



2025:DHC:4030-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19.05.2025

+ W.P.(C) 2506/2025
THE MEDICAL SUPERINTENDENT, DR. RAM
MANOHAR LOHIA HOSPITALPetitioner
Through: Ms.Aakanksha Kaul, Mr.Aman
Sahani and Ms.Ashima Chopra,
Advs.

versus

ANUJ SINGH CHAPRANA AND ORSRespondents
Through: Mr.T. Singhdev, Mr.Abhijit
Chakravarty, Mr.Anum
Hussain, Mr.Bhanu Gulati,
Mr.Tanishq Srivastava,
Mr.Sourabh Kumar, Ms.Yamini
Singh and Mr.Ramanpreet
Kaur, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner, challenging the Order dated 04.04.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'learned Tribunal') in O.A. No. 3011/2019, titled ***Anuj Singh Chaprana v. The Secretary, Ministry of Health & Family Welfare, Govt. of India & Ors.***, allowing the O.A. filed by the respondents herein with the following direction:



“11. Against the background of what has been elaborately outlined, we allow the present OA and quash the order dated 07.10.2019 vide which the services of the applicant have been terminated. As a sequel to quashing of this order the memorandum dated 18.07.2019 followed by office memorandum dated 13.09.2019 are also quashed. The purport of this order is that the applicant will be deemed to have been in continuous employment of the respondents from the date of his initial appointment, as if the order dated 07.10.2019 was never issued. However, he shall not be entitled to actual payment of salary and allowances for the period he has been out of service, but benefit of that period on notional basis shall be extended in his favour including seniority, promotion and fixation of pay and allowances. The respondents shall take necessary administrative measures to give effect to these directions including, creation of a supernumerary post, if required for such period as may be necessary. We are of the considered view that this would be a positive approach and perspective to rectify the mistake and also a good repentance for the injustice meted out to the applicant.”

2. It is not denied by the petitioner that the respondent no.3, vide Advertisement/Circular dated 16.04.2018, advertised vacancies of 2 posts of Care Taker, one against an Un-reserved Category and one against the OBC Category.

3. The respondent no.1 had applied in the OBC Category and was declared successful for the said post, while the respondent no.4 was declared successful under the Un-reserved Category. Both the respondent no.1 and the respondent no.4 joined the petitioner on 27.05.2019.



4. The petitioner claims that on further scrutiny of the documents, it was found that the respondent no.4 had taken the benefit of age relaxation, extended to candidates belonging to OBC category and, therefore, could not have been considered against an Un-reserved post.

5. As the respondent no.4 had secured more marks than the respondent no.1, a Show-Cause Notice dated 18.07.2019 was issued to the respondent no.1, asking as to why his appointment should not be cancelled. Thereafter, *vide* a Memorandum dated 13.09.2019, the respondent no.1 was granted an opportunity for personal hearing.

6. Finally, in terms of Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 (in short, '**CCS Rules**'), an Order dated 07.10.2019 was passed by the petitioner, terminating the respondent no.1 from services.

7. The respondent no.1 filed the above O.A. before the learned Tribunal, challenging the Show-Cause Notice dated 18.07.2019 and also the Memorandum dated 13.09.2019, by which he was called for a personal hearing.

8. The learned counsel for the petitioner submits that the respondent no.1 had not challenged the Order dated 07.10.2019, by which he had been terminated from service. He submits that in absence of such a prayer, the learned Tribunal should not have granted the relief of setting aside of the said order of termination.

9. We are not impressed with this submission of the learned counsel for the petitioner. As is noted hereinabove, the respondent no.1 had approached the learned Tribunal challenging the Show-Cause Notice and the Memorandum issued to him, and also made a



submission that he had not received the copy of the termination order. Only on this technicality that he did not later formally amend his prayer in the O.A., the O.A. filed by the respondent no.1 or the relief granted by the learned Tribunal cannot be faulted. The petitioners were heard by the learned Tribunal on the validity of the termination letter and, therefore, no prejudice has been caused to them by this technical flaw in the prayer clause of the O.A.

10. The learned Tribunal, as is noted hereinabove, allowed the O.A. filed by the respondent no.1, *inter alia*, directing that the respondent no.1 will be deemed to be in continuous employment of the petitioner from the date of his initial appointment, however, will not be entitled to actual payment of salary and allowances for the period that he has been out of service. The petitioner had been directed to take measures to give effect to the direction including, creation of a supernumerary post, if required.

11. At the outset, we would note that the present petition has been filed only on 21.02.2025, that is, with a delay of almost one year. Though the petitioner has filed an affidavit explaining the said delay, the same is not on record. We have perused the same by obtaining a copy thereof from the learned counsel for the petitioner. We find that the delay has been explained by the petitioner.

12. Our attention, however, has been drawn to the Order dated 13.02.2025 passed by the learned Tribunal in CP No. 678/2024 filed in the original OA, wherein the Medical Superintendent of the petitioner had assured the learned Tribunal that the Order of the learned Tribunal will be complied with within a week. We deprecate



this conduct of the petitioner of stating before the learned Tribunal that they are complying with the Order, however, proceed to challenge the same before this Court at a belated stage. Be that as it may, we have proceeded to consider the merits of the present petition as well.

13. Reverting back to the merits of the present petition, it is not denied by the petitioner that the respondent no.1 played no part in securing employment, which the petitioner now claims is liable to be cancelled, only because the respondent no.4 needs to be adjusted against the OBC vacancy. It is the own case of the petitioners that, for their own fault, they appointed respondent no.4 against an unserved vacancy. The respondent no.1 cannot be made to suffer for the own fault of the petitioners. There is no allegation against the respondent no.1 of not performing satisfactorily during the period of his employment.

14. We may also herein note that the learned counsel for the respondent no.1, by drawing reference to the Judgment of the Supreme Court in ***Jitendra Kumar Singh & Anr. v. State of UP & Ors.***, (2010) 3 SCC 119, has also submitted that the petitioner has proceeded on an incorrect basis that only because the respondent no.4 had availed of an age relaxation based on his OBC status, he cannot be considered against the Un-reserved vacancy. In this regard, he has drawn our attention specifically to Paragraphs 75 to 77, which we reproduce hereinbelow:

“75. In our opinion, the relaxation in age does not in any manner upset the “level playing field”. It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the



concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.

76. *Mr Rao had suggested that Section 3(6) ensures that there is a level playing field in open competition. However, Section 8 lowers the level playing field, by providing concessions in respect of fees for any competitive examination or interview and relaxation in upper age-limit. We are unable to accept the aforesaid submission. Section 3(6) is clear and unambiguous. It clearly provides that a reserved category candidate who gets selected on the basis of merit in open competition with general category candidates shall not be adjusted against the reserved vacancies. Sections 3(1), 3(6) and Section 8 are interconnected. Expression “open competition” in Section 3(6) clearly provides that all eligible candidates have to be assessed on the same criteria.*

77. *We have already noticed earlier that all the candidates irrespective of the category they belong to have been subjected to the*



uniform selection criteria. All of them have participated in the preliminary written test and the physical test followed by the main written test and the interview. Such being the position, we are unable to accept the submissions of the learned counsel for the appellant-petitioners that the reserved category candidates having availed relaxation of age are disqualified to be adjusted against the open category seats. It was perhaps to avoid any further confusion that the State of Uttar Pradesh issued directions on 25-3-1994 to ensure compliance with the various provisions of the Act. Non-compliance with any officer was in fact made punishable with imprisonment which may extend to period of three months.”

15. Since the respondent no.4 is not before us, we would not make further comment on the same.

16. As noted hereinabove, as far as the respondent no.1 is concerned, against his offer of appointment, there is no allegation against the respondent no.1 for misleading the petitioner or mis-stating any fact. Once the petitioner has offered employment to the respondent no.1, merely because it later found that the respondent no.4 needs to be accommodated against the post, it is for the petitioner to find out ways of doing so. The learned Tribunal has rightly stated that a supernumerary post may have to be created in that regard.

17. Herein again, we may note that the learned counsel for the respondent no.1 has stated that, in fact, recently the petitioner had advertised the same posts, though the said Advertisement was later withdrawn for reasons not known. He submits that, therefore, there are vacant posts of care taker with the petitioners.

18. Be that as it may, we even otherwise find no merit in the



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present petition. The same is dismissed.

19. As is noted hereinabove, the petitioner has been assuring the learned Tribunal that it shall be complying with the Impugned Order, however, the Order remains un-complied till date. We, therefore, direct the petitioner to comply with the Impugned Order within a period of four weeks from today.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 19, 2025/sg/VS

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