

5
CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.811/2001

New Delhi, this the 23rd day of August, 2002

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

Dr. Rohtas K. Yadav
40/9, Medical Enclave
PGIMS, Rohtak (Haryana) .. Applicant

(By Shri Arun Bhardwaj, Advocate)

versus

1. Secretary
Ministry of Home Affairs
New Delhi
2. Administrator
UT of Chandigarh
UT Civil Secttt. S-9, Chandigarh
3. Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi
4. Secretary
Medical Council of India
IP Estate, New Delhi
5. Dr. Suman Kochar
1156, Sector 24B, Chandigarh
6. Dr. V.K. Kak
5768, Duplex Complex, Phase III
Manimajra, Chandigarh .. Respondents

(By Mrs. Naresh Bakshi, Advocate for R-1, R-2 and R-6
Shri K.R. Sachdeva, Advocate for R-3 and
Shri Rajiv Kataria, Advocate for R-5)

ORDER

Shri M.P. Singh, Member(A)

By the present OA, applicant is seeking direction to quash and set aside the selection of Dr. Sumar Kochar (R-5) to the post of Professor (Radio-diagnosis) in GMC, Chandigarh and further direction to the respondents to consider him for appointment to the said post.

2. Briefly stated, the applicant, who is working as Associate Professor in the Medical College, Rohtak, had applied for the post of Professor in Radio-Diagnosis

mk

(2)


(PRD, for short) in Government Medical College, Chandigarh in the year 1998 in response to an advertisement released by UPSC. At that point of time, essential qualification for the said post was PG Degree in Radiology and 12 years experience in the profession after the requisite PG degree qualification, out of which at least 4 years should be as Reader/Associate Professor in the concerned speciality or equivalent in a recognised Medical College/Teaching Institution. According to the applicant, he was the only eligible candidate, out of 3 who had been invited for interview. However, he was not selected for the post because of malafide intention of Dr. V.K. Kak (R-6). Thereafter, the UPSC re-advertised the post in the year 2000 wherein the essential qualifications laid down were Post Graduate in Radiology and 12 years standing in the profession, out of which 4 years experience should be in concerned speciality. The respondents had intentionally changed the recruitment rules/ essential qualification with a malafide intention to accommodate there own candidate. In response to this advertisement the applicant had again applied. But the applicant was again left out and R-5 was selected. According to the applicant R-5 is an unsuitable, non-eligible and less meritorious candidate. He has alleged that R-5 was selected and appointed at the behest of R-6. Aggrieved by this, he is before us seeking the aforesaid reliefs.

3. In the reply filed on behalf of R-1 and R-2, it is stated that the applicant has neither challenged the recruitment rules at the stage of advertisement nor at

mk

the time of submitting his application or at the time of interview. Therefore he is estopped from challenging the procedure of selection after having participated in the recruitment process. A corrigendum dated 10.4.99 to the advertisement No.20/1998 by which the essential qualification for the post in question was changed from 12 years experience after acquiring post-graduate degree to 12 years standing experience in the profession. This was done in accordance with the guidelines of R-4 and these have been followed in all the advertisements issued by the UPSC for various posts of Professors in different departments. R-5 is/was fully competent and eligible as she fulfils the essential qualifications for the post as laid down in the advertisement. Professor V.K. Kak, for Secretary, Medical Education & Research, Chandigarh Admn. and Director-Principal, GMCH had no role in the selection since he was not a member of the Selection/Review Committee. Dr. Kak relinquished charge of these posts after attaining the age of 62 years. In fact, Ministry's representative of the Chandigarh Admn. in the said selection was Shri Satish Ahlawat, Ex-Legal Remembrancer, UT Chandigarh. A validly constituted Selection Committee of UPSC has made the selection and selected R-5 who is fully eligible as per the prescribed qualifications and experience. In view of this position, the OA be dismissed.

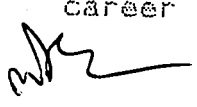
4. In the reply filed on behalf of UPSC, it is stated that the applicant appeared before the Board in respect of the advertisement of 1998 but he could not be recommended for appointment to the post of PRD and thus



the recruitment process became infructuous in 1998. The Commission again advertised the post on 22.1.2000 on receipt of fresh requisition from the Department. The essential qualifications prescribed for the post were the same as published on earlier occasion. Applicant applied for the post, his candidate was considered and was called for interview along with other four candidates. On the basis of performance before the interview board, R-5 was recommended for the post. UPSC has further stated that in the Employment News dated 10.4.99 and other leading Newspapers, the Commission issued a corrigendum regarding amendment to the essential qualification (B) for the said post already notified by them on 24.10.1998 to read as follows:

"It is notified for general information that the E.Q (B) Experience for the post may be read as '12 years standing in profession out of which atleast 4 years experience should be in concerned speciality as Reader or equivalent in a Medical College/Teaching Institution' instead of '12 years experience in profession after the requisite PG Degree qualification, out of which atleast 4 years experience should be in concerned speciality as Associate Professor/Reader or equivalent in a Medical College/Teaching Institution'."

As regards applicant's allegation against Dr. Kak, it is stated by UPSC that Dr. Kak was present as Ministry's Representative (MR) at the interview and not as Member of the Selection Board. MR does not participate in the actual process of selection; his role in the interview board is confirmed solely to apprising the Interview Board of the duties of the posts, service conditions, career prospects, etc. within the organization and such



other information as may be sought by the Board. He is not required to take part in the interview process or give his assessment of the suitability or otherwise of any of the candidates.

6. UPSC have further contended that as per MCI Regulations, 1998, to be eligible for the post of Professor a person must possess Post Graduate degree in the subject and 12 years experience out of which 4 years should be as Reader/Associate Professor (3 years as Resident/Registrar/Demonstrator/Tutor + 5 years as Assistant Professor/Lecturer + 4 years as Reader/Associate Professor, total 12 years). As such the advertisement dated 26.3.2000 is as per regulations of the MCI for teaching posts and on that basis R-5 was eligible for the said post. As the applicant was also considered and called for interview along with other candidates, it cannot be said that the interest of the applicant has been affected adversely. Applicant has only a right to be considered, he has no right to be selected. In view of this, OA is devoid of merit and deserves dismissal.

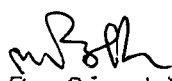
7. Reply affidavit is also filed by R-6, who has retired from service on 31.10.2000, denying the various allegations made by the applicant against him. He has submitted that he was not a member of the selection committee.

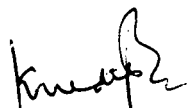
8. We have heard the learned counsel for the parties and considered the pleadings as also the submissions made by them.

mk

9. It is settled legal position that the Tribunal cannot substitute itself in place of the selection committee and make the selection. It is also a settled position that having appeared in a test, one cannot question its validity after failing in the test. In fact we do not find any illegality in the selection method adopted by the UPSC, which was strictly in accordance with the Recruitment Rules for the post in question. We are also satisfied that the Respondent No.5 possesses the requisite educational qualification and experience as per Recruitment Rules and advertisement and, therefore she was fully eligible for being considered for the post of Professor (Radio-diagnoses). We also find that R-6 had no role to play in the selection of Respondent No.5 in UPSC as the MR does not take part in the actual process of selection. Moreover, in the present selection, he was not even a member of the selection/interview committee.

10. Therefore, we find no merit in the present OA and the same is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

/gtv/