which by direct recruitment. Accordingly, a circular dated 08.08.2013 was issued inviting applications for filling up the unreserved

post of MRT on promotion basis from eligible candidates. Against the said circular, two applications were received, DPC was held on 04.10.2013, and only one candidate, namely, Raj Kumar, who was found eligible by the DPC, was promoted as MRT, vide order dated 09.10.2013. The second post was not filled as no other candidate was found eligible. It is further submitted that one post of MRT earmarked for ST category fell vacant on 14.08.2013 due to promotion of Manish Gupta to the post of Demonstrator. Accordingly, another circular dated 05.12.2013 was issued inviting applications from eligible candidates to fill up the said post on promotion basis. Against the said circular, only one application from Harikesh Meena was received, but the DPC did not find him eligible for promotion. Resultantly, the vacancy was re-circulated on 16.04.2014 and this time also only Harikesh Meena applied for the same. This time, the DPC held on 26.05.2015, found him eligible and recommended for promotion. Accordingly, Harikesh Meena was promoted to the post of MRT vide order dated 02.06.2014. However, it is the case of the respondents that as there was no eligible candidate for the only unreserved vacancy against the circulars dated 05.12.2013 and 16.04.2014, the same remained vacant. Hence, it was decided to fill that post by direct recruitment under 'failing which clause'. Accordingly, advertisement dated 19-25 July, 2014 was published.

6. It is further averred in their counter that considering the representations of the applicants against the advertisement dated 19-25 July, 2014, the process of recruitment on direct recruitment basis was cancelled due to administrative reasons till further orders vide order dated 14.10.2014, and a circular of even date was issued inviting applications to fill up the post on promotion basis, and total six applications were received against the said circular. It is further submitted that as none of the applicants was eligible to be considered for promotion as MRT at the time of issuance of the advertisement, and a number of applications had already been received against the advertisement dated 19-25 July, 2014, it was decided to proceed to fill up the post of MRT through direct recruitment under the 'failing which clause'. It is accordingly averred that the respondents have not committed any illegality in resorting to the direct recruitment method. It is further stated that interview has already been held on 27.02.2015 but the result thereof has been kept in sealed cover in view of the interim direction issued by this Tribunal vide order dated 27.02.2015.

7. The applicant no.5 has filed her rejoinder denying the averments of the respondents made in their counter affidavit, and reiterated the averments made in the OA.

8. We have heard Mr. P.S. Bhullar & Mr. Abhishek Kishore, learned counsel for the applicant no.5; Mr.S.M. Arif, learned counsel for the remaining applicants; and Mr. Subhash Gosain, learned counsel for the respondents. We have also perused the written arguments submitted on behalf of applicant no.5 as also by the respondents.

9. It is not in dispute that as per the recruitment rules, the post of MRT needs to

be filled 100% by promotion failing which by direct recruitment. It is also not in dispute that the advertisement dated 19-25 July, 2014 inviting applications to fill the post of MRT on direct recruitment basis was cancelled by the respondents themselves vide order dated 14.10.2014 in consideration of the representations of the applicants, and rectifying their mistake, issued a fresh circular dated 14.10.2014 inviting applications for the said post to be filled on promotion basis, against which applicants also applied. It is also not in dispute that the applicants fulfilled all the requisite qualifications and experience, except that their training certificates were issued only in August, 2014, i.e., after issuance of the initial advertisement, which is the only ground taken by the respondents to resort to the earlier advertisement dated 19-25 July, 2014 in order to fill up the post of MRT on direct recruitment basis, which is not tenable in the eyes of law in view of the fact that the said advertisement had already been cancelled by the respondents themselves vide letter dated 14.10.2014, which reads as under:-

"Sub: Cancellation of one post of Medical Record Technician (MRT) in PB-I,2400/-GP.

Reference to advertisement in Employment News 19-25 July, 2014, direct rectt.of one (UR) post of Medical Record Technician in PB-I,?Rs.2400/-G.P. has been cancelled due to administrative reasons till further orders. [Emphasis supplied]

10. It is, however, not in dispute that the applicants had successfully completed the requisite training as on 30.06.2014, i.e., before the issuance of the impugned advertisement of July, 2014. At this stage, it would be appropriate to extract the contents of one of the training certificates issued to the applicants, which read as under:-

"Certified that Mr. Dinesh Kumar of ENT, Office, S.J. Hospital, New Delhi has successfully completed the Training Course for Medical Record Technician from 01.01.2014 to 30.06.2014 at Medical Records Department & Training Centre, Safdarjang Hospital, New Delhi and passed the qualifying examination."

11. Perusal of the above clearly reveals that the applicants had successfully completed the requisite training well before issuance of the advertisement dated 19-25 July, 2014 as well as circular dated 14.10.2014. Even if it is assumed that the applicants have not fulfilled the criteria of training on the date of initial advertisement for the said post, but in view of the fact that the said advertisement had been cancelled and in response to the fresh circular dated 14.10.2014 the applicants applied for the said post, meaning thereby the eligibility criteria of training has to be ascertained on the date when the fresh circular was issued i.e. on 14.10.2014. From the aforesaid training certificate, it is apparent that though the training was successfully completed in June, 2014 but the certificate to that effect was issued only in August, 2014. The applicants could not have been, therefore, held to be ineligible for consideration of their claims against the said post. It is also noticed that the respondents without considering the applications of the applicants for the post of MRT on promotion

basis, resorted again to the initial advertisement issued on 19-25 July, 2014, which had already been cancelled by them, without issuing any fresh advertisement/ circular for filling up that post on direct recruitment basis, which, in our view, is illegal and arbitrary.

12. In view of the foregoing reasons, we are of the considered opinion that the applicants possessed the requisite qualifications and experience and, therefore, are entitled to be considered for promotion to the post of MRT. Accordingly the respondents are directed to consider the applicants for promotion to the post of MRT in accordance with the rules, and pass appropriate orders after considering their candidature for the said post, within a period of two month from the date of receipt of a copy of this order.

13. The instant OA accordingly stands disposed of. There shall be no order as to costs.