

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O. A. No. 1834/1998

New Delhi: this the 6th day of January, 2000.

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

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Dr. Ali Murtaza,
S/o Shri Shaukat Ali,
R/O C-12, Gafoor Nagar, Jamia Nagar,
New Delhi -25 applicant.
(By Advocate: Shri B. S. Charye)

Versus

1. The Director General,
Central Govt. Health Services,
Directorate General of Central Govt. Health
Services,
Nimman Bhawan,
New Delhi.
2. The Director,
Indian System of Medicines and Homoeopathy,
Ministry of Health & Family Welfare,
Red Cross Annex Building,
New Delhi -1.
3. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi (through its Secretary),
4. Union of India,
Ministry of Health & Family Welfare,
Govt. of India,
Nimman Bhawan,
New Delhi,
through its Secretary Respondents.

(By Advocate: Shri Madhav Panikar)

ORDER

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

Applicant impugns respondents' order dated 1.9.98 (Annexure P-1) and seeks regularisation as Unani Physician on the same lines as has been done in the case of Ayurvedic Physicians vide letter dated 18.12.97 and in the case of allopathic physicians.

2. Applicant does not deny that he was appointed as Unani Physician on adhoc basis on monthly wages under CGHS on 5.1.87 and his services were terminated on 9.8.89 on candidates selected by UPSC joined the post. He challenged the termination of his service in CAT, PB vide OA No. 1598/89 which was disposed of by order dated 9.11.90 (Annexure-I). In term of that order, he was offered the post of Unani Physician on adhoc basis vide Memo dated 9.11.90 (Annexure-P-4) and was posted at Calcutta where he joined on 11.3.91. He was considered for the said post by the UPSC in 1991 but was not found suitable. In January, 1996 he again applied for the post of M.O. (Unani) but even after granting age relaxation, he was found to be overaged.

3. Applicant also does not deny that in December, 1991 he filed OA No. 2834/91 in CAT, New Delhi seeking a direction to condone break in service from 10.8.89 to 10.3.91 for all purposes including pay fixation etc. which was disposed of as having become infructuous by order dated 11.4.97 (Annexure-II) against which applicant filed CJP No. 2419/98 in Delhi High Court which was dismissed on 18.5.98 (Annexure-III).

4. Meanwhile applicant filed another OA No. 19/97 in January, 1997 in CAT PB requesting that he be considered along with others when the vacancy available was being filled up by UPSC through vacancy dated 13.1.96. The CAT by order dated 2.4.97 (Annexure-IV) directed that respondents should call applicant for

taking part in the selection process initiated by advertisement dated 13.1.96 and on the basis of the UPSC's recommendations should pass appropriate order in accordance with rules. It is not denied that applicant was interviewed by UPSC but was not found suitable for appointment as Unani Physician, as is clear from letter dated 8.7.97 (Annexure-V).

5. Meanwhile applicant has continued to work as Unani Physician and upon respondents issuing impugned order dated 1.9.98 (Annexure-R-1) terminating that adhoc arrangement, applicant has filed ~~the~~ OA and by interim order dated 6.10.98 respondents were restrained from terminating applicant's services till next date, while interim order has been extended from time to time.

6. We have heard applicant's counsel Shri Charya and respondents' counsel Shri Panikar. We have perused the materials on record including the written submissions filed by Shri Charya and given the matter our anxious consideration.

7. In the written submissions filed by Shri Charya he has admitted that upon not being selected by UPSC, applicant filed OA No.551/98 for summoning of the record of marks from UPSC, but that OA was dismissed by the Tribunal vide order dated 12.3.98, and a writ bearing CW No.2419/98 filed in Delhi High Court on this issue was also dismissed on 18.5.98. Shri Charya has however pressed that applicant's case should be referred to UPSC in the same manner as was done in the case of Hakim Sayed Ahmed.

2

8. Hakim Sayed Ahmed who was appointed as Unani physician on adhoc basis had filed OA No.2992/92 seeking regularisation. In that OA respondents had taken the stand that applicant had applied for the post in response to an advertisement and his name was considered by UPSC but he was not found fit and suitable. That OA was dismissed by order dated 7.7.98. Against that order dated 7.7.98, Hakim Sayed Ahmed filed CW No.4467/98 in the Delhi High Court on which the Delhi High Court by order dated 21.7.99 directed respondents to consider his case on the basis of the Tribunal's decision in the case of Ayurvedic doctors, and by its subsequent order dated 23.3.99 directed respondents to send his ACR dossier to UPSC for consideration for the purpose of regularisation.

9. Recently in somewhat similar circumstances, the Tribunal while disposing of OA No.2058/98 filed by Hakim Wadudul Hasan by its order dated 13.12.99 had noted the aforesaid directions of the Delhi High Court in Hakim Sayed Ahmed's case, and had held that Hakim Wadudul Hasan could not be denied similar treatment. It accordingly quashed the impugned order dated 4/7.9.98 in that OA and directed respondents to forward the ACR dossier for Hakim Wadudul Hasan for consideration for regularisation.

10. The present applicant Hakim Ali Murtaza is not differently placed, and accordingly following the aforesaid directions of the High Court referred to in para 8 above is also entitled to have his ACR dossier forwarded to UPSC for consideration for regularisation.

11. Accordingly this OA succeeds and is allowed to the extent that the impugned order dated 1.9.98 to the extent that it affects applicant Hakim Ali Murtaza is quashed and set aside. Respondents are directed to send his ACR dossier to UPSC for consideration for regularisation. Till receipt of UPSC's advise, respondents shall maintain status quo in regard to applicant. No costs.

Kuldeep
(KULDIP SINGH)

MEMBER(J)

S. R. Naige
(S. R. NAIGE)

VICE CHAIRMAN (A).

/ug/