

(09)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2528/96
T.A. No.

199

DATE OF DECISION 30-6-97

Sh.R.D. Mehla

Petitioner

Sh.S.K. Gupta

Advocate for the Petitioner(s)

Versus

VOI & Ors

Respondent

Sh.M.M. Sudan for R-2

Sh.R.V. Sinha for R-1 to 4

None for R-3

Advocate for the Respondent(s)

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri R.K. Ahooja, Member (A)

1. To be referred to the Reporter or not? *Yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

Central Administrative Tribunal
Principal Bench

O.A. No. 2528/96

New Delhi this the 30th day of June, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri R.K. Ahooja, Member(A).

R.D. Mehla,
S/o Shri Hari Kesh,
R/o E-132, Street No. 17-B, Sadh Nagar,
Part-II, Palam Colony,
New Delhi.

...Applicant.

By Advocate Shri S.K. Gupta.

Versus

Union of India through

1. Director General,
Directorate General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhawan, Maulana Azad Road,
New Delhi.
2. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
3. Mrs. Anjana Chattopadhyay,
Qr. No. 743, Jawaharlal Nehru University,
New Delhi.
4. Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.

...Respondents.

By Advocate Shri M.M. Sudan - for Respondent 2.

By Advocate Shri R.V. Sinha - for Respondents 1 and 4.

None for Respondent 3.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

This application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 against the alleged arbitrary action of Respondent 2, Union Public Service Commission, recommending the appointment of Respondent 3 to the post of Director, National Medical Library to Respondent 4, i.e. Ministry of Health and Family Welfare. The applicant submits that this recommendation

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of Respondent 2 has been made in violation of the recruitment rules, as Respondent 3 does not have the requisite experience of 15 years in a supervisory capacity which is an essential requirement for the post.

2. In pursuance of the Regulation made by Respondent 4, under the Directorate General of Health Services, National Medical Library (Director-Library), Recruitment Rules, 1990, the post of Director (Library) was to be filled up by promotion/transfer on deputation failing which it could be filled by direct recruitment. For the purpose of direct recruitment, the following essential qualifications are prescribed under the rules:

"Essential: (i) Master's Degree in Science (preferably Biological Science) from a recognised University or equivalent.

(ii) Degree in Library Science of a recognised University or equivalent.

(iii) 15 year's experience in a supervisory capacity in a Library.

Note-1: Qualifications are relaxable at the discretion of the U.P.S.C. in case of candidates otherwise well qualified.

Note-2: The qualification(s) regarding experience is/are relaxable at the discretion of the U.P.S.C. in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes, if at, any stage of selection, the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them".

Respondent 1 with a view to fill up the post of Director, National Medical Library, had sent a requisition to Respondent 2 and had appeared advertisement for the purpose/in the Employment News dated 8/14.7.1995.

The advertisement also carried the aforesaid essential qualifications, including that prescribed in clause (iii), namely, 15 year's experience in a supervisory capacity in a Library. Both the applicant and Respondent 3 had applied for the post of Director in response to the advertisement. According to the applicant, Respondent 3 who has been recommended by Respondent 2 has never worked in the capacity of a

Gazetted Officer in the scale of Rs.2000-3500 or above for a period of 15 years as required for the purpose of filling the post of Director. However, both the applicant and Respondent 3 had been interviewed by Respondent 2. The grievance of the applicant is that Respondent 2 had ignored one of the essential qualifications, namely, 15 years experience in a supervisory capacity in a Library which Respondent 3 did not possess. In the meantime, admittedly, the post of Director, National Medical Library, had lapsed in terms of the Ministry of Finance O.M. No. 7(7)-E(Coord)/93 dated 3.5.1993 as it was lying vacant for more than one year and the offer of appointment had not yet been made to Respondent 3 further to the recommendations made by the UPSC. However, it has been stated that/proposal regarding revival of the post is under active consideration.

3. The main contention of Shri S.K. Gupta, learned counsel for the applicant, is that Respondent 3 had never worked in a supervisory capacity for a period of 15 years as required under the rules. He submits that Respondent 3 had worked in the scale of Rs.550-900 (Revised Rs.1640-2900) on the post of Professional Assistant in J.N. University from the year 1972 and when this post was upgraded, she was given the scale of Rs.775-1000 in the year 1979 and later she was assigned the scale of Rs.2200-4000 on the same post. He further submits that the applicant has got the required qualifications under the recruitment rules as he had held the post of Librarian in the Indian Agriculture Research Institute (ICAR), Pusa from January, 1981 to December, 1986 in the scale of Rs.2200-4000, from January, 1987 to September, 1994 in the scale of Rs.3000-4500 and as Deputy Director in the scale of Rs.3700-5000 in the National Medical Library, DGHS from September, 1994 onwards. The post of Director is in the scale of Rs.4100-5300. The learned counsel has submitted that the applicant is having the

15 year's experience in a supervisory capacity. He has also drawn attention to the reply filed by the respondents 1 and 4 in which it has been stated that to a clarification sought by the 2nd respondent, the Ministry of Health and Family Welfare after consultation with the DOP&T informed the UPSC that the supervisory capacity is to be determined with reference to the appointment of the candidate in a Library of repute at least in the scale of pay of Rs.2000-3500 (Group 'B' Gazetted). It has also been stated in the reply that the service rendered in a Non-gazetted post cannot be taken into account for appointment to a Group 'A' post in the above JAG level in the scale of Rs.4100-5300. He relies on the judgement of the Supreme Court in Jagmal Singh Yadav Vs. M. Ramayya & Ors. (1977 (1) SLR 423) at page 430. He submits that Respondent 2, ~~xxxxxx~~ the UPSC had sought a clarification from the administrative Ministry who had in turn sought the same from the DOP&T, who is the nodal Ministry for the purposes of matters relating to recruitment, conditions of service, etc. It was, therefore, not open to Respondent 2 to ignore/clarification that Respondent 3, who was a candidate for the post of Director, did not possess the requisite qualification as she was never in the scale of Rs.2000-3500 for of 15 years the period/as prescribed in the recruitment rules. The learned counsel, on the other hand, submits that the applicant ~~this~~ possesses the requisite qualification as he was in the scale of Rs.2200-4000 from 1981 and, therefore, has 15 year's service in a supervisory capacity as clarified by the DOP&T. In the circumstances, the learned counsel has submitted that the recommendations made by Respondent 2 recommending the appointment of Respondent 3 to the post of Director, National Medical Library, by the letter dated 14.8.1996 may be quashed and set aside and the respondents may be directed to reconsider the matter and appoint the applicant to the said post.

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4. The respondents have filed their reply and we have also heard Shri M.M. Sudan, learned counsel for Respondent 2 and Shri R.V. Sinha, learned counsel for Respondents 1 and 4. Respondent 3 has also filed a reply in which she has stated that she has experience of 15 years in a supervisory capacity. She has stated that she joined JNU Library on 13.7.1972. From that date, she was supervising the Science division of the Library. In April, 1985, on promotion she was given higher responsibilities. She further states that she is having supervisory experience of nearly 25 years.

5. Respondent 2 has submitted that they (UPSC) did not take into consideration the pay scale while computing the experience because if pay scales are adopted as a yardstick, it will be difficult to make a comparison between the pay scales of Govt. of India, Public Sector Undertakings, Private Organisations, Universities/Colleges, etc. They rely on the order of the Hyderabad Bench of the Tribunal in O.A. No. 30/92 decided on 29.4.1994 in which it has been held as follows:

"...Hence it cannot be stated that by adopting emoluments as one of the criteria, equals are treated as equals, and on the other hand less meritorious satisfied that criteria while more meritorious had not satisfied the same, hence, it cannot be stated that there is no force in the contention of the learned counsel for the applicant that by adopting the emoluments as one of the criteria, the same is violative of Article 14 and 16 of the Constitution".

They have further stated that on 15.11.1995, they had written to the Ministry of Health & Family Welfare - Respondent 4 - requesting them to comment on the relevance of certain types of experience possessed/claimed by the candidates towards essential qualifications (iii) of the recruitment rules. This was followed up with another letter dated 6.2.1996 seeking comments of the Ministry on the relevance of experience possessed by eight candidates who had applied for the post. They have submitted that there were 24 applications for the post in response to the advertisement out of which 12 candidates had been provisionally

considered as suitable for interview and their summary sheets were furnished to Respondent 4. The UPSC has stated that Respondent 3, Smt. Anjana Chattpadhyay did not figure in this letter as the Commission was certain that her experience was relevant under the recruitment rules. While they have stated that the Ministry in their letter dated 6.6.1996 gave their comments on the provisionally selected candidates, they did not comment adversely on the experience claimed and possessed by Respondent 3 in the list of six candidates who were referred to by the Ministry's representative as not possessing experience in the scale of Rs.2000-3500. Respondent 2 in their reply has, therefore, stated that as per the Ministry's comments, Respondent 3, who has been recommended by the Commission had the necessary experience as per the essential qualification in clause (iii). They have further submitted that as regards their comments regarding supervisory capacity i.e. in the posts carrying pay scale of Rs.2000-3500, these were considered by the Commission and rejected. These facts have been brought out in the additional reply filed by Respondent 2 on 28.5.1997 wherein they have reiterated the stand taken by them that the Commission do not normally take into consideration the pay scales of the candidates while computing relevant experience as a yard stick to compare relevant supervisory experience.

6. However, in the reply filed by the concerned Ministry - Respondent 4 - on the above points submitted by Respondent 2, they have stated that on a clarification sought by the UPSC, they after consultation with the DOP&T informed them that the supervisory capacity is to be determined with reference to the appointment of the candidate in the scale of Rs.2000-3500. With regard to the clarification sought by the UPSC, they have stated that their comments conveyed vide letter dated 6.6.1996 cannot be treated that 'this respondent has approved the eligibility of the 3rd respondent'. In other words, they have categorically stated that it is for the second respondent to satisfy itself before calling her for personal interview.

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7. After careful consideration of the pleadings and the submissions made by the learned counsel for the parties, we feel that the main question for consideration in this case is whether Respondent 3 did or did not fulfil the essential qualifications regarding experience of 15 years in a supervisory capacity as prescribed in the recruitment rules for the post of Director, National Medical Library. The applicant has stated in the application that Respondent 3 did not possess the requisite qualification of 15 years in a supervisory capacity as she had never worked in the capacity of a Gazetted Officer either in the scale of Rs.2000-3500 or above for a period of 15 years. Needless to say, the question of a Gazetted post in a University does not arise but the question is whether she had worked in the scale of Rs.2000-3500 and whether this case is relevant for the purpose of determining the requisite experience in a supervisory capacity as prescribed in the rules. These rules have been made by the Govt. of India, Ministry of Health and Family Welfare, in exercise of the powers conferred by the proviso to Article 309 of the Constitution and are called 'the DGHS, National Medical Library (Director-Library), Recruitment Rules, 1990. It is relevant to note that the Ministry of Health and Family Welfare - Respondent 4 - had stated that on a clarification sought by the UPSC, they had in consultation with the DOP&T informed them that the supervisory capacity is to be determined with reference to the appointment of the candidate in a Library of repute, at least in the scale of pay of Rs.2000-3500. It is also relevant to note that Respondent 3 in spite of the specific averments/made by the applicant to the contrary, has not given a categorical reply as to when she has been appointed in this scale which makes her eligible for consideration for appointment to the post of Director. However, from the letter of the JNU dated 30.4.1996, it is seen that Respondent 3 was placed in the selection scale of Rs.2200-4000 in April, 1985 which does not give her 15 years experience as clarified by the DOP&T. Reliance

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placed by Respondent 2 on the observations made by the Hyderabad Bench of shortlisting of candidates of the Tribunal in O.A. 30/92 is in a different context/ wherein it has not been stated that such a clarification has been given.

8. The observations of the Supreme Court in Jagmal Singh Yadav's case (supra) are relevant wherein it has been noted that "at the relevant time the department of Personnel was in the Ministry of Home Affairs and it is that Ministry which was entrusted with the matters relating to recruitment and seniority. He (learned counsel) further submitted that the approval or sanction of the Home Ministry was mandatory for validity of any rule. It is, therefore, clear that the determination under rule 4(c) must be by the Ministry of Home Affairs at the relevant time and if a decision were taken by the Home Ministry under the Rules of Business under Article 77(3) of the Constitution the determination would be of the Government of India". In the present case, the DOP&T has given a clarification which, in the context of the recruitment rules, can be considered as supplementing the rules, and they are, therefore, not to be ignored as redundant or irrelevant. It is settled law that executive instructions can supplement the statutory rules though they cannot supplant them, and in the present case there is nothing illegal in the DOP&T clarifications which had been given to the query on the facts of the case raised by the Ministry. Therefore, it cannot be held that Respondent 3 fulfills the essential qualifications prescribed in the recruitment rules, for being eligible to be considered for the post of Director, National Medical Library. It is also not the case of Respondent 2 that they have relaxed the qualifications in her favour.

9. In District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another Vs. M. Tripura Sundari Devi (1990(3) SCC 655), the Supreme Court has made the following observations which are relevant in the present case:

"It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only

between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact".

facts and decision of the Supreme Court
10. In the light of the above/ the recommendation letter issued by Respondent 2 dated 14.8.1996 recommending the name of Respondent 3 for the post of Director, National Medical Library, to Respondent 4, cannot be sustained and it is accordingly quashed and set aside. However, the prayer of the applicant that he may be appointed to this post is also without any basis as he only has a right to be considered for the post and, therefore, such a direction cannot be given. Since the post of Director, National Medical Library is stated to have lapsed, no further directions in the matter are required.

11. In the result, the application is partly allowed, as above.

No order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'