

03 **18.07.22**

Ct. No. 04

Akd

WP.CT. 204 of 2013
CAN 2 of 2021

Khokan Kumar Mallik
Vs.
Union of India & Ors.

Mr. Siddhartha Sankar Mondal.
... for the petitioner.
Mr. T. K. Chatterjee.
... for the respondents.

Pursuant to the advertisements issued by the respondent authorities for filling up various posts including Audiometry Technician, the lists of the successful candidates were duly published indicating that those persons shall be appointed purely on the provisional basis. It was further indicated therein that such appointment shall be subject to the verification of original certificates in support of the qualification, age, community and experience as claimed.

Since the writ petitioner was not appointed despite having found place in the selection list, an approach was made to the authority and the moment such prayer was not acceded to, an application was taken out before the Tribunal being OA 817 of 2011.

In course of hearing of the said tribunal application the respondents took a stand that there is no Audiometric set up, i.e., pure tone Audiometer and Audiometry sound proof room are not available in the Hospital at present and, therefore, Regular Specialist (Full Time) is also not available in the Department. It was conveyed that there is no need for such manpower, as his potential and expertise cannot be utilized.

Curiously enough even though recording the aforesaid stand of the respondents the Tribunal proceeded to record that the petitioner had further challenged the action of the authority on the premise

that certain unmeritorious candidates have been included in the selection list and appointed.

The learned Advocate for the petitioner submits that the challenge before the Tribunal was restricted to non-appointment even after having been selected and found place in the selection list and there was no allegation of such nature in the tribunal application.

The aforesaid stand is also corroborated by the learned Advocate appearing for the respondents. According to him, there is no allegation that less meritorious candidates have been appointed and such finding does not appear to be in tune with the pleadings of the respective parties.

In view of the aforesaid stand having taken before us, the findings in relation to the allegation that the less meritorious candidates have been appointed is beyond the scope of the said tribunal application and should not have been the factor while rejecting the application. The only point which created obstacle in the appointment of the petitioner that there is no infrastructure nor regular staff and, therefore, the potential and expertise of the petitioner could not be utilized.

It has now been communicated to us by the respondents that the infrastructure is in place and, in fact, there is need for filling up of the posts of such technician for which the petitioner was selected. It is further submitted that the authorities have decided to go ahead with the selection list which they published and such decision has been taken by a competent authority and there is no difficulty in appointing the petitioner expanding the life span of the said list to such post.

Since the authorities have decided to fill up the said post from the select list by expanding its life span and only because the instant writ petition is pending

such appointment could not be made.

In view of the stand having taken we do not find that keeping the writ petition pending would subserve any purpose.

As indicated above the Tribunal dismissed the matter on two counts, namely the writ petitioner miserably failed to prove the allegation as to the appointment of the less meritorious candidates and secondly there is no infrastructure. The first point does not find support from the pleadings nor the argument was advanced in this regard.

Since the infrastructure is now available and there is need for appointment of such technician and the decision has been taken to appoint the candidates from the said select list, the order impugned cannot be sustained. The same is hereby set aside.

The respondents are at liberty to proceed as per decision communicated to us and we expect that the process would be expedited without any further delay.

It goes without saying the moment the petitioner is appointed to such post, he shall be extended the notional benefits from the date when the last candidate in the said selection list was appointed.

The writ petition being WPCT 204 of 2013 and the application being CAN 2 of 2021 are disposed of accordingly.

There shall however be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

