

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri M.P.Singh, Member(Admnv.)
Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.1716/1999

New Delhi, this the 19th day of September, 2001

Dr. Manoj Goyal
s/o Shri G.C.Goyal
118, Vigyan Lok
Anand Vihar
Delhi - 92.

(By Advocate: Shri J.R.Midha with Sh. S.Chugh)

Vs.

1. Govt. of NCT of Delhi
through Lt. Governor
Raj Niwas
Delhi.
2. Principal Secretary
(Medical)
5, Shamnath Marg
Govt. of NCT of Delhi
Delhi.
3. Maulana Azad Medical College
through its Dean
New Delhi.
4. Dr. Dhirender Srivastavam
Professor in Oral Surgery
to be served through
MAM College
New Delhi.

. Respondents

[(By Advocate: Shri Rajinder Pandita for R-1 to R-3)
Shri V.K.Mehta for R-4]]

O R D E R

By Shanker Raju, Member (J):

The applicant in the present case has challenged the appointment of Respondent No.4 Dr. Dhirender Srivastavam as Professor in Oral Surgery in Maulana Azad Medical College (hereinafter called as 'MAM College'). The applicant further claims that his consideration for the post of Professor was not as per the norms.

2. Briefly stated that in MAM College the entire unit of Dentistry work is on ad hoc basis but they continue to work like a regular Doctors as the sanctions are accorded with retrospective effect. The applicant joined as Assistant Professor in 1991 on ad hoc basis and continued till today and is treated as a regular Doctor. The applicant has been performing the job work also. In July 1995, the applicant was appointed as an Associate Professor and later on applied for fellowship of common wealth. The applicant applied for 'No Objection Certificate' (hereinafter called as 'NOC') for Interview and ultimately on 25.3.1996 he has selected for Common Wealth Scholarship of 1996 for which he applied for 'no objection certificate'. Being aggrieved by non accord of the NOC, OA was filed before this Court and in pursuance of he was relieved and he went to London for his fellowship. During his stay at London he came to know that the Government of N.C.T had advertised for the post of Professor in oral surgery and as there are no recruitment rules were existing and approved by the UPSC norms fixed by the Dental Council of India (hereinafter called as 'DCI') which is apex body of the Dentistry are followed. As per the norms a candidate after the Post Graduate qualification as Reader and having five years teaching experience is entitled for consideration. The post of Reader is equivalent to the Assistant Professor. In this back ground, it is stated that he had done his post graduation in oral surgery in May, 1988 and thereafter Post Graduation in 1997. The applicant had been

teaching at MAM College from 1991. The Selection Board has selected Respondent No.4 ignoring the applicant as such the present OA.

3. The learned counsel for the applicant stated that Respondent No.4 is not qualified to be appointed as Professor (oral surgery) as he does not fulfil the eligibility norms laid down by the DCI as Respondent No.4 was working as Maxillofacial Surgeon (hereinafter called as 'MF Surgery') in Safdarjung Hospital which is not recognised for teaching post equivalent to Assistant Professor or Reader, he is not eligible for the same. By drawing our attention to a letter issued by Faculty of Medical Sciences, University of Delhi on 1.5.2000 it has been clarified that Faculty of Medical Sciences, University of Delhi does not recognize the post of MF Surgery of Safdarjung Hospital as teaching post equivalent to Reader or Assistant Professor. As per the two cadres in Health Services teaching and non-teaching Assistant Professor is equivalent to Reader and Associate Professor and Professor are three recognised teaching posts in Dentistry. The post of MF Surgery in Safdarjung Hospital is not within the list of teaching post and is not equivalent to MF Surgery, three years experience is required whereas for the post of Reader 3 years teaching experience is required. MF Surgery has no promotional avenues but Reader being a teaching post there is a promotional avenues to the post of Assistant Professor. Respondent No.4 has not enclosed any documents of teaching experience the certificate issued by the Department of Plastic Surgery, Safdarjung Hospital is not by the competent authority

as it has not been issued by the Head of the Institution but the certificate was issued to favour the applicant by the Head of the Department on the eve of his retirement. As regards the Selection Board, it is contended that the same does not inter alia included any specialist in the field of oral and MF Surgery which is necessary. It is also contended that Respondent No.4 still holds in his lien to the post of MF Surgery at Safdarjung Hospital. The learned counsel for the applicant stated that the then Secretary was biased towards the applicant as he was not allowed to join and was not accorded permission to get himself relieved for Common Wealth Assignment. As Respondent No.4 has no valid teaching experience of five years, his appointment is void ab-initio and is de hors the guide-lines which is in absence of Statutory Rules are binding as well followed. It is also stated that the candidature of Respondent No.4 was rejected for the post of a Professor in Santhosh Medical and Dental College.

4. Whereas strongly rebutting the contentions of the applicant, the learned counsel of the official respondents stated that the Selection Board was duly constituted and as the same Board had interviewed candidates for the post of Associate Professor in oral surgery, no objection was raised by any other candidate, the candidate was selected and in 1995 itself Respondent No.4 was qualified as such was called for an interview. It is also stated that Respondent No.4 had requisite teaching experience of 15 years and this has been gone into thoroughly by the Selection Board and after verifying about the

experience and qualifications of Respondent No.4 as he had worked in Department of Burns and Plastic and MF Surgery in Safdarjung Hospital which is a Post Graduate Teaching Hospital, Respondent No.4 was involved in teaching work and was also selected for the post of Professor in oral surgery in Santhosh Medical College of Dental by an order dated 28.10.1997.

5. Learned counsel for Respondent No.4 has stated that as per the norms of DCI, the only requirement is of teaching experience of 5 years and nowhere it is laid down that the candidate must belong to the teaching cadre. By referring to a certificate issued by the Faculty of Medical Sciences, University of Delhi dated 29.11.2000, it has been brought to our notice that Department of Burns, Plastic and Maxillofacial Surgery at Safdarjung Hospital, New Delhi has the teaching programme of M.Ch. Plastic Surgery and the teaching of this course is done by the recognised Supervisors/Surgeons working in the Department and the Degree of M.Ch. is awarded by the University of Delhi, Delhi and the same is recognised. Further placing reliance to the Bulletin of Information Session - 2000, Faculty of Medical Sciences, University of Delhi, it is stated that M.Ch (Plastic Surgery) is a post doctoral/post graduate Degree course and M.Ch. Course includes plastic surgery and Safdarjung Hospital has M.Ch Plastic Surgery. Further placing reliance on the Dentist Act, 1948 and by referring to Section 2(d) it is inter alia contended that Dentary includes performance of any operation and treatment of any deceases deficiency of human death or

Jaws. In this conspectus, it is stated that applicant falls within the definition of dentistry as being MF Surgeon. Further placing reliance on a decision of the Apex Court in AIR 1975 SC 192 (The State of Bihar & Anr. Vs. Asis Kumar Mukherjee & Others, it is contended that under Section 33 in the Registrar in Briish Hospital has been allowed the teaching experience by treating it as a Teaching Institution. The learned counsel for the respondents further contended that he had been appointed as Professor in oral surgery on having the same qualifications as on which he was appointed by the respondents by letter dated 28.10.1997 and this shows that he was fully eligible for being appointed as Professor (oral surgery). The respondents contended that Respondent has BDS and obtained Postgraduate qualification, i.e., MDS and had working experience pertains to the teaching institution from 4.2.1987 to 2.6.1997 he has worked as Assistant Professor in the Dental Department of MAM College and since 7.11.1997 he has been working as MF Surgery at Safdarjung Hospital which is a Group 'A' post, the aforesaid appointment was adhoc and had been made regular on 10.5.1994. By referring to the UPSC advertisement to the post of MF Surgery notified in February, 1989, it is stated therein the duties of MF Surgeon interalia included teaching and guiding M.Ch. Plastic Surgery students in the field of MF Surgery students as well as teaching MBBS students guiding dental know now to nurses, etc. The applicant stated that qualification and experience required for the post of Professor of the Reader as per the norms of DCI, the basis qualification for Professor is MDS. The applicant had taught Doctors, Students, etc. and

had more than 14 years teaching certificate and as MF Surgeon he had about 10 years experience at the time of interview. As the applicant was called for the interview 1995 clearly points towards his eligibility for the post of Professor. It is contended that an unsuccessful candidate cannot challenge the finding of the Selection Board and the Court does not assume role of selection body to come to its own conclusion otherthan which had been arrived by the experts in the concerned field. Respondents further contended that the applicant had done his MDS in 1988 whereas Respondent No.4 has passed the same in 1983.

6. The learned counsel for the applicant filed his rejoinder reiterating the pleas already taken by him in the OA. Further it is stated that as per Gazette of India pertaining to Recruitment Rules, the Assistant Professor post requires 3 years teaching experience in the specialist field and further the RRs of 1996 for MF Surgeon does not prescribe any teaching experience and what has been contended is only the duties. Apart from it placing reliance on the notification of Ministry of Health & Family Welfare (Department of Health), dated 11.11.1982 it is contended that Plastic Surgeon in Safdarjung Hospital has been categorised under Non-teaching Specialist and as such Respondent No.4 cannot contend that he has attained any teaching experience to that effect.

7. We have carefully considered the rival contentions of both the parties and perused the material on record. We are of the confirmed view that the appointment of Respondent No.4 as Professor in

oral surgery in MAM College is perfectly legal and cannot be found fault with. As admittedly there are no recruitment rules for selection and appointment as Professor. The norms laid down by the DCI are to hold the field and as per these norms, for a Reader and Associate Professor which are the feeder categories to the post of Professor, the essential requirement is BDS Degree with Postgraduate qualification and three years teaching experience after Postgraduation and for Professor what is required is a BDS Degree with Postgraduation qualification and with 5 years teaching experience after the postgraduate qualification as a Reader. What has been made an essential qualification is not that an incumbent, belongs to teaching cadre but he must have five years teaching experience.

6. Respondent No.4 who had earlier completed his Postgraduation and continued to work as MF Surgeon in Safdarjung Hospital where one of his duties is also to teach M.Ch. Plastic Surgery students and the same is apparent from the certificate issued by the University of Delhi and also Bulletin of Information, interalia, also the applicant during his teaching assignment used to teach the nurses students, dental students as well as M.Ch and the same cannot be said to be not a teaching experience. The definition of dentists interalia includes the MF Surgeon as per the Dentist Act, 1948. Our observation is also fortified by the ratio of Apex Court in Shri Asis Kumar Mukherjee's case supra wherein under Section 33 in the Registrar in Briish Hospital has been allowed the teaching experience by treating it as a Teaching Institution. The applicant has also been found

qualified for the post of Professor on the same norms in oral surgery at Santhosh Medical College wherein he had been offered appointment on October 28, 1997 this clearly proves that he was having requisite qualifications for being appointed as Professor in oral surgery and the norms which had been applied therein were the same as applicable to his present appointment. The contention of the applicant that the Board has been biased and malafide and was not constituted as per the requisite criteria is of no avail to him. We find from the rely of the official respondents that the Board was properly constituted and the other incumbents have not put any challenge to the Board. Apart from it, it is a usual feature that a candidate who remained unsuccessful in the selection has a tendency to challenge the same. The applicant in the present case has utterly failed to bring any discrepancy or malafide on the part of any of the Members of the Selection Board or in the process of selection. The claim of Respondent 4 is also justified on the ground that in the year 1995, UPSC has advertised the post of MF Surgeon wherein one of the qualification and duties prescribed are Teaching M.Ch. students which is fortified by the certificate issued by the University of Delhi and from the Bulletin ibid. Respondent No.4 being qualified in all respects and being the most suitable candidate has been appointed by the official respondents, their action cannot be said to be illegal or actuated by any malafide, arbitrariness or bias and it also confirms to the laid down criteria that is norms of DCI.

9. In this view of the matter and having regard to the reasons recorded and discussion made above, it is confirmed that the appointment of Respondent No.4 to the post of Professor (oral surgery) was legal and as per the norms and having found no irregularity, arbitrariness, bias on the part of the respondents, the claim of the applicant is not legally tenable as bereft of merit. In the result, the present OA is rejected but without any order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

M.P. Singh

(M.P. SINGH)
MEMBER(A)

V/RAO/