

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2444/97

New Delhi this the 15th day of September, 1999.

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE-CHARIMAN(J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Dr. Jyoti Lochab,
W/o Dr. S.P. Lochab,
age 37 years,
R/o 1165, Sector-A, Pocket-B,
Vasant Kunj,
New Delhi.

...Applicant

(By Advocate Shri K.N.R. Pillai)

-Versus-

1. Union of India through
the Secretary,
Ministry of Health and
Family Welfare,
Nirman Bhawan,
New Delhi.

...Respondent

(By Advocate Shri R.V. Sinha)

O R D E R

By Reddy, J.

The applicant was appointed as Physicist in the pay scale of Rs.3000-4500 in Safdarjung Hospital on ad hoc basis for a period of six months by order dated 2.12.91. Her ad hoc appointment was continued upto the date of filing of the OA in 1997. It is stated that the applicant is still continuing even on date. As per the recruitment rules for the post of Physicist in Safdarjung Hospital the essential qualifications are second class Masters Degree in Physics and two years practical training and experience in X-Ray department or laboratory. The age should not exceed 35 years. On the date of the appointment in 1991 the applicant was fully qualified for appointment in the regular post. The applicant possesses first class Degree in Physics, Post Graduate Diploma in Hospital Physics and Radiological Physics, 14 months experience in AIIMS and Batra Hospital

(22)

and three years as Radiological Safety Officer. There was also a regular vacancy in 1991 and it is case of applicant that the respondents ought to have filled up the same as per the rules. In 1991 he was qualified and also within the age limit, i.e., 35 years, but on the date of filing of the OA the applicant was 37 years. In spite of repeated representations for regularisation the respondents have not taken any action and there has been no response. Hence, the OA.

2. It is the case of the respondents that there were three vacancies of Physicist/Senior Physicist in the pay scale of Rs.3000-4500. Subsequently in March, 1992 two posts of Physicist in the lower pay scale of Rs.2200-4000 were created. The post of Physicist was upgraded owing to the higher qualifications and responsibilities attached to the posts of Physicist from the scale of pay of Rs.2200-4000 to Rs.3000-4500 in pursuance of the recommendations of the 4th Pay Commission. There were no recruitment rules for the upgraded posts as well as in the post of Physicist in the scale of Rs.2200-4000. Accordingly, it was decided to fill up all the five posts of Physicist/Senior Physicist by direct recruitment in the pay scale of Rs.2200-4000 with the approval of the UPSC. But the UPSC rejected the proposal on the ground that the recruitment was sought to be made in a lower scale. Hence the posts remained unfilled. It is also averred that the steps were being taken to fill up the posts of Physicist on regular basis

CAA



through UPSC. The learned counsel for the respondents, therefore, contends that the applicant can only apply whenever the UPSC advertises for the post of Physicist.

3. The learned counsel for the applicant contends that the applicant is now overaged and is not eligible under the rules for appointment as Senior Physicist, disentitled to apply for the post. The learned counsel for the applicant draws to our ^{attention} ~~notice~~ the judgement of the Principal Bench in OA-1259/90 and batch disposed of by order dated 8.10.91 and the order of the Supreme Court in SLP (c) 13578-84/92 dated 3.5.93 and also the judgement of the Bombay Bench of the Tribunal in OA-619/88 disposed of on 8.10.91. In these cases the applicants were Medical Doctors who were recruited on ad hoc basis in 1989. The Tribunal directed that they should be regularised by treating them as forming a separate block and on the basis of evaluation of their service record. Their seniority should be reckoned from the date of initial appointment on ad hoc basis as Medical Officer. The order of the Principal Bench of the Tribunal was also approved by the Supreme Court.

4. The initial appointment of the applicant as Physicist was stated to be ad hoc in 1991 till selection was made by the UPSC. It is not in dispute that in 1991 there were clear vacancies of Physicists in the pay scale of Rs.3000-4500 in which the applicant was appointed. We do not find any reason in the counter-affidavit for delaying the appointments on regular basis though such appointment was in contemplation of the respondents. The only reason appears to be that UPSC was not asked to fill



24

up the posts. It is also not in dispute that there were recruitment rules existing in 1991. The applicant was fully qualified as per the recruitment rules for appointment as Physicist. He has been working since 1991 and has been discharging the functions of the Physicist in Safdarjung Hospital. If the respondents had taken steps in 1991 or immediately thereafter the applicant would have been found eligible for appointment. Unfortunately, applicant has now become overaged in the service of the respondents as Physicist and is not eligible to apply for the said post. The Principal Bench in OA-1259/90 while disposing of the OA by order dated 8.10.91 considered the ad hoc appointment of Medical Doctors and their continuously discharging the functions of Doctors for quite some time and directed regularisation of their services w.e.f. their initial appointment. The Supreme Court thereafter in SLP-13578-84/92 approved the order. || In the circumstances and facts of this of the particular case, to meet the interests of justice, we direct the respondents to consider regularisation of the service of the applicant as Physicist in the pay scale of Rs.3000-4500 through UPSC, relaxing the qualification as to age, on the basis of evaluation of the ACRs of the applicant and to continue her in service till he was so considered.

5. The OA is accordingly disposed of. No Costs.

Shanta Shastry
(Shanta Shastry)
Member (A)

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

'San.'