

(19)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No.349/86

DATE OF DECISION

16/7/92

Dr.Biswa Nath Rati

Applicant

Versus

U.P.S.C.

Respondents

CDRAM

Hon'ble Mr.Justice Ram Pal Singh,Vice Chairman(J)

Hon'ble Mr.I.P.Gupta, Member(A)

For the Applicant

Sh.G.D.Gupta,counsel

For the Respondents

Sh.M.L.Verma,counsel for
Respondent No.1 &2.

Sh.A.K.Ganguli, with Sh.
R.P.Srivastava,counsel for
Respondent No.3

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(Delivered by Hon'ble Sh.I.P.Gupta, Member(A))

In the amended application filed by the applicant with the approval of a Bench of the Central Administrative Tribunal, the applicant has sought for the reliefs for quashing the selection and appointment of Dr.A.K.Khare (Respondent No.3) as Orthopaedic Surgeon(Specialist Grade-II) and declaring the applicant as eligible for consideration and entitled to seniority from the appropriate date.

2. The contentions of the learned counsel for the applicant are -

(i) The applicant was eligible for consideration in terms of advertisement, as he had clearly 3 years' experience in the Speciality of Orthopaedics and was a Post Graduate in Orthopaedic. Respondent No.3 did not have 3 years' experience

after the post Graduation. Attention was drawn to the case of N.Suresh & Anr.V/s U.O.I. and Ors.(AIR 1992 SC 564) where the Hon'ble Supreme Court observed that the period of 3 years' service in the grade required for Degree holders as the qualification for promotion to the post of Assistant Engineer must mean 3 years' service in the grade as a Degree holder. Therefore in the instant case, the counsel argued that 3 years' experience should count after Post graduation in Orthopaedics and while the applicant had this experience but was not considered for the post, Dr A.K.Khare did not have the qualification but was not only considered but also selected against one of the two posts of Orthopaedic Surgeons advertised- one for Police Hospital, Delhi and the other for N.C.Joshi Hospital under Ministry of Health and Family Welfare. The other post was not filled.

(ii) The experience of respondent No.3 in Orthopaedic Speciality can by no stretch of imagination be 6 years as mentioned in the counter. Details are at Annexure-C. If the period during which respondent No.3 was doing M.S.(Ortho) is also counted then his total experience will come to 4 years 5 months. Further if the pre M.S. and House job is also counted the total experience would come to 4-years 11 months by excluding the experience on house job in Paediatrics and Surgery. If the period during which M.S.(Ortho) was done by the respondent No.3 is to be counted it has to be counted in respect of applicant also irrespective of the fact whether he was on study leave or not.

Full
(iii) The recommendations of the Commission of the interview which was held on 1-1-85 and 2-1-1985 were kept pending and communicated only in August, 1985. U.P.S.C. records which were produced before Bench were scrutinised which showed that the application of respondent No.3 also included experience upto 14-5-85 when the last date of

filing the application was 21-8-1984. This is inexplicable.

(iv) The applicant was selected for the post of Assistant Director(Ortho.Surgery) specialist Grade-II of C.G.H.S. on recommendations of U.P.S.C. wef 18-3-1987 which is an equivalent post.

3. The learned counsel for the respondents contended that in response to the advertisement, 60 candidates applied for the post and 24 candidates were called for interview in the first instance in-accordance with criteria approved by the Competent Authority. The applicant did not satisfy the criteria. Two candidates were called for interview on re-consideration of their application, keeping in view the additional experience supplied in the representations. The applicant was screened out as he did not have 6-years experience. His services in Assam Rifles were on Adhoc basis and in Safdarjung Hospital on temporary basis and further while doing M.S. he was on study leave. Adhoc and temporary service and period spent on study leave were not counted towards his experience.

4. During the course of argument the Learned Counsel for the applicant did not press for quashing appointment of respondent No.3 but he urged that the applicant should also be appointed from the date from which respondent No.3 was appointed and given appropriate seniority.

5. Analysing the facts and issues involved in the case we find that the applicant clearly fulfilled the eligible conditions set out in the advertisement as he has done more than 3-years after Post Graduation in Ortho. Respondent No.3 did not have 6 years experience if any screening condition was so laid down. Respondent No.3 did not

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have 6 years even by counting the period during M.S. Ortho. and house job in Ortho. Therefore, the contention of the respondent that while respondent No.3 had the experience of 6 years, the applicant had not, is not tenable.

6. In the circumstances we are of the view that the applicant should have been called for interview by the U.P.S. C. in pursuance of advertisement No.29 for two posts of Ortho.Surgeon for which the last date was 21-8-84. We therefore, direct that respondent No.1 (UPSC) should consider the application of the applicant in pursuance of this said advertisement within a period of 3 months from the date of receipt of a copy of this order. Respondent No.1 should also consider inter-seniority of the applicant vis - a - vis respondent No.3. In the event of selection of the applicant (for one of the two advertised posts) his seniority vis- a - vis respondent No.3 should be determined by respondent No.1 on the basis of inter-seniority ^{and} of notional pay fixation and grant of increment duly allowed in respect of applicant from the date from which respondent No.3 was appointed.

7. With the above direction and order, the case is disposed of with no order as to costs.

I. P. Gupta
(I.P. GUPTA) 16/7/92
MEMBER(A)

Ram Pal Singh 16.7.92
(RAM PAL SINGH)
VICE CHAIRMAN(J)

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