

(2019) 05 CAT CK 0015
In the Central Administrative Tribunal
Case No : Original Application No. 1802 Of 2017

Sunder Singh

APPELLANT

Vs

Government Of N.C.T. Delhi

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Citation : (2019) 05 CAT CK 0015

Hon'ble Judges : V. Ajay Kumar, J; Nita Chowdhury, J

Bench : Division Bench

Advocate : Pardeep Kumar, Amit Anand

Final Decision : Dismissed

Judgement

1. The applicants, 5 in number, filed the OA seeking the following reliefs-

"(a) Quashing and Setting aside of the impugned office order as issued by the Medical Director, 'LNH' bearing number F.2(76)/E.II/LNH/2013/590 dated 06.05.2017 [Annexure A - 1] to the extent it orders illegal cadre change of 28 Group 'D' officials from the post of Nursing Orderlies to the post of Laboratory Attendant and keeps for illegal cadre change names of 03 Group 'D' officials from the post of Nursing Orderlies to the post of Laboratory Attendant in the waiting list and defeats, denies the Applicants their legitimate right i.e. change of cadre from the post of Nursing Orderly to the post of Laboratory Attendant.;

(b) Directing Respondents to forthwith issue orders thereby changing cadre of the Applicants herein from 'Nursing Orderly' to the post of 'Laboratory Attendant' with protection of relative seniority to the post of 'Laboratory Attendant', with all consequential reliefs and benefits;

(c) Directing Respondents to pay to the Applicants the cost of this Original Application, recoverable from salaries of officers of 'LNH', for forcing the Applicants into this otherwise avoidable litigation with all consequential reliefs and benefits;

(d) Any other or further order or direction to grant complete relief to the Applicants".

2. All the applicants are working as Nursing Orderlies (Group 'D') in the 2nd respondent-Lok Nayak Hospital (in short L.N. Hospital) mainly aggrieved with the action of the respondents in changing the cadre of some of the Group 'D' officials to the post of Laboratory Attendants and OT Attendants, but not extended the said benefit to the applicants.

3. Heard Shri Pardeep Kumar, the learned counsel for the applicants and Shri Amit Anand, the learned counsel for the respondents and perused the pleadings on record.

4. It is submitted on behalf of the applicants that they were appointed as Nursing Orderlies (Group 'D') on regular basis and have been working as such since long time in the 2nd respondent-L.N. Hospital. It was also submitted that they were, in fact, working in the various Laboratories in the 2nd respondent-L.N. Hospital and discharging the duties and responsibilities attached to the post of Laboratory Attendants/O.T. Attendants. The respondents vide Annexure A-3 Circular dated 28.08.2014, called for applications from Group 'D' employees for change of cadre and it was stated therein that the cadre change will be done for the respective categories basing on Recruitment Rules, duty roster based and seniority. As the applicants were also interested for change of cadre, they have applied along with others and since they were working in the Laboratories since long time and that the Annexure A-3 mentioned that the duty roster based and seniority would be considered, they were under the impression that their cases will be considered for change of cadre. However, the respondents vide the impugned Annexure A-1 dated 06.05.2017, considered the cases of those Group 'D' employees basing on their general seniority, though some of them have never worked in any Laboratory and some of them were posted in the Laboratories much later to the applicants, but basing on their general seniority, i.e., the date of their appointment as Group 'D'. Hence, the OA.

5. On the other hand, the respondents submitted that as per the Recruitment Rules, Nursing Orderlies/Ward Aya/Class-IV category of posts who have matriculation with 3 years regular service can be considered for promotion/change of cadre. There is no provision in the Recruitment Rules for grant of weightage to those employees who have experience of working in Laboratories. Accordingly, as per the RRs, the respondents, on the basis of seniority in Group 'D' category, considered the applications for change of cadre and passed the impugned orders. Hence, there is no irregularity in their action.

6. It is not the case of the applicants that the respondents have violated the Recruitment Rules, in any manner while issuing the impugned Annexure A-1. It was their case that the respondents ought to have given weightage or preference to the seniority in the Laboratory in preference to the seniority in Group 'D' service. Once it is admitted that the Recruitment Rules does not provide for any

weightage for the seniority in the Laboratories, we cannot find fault with the action of the respondents in considering the general seniority in Group 'D' service, while considering the claims for change of cadre from Group 'D' to the posts of Laboratory Attendants/Operation Theatre Attendants. It is also not the case of the applicants that they were originally selected specifically for appointment in Laboratories. On the other hand, the posting in various places/departments/wards/laboratories is fortuitous and the postings are transferable between Office departments/Laboratories.

7. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. No costs.