

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 19/1997

New Delhi this the 2nd Day of April 97

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

Dr. Ali Murtaza,
Son of Shri Shaukat Ali,
Resident of C-12 Gafoor Nagar,
Jamia Nagar,
New Delhi

Applicant

(By Advocate: Shri B.S. Charya)

Vs

1. Director General
Central Government Health Services,
Dte. of Central Govt. Health Services,
Nirman Bhawan,
New Delhi.
2. Union of India,
Ministry of Health and Family Welfare,
Government of India,
New Delhi
3. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi
through its Secretary Respondents

(By Advocate: Shri M.K. Gupta, Counsel
for Respondent Nos. 1 & 2)

(By Advocate: Shri M.M. Sudan, Counsel
for Respondent No.3)

O R D E R

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case was working as Medical Officer (Unani) since 1987 to 1989 on ad hoc basis and thereafter in pursuance to this Court's order in O.A. No. 1598/89 decided on 28.9.1990, from 11.3.1991 till todate that is to say he has been working for more than seven years on ad hoc basis. But when the question of considering his candidature for the regular post came, the petitioner was excluded by short listing and he was given an opportunity of being considered to the regular post. The short question

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involved therein is, therefore, whether the respondents were justified in excluding the petitioner from consideration for regular appointment to the post which the petitioner was holding admittedly for more than seven years under the power available to the respondents for short listing.

2. When the services of petitioner after an earlier spell of about two years of adhoc service from March 1987 were terminated by an order dated 9.8.1989, he approached this Tribunal for appropriate relief either of regularisation or consideration of his services on ad hoc basis against available vacancies. This Court after considering various decisions especially that of the Hon'ble Supreme Court in Dr. A.K. Jain and Others Vs. Union of India, JT 1987 (4) SC 445, held that the ratio in the said case was applicable to the case of the petitioner. Accordingly, the following directions were issued:

3. In the light of the aforesaid judicial pronouncements, we dispose of the present application with the following directions:

(i) respondents shall offer to the applicant the vacancy of Unani Physician at Calcutta and in case he agrees to join the post, he shall be appointed to the same. He shall not be replaced by any newly recruited Unani Physician unless he is a nominee of the UPSC.

(ii) The respondents shall report the case of the applicant to the UPSC for consultation and upon consultation with the UPSC, he shall be continued in service in the light of the advice of the UPSC till regular appointment is made to the post at Calcutta offered to him.

(iii) If the applicant applies for selection by the UPSC for any post that may fall vacant, the respondents shall consider

giving him relaxation in age to the extent of the period of service rendered by him on ad hoc basis.

- (iv) The respondents shall comply with the above directions within a period of one month of the receipt of this order."

4. Thereafter it is stated that out of the total ten posts, three vacancies arose which were advertised in January 1996 and the petitioner was holding the post all this while against the available permanent vacancies. The petitioner had also submitted himself for consideration in the year 1992 and was not successful then, and since vacancies were still available, petitioner continued holding the post on an ad hoc basis til todote.

5. In response to the advertisement referred to above dated 13.1.1996, the petitioner applied for consideration of his case against the available vacancies and the submission of the respondent No. 2 viz., the Union Public Service Commission was that since there were three posts in all and one reserved and two unreserved, and since as large as 440 candidates applied against unreserved posts, the answering respondents were left with no option but to short list the candidates to be called for interview. Accordingly, the answering respondent seems to have short listed and the petitioner happened to be excluded in this process of short listing. The respondents did not disclose the short listing criteria adopted for general candidates and yet it had so happened that the petitioner happened to be excluded from being considered for regular appointment against the regular vacancies.

6. In our opinion whatever be the criteria adopted by the respondents for short listing, since the petitioner has been holding the post for more than seven years, to the satisfaction of the respondents, and when a situation comes when a regular incumbent is selected by UPSC and the petitioner is likely to be replaced by a regular incumbent in accordance with the rules, and the petitioner's application for candidature for the said post and instead of being considered along with others for the said vacant post, were wrongly excluded by the respondents by adopting undisclosed criteria of short listing. The petitioner may not have any right for regular appointment/promotion and the petitioner's case is not that he may be considered for regularisation on account of his seven and a half years adhoc service either. His only request was that he may be considered along with others when the vacancy available is being filled up by the respondents, which will have an effect of replacing him and his adhoc service.

7. The case of the respondents is that the adhoc services of the petitioner were considered for the purpose of age relaxation and it was stated that even after the entire period of services were considered and relaxed for the purpose of calculating the eligibility as far as the age is considered, the petitioner could not have been permitted to appear for the test and compete with others. The learned counsel for the petitioner disputed this fact. It was stated that the date of birth of the applicant is 25.1.1955 and the closing date for the receipt of the application was 1.2.1996. According to the petitioner the age of the applicant was to be considered as on the date of closing and the petitioner was 41 years and six days only on the date of closing. The

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applicant has admittedly, the actual period of ad hoc service in the post viz., for seven years five months and twenty four days and in the event the ad hoc services held by the petitioner is considered, the petitioner would have been below the eligible age of 35 years. The submission of the petitioner seems to be correct on the face of the pleadings by either parties. The respondents also made a feeble defence that the age relaxation was once considered in the year 1992 in pursuance to the previous orders of this Court and such relaxation could not be continued to be given even for this second interview.

8. We are of the considered view that even though the Court had in the year 1990 had directed for age relaxation, the petitioner had a right for consideration when a regular incumbent is to replace him from the post he was holding on ad hoc basis for more than seven years and the respondents should have even otherwise relaxed the age to the extent of ad hoc service for the purpose of considering the eligibility with regard to the age. The age bar has a direct relation with the post which he is holding and since the petitioner has aged only by holding the post even though it is on ad hoc basis, and admittedly it was to the satisfaction of the respondents, short listing and excluding the petitioner from being considered, in the the circumstances of the case, is totally unjustified.

9. In the circumstances we allow the O.A. to the extent that the respondents shall consider the petitioner against the vacancies available along with others before the petitioner who is holding the post for more than seven and a half years on adhoc basis is replaced by a candidate who may

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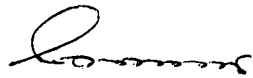
come after such selection process. This court had passed a status quo order on 3.1.1997 and it is in the circumstances that we are issuing the following directions:

10. The respondents are restrained from making any regular appointment in pursuance to the selection process being held on the basis of the advertisement dated 13.1.1996 without considering the candidature of the petitioner. Even if the process is at an advance stage, the petitioner shall also be interviewed and the case of the petitioner shall be decided on merit before replacing the petitioner by a regular incumbent after the selection process is complete. These directions will pertain to the two general vacancies and if the selection process is complete with respect to the reserved vacancies and petitioner cannot have any claim against reserved vacancies, the respondents are at liberty to proceed with the process of selection in case of reserved vacancies. The respondents shall invite the petitioner for taking part in the selection process initiated on the basis of the advertisement dated 13.1.1996 and on the basis of the recommendation of the Union Public Service Commission, the respondents shall pass appropriate orders in accordance with rules.

11. It goes without saying that the ad hoc services of the petitioner for which the status quo order was issued by this Court, shall not be displaced by any regular incumbent who is likely to be appointed after completion of the selection process, unless the case of the petitioner is

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also considered for the purpose of selection. With these orders this Original Application is disposed of. No order as to costs.



(S.P. Biswas)
Member (A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

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