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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.222/2002

New Delhi this the 10th day of December, 2002.

Hon'ble Mrs. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Mr. V.K. Majotra, Member (Admnv)

1. Dr. Pankaj Kumar,
S/o Sh. Arvind Kumar,
R/o House No.569,
Pocket-D, Dilshad Garden,
Delhi.
2. Dr. Madhu Gupta,
D/o Shri R.G. Gupta,
R/o BF-31, Janakpuri,
New Delhi.
3. Dr. Mamta Jain,
D/o Sh. Ajit Prasad Jain,
R/o B-1/52, Yamuna Vihar,
Delhi-110 053.
4. Dr. Munesh Sharma,
D/o Sh. B.N. Sharma,
R/o B-2/415, Yamuna Vihar,
New Delhi-110 053.
5. Dr. Manish Sharma,
S/o Shri B.S. Sharma,
AA-74, Shalimar Bagh,
New Delhi.
6. Dr. Meeta Verma,
D/o Sh. H.P. Verma,
R/o D-5, Ashok Road,
Adarsh Nagar, Delhi-33. -Applicants

(By Advocate Sh. Sahdev Singh, proxy for Sh. K.C. Mittal,
Advocate)

-Versus-

1. Govt. of NCT of Delhi,
through its Chief Secretary,
Delhi Sachivalaya, Delhi.
2. The Principal Secretary,
Health & Family Welfare Deptt.
Govt. of NCT of Delhi,
Delhi Sachivalaya, Delhi.
3. The Director, I.S.M.& Homeopathy,
Govt. of NCT of Delhi,
Tibbia College, Ajmal Khan Road,
Karol Bagh, New Delhi. -Respondents
4. The Union Public Service Commission,
through Secretary, Dholpur House,
New Delhi.

(Respondents 1-3 by Advocate Sh. Ajesh Luthra)

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(Respondent 4 by Advocate Sh. Vivek proxy for
Sh. R.V. Sinha)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In this application, which has been filed by six Medical Officers (Ayurvedic), they have sought a direction to the respondents 1-3 to send their service records to respondent No.4/UPSC for assessing their suitability and eligibility for recommending them for regular appointments to those posts.

2. The applicants have referred to an advertisement issued by respondent No.4/UPSC in the Employment News dated 9-15 September 2000 (Annexure A-1). They have also submitted that this advertisement was for filling up 13 posts of Medical Officers (Ayurvedic) and respondent No.4 is going to conduct examination tentatively fixed in February 2002. We note from the reply filed by respondent No.4 that the examinations have been held on 10.2.2002, which according to them has been done for purposes of recruitment to select suitable candidates, keeping in view the provisions of the Recruitment Rules for the post in question. The applicants have contended that they are a separate class having worked with respondents 1-3 ~~for 15~~ having a large number of years and, therefore, they cannot be equated with freshers and outsiders in matters of selection. They have contended further, that there is no justification in the action of the respondents referring applicants to the said examination/interview to be conducted by UPSC. One of the main prayers of the applicants is that, in the circumstances of the case, respondent No.4/UPSC should be directed to assess eligibility and suitability of the applicants on the basis of their service records and past performance for regular

appointment to the post of M.O. (Ayurvedic) in various hospitals and dispensaries under the Government of NCT of Delhi, respondent No.1.

3. Applicant No.1 has been appointed to the post of M.O. (Ayurvedic) on contract basis vide OM dated 22.9.1998 for a period of six months or till ^{a/c} ~~regular~~ appointment is made, whichever is earlier subject to certain other conditions which are mentioned therein. Clause-7 of the terms and conditions further stipulates that the appointee will not be granted any claim or right for regular appointment to the post of M.O. (Ayurvedic).

4. Shri Ajesh Luthra, learned counsel of the respondents has drawn our attention to the fact that five of the present applicants had filed an earlier application in the Tribunal (OA No.1109/2000) which was disposed of vide order dated 10.4.2001 (Annexure A-4). That OA had been allowed with regard to the claims of the applicants for equal pay and allowances, leave, increments, maternity leave and other reliefs as set out in paragraph-1 of the judgment. In that application, it is relevant to note that the applicants had not sought any regularisation of their services. Learned counsel has relied on the judgments of the Hon'ble Supreme Court in Union of India & Ors Vs. Harish Balkrishna Mahajan JT 1997 (10) SC 375 which has followed earlier judgment of the Apex Court in J&K Public Service Commission and Others Vs. Dr. Narinder Mohan and others (JT 1993 (6) SC 593). He has also relied on the judgment of the Tribunal in Dr. Pramila Bhatia Vs. Government of NCT of Delhi and Others (OA No.3418/2001, PB) decided on 25.9.2002, copy placed on record. We note that the three applicants in OA-3418/2001 were the first three

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applicants in the earlier OA-1109/2000. In OA-3418/2001, the Tribunal vide its order dated 25.9.2002 relying on the judgment of the Hon'ble Delhi High Court in Sandeep & Others vs. Delhi Subordinate Services Selection Board and Others (CWP No. 7386/2000 decided on 23.7.2002) had dismissed the OA as without any merit, where the applicants were also appointed on contract basis for a period of six months and had sought regularisation of their services on the basis of their record and work, so that they should not be equated with fresh applicants. It is also relevant to see the judgment of the Hon'ble Supreme Court in Dr. Narinder Mohan's case (supra) in which it has been held as follows:-

"The next question is whether the direction given by the High Court to regularise the services of the respondents is valid in law. It is true that the ad hoc appointees have been continuing from 1986 onwards but their appointments are de hors the Rules. Rules prescribe only two modes of recruitment, namely, direct recruitment or promotion by selection. As regards the Lecturers are concerned, it is only by direct recruitment. The mode of recruitment suggested by the High Court, namely, regularisation by placing the service record of the respondents before the PSC and consideration thereof and PSC's recommendation in that behalf is only a hybrid procedure not contemplated by the Rules. Moreover, when the Rules prescribe direct recruitment, every eligible candidate is entitled to be considered and recruitment by open advertisement which is one of the well accepted modes of recruitment. Inviting applications for recruitment to fill in notified vacancies is consistent with the right to apply for by qualified and eligible persons and consideration of their claim to an office or post under the State is a guaranteed right given under Articles 14 and 16 of the Constitution. The direction, therefore, issued by the Division Bench is in negation of Arts. 14 and 16 and in violation to the statutory rules. The PSC cannot be directed to devise a third mode of selection, as directed by the High Court, nor be mandated to disobey the Constitution and the law".

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5. In Harish Balkrishna Mahajan's case (supra) also the Hon'ble Apex Court has held as follows:-

"The controversy is no longer res integra. In similar circumstances, this court had considered the entire controversy in J & K Public Service Commission & Ors. Vs. Dr. Narinder Mohan & Ors. JT 1993 (6) SC 593=1994 (2) SCC 630. Admittedly, the post of doctors in the Central Government Health Scheme are required to be filled up by recruitment through Union Public Service Commission. Therefore, the direction to consider the case of the respondent in consultation with the Public Service Commission for regularisation is in violation of statutory rules and Article 320 of the Constitution of India. The only course known to law is that of Union of India Shall be required to notify the recruitment to the Public Service Commission and Union Public Service Commission shall conduct the examination inviting the applications from all the eligible persons including the persons like the respondents. It would be for the respondents to apply for and seek selection in accordance with Rules. Therefore, the direction is in violation of Article 320 of the Constitution".

6. The applicants have contended that while UPSC is to be consulted for the purpose of the recruitment of Group-A posts of Central Government, that does not apply in the case of Government of NCT of Delhi. According to them, no such request has been made by the Lt. Governor of Delhi for consultation with UPSC under Article 320 of the Constitution of India. Accordingly, they have stated that UPSC is not competent to hold any examination to the post of MO(Ayurvedic). This plea has been controverted by the learned counsel for respondents who has submitted that what has been done by the respondents is strictly in accordance with the relevant Recruitment Rules to the MO(Ayurvedic) as applicable to the Government of NCT of Delhi, copy of the Recruitment Rules for the post of MO (Ayurvedic) is annexed at Annexure A-10. These rules have been made under the proviso to Article 309 of the Constitution of India by the

Lt. Governor, Govt. of NCT of Delhi, after prior consultation with UPSC and has been notified on 3.1.2000. Under these Rules, consultation with UPSC has been provided, which, therefore, becomes mandatory. These Rules have not been challenged by the applicants. Besides, there is nothing arbitrary or unreasonable in the Rules as the Rules merely state the normal practice that recruitments to Group-A posts, like MO (Ayurvedic), ~~are~~ ^{are} done through the UPSC. These posts are all by direct recruitment as mentioned in the Recruitment Rules. In the circumstances of the case, the contention of the applicants that UPSC is not the competent authority or they need not be consulted or they cannot hold the examination are baseless and are accordingly rejected.

7. In the facts and circumstances of the case, the ratio of the judgements referred to above and relied upon by the respondents are fully applicable to the facts of the case. We respectfully follow the judgments in Harish Balkrishna Mahajan's case and Dr. Pramila Bhatia's case (supra). Therefore, no such directions can be given as prayed for by the applicants to the respondents for regularising their services based only on their past service record and work de hors the Rules.

8. In this view of the matter, we find no merit in this application and the same is dismissed. No order as to costs.

V.K. Majotra
(V.K. Majotra)
Member (A)

cc.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)