

Central Administrative Tribunal  
Principal Bench

O.A. No. 154 of 1999

New Delhi; dated this the 14<sup>th</sup> September 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)  
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Dr. Rajeev Sood,  
Urologist,  
Dr. R.M.L. Hospital,  
New Delhi. .... Applicant  
(By Advocate: Shri B.P.Singh)

(9)

Versus

1. Union of India through  
the Secretary,  
Ministry of Health & F.W.,  
Nirman Bhawan,  
New Delhi.
2. U.P.S.C.,  
Dholpur House, Shahjahan Road,  
New Delhi.
3. Medical Council of India,  
Aiwan-e-Ghalib Marg, Kotla Road,  
New Delhi.
4. Dr. Arun Sharma,  
25, Lajpat Kunj,  
Civil Lines,  
Agra-282002  
U.P. .... Respondents  
(By Advocates: Shri VSR Krishna for R-1 to 3  
Shri Jog Singh for R-4)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' orders dated  
12/13.1.99 (Annexure IX) appointing Respondent No.4  
to the post of Specialist Gr. I in Central Health  
Service (Non-Teaching Specialists Sub-Cadre).

2. Applicant's case is that after completing  
MBBS in 1980 and M.S. (General Surgery) in 1986 he

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joined Central Health Service on 1.9.86 as Medical Officer and was promoted as Sr. M.O. on 1.9.90. Thereafter he was appointed through UPSC as Specialist Gr. II (General Surgery) in Non-Teaching Sub Cadre of C.H.S. on 6.3.95. Thereafter he completed M.Ch in Urology on 31.7.96.

3. He states that in May, 1997 UPSC advertised a vacancy of Urologist in Specialist Gr. II of CHS. Applicant applied for the post along with five other candidates including Respondent No.4. The essential qualification for the said post was M.Ch (Urology) or Speciality Board of Urology (USA), but candidature of Respondent No.4 was rejected as he possessed only DNB (Diplomate in National Board of Examination) which he contends was not equivalent to M.Ch (Urology) or Speciality Board of Urology (USA). Applicant states that pursuant to the aforesaid advertisement interviews were held on 4.2.97 and he was recommended for appointment to the post of Specialist Gr. II by UPSC and he joined the said post on 15.10.97 (Annexure III).

4. Applicant further states that in July, 1997 UPSC advertised for appointment of Urologists to the post of Specialist Gr. I. The essential qualifications for appointment to the post of Specialist Gr. I (Urology) were

- i) A recognised medical qualification included in the First or Second Schedule or Part II of the Third Schedule (other than licenciate qualification) to the Indian Medical Council Act, 1956.
- ii) Post graduate degree in the concerned speciality i.e. M. Ch (Urology) or Speciality Board of Urology (USA) or its equivalent.
- iii) 12 years standing in the profession out of which 5 years experience in the Super Speciality concerned.
- iv) Extensive practical and administrative experience.

5. Applicant contends that Respondent No.4 knowing his candidature would be rejected as had happened in the earlier interview dated 4.8.97, represented to UPSC on the basis of two letters dated 28.3.90 and 3.1.94 respectively that MNMAS (DNB) was recognised as equivalent to M. Ch by Medical Council of India, but applicant asserts that the Health Ministry's representative on the interview Board Dr.N.K.Mohanty, Consultant (Urology) Safdarjung Hospital, New Delhi specifically objected to Respondent No.4's candidature on the ground that he did not possess the essential qualification.

6. Applicant further states that the Interview Board on 22.12.97 interviewed applicant, another candidate, as well as Respondent No.4 on the condition that he satisfied the authorities that DNB which was the qualification he possessed, was equivalent to M. Ch or Speciality Board of Urology (USA). Thereupon applicant on the same day i.e. 22.12.97 represented (Ann. V) to the Chairman, UPSC

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as well as to Dr. N.K. Mohanty against Respondent No.4 being called for interview for the post of Urologist in Specialist Gr.I stating that he did not possess the essential qualification of M. Ch (Urology) or Speciality Board of Urology (USA), and his candidature had been rejected on this very ground for the post of Urologist in Specialist Gr. II just four months back in August, 1997.

7. Applicant asserts that UPSC wrote to Health Ministry and M.C.I. asking for clarification as to the equivalence of DNB to M. Ch., but in the mean time applicant had also made another representation dated 21.1.98 (Ann. VII) pointing out that Respondent No.4 did not have the essential qualification, and followed it up with another representation on 28.1.98 (Ann. VIII). Applicant asserts further that upon his representation, the ADG (ME) had, in his note date 12.2.98 advised that in CHS Rules the prescribed qualification for recruitment of Group A post in super-speciality in Urology was M. Ch (Urology) or Speciality Board of Urology (USA), and did not prescribe any equivalent qualification such as DNB as prescribed in other specialities such as Chest and Respiratory Diseases etc.

8. Applicant further states that UPSC accordingly sought clarification from MCI and also wrote to the Health Ministry, and in reply the MCI in their letter dated 5.2.98 stated that DNB (Genito

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Urinary Surgery) qualification granted by National Board of Examination (NBE) is treated at par with M.Ch(Urology) of Universities of India provided the holders of such DNB qualification possess two years post qualification experience in a centre recognised by MCI and Respondent No.4 had experience at G.G. Hospital and Research Centre, Agra and S.N. Medical College & Hospital, Agra which were not recognised centres by M.C.I. for urology experience. Applicant states that the same communication was sent to the Health Ministry on 5.3.98.

9. Applicant states that thereupon he sent further representations on 20.4.98 and 25.10.98 in which apart from reiterating the earlier contentions, he also pointed out that applicant did not possess extensive practical and administrative experience, he having ~~been~~ been throughout in private practice. He states that thereupon the Health Secretary on 8.5.98 constituted a High Powered Committee to resolve the issue, who in their report 2.6.98 held that DNB could not be considered equivalent to M. Ch/DM. Meanwhile the UPSC declared the result of the interview on 22.12.97 making a panel in which Respondent No.4 was placed at SI. No.1 provisionally, which applicant claims he was placed at SI. No.2 while the third candidate was placed at SI. No.3.

10. Applicant further asserts that after the report of the High Powered Committee, the candidature of Respondent No.4 should have been cancelled, but

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instead the matter was referred once again to M.C.I., who referred it to its Post Graduate Committee, who according to applicant, recommended that DNB could not be treated as equivalent to M.Ch/DM and placed the matter before the General Body of M.C.I. Applicant asserts that the General Body of M.C.I. in its decision dated 10.9.98 held that DNB could not be treated as equivalent to M.Ch/DM, but despite all that, Respondent No. 1 in his Note dated 6.1.99 arbitrarily and illegally directed that appointment be given to Respondent No.4 on the basis of which impugned appointment letter dated 12/13.1.99 was issued to him.

11. Respondent No.1 (Union of India) have filed a short reply in which they have admitted receiving a representation from applicant against calling of Respondent No.4 for interview, which was addressed to their representative at the interview Dr. Mohanty. They have stated that UPSC called for comments of MCI and on 5.3.98 MCI gave its opinion which is quoted below:

"DNB (Genito-Urinary-Surgery) qualification granted by National Board of Examination granted after an examination is treated at par for appointment to a teaching post with M.Ch (Urology) of Universities in India provided the holder of such (DNB) qualification possesses two

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years post qualification experience in a centre recognised by Medical Council of India.

However, any clarification regarding non-teaching posts may be referred to the Directorate General of Health Services, Nirman Bhawan, New Delhi."

12. It has been stated that the matter was examined in consultation with DGHS who advised that Respondent No.4 possessed the required qualification for the post of Urologist. It is stated that thereafter a meeting of departmental officials was held on 8.5.98 and a note in this regard was put upto Health Secretary who directed that a clear view of MCI be obtained. Accordingly a letter to MCI was sent on 10.6.98 who on 8.10.98 after further correspondence conveyed the decision of the Postgraduate Committee that

"In view of the above, the Committee decided to recommend that its following decision taken earlier at its meeting held on 17.10.93 which was for teaching appointments be made applicable for non-teaching appointments as well:-

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It is recommended that for teaching appointments in the broad specialities the holders of Diplomate NBE should have at least 1 (one) year teaching experience as a Tutor/Registrar/Demonstrator or equivalent post in a recognised medical college imparting undergraduate teaching and training for appointment as Lecturer. Regarding the candidates holding Diplomate NBE in super speciality subjects, the training shall be for 2 (two) years in a recognised medical college having recognised postgraduate medical degree in the concerned speciality for appointment as a Lecturer.

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13. Official respondents further state that the decision of the P.G. Committee of 17.10.93 was incorporated in the Ministry's circular dated 3.10.94. This circular indicated equivalence of DNB qualifications with DM/MCH for teaching posts only and not for non-teaching posts. The new decision of the P.G. Committee for application of the above condition specially for a non-teaching post, that the DNB holder should have experience in a recognised medical college having recognised P.G. medical degree in the concerned speciality for appointment as Lecturers, was not considered appropriate and could not have retrospective effect. Official respondents, however, state that after consideration of the matter in detail and with the approval of the appointing authority - the Minister of Health & Family Welfare it was decided to appoint Respondent No.4 to the post of Senior Urologist.

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14. Respondent No.4 (Dr. Arun Sharma) has also filed his short reply.

15. After listing his various qualifications, including the Diploma in Urology from the Institute of Urology, University of London, U.K. he states that on return to India in November, 1988, he applied for DNB (Diplomate of National Board) from the National Board of Examinations, Ansari Nagar, New Delhi and successfully obtained after the examination the qualification of Diplomate of National Board in May, 1990 (Annexure-3). He states that after obtaining the above qualification of DNB in May, 1990 he wrote to the Medical Council of India as to the nature/status of the qualification acquired by him and was informed by the Council vide their letter dated 14.6.90 that DNB (Genito-Urinary-Surgery) granted by NBE is recognised by the Council for purposes of Indian Medical Council Act, 1956 (Annexure 6). He states that similarly Government of India by its letter dated 3.10.94 specifically clarifies that NBE qualifications have to be given due importance and have to be considered at par with MD/MS of Indian Universities for all posts, including teaching post.

16. Applicant has also filed his rejoinder in which he has challenged the assertions made by Respondents and broadly reiterated his own.

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17. We have heard both sides and given the matter our careful consideration.

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18. It is clear that as per CHS Rules, 1996 notified under Article 309 of the Constitution vide GSR No. 460 (E) dated 8.10.96 the following are the grades in the Non-Teaching Specialists Sub-Cadre

- (a) Super Time Grade Rs.5900-6700
- (b) Specialist Grade I Rs.4500-5700
- (c) Specialist Grade II Rs.3700-5000

Essential qualification number (ii) in Specialist Grade I is a Postgraduate degree/Diploma in the concerned speciality mentioned in Schedule VI or equivalent, while Essential qualification number (iii), speaks of

- (a) 12 years' standing in the profession, out of which 5 years experience in the Super-Specialities  
or
- (b) 12 years' standing in the profession out of which at least 8 years' experience in the concerned speciality other than Super-Specialities.

18. Aforementioned Schedule VI contains a list of recognised Postgraduate qualifications, and under Part (C) covering Super

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Specialities the requisite P.G. qualification for Urology is M.Ch (Urology) or Speciality Board of Urology (USA)

19. Note 4 to the Schedule VI refers to Member of Academy of Medical Science (MAMS) and Membership of National Academy of Medical Sciences (MNAMS) which lays down that this qualification shall be a recognised medical qualification as aforesaid only when granted on or after 1.4.970 on the basis of the results of examination conducted (whether before or after the said date) by the National Academy of Medical Sciences, New Delhi on behalf of the NBE, New Delhi and not when conferred as an Honorary Degree. Various subjects have been listed under MAMS and MNAMS but Urology is not one of them.

20. Note 4(ii) to the Schedule VI lays down that in terms of Health Ministry (Dept. of Health) Notification dated 29.8.78 the qualifications granted in U.K. shall be recognised medical qualifications only when granted on or before 11.11.78.

21. While Note 5 lays down that the holders of equivalent Postgraduate qualifications as are approved by the Medical Council of India from time to time will be considered to have requisite Postgraduate qualification in the subject concerned.

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22. Note 7 permits the Controlling Authority in consultation with the UPSC to assign other qualifications to Part A, B, C or D.

23. The point for adjudication is whether Respondent No.4 at the time of submission of application for the post of Specialist Grade I (Urologist) possessed the requisite essential qualification M.Ch (Urology) or Speciality Board of Urology (USA) or its equivalent.

24. Clearly the Diploma in Urology from the Institute of Urology, University of London, U.K. which Respondent No.4 has acquired, as per his own short reply in 1986 does not help him because it was obtained after 11.11.78 and hence is hit by Note 4(ii) to Schedule VI of the CHS Rules, 1986.

25. Similarly Respondent No.4 in his reply has stated that the National Academy of Medical Sciences (India) has awarded him the Membership of the Academy (MNAMS) in the year 1992. The certificate at Annexure 9 makes it clear that Respondent No.4 was elected as a Member of NAMS (India) in 1992. Prima facie this Membership is not based on the results of any examination conducted for the purpose and hence Respondent No.4's Membership of

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NAMS also does not advance his case, it being hit by Note 4 to Schedule VI.

26. Examining further the question whether holders of DNB (Genito-Urinary-Surgery) qualification granted by National Board of Examinations is equivalent to M.Ch (Urology) or Speciality Board of Urology (USA) we notice that official Respondents themselves have stated in Para 6 of their reply that the decision of the Postgraduate Committee on 17.10.93, which was incorporated in Ministry's circular dated 3.10.94 indicated the equivalence of DNB in DM/MCh for teaching posts only and not for non-teaching posts. They further state that the new decision of the Postgraduate Committee for application of the above condition especially for a non-teaching post that the DNB holder should have experience in a recognised medical college having recognised postgraduate medical degree in the concerned speciality for appointments as Lecturers was not considered appropriate and furthermore could not have retrospective effect.

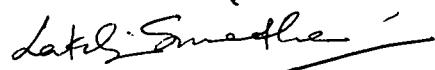
27. In the light of official Respondents' own admission that Medical Council of India's decision on 8.10.98 could not have retrospective effect, the appointment of Respondent No.4 as Specialist Grade I (Urology) in the Non-Teaching

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Specialist Sub-Cadre by impugned appointment letter dated 12/13.1.99, cannot be sustained in law, as the DNB (Genito-Urinary-Surgery) qualification granted to him by National Board of Examinations cannot be treated as equivalent of M.Ch (Urology) or Speciality Board of Urology (USA) for the post in post of Specialist Grade I (Urology) in the Non-Teaching Specialist Sub-Cadre as on May, 1997, when the post was advertised and applications were invited.

28. In the result the O.A. succeeds and is allowed to the extent that the impugned appointment letter dated 12/13.1.99 appointing Respondent No.4 to the post of Specialist Grade I (Non-Teaching Sub-Cadre) is quashed and set aside and Respondents are directed to fill up the post of Specialist Grade I (Urology) in the CHS strictly in accordance with rules and instructions on the subject. No costs.



(Mrs. Lakshmi Swaminathan)  
Member (J)

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(S.R. Adige)  
Vice Chairman (A)