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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A.NOS.1498 & 1076 OF 2000

New Delhi, this the 23rd day of November, 2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

OA-1498/2000

Hakim Wadud-ul-Hasan
S/O Maulana Nuril Hasan,
R/O C-31, Minto Road, *New Delhi*Applicant.
(By Advocate: Sh. M.K.Gupta)

VERSUS

1. Union of India
through its Secretary (ISM),
Ministry of Health & Family Welfare,
IRCS Building, New Delhi-1.
2. Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman bhawan, New Delhi-1.
3. Union Public Service Commission,
through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-3.
4. Directorate of Estates,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-1.Respondents.
(By Advocate: Sh. Madhav Panikar for Respondents 1 & 2
Sh. S.M.Arif for Respondent 4
None for Respondent 3)

OA-1076/2000

Hakim Wadud-ul-Hasan
S/O Maulana Nuril Hasan,
R/O C-31, Minto Road, *New Delhi*Applicant.
(By Advocate: Sh. M.K.Gupta)

VERSUS

1. Union of India through the Secretary
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-1.
2. The Director General of Health Services,
Govt. of India,
Nirman bhawan, New Delhi-1.
3. Secretary, Indian System of Medicines,
Red Cross Annexe Building,
New Delhi-1.Respondents.
(By Advocate: Sh. Madhav Panikar)

Q.R.D.E.R. (ORAL)

BY HON'BLE SHRI S.A.T. RIZVI, MEMBER (A):-

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These OAs, namely, OA Nos. 1498/2000 and 1076/2000 have been filed by the same applicant and are based on the same issues. We, therefore, propose to dispose these of by this common order.

2. Briefly stated the facts of the case are as follows:

3. The applicant was appointed as Unani Physician on adhoc basis w.e.f. 9.8.83 after being duly selected by the Selection Committee in accordance with the rules. He continued on the said post without interruption or break in service till 4/7.9.98 when his services were terminated by an order of the same date passed by the respondent No.1. Earlier, in 1985, the same respondent had terminated the service of the applicant but that order could not served upon him and subsequently the respondent passed another order of 12.6.95 keeping the said order of termination in abeyance. The Civil Suit No.241/85 filed in that case was transferred to this Tribunal and was disposed of vide order of 14.9.92. In that case, the departmental representative had held out an assurance that the services of the applicant will be continued. Subsequently, the relevant service rules underwent a change by which the requirement of a degree instead of a diploma was prescribed as the educational qualification for the post of Unani Physician. The applicant is a diploma holder. He was, therefore, hit by the new service rules which had come into existence w.e.f. 24.9.86. Anticipating problems because of the new rules having been enforced and thinking that he was

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not likely to be regularised under the new rules, the applicant filed OA-2832/92 which was decided by this Tribunal by its order dated 15.12.97. The relevant portion of which is reproduced below:-

"5.....In any event since the applicant is working without interruption since 1983, he shall not be removed from service except in accordance with the rules and his services shall be considered if he is selected as regular from the date of his initial appointment. It is further clarified that in case the applicant is found eligible in accordance with the erstwhile Recruitment Rules existing at the time when the vacancy arose, the applicant will be entitled to all consequential benefits in accordance with the said Recruitment Rules."

4. By the aforesaid order, the Tribunal, taking note of the fact that the applicant had been working uninterruptedly since 1983, ordered that he shall not be removed from service except in accordance with the rules and his services shall be considered if he is selected as regular from the date of his initial appointment. Meanwhile, in accordance with the same order of this Tribunal, the case of the applicant was referred to the UPSC for a decision as regards regularisation of his services in terms of the old rules of 1975. The UPSC had found him unfit and the aforesaid order of termination resulted therefrom. The aforesaid termination order was thereafter challenged in OA-2058/98 which was allowed vide order of this Tribunal dated 13.12.99. The Tribunal had quashed the aforesaid termination order. The Tribunal had also directed the respondents to send the ACR dossier of the applicant to the UPSC for consideration for the purpose of regularisation. It is

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relevant to note right here that by the same order, the Tribunal had also directed that the UPSC should be informed that the criminal case No. 4448/91 under Section 498A IPC had ended in applicant's acquittal on his being not found guilty of the charge. This led to a Review Application being filed by the UPSC impugning the aforesaid order of this Tribunal dated 13.12.99. However, the same was dismissed on 26.5.2000. Since the aforesaid order dated 13.12.99 of this Tribunal had not been complied with, the applicant filed CP 124/2000 which was dismissed on 1.8.2000. The Tribunal had in its order in question observed that the case of the applicant was sent to the UPSC for consideration for the purpose of regularisation of his services but the UPSC did not find him fit for regular appointment. The respondents had on 25.5.2000, however, held out an assurance that the applicant's case will be considered for regularisation in accordance with the rules, instructions and judicial pronouncements on the subject within two weeks from the date of the receipt of a copy of the order dated 25.5.2000. This assurance was kept up and the applicant's case was referred to the UPSC. The Commission, however, found him not suitable for regular appointment to the post of Medical Officer (Unani) once again.

5. The applicant's case is that consideration by the UPSC on the latter occasion is a ~~farce~~ and is an eye wash. The learned counsel for the applicant contends that applicant's case was unduly influenced by the respondent No.1's communication dated 20.1.2000. In this

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connection, the learned counsel has drawn our attention to the contents of the RA filed by the respondent No.3 in OA-2058/98. It has been mentioned in this RA that the UPSC had received a communication dated 20.1.2000 from the applicant's employer, namely, Ministry of Health & Family Welfare wherein it has been clearly stated that the applicant was not clear from vigilance angle and his integrity was doubtful. It was also stated that the applicant was not fit for appointment in Govt. service. (emphasis supplied). In the same connection, the learned counsel for the applicant further states that a communication issued by the respondent No.1 as late as on 20.8.97 had clearly shown that no disciplinary proceedings were pending or contemplated against the applicant. The said letter was written in the context of crossing of efficiency bar which according to the learned counsel requires clearance from vigilance angle. So, there was nothing against him at any rate upto August, 1997. The learned counsel also contends that the applicant has always been kept in dark insofar as withholding of his integrity is concerned. The applicant is presently not in service, having been terminated way-back on 4/7.9.98. The learned counsel states that at the same time, the proceedings for his eviction from the Govt. Quarter have been initiated and these proceedings seem to be in an advance stage. However, the applicant continues to occupy the accommodation by virtue of an ad-interim order earlier passed by this Tribunal.

6. In relation to the other OA where the applicant has challenged the order of termination of his services

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w.e.f. 4/7.9.98, the plea taken by the respondents is that since the order passed by this Tribunal in OA-2058/98 merely stated that the impugned order dated 4/7.9.98 stood quashed and set aside, they have not proceeded to reinstate him. Their plea is that they had meanwhile referred the case of the applicant to the UPSC again in terms of the direction of the Tribunal in the same case and would have been willing to take him back in service if the UPSC had thought it fit to recommend his case for regularisation. Since that did not happen and the UPSC again gave a verdict against the applicant, he remains out.

7. The learned counsel for the applicant has contended that the aforesaid order of this Tribunal by which the order of termination of the service of the applicant had been quashed and set aside, could have only one implication which is that the applicant should have been reinstated promptly and, since there is no evidence of gainful employment of the applicant during the relevant period, he should have been so reinstated from the date of termination of his services. There could be no other implication of the order of this Tribunal dated 13.12.99. We strongly feel that it would have been in order and proper if the respondents had used their common sense to ascertain the implication of the orders passed by this Tribunal which had left no manner of doubt about its correct import and true implication.

8. We find that the learned counsel for the respondents has no fresh ground to plead in his case

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except what has been mentioned in the replies filed by him in both the OAs. The ground essentially taken by the respondents in brief is that what has been stated in their reply is correct and that the recommendation of the UPSC and the decision taken based thereon cannot be questioned.

9. In the light of what the learned counsel for the applicant has reiterated, we feel constrained to observe that the respondents do not appear to have given proper and adequate attention to the order passed by this Tribunal and to have sheltered themselves behind a atechnical interpretation of the order of this Tribunal. We do not wish to comment any further on this aspect and would like to dispose of both the OAs in terms of the directions, set out below. Before we formulate the directions, we would like to note that the respondents had, in their communication to the UPSC earlier referred to, without proper basis, conveyed that the integrity of the applicant was in doubt and further that he was not fit to be given employment and this was done notwithstanding the fact that the applicant had been acquitted of the criminal charge under Section 498A IPC because of which the integrity aspect had been placed in doubt.

10. Insofar as the termination of the services of the applicant is concerned, we have only to reiterate the orders, passed by this Tribunal on 13.12.99 in OA-2058/98 by which the order of termination of applicant's service had been quashed and set aside and to order that the

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applicant should be reinstated, on grounds mentioned earlier, with effect from the date of termination of his service, on adhoc basis. He will thereupon be entitled to back-wages in full.

11. In relation to regularisation of service of the applicant, we would like to direct the UPSC to form a fresh Committee different from the Committee earlier formed to consider the case of the applicant. The representative of the Ministry of Health & Family Welfare to be deputed to take part in the meeting of the review DPC will also be a person different from the person earlier deputed. Having said what we have said in the preceding paragraphs about the likelihood of bias in the consideration of the case of the applicant for regularisation, we would like to reiterate that the case of the applicant for regularisation should be considered without taking into account the communications earlier received from the Ministry of Health & F.W. casting doubt on his integrity and without being influenced in any manner by the earlier rejection of his case by the UPSC.

12. The learned counsel for the applicant contends that the applicant is also entitled to benefits arising from the crossing of the efficiency bar and also from the recommendations of the 5th Pay Commission and the applicant has been unduly deprived of these benefits. In view of what we have held in this case, it would be just and proper to direct the Ministry of Health & F.W. to grant him the aforesaid benefit along with the



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reinstatement of the applicant in accordance with our direction in para 9 above.

13. In regard to the eviction of the applicant from the Govt. Quarter, in the circumstances of the case, we would like to quash the eviction proceedings with liberty to the respondent No.4 (Directorate of Estates) to take appropriate steps in accordance with the rules.

14. We further direct the Ministry of Health & F.W. to comply with the direction contained in paras 10 & 12 above within a period of two months from the date of receipt of a copy of this order, and to cooperate with the UPSC in organising the fresh DPC meeting in time.

15. We also direct the UPSC to reconstitute the DPC and consider the case of the applicant afresh in accordance with the observations made in para 11 above within the same period of two months mentioned above.

There shall be no order as to costs.


(Ashok Agarwal)
Chairman


(S.A.T. Rizvi)
Member (A)

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