

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 195/1997

New Delhi this the 27th day of June, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Dr. Vinod Puri
S/o Late Shri Bhagwan Das Puri
R/o D-III/Type IV, M.A.M.C. Campus
New Delhi.Applicant

(By Shri G.D.Gupta, Advocate)

-Versus-

1. Union of India through
Secretary to the Government of India
Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi.
2. Secretary (Medical)
Government of National Capital Territory of
Delhi, 5 Sham Nath Marg,
Delhi-110054.
3. Union Public Service Commission
through its Secretary
Dholpur House, Shahjehan Road
New Delhi. Respondents

(Shri V.S.R.Krishna, Advocate)

O R D E R (ORAL)

V.K. Majotra, Member (A):-

Through this OA, the applicant has impugned letter dated 4.9.1996, Annexure A-1 issued by respondent No.1 rejecting the request of the applicant for recognition of service rendered by him as Assistant Professor of Neurology during the period 25.1.1985 to 24.7.1986 for the purpose of promotion. The applicant has obtained his Master's Degree in Medicine (M.D.) in 1978. Thereafter, he did his Super Speciality Degree in Neurology (D.M.) in 1984. He served as Senior Resident in the Department of Neurology, G.B.Pant Hospital, New Delhi for the period from 10.9.1981 to 24.1.1985. The recruitment to the

various posts in the Central Health Service is governed by the Central Health Service Rules, 1982, (for short, the rules of 1982). The essential qualifications prescribed for the post of Assistant Professor were as under:-

(21)

- "(i). A recognised medical qualification included in the First or the Second Schedule of Part-II of Third Schedule viz. M.B.B.S.
- (ii) Post Graduate Degree in the concerned Speciality mentioned in Part-A of Schedule VI or equivalent.
- (iii) At least three years teaching experience in the concerned Speciality as Lecturer/Tutor/Registrar/Demonstrator/Senior Resident after the requisite Post-Graduate degree qualification.

For Super Speciality of Neurology under the Rules of 1982, the qualification of D.M.(Neurology) has been specified as the requisite Post Graduate Degree qualification. Under the rules of 1982, the post of Lecturer/Teacher/Registrar/Demonstrator became non-existent and the post of Assistant Professor was included in the Central Health Service. The applicant was selected for the post of Assistant Professor on ad hoc basis in 1983. It is his claim that he did his M.D. in 1979 and had three years' experience thereafter as Senior Resident from April 1980 to July 1983. Citing the case of one Dr.I.M.S.Sawhney, it has been contended that the Ministry of Health & Family Welfare and the U.P.S.C. interpreted the requirement of "at least 3 years' teaching experience in the concerned Speciality as Lecturer/Tutor/Registrar/Demonstrator/Senior Resident after the requisite Post-graduate Degree

(22)

qualification" to mean three years' teaching experience in the concerned speciality in the aforesaid post only after Post-graduate degree qualification of MD/MS and not after DM/MCh. It is the claim of the applicant that the experience gained as a Senior Resident was co-existent with the acquisition of the qualification of D.M./M.Ch and the Senior Residency could not extend after a period of three years and during this period the said qualification itself was acquired. Between 1984 and 1986 advertisements appeared for the post of Assistant Professor in the department of Neurology, Gastroenterology, Cardiology, Neuro Surgery and Plastic Surgery. Whereas interviews were held for various other disciplines, no interview was held for the department of Neurology. Candidates were appointed to the post of Assistant Professor in the departments of Cardiology and Plastic Surgery even though they did not fulfil the requirement of three years' teaching experience after D.M./M.Ch. These candidates had only three years' teaching experience after M.D./M.S. and the rules of 1982 were relaxed by the Union Public Service Commission in this behalf in their cases. However, in the case of department of Neurology, a different yardstick was adopted inasmuch as no interviews were held on the ground that none of the candidates fulfilled the requisite three years' teaching experience and the power of relaxation was not exercised as in the case of other departments. UPSC is stated to have been asked by the DOP&T to clarify as to why power of relaxation was not

(23)

exercised in the case of the applicant. However, no plausible explanation came from the UPSC. Vide notification dated 25.7.1986, the rules of 1982 were amended to the effect that three years' experience for recruitment to the post of Assistant Professor was meant to be after acquisition of M.D./M.S. and not D.M./M.Ch. On ¹⁴ 27.11.1986, the post of Assistant Professor in the Department of Neurology was advertised and the applicant was selected and appointed with effect from 14.8.1987. The applicant made a representation to the respondents on 25.8.1989 followed by a few more representations for treating him to have been appointed on regular basis from 25.1.1985. It has been alleged that ~~grave~~ ^{grave} discrimination has been meted out to him as candidates of various super-specialties like that of Cardiology, Plastic Surgery and Neuro Surgery were selected as Assistant Professor even though like the applicant, they also lack under the rules of 1982 the requisite experience of three years after acquiring the Post Graduate qualification of DM/M.Ch. The applicant was given the benefit of service rendered by him from 25.7.1986 i.e. the date when the rules of 1982 were amended and not from 25.1.1985 as claimed by him.

2. The main issue in the present case is that while for recruitment to the post of Assistant Professor in other departments like the Cardiology, Plastic Surgery, the candidates with three years' teaching experience after acquisition of Post Graduate qualification in MD/M.Ch were not available and yet candidates were interviewed, selected and appointed

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(24)

after according relaxation in the rules. The applicant was denied the same treatment although he too had been working in the post of Assistant Professor though on ad hoc basis right from 25.1.1985. In applicant's case interviews after the post was advertised on 17.8.1985 and 25.1.1986 were not held. Only later on when the post was again advertised on 27.11.1986, the applicant was ultimately selected and appointed on regular basis with effect from 14.8.1987. Whereas the UPSC was not in a position to render any plausible explanation for not relaxing the rules in the case of the applicant, the DOP&T was in favour of according similar treatment as was done in the case of other super specialities. Ultimately the applicant was not given the benefit with effect from 25.1.1985 which according to him is illegal, arbitrary and violative of Articles 14 & 16 of the Constitution.

3. In their counter, the respondents have admitted that in the case of certain candidates in disciplines other than Neurology, the experience of three years' required for appointment as Assistant Professor after the first Post Graduate Degree i.e. M.D/M.S. was taken into cognizance. The case of the applicant was decided by the Government by giving him the benefit of regular appointment with effect from 25.7.1986. Subsequently Dr. M.M. Mehndiratta, Associate Professor of Neurology, G.B. Pant Hospital also requested the Government that ad hoc service rendered by him from 27.6.1986 till he was regularly appointed may also be counted for the purpose of

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(25)

seniority etc. Dr. Mehndiratta was not eligible for first two times when UPSC advertised these posts. He became eligible only on the third occasion i.e. in November 1986. Government compared the case of Dr. Mehndiratta with that of Dr. Sanjay Tyagi and decided in the negative on the ground that his claim of discrimination would arise only with reference to that of Dr. J.C. Mohan. It was thus decided that in the case of Dr. Mehndiratta, his ad hoc service should be counted from the date of Dr. Mohan's appointment in 1986 to neutralise the adverse effect of the discrimination. The benefit was accordingly allowed to Dr. Mehndiratta with effect from 16.9.1986. The applicant claimed for further antedating his date of entry by counting the ad hoc service rendered by him from 25.1.1985 onwards with reference to the case of Dr. D.S. Gambhir of Cardiology who was recommended by the UPSC in 1985. The respondents considered this request and it was decided to accord him the benefit of regularisation of ad hoc service with effect from 17.8.1985. One Dr. Ravi Nehru, Associate Professor of Neurology also sought the benefit of ad hoc service for seniority. The Government agreed to allow the benefit of regularisation of ad hoc service of Dr. Ravi Nehru with effect from 23.7.1986. In the meantime, two more Associate Professors in the speciality of Neurology, namely Dr. M.M. Mehndiratta and Dr. (Mrs.) Geeta A. Khwaja represented against the decision of the Government to the antedating of the appointment of Dr. Ravi Nehru. In this background, the respondents decided that the benefit of ad hoc service cannot be

26

allowed to anyone and status quo would prevail in the case of Dr. Puri and Dr. Mehndiratta. The respondents have stated that the UPSC has not mentioned anything about relaxation of experience in any case. Therefore, it cannot be said that the recommendations were made in these specialities by relaxing Central Health Rules. According to the respondents, the benefit of ad hoc service cannot be given for promotion and seniority. However, the applicant was given benefit of ad hoc service from 25.7.1986 to 13.8.1987 which has not been given to any other officer except in the case of Dr. M.M. Mehndiratta.

4. We have heard the learned counsel and gone through the material placed in the file carefully. Citing the instances of Dr. D.S. Gambhir, Dr. J.C. Mohan and Dr. Sanjay Tyagi in the department of Cardiology and Dr. Karoon Aggarwal in the department of Plastic Surgery who did not fulfil the qualification relating to experience of three years after acquisition of the Post Graduate qualification of D.M./M.Ch were considered and selected for the post of Assistant Professor in their respective disciplines, the learned counsel of the applicant alleged discrimination in the case of the applicant. He further contended that in the case of the aforesaid personnel relaxation was duly accorded in rules or the relaxation was deemed to have been accorded when these personnel were selected and appointed as Assistant Professor though they did not possess the prescribed qualification under the rules of 1982. The benefit of such deemed relaxation

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27

was not given in the case of the applicant. The learned counsel relied on the decision of the Supreme Court in the case of G.S.Lamba & ors. v. Union of India & ors., AIR 1985 SC 1019 wherein it was held that once the power to relax a given mandatory rule exists and an action in derogation of the rule has been repeatedly taken year after the year, it would be a permissible inference that the action was taken in relaxation of the rule for which the power exists. A body like the Government of India presumably knew that there is a statutory quota for recruitment but it also presumably knew that it had power to relax and for exigency of service repeatedly acted in derogation of the quota rule, and therefore it would be permissible to infer that the action was taken in relaxation of the mandatory quota rule.

5. The learned counsel also drew our attention to an order dated 31.8.1994 passed by the Principal Bench of this Tribunal in OA No.1363/1990 in the case of Dr.I.K.Bhatnagar vs. Union of India & ors. The controversy in that case related to the appointment to the post of Director N.R.L.C. on transfer on deputation basis. Whereas Dr.Bhatnagar's adversary Dr.N.V.Nair had continued on the post of Director for a full term of 4 years, it was held that in case Dr.Bhatnagar was selected, he was to be given two advance increments in the scale of Director to compensate him for the delay in the decision of that

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6. The learned counsel for the respondents contended that the applicant's case relates to direct recruitment to the post of Assistant Professor. He was selected and appointed on 14.8.1987 in response to an advertisement issued on 27.11.1986. The question of antedating his appointment as such does not arise at all. The rules of 1982 were amended on 25.7.1986 and the applicant had been selected thereafter in response to an advertisement issued after the rules were modified. The applicant became eligible for appointment to the post of Assistant Professor in July 1986 when the amended rules were notified. ^{He} drew support from the case of Dr. Anuradha Bodi and ors. vs. Municipal Corporation of Delhi & ors. (1998) 5 SCC 293. In that case, the petitioners were appointed as General Duty Medical Officers Grade II between 1982 and 1985 on ad hoc basis and on being selected by the UPSC, they were appointed on regular basis with effect from 27.6.1991. It was held that the petitioners were not entitled to regularisation from the dates of their initial appointment on ad hoc basis. He also drew our attention to an order dated 5.5.1998 made by the Hon'ble Supreme Court in the case of Dr. Deepak Saxena & ors. vs. Union of India & ors. Writ Petition (C) No. 661/1995. It was held that the seniority could not be fixed by taking into account their ad hoc service prior to the date of their regularisation.

7. In our view, the ratio laid down in the case of G.S. Lamba (*supra*) is not applicable to the facts of the present case. Whereas that case related to

(29)

promotions made in excess of promotee quota for a long number of years vis-a-vis the quota prescribed for the direct recruits, the present case does not relate to quota~~s~~ prescribed for promotees /direct recruits. The present is the case relating to direct recruitment of the applicant as Assistant Professor for which qualifications are prescribed under the rules. Whereas under the rules of 1982, it was necessary to have three years teaching experience after DM/M.Ch, these qualifications were changed to three years' teaching experience after MD/MS only when the rules of 1982 were amended on 25.7.1986. Another important distinction, we take note of is that the Government had been resorting to promotion in excess quota for a long number of years. In the present case, a departure has been made in a few cases when the prescribed qualification relating to experience was not followed by the UPSC and the Government.

8. The case of Dr. I.K.Bhatnagar (supra) also relates to a different controversy. That related to appointment on transfer on deputation basis. Whereas Dr.Nair did not hold an analogous post and was, therefore, not eligible for selection on deputation but was accorded relaxation and selected to the post, Dr.Bhatnagar was not given relaxation and was ultimately given the benefit of two advance increments in the scale of Director to compensate him for the delay in the decision of the OA and Dr.Nair was allowed to complete his term of four years. Again the

(30)

facts of the present case are distinguishable from those of the case of Dr. Bhatnagar and the ratio in that case would not be applicable to the facts and circumstances of the present case.

9. From the facts and circumstances of the case, we are of the view that basically the UPSC and the Government should not have deviated from the provisions of the rules and selected the candidates to the post of Assistant Professor in different disciplines when they did not fulfil the prescribed qualifications relating to experience under the rules of 1982. The applicant was not considered for the post of Assistant Professor under the rules of 1982 as he did not have three years' teaching experience after acquiring Post Graduation qualification in DM/M.Ch. The others who had been selected though they did not have the prescribed teaching experience were obviously selected erroneously. The applicant has based his case on discrimination meted out to him vis-a-vis those who were selected as Assistant Professor who like him did not have the requisite teaching experience. In our view, the applicant has no right whatsoever and cannot be given the relief wrongly given to others. Wrong orders cannot be the foundation for claiming equality. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right. Reliance is placed on State of Haryana & ors. vs. Ram Kumar Mann, 1997 SCC (L&S) 801.

(31)

11. Having regard to the aforesaid discussion, we do not find merit in the OA. The same is accordingly dismissed but without any order as to costs.

V.K.Majotra

(V.K. Majotra)
Member (A)

Ashok Agarwal

(Ashok Agarwal)
Chairman

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