

Review Application No.138 of 1999 in
Original Application No.490 of 1993

New Delhi, this the 16th day of November, 1999

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN(A)
HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Harish Kumar Sharma
S/o Shri Har Prasad Sharma
Aged about: 29 years
Resident of: House No.489,
Krishna Gali No.13,
Mojpur, Delhi-110053

And employs as:

Pharmacist in Rural Health Training Centre
Najafgarh,Applicant
New Delhi-110043.

(By Advocate: Shri B.B.Raval)

Versus

1. Union of India
through the Director General of Health Services,
Nirman Bhawan,
New Delhi
2. The Officer Incharge
Rural Health Training Centre
Najafgarh, New Delhi
3. The Medical Officer Incharge
Primary Health Centre
Medical Health Training Centre
Najafgarh,
New Delhi-110043Respondents

(By Advocate: Shri E.X.Joseph)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

This review application has been filed by the applicant seeking review of the order dated 11.5.99 vide which the O.A. of the applicant had been disposed of with the direction to the respondents to arrange to convene a medical board and then on receipt of report of the medical board, to consider the regularisation of the applicant with consequential benefits in accordance with rules and instructions on the subject.

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2. Facts in brief are that the applicant had filed O.A.490/93 seeking regularisation as Pharmacist. The applicant was working on that post since January, 1992 and the only ground on which he was being denied regularisation was a medical report issued by the R.M.L. Hospital wherein it was mentioned that "higher grade colour vision defective. Lower grade colour vision present." Considering the same, the Tribunal vide its order dated 11.5.99 had directed that the applicant be examined by a Medical Board. Against that order, the applicant has filed this review application.

3. Learned counsel for the applicant has submitted that at the time of arguments in the O.A., he had submitted certain documents on the basis of which no opinion from the Medical Board is required and this court straightaway could have directed the respondents to regularise the services of the applicant. He submitted that the defective colour vision pointed out by the Medical Authorities is not a bar for employment in the CGHS and there is nothing that remains to be done by way of yet another medical examination to regularise the applicant as a Pharmacist with effect from January, 1992. In support of his claim, Shri Rawal referred to the documents which he states that he had submitted at the time of arguments but it escaped the notice of the court. The said documents are Annexures RA-1, RA-2 and RA-3. Annexure RA1 is a letter issued by the Govt. of India, Rural Health Training Centre, Najafgarh, Delhi, wherein it is mentioned that the colour vision required for the discharge of duties attached to the post of Pharmacist need not be of a high grade and the persons with the

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lower colour vision can satisfactorily perform the duties of a Pharmacist. Particularly in the case of the applicant, it was observed that he was found to be able to identify various colours without difficulty, both at near and also at a distance. The applicant also relied on another letter at Annexure RA-2 wherein the case of medical examination of one Shri Chander Pal Singh was in question. This letter is issued by the Govt. of India, Central Govt. Health Scheme, Nirman Bhawan, New Delhi on 15.6.82 and is signed by Shri G.S. Aggarwal, Administrative Officer, who had mentioned therein that the colour bar does not seem to be a disqualification for the post of Pharmacist. These services do not require proper colour perception. Then the applicant referred to another case of Shri Pawan Kumar who is continuing to perform the job of Pharmacist and the certificate about his medical examination was also issued by Dr. S. Chakraborty wherein he had mentioned that he could not discover any disease (communicable or otherwise, constitutional weakness or bodily infirmity) except colour vision defective, which he had not considered a disqualification for employment in the Central Government Health Scheme. Relying upon the same, Shri Rawal submitted that the applicant is being discriminated and once he was found working satisfactorily and was able to identify the colours without any difficulty, he should not be denied the benefit of regularisation of services. He submitted that since the documents placed by him during the arguments had escaped the notice of the court, the order issued for the second medical opinion by a Medical Board was not required. Moreover the applicant had already undergone the medical examination and his case is based on those

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<https://PDFReplacer.com> documents which show that the colour vision defect is not a bar for the post of Pharmacist. So the applicant is entitled to be regularised and the judgement in question should be reviewed.

4. In reply to this, learned counsel for the respondents submitted that the order in O.A. does not call for a review and insisted that in view of the opinion given by Medical Superintendent, Dr.R.M.L. Hospital, the post of Pharmacist for which higher grade colour vision is essential, is defective in the case of the applicant.

5. We have heard learned counsel for the parties and gone through the records.

6. The question to be decided in this R.A. is whether the applicant, with the defective colour vision, is able to perform his duties satisfactorily and whether the defective colour vision is not a bar for employment as Pharmacist. Admittedly the documents relied upon by the applicant's counsel show that one Shri Pawan Kumar is already working as a Pharmacist and, he too, has a colour vision defect. The letters of Dr.S.Chakraborty dated 16.3.92 and that of Shri G.S.Agarwal, Administrative Officer of C.G.H.S. also show that the colour vision defect is not a disqualification for the post of Pharmacist. To these documents, learned counsel for the respondents had no answer. He simply insisted upon the opinion of the Medical Superintendent, Dr.R.M.L.Hospital. Besides, there is another practical aspect of the case according to which the applicant himself is working in

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the same post of Pharmacist since 1992 and, till date, no complaint has ever been received against him because of defective colour vision, at least no complaint has been pointed out to us. So we presume that the applicant is performing his duties as a Pharmacist in an efficient manner. Particularly in view of the documents at Annexure RA-1, RA-2 and RA-3, we are of the opinion that the applicant need not be put to second medical opinion and he can be straightaway allowed for regularisation of his services.

7. Accordingly R.A.138/99 is allowed and we review our judgement in O.A.490/93 and direct that the applicant should be regularised with consequential benefits in accordance with rules and instructions on the subject. No costs.


(KULDIP SINGH)
MEMBER (JUDL)


(S.R. ADIGE)
VICE CHAIRMAN (ADMNV)

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