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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2516/98

New Delhi this the 25th day of May, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Dr. Om Parkas Lathwal,
R/o 282, Housing Board Colony,
Rohtak, (Haryana).

...Applicant

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. Union of India through
Secretary,
Ministry of Home Affairs,
Central Sectt. New Delhi.
 2. The Administrator,
Union Territory of Chandigarh,
UT Civil Secretariat,
Sector-9, Chandigarh.
 3. Union Public Service Co,mission
through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi.
 4. Medical Council of India,
through Secretary,
I.P. Estate (Opposite PHQ),
New Delhi.
 5. Dr. Dharam Pal Mehta,
Professor, Hospital Administration-
cum-Medical Supdt.,
Govt. Medical College,
Sector-32, Chandigarh.
 6. Dr. V.K. Kak,
Director-cum-Principal-Secretary,
Medical, E.O.N. Chandigarh Admn.
Govt. Medical College,
Sector-32, Chandigarh.
- ...Respondents

(By Advocates Shri K.R. Sachdeva, Sh. B.T. Kaul and
Shri Parveen Swarup).

O R D E R

By Reddy, J.-

The selection of Respondent No.5 to the post of Professor, Hospital-cum-Medical Superintendent, Government Medical College, Chandigarh (for short GMC, Chandigarh) is under challenge in this OA. The applicant also seeks a declaration that he fulfilled all the required

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qualifications for his selection. The facts are as under:

2. By an advertisement dated 14.12.96 issued by the UPSC, inviting applications for the post of Professor, Hospital Administration-cum-Medical Superintendent in GMC, Chandigarh, the applicant applied for the post of Professor. As per the advertisement the essential qualifications were as under:

"i) A recognised medical qualification included in the First or the Second Schedule or Part II of the Third Schedule (Other than Licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in Part II of the Third Schedule should also fulfil the conditions stipulated in sub-section (3) of Section 13 of the IMC Act, 1956.

ii) A post graduate degree in any of the broad disciplines of Medical Sciences including its various specialities, super specialities, recognised by Medical Council of India or equivalent.

iii) 12 years experience in the running of a teaching hospital of more than 500 beds."

3. The applicant possesses the M.D. from Delhi University and DNB (Diploma of National Board) in Health Administration, including Hospital administration from the National Board of Examination. On 23.10.97, the UPSC asked the applicant to produce the certificate of experience of 12 years in the running of a teaching hospital of more than 500 beds, failing which his application was liable to be rejected. Only three candidates had been called for interview, including the applicant. During interview he was told that the UPSC decided to relax the qualification as to 12 years' experience. He was, therefore, asked to produce the experience certificate of working as Medical Officer in Civil Medical Service from 1971-75. On his undertaking to do so, he was interviewed. Thereafter he produced the

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certificate of experience from 1971-75 as Medical Officer. In October, 1998 the results were published, but he was not one of the selected persons. R-5 was selected.

4. It is the case of the applicant that R-5 does not have 12 years experience as required in the advertisement, nor does he possess any desirable qualification of having P.G. Degree in Hospital Administration. In fact the said condition was mandatory as per the Medical Council of India's guidelines whereas the applicant fulfilled all the conditions including 12 years experience.

5. The learned counsel for the applicant Shri Arun Bhardwaj, contends that the selection of R-5 is illegal as it is violative of the essential qualifications, required as per the advertisement. The selection is also attacked on the ground that the composition of the selection Committee was not in accordance with the rules. Malafides are also levelled against R-6, who is said to have influenced the selection in favour of R-5.

6. The UPSC, R-3 in the case, filed a counter-affidavit stating that only three candidates have been interviewed subject to the production of the documentary proof of possessing 12 years experience in the running of the Teaching Hospital of more than 500 beds as per EQ (iii), failing which their selection would have to be cancelled. Only R-5 fulfilled all the requisite qualifications including 12 years experience, hence he was selected. He also joined the post on 27.8.98. The applicant was not having the requisite experience. As per


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his experience certificate he was having valid experience only for six years and 10 months as Deputy Medical Superintendent in Medical College & Hospital, Rohtak from 7.3.88 to 31.10.96 against the requirement of 12 years. The allegation that the Commission has relaxed the qualification regarding 12 years experience is denied. It was averred that R-4 had experience in the Post Graduate Institute of Medical Research, Chandigarh, for about 15 years as Medical Officer and as a Deputy Medical Superintendent. It is also averred that the selection committee was constituted in conformity with the rules.

7. R-5 also filed a counter-affidavit, denying the allegations as to the relaxation of the essential qualifications in appointing R-5. It is submitted that he fulfilled the requisite qualifications as stipulated in the advertisement.

8. The learned counsel for the respondents S/Shri K.R. Sachdeva, B.T. Kaul and Parveen Swarup submitted that the selection made by the respondents was strictly in conformity with the requisite essential qualifications. The learned counsel also submits that the allegations of malafide are wholly unsubstantiated and hence they have to be rejected outright. It is also submitted that the selection committee was properly constituted and no infirmity was brought out.

9. We have perused the pleadings in this case and given careful consideration to the arguments advanced by the learned counsel of the respective parties.



10. The crucial question that has to be decided in this case is whether the selection to the post of Professor in the Hospital Administration is valid? The selection is attacked on more than one ground. It is firstly contended that the selection of R-5 was not in accordance with the required essential qualifications mentioned in the advertisement. The learned counsel fairly concedes that the applicant had not fulfilled the essential qualification No.(iii) as he did not have 12 years experience in running the hospital administration in conformity with all the requirements mentioned in the advertisement. But he also submits that R-5 also had not fulfilled the essential qualification No.(iii) and that his selection is, therefore, bad in law. The case of the R-5, however, is that he had more than 12 years of experience in running the hospital and hence his selection is in accordance with all the requirements stipulated by the Service Commission. The Service Commission, R-3 in this case has filed the counter-affidavit, supporting the case of R-5. It is, therefore, necessary for us to notice the essential qualification No.(iii). It is reproduced as under:-

"iii) 12 years experience in the running of a teaching hospital of more than 500 beds."

11. It must be recalled that the post that has been advertised is the post of Professor Hospital Administration-cum-Medical Superintendent in the GMC, Chandigarh. Hence, the requirement of possessing a PG Degree in any of the broad speciality for Medical Sciences was stipulated. A Professor is required to teach and in this case, it is teaching in hospital administration in a

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teaching hospital. The duties of the post of Professor are also mentioned after Note IV in the advertisement itself, which are reproduced as under:-

"4. DUTIES

Teaching the medical (MBBS) students in the Government Medical College, Chandigarh & Providing other services in the attached teaching hospital."

12. Since teaching is the primary duty of the Professor, Note-II clearly stipulates that the post of General Duty Medical Officer/Medical Officer shall not be considered for eligibility purpose for recruitment to the teaching post. The idea behind excluding the post of Medical Officer was that there will be no teaching for the medical students in the post of Medical Officer. Admittedly, if the experience in the post of Medical Officer is excluded none of the three candidates invited for interview are having the required experience of 12 years. Consequently, reading EQ (iii) alongwith Note-II the Commission should have disqualified, them even to be interviewed, let alone selecting R-5.

13. In order to satisfy ourselves about the validity of the selection of R-5 we have called for the records from R-3 and the learned counsel for the respondent No.3 has produced the same before us. We have perused file No.F/1/155(25)/96-R.I, relating to recruitment to the post in question. At page 20 it was clearly stated by the Commission that "none of the applicants possess^{ed} 12 years' teaching experience. As per Note-II of IFS, teaching experience at the level of General Duty Medical/Medical Officer shall not be considered." After coming to the above decision the Commission, however, made a volt face and

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pointed out that as EQ(iii) simply required 12 years of experience of running of a teaching hospital of more than 500 beds, the insertion of Note II in the IFS was not relevant for counting experience. As the applicant and another candidate (Roll No.5) possess the experience in the post of Deputy Medical Expert, Medical Officer etc. they were treated as possessing 12 years experience. R-5 was found ineligible even to be called for interview. On that basis, the Note put up by the Joint Secretary was subsequently approved by the Member of the Commission on 8.10.98, to call for the interview the applicant and the another candidate (Roll No.5). Thus the name of the R-5 was excluded even for calling for interview. However, at the instance of Dr. Kak, respondent No.6 Director-cum-Principal-cum-Secretary, Medical Education, Chandigarh, who was also subsequently nominated himself as the Ministry's Representative (MR) and was present during the interview, the Commission decided to call respondent No.5 also for the interview along with applicant and another, holding that he also possesses the required experience if his service as Medical Officer was taken into consideration.

14. The action of the Commission in holding that Note II was irrelevant for selection, appears to be invalid. The interpretation put by R-3 on Note II is contrary to the scope and the nature of the post. We have given careful consideration to the nature of the post of Professor as well as the essential qualifications, particularly EQ (iii) that have to be fulfilled for the post. As the name indicates the Professor has to teach the students in the subject of hospital administration. Without leaving to ourselves to guess the duties of the Professor, advertisement itself

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makes it clear in paragraph 4 of the advertisement that the duties of the Professor are teaching the medical students in the GMC, and providing other services to the attached teaching hospitals, i.e., not only to teach the student in running the hospital in GMC as well as in the attached teaching hospital. Hence, Note-II was inserted excluding the experience in the post of General Duty Medical Officer/Medical Officer for the eligibility of the candidate in having the required experience. Considering the EQ (iii) the Commission in fact had come to the right decision to say that none of the candidates had possessed the required experience. However, it may be to avoid advertising the post once again or in order to fill up the post expeditiously or for whatever reason it may be, the Commission adopting a wrong interpretation to the essential qualifications overturning its own earlier decision, decided to treat ^{that} the experience in the post of Medical Officer also could be considered as valid experience as per EQ (iii). When Note II was inserted for the post in question, the Commission is wholly incompetent to hold that the same is irrelevant. The action of R-3 amounts to deleting Note II from the advertisement. In that case it should have re-advertised the post without Note II, so that candidates who would be working as Medical Officers also would have applied. Now, all those candidates are deprived of their right from applying and being considered for the post. Hence, R-3's action is violative of Article 14 and 16 of the Constitution. This is not a case where the Commission has decided to relax the qualification which it is entitled to do if the candidates are otherwise well qualified. In fact

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the Commission in his counter has clearly stated at para 4.9 that it had not relaxed the qualifications as contained in the advertisement and it had strictly adhered to EQ (iii).

15. If the period of service of the applicant in the post of Medical Officer was excluded for considering the experience of 12 years none of the candidates possess^{12 1/2} 12 years experience. The applicant's candidature, however, was cancelled by the Commission after he was interviewed, on considering the experience certificate on 30.12.97. We have, therefore, no hesitation in holding that the Commission had adopted an illegal interpretation to Essential Qualifications required, rendering the selection illegal, being arbitrary. The selection has to be set aside on this ground alone.

16. The selection of the R-5 is also bad for another reason. As stated supra, initially the Commission has decided only to call for interview the applicant and another. R-5 was held to be in-eligible to be interviewed. Hence, no interview call was sent to him. But, later, we find an interesting development. A close perusal of the file produced by the Commission reveals thus:

17. In the proceedings dated 22.10.97 the Commission has addressed a letter dated 22.10.97 to R-6 (Dr. Kak) requesting him to send the ACRs of the two candidates viz. the applicant and another candidate viz. Dr. Gopi Krishan Tiwari, informing him that those two candidates were^{to be} provisionally interviewed. In another letter of even date he was also requested to nominate a MR, to be present in the interview. In response to the said letters, R-6 Dr. Kak,

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the Principal of the College, instead of replying to the letters and by sending the ACRs of the candidates, he wrote a letter dated 28.10.97 (Memo No.GMC-ME-1-97/28563), recommending R-5 also to be called for interview. On this recommendation the Commission has initiated a Note clearly mentioning the letter of R-6 dated 28.10.97 and the recommendation made therein and the Under Secretary suggested that R-5 also be called for interview. The Note was subsequently approved by the Deputy Secretary as well as the Member of the Commission. R-5 was accordingly called for interview. The R-6 subsequently nominated himself as MR to be present in the interview. Thus, it is manifest that on the recommendation of the R-6, R-5 has been called, interviewed and ultimately selected. Hence, it can be stated that the decision taken by the UPSC not to call R-5 for interview was altered only on the recommendation of R-6 who was not at all connected with the UPSC or its process of selection. But for the letter of R-6, R-5 could not have been called for interview, leave alone, his selection. For the moment we are not here to say whether R-5 was rightly excluded earlier from the interview. That is entirely besides the issue. True, the presence of MR during the selection was only for seeking clarification on any point that may be raised during the interview and he had no say in the process of selection. Still, his presence made all the difference, as he was obviously an interested party and ultimately we find R-5 got selected. Hence, we are of the view that the selection of R-5 was influenced by a person who was not connected with the selection at all.

18. For the aforesaid reasons, it has to be held that the selection of R-5 is vitiated as violative of Article 14 and 16 of the Constitution and has to be set aside.

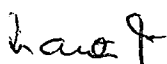
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19. Since the applicant succeeds on the above points, the other points raised by him need not be considered by us.

20. As the learned counsel for the applicant himself fairly conceded that applicant also was not possessing the 12 years experience as required in EQ (iii) and as we have held that the Commission has not relaxed or altered the Essential Qualifications, the applicant is not entitled for the consequential relief of declaring himself as selected. This prayer is, therefore, rejected.

21. In view of the aforesaid discussion, we partly allow the OA. We quash the impugned notification, declaring the results in so far as R-5 is concerned, as Professor, Hospital Administration-cum-Superintendent, GMC, Chandigarh. We direct the respondents 1-3 to fill up the post as early as possible by inviting applications and to consider the candidates in accordance with law. In the circumstances, the parties are directed to bear their own costs.



(Smt. Shanta Shastry)
Member (Admnv)



(V. Rajagopala Reddy)
Vice-Chairman(J)

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