

**UNION TERRITORY OF JAMMU & KASHMIR
DIRECTORATE OF HEALTH SERVICES, JAMMU**

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Subject: - O.A./1397/2023 titled Vijay Kumar Vs U.T. of J&K & Ors.

ORDER

Whereas, the applicant working as Class-IV in the department in District Doda has filed the subject captioned Original Application in the Hon'ble Central Administrative Tribunal, Jammu Bench seeking the following reliefs:-

- a) An appropriate order in the nature of direction for quashing of order bearing No. 651-DHSJ of 2023, dated. 09-10-2023 passed by respondent No. 2 by which he has accorded sanction to the promotion of eight persons as Basic Health Workers to the extent of respondent No. 4 and 5 who are juniors to the applicant;
- b) Further directing the official respondents to promote the applicant by fixing his seniority over and above the private respondent No 4 & 5;
- c) Any other relief which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case;

And whereas, the Hon'ble Central Administrative Tribunal, Jammu Bench disposed of the Original Application, on 20-10-2023, with the judgment/order whose operative portion is reproduced verbatim as under: -

"In light of the above, I dispose of this OA by directing the respondents to treat a copy of this O.A. as representation and to decide applicant's aforesaid representation by passing a reasoned and speaking order thereon as expeditiously as possible and in any case not later than a period of four weeks from the date of receipt of a copy of this order in accordance with the relevant rules and law laid down on the subject.

It is made clear that I have not gone into the merits of the matter and this order shall not be treated as expression of any opinion on the merits of the matter. All the points and contentions of the respective parties are kept open."

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And whereas, as per the records, the applicant was earlier appointed as Nursing Orderly on Adhoc Basis for a period of 89 days by the then Chief Medical Officer Doda, vide Order No. Est-1/6175-77, dated 03-01-1989 and was allowed to continue on the same post for a period of 89 days with usual breaks of one day at the end of his previous appointment;

And whereas, on the basis of selection made by the then District Development Commissioner, Doda the post occupied by the applicant was filled up as such the services of the applicant were terminated vide Order dated 10-10-1994;

And whereas, the applicant filed a writ petition in the Hon'ble High Court at Jammu bearing SWP No:-1095/1994 and the Hon'ble Court was pleased to dispose of the writ petition with the directions to the respondents to consider the petitioner's case for regularization of his services under SRO-181 of 1989, in case he is still in service and if he satisfies the requirements of the aforesaid SRO. Subsequently, in the contempt petition filed by the applicant bearing COA (SW) No. 252/94 titled Vijay Kumar Vs V.P. Gupta and others and orders passed by the Hon'ble High Court in this contempt petition, the applicant was re-appointed as a Class IV (Nursing Orderly) vide Order No:-DHSJ/Legal/COA-252/94/2644-46, dated 19-03-1997;

And whereas, Rule 24 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 provides that the seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be. The interpretation of words "date of first appointment" occurring in the above rule means the date of first substantive appointment;

And whereas, the applicant has been appointed substantively vide order dated 19-03-1997 as such the seniority of the applicant, in the category of Class-IV (Nursing Orderly), is to be reckoned w.e.f. 19-03-1997 i.e. the date of his first substantive appointment;

And whereas, on the contrary, as per the records, the date of first substantive appointment of the private respondents No. 4 and 5 namely Mohd Ashraf and Hakim Singh as Class-IV is 09-05-1995 & 14-02-1995 respectively as such they are senior to the applicant;

And whereas, the applicant is not entitled to be promoted as Basic Health Worker by fixing his seniority over and above the private respondent No 4 & 5 who are senior to the applicant, according to their date of first substantive appointment;

Q

Now, therefore, in compliance to the order dated 20-10-2023 passed by the Hon'ble Central Administrative Tribunal, Jammu in the subject captioned Original Application, which has been treated as representation, the claim of the applicant has been accorded consideration and in view of the above stated factual position is found devoid of merit, hence rejected.


Sd/-
(Dr. Rajeev K. Sharma)
Director Health Services,
Jammu

No;-DHSJ/Legal/ 13408-12

Dated: - 10/01/2024

Copy to the: -

1. Secretary to Government, Health and Medical Education Department, Civil Secretariat, Jammu/Srinagar for information.
2. Chief Medical Officer, Doda for information.
3. Health Education Bureau, Directorate of Health Services, Jammu to upload the order on official website.
4. Establishment Section Es-5.
5. Sh. Vijay Kumar S/O Late Sh. Lobhi Lal R/O Village Chilly Pain, Tehsil Gandoh, District Doda for information.


(Dr. Sanjay Sharma)
Dy. Director (Dentistry)
Health Services, Jammu