

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 429 of 1986
~~ExxNo.~~

DATE OF DECISION 1-4-1987

Dr. S. S. Yadav Petitioner

Shri G. D. Gupta Advocate for the Petitioner(s)

Versus

Union of India and others Respondents

Shri M. L. Verma Advocate for the Respondent(s)

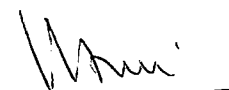
CORAM :

The Hon'ble Mr. V. S. Bhir, Member (A)

The Hon'ble Mr. G. Sreedharan Nair, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(G. SREEDHARAN NAIR)
MEMBER (J)


(V. S. BHIR)
MEMBER (A)

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

D.A.No.429 of 1986.

1-4-1987.

Dr.S.S.Yadav

...

Applicant.

vs.

Union of India through the
Secretary to the Government of
India, Ministry of Health & Family
Welfare, Nirman Bhawan, New Delhi-11
and others.

...

Respondents.

For applicant:

Shri G.D.Gupta, counsel.

For respondents:

Shri M.L.Verma, counsel.

Coram:

The Hon'ble Mr.V.S.Bhir, Member (A)

The Hon'ble Mr.G.Sreedharan Nair, Member (J)

(The judgment of the Tribunal delivered by

The Hon'ble Mr.G.Sreedharan Nair)

Can a person who has been considered for selection to the post of Professor of Orthopaedic Surgery, Central Institute of Orthopaedics, Safdarjung Hospital, and selected by the U.P.S.C. accepting that he has the essential qualifications for the post, be treated as not eligible for consideration for selection to the post of Director, when the essential qualifications for that post are the same as that for Professor? This is the question that is posed in this application filed by Dr.S.S. Yadav, at present employed as the Professor and Head of the Department of Orthopaedics in Maulana Azad Medical College, New Delhi, under the Ministry of Health and Family Welfare.

2. The applicant is the holder of a M.B.B.S.degree which he obtained in the year 1960 from the University of

✓

Rajasthan. He obtained his Post Graduate Degree of M.S. with Orthopaedics as special subject in the year 1966 from the University of Delhi. Admittedly, regarding Orthopaedics and certain other subjects like Plastic Surgery, Cardio Thoracic Surgery, Urology etc., the University of Delhi was not granting any Post Graduate Degree as such till the year 1966, but was granting only a Post Graduate Degree of M.S. with Orthopaedics, Plastic Surgery, etc., as the case may be, as a special subject. The U.P.S.C. (the third respondent) issued an advertisement on 15-2-1986 inviting applications for the post of Director, Central Institute of Orthopaedics, Safdarjung Hospital, New Delhi. One of the essential qualifications mentioned was a Post Graduate Degree in the speciality of Orthopaedics. When the applicant presented his application, he was summoned for interview by the letter of the third respondent dated 19-5-1986. A Note was appended to the letter to the effect that the applicant is being called for interview subject to production of documentary proof from a competent authority that M.S. (Orthopaedics) and M.S. with special paper in Orthopaedics are one and the same thing. It was also indicated that in case of failure to produce such proof, he will not be interviewed. Immediately, the applicant submitted his representation to the third respondent pointing out that already the Medical Council of India, for short 'the M.C.I.', had clarified in connection with the consideration of the applicant for the post of Professor of Orthopaedics that the qualification of the applicant could be treated as equivalent to that prescribed, and on that basis he was considered and selected. He also referred to the fact that the basic qualification for the post

2

of Professor and Director is the same. However, the third respondent informed the applicant that he cannot be called for interview for the post of Director. Hence ^{he} has approached this Tribunal for quashing the act of the respondents in not considering him for the interview and also for declaring that he is entitled to be called for the interview as he has satisfied the requirement of essential qualifications for the post.

3. The main ground urged is that the act of the third respondent in not calling the applicant for interview is wholly illegal, arbitrary, malafide and unconstitutional. It is alleged that the third respondent itself had already considered the Post Graduate Degree of M.S. with Orthopaedics as special subject as equivalent to the Post Graduate Degree in M.S. in Orthopaedics, in connection with the selection and appointment of the applicant to the post of Lecturer in Orthopaedics, Assistant Professor in Orthopaedics, Senior Orthopaedic Surgeon and Professor in Orthopaedics. The Ministry of Health and Family Welfare had reminded the third respondent of its earlier acts and had recommended that the applicant be called for interview for the post of Director. The Rules do not prescribe that a Post Graduate Degree in M.S. in Orthopaedics is the sole essential qualification; its equivalent has also been recognised.

4. On behalf of the third respondent, an Under Secretary in the Office of the U.P.S.C. has filed a reply. It is contended that in the advertisement issued on 15-2-1986, one of the essential qualifications mentioned is a Post Graduate Degree in

l

the speciality of Orthopaedics. The selection of the applicant for the post of Professor in Orthopaedics and to the other posts held by him earlier has no relevance in determining his eligibility to the post of Director, for, the qualifications which are prescribed in respect of all the other posts was a Post Graduate Degree of M.S.(Orthopaedics) or the equivalent thereof. The earlier decisions were taken by the third respondent in the context of the equivalence of the Post Graduate Degree in M.S.(Orthopaedics) with M.S.(Surgery) with a special paper in Orthopaedics. It is contended that in the present case, the M.C.I. was of opinion that the qualifications are not equivalent. There is also the plea that in the absence of equivalence being a condition, others who had equivalent qualifications have been denied the chance of offering their candidature. According to the third respondent, it was on account of these circumstances that the third respondent took the decision not to consider the applicant for the selection.

5. It is not in dispute that for the post of Lecturer in Orthopaedics, Assistant Professor in Orthopaedics, Senior Orthopaedic Surgeon, and Professor in Orthopaedics, the basic essential qualification as per the Rules is a Post Graduate Degree in M.S. in Orthopaedics or equivalent, and that the same is the case as regards the post of Director as well. Recruitment to the post of Director is governed by the Central Health Services Rules, 1982, according to which the post is a teaching cadre post and the essential qualification required is a Post Graduate Degree in Orthopaedics or equivalent. In the schedule containing the list of recognised Post Graduate qualifications, there is a Note appended to the effect that holders of equivalent Post Graduate

qualifications as are approved by the Medical Council of India from time to time will be considered to have the requisite Post Graduate qualification in the subject concerned. There is also a provision that the Controlling Authority in consultation with the U.P.S.C. shall have the power to assign other qualifications as well. The applicant has specifically alleged that he was initially appointed as Lecturer in Orthopaedics in the year 1966 through the third respondent treating the Post Graduate Degree of M.S. with Orthopaedics as special subject as equivalent to the Post Graduate Degree of M.S. in Orthopaedics. Thereafter, in an open selection for the post of Assistant Professor in Orthopaedics in the year 1972, the same criterion was followed and he was selected and appointed. Again in the year 1979, when the third respondent advertised for the post of Professor in Orthopaedics at Medical College, Goa, Daman and Diu, and in the year 1981 for the post of Senior Orthopaedic Surgeon, the third respondent considered the applicant as eligible treating his Post Graduate qualification as equivalent to Post Graduate Degree of M.S. in Orthopaedics. In the year 1980, when the applicant was a candidate for the post of Professor in Orthopaedics, the Medical Council of India had occasion to consider the qualification of the applicant, and its Executive Committee noting that the applicant having been selected for appointment as Lecturer in Orthopaedics, Assistant Professor in Orthopaedics and as Associate Professor of Orthopaedics as well as for the post of Professor at the Goa Medical College, and in view of his long teaching and professional experience in Orthopaedics, decided that he can be appointed as Professor of Orthopaedics. These averments

2

in the application are not denied in the reply. However, the third respondent takes up the stand that for the earlier posts while the advertisements for the selection were made the qualification prescribed was a Post Graduate Degree of M.S. (Orthopaedics) or the equivalent thereof, while in the instant case the essential qualification prescribed in the advertisement was a Post Graduate Degree in the speciality of Orthopaedics. It is stated that it was so done on the basis of the intimation by the Ministry of Health and Family Welfare. This stand of the third respondent cannot be accepted so as to deprive a chance to the applicant for offering his candidature, for, the Rules relating to the recruitment specifically prescribe Post Graduate Degree in Orthopaedics or equivalent as the essential qualification. Besides, the applicant has produced a copy of the letter dated 12-6-1986 from the Ministry of Health and Family Welfare addressed to the Secretary, U.P.S.C. to the effect that there is no difference in the essential qualifications for the post of Professor of Orthopaedic Surgery and Director, and requesting the U.P.S.C. to consider the applicant for being called for interview for the post of Director as he is in possession of essential qualifications. Moreover, the respondents 1 and 2, the Ministry of Health and Family Welfare and the Director General, Health Services, have not filed any reply challenging the claim of the applicant in the present application.

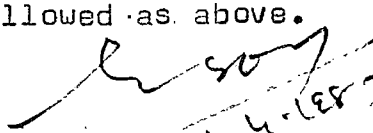
6. It was submitted by counsel of the third respondent that it was after getting the opinion of the M.C.I. that the third respondent took the decision that the applicant is not eligible. Along with the reply, a copy of the letter from the Secretary of the M.C.I. to the U.P.S.C. has been filed. What is stated therein

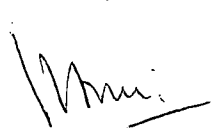
9

is only the general proposition that "as per the recommendations of the Council relating to the eligibility qualifications of teachers, a person must possess M.S. (Orthopaedics) for appointment to teaching post and that M.S. (Surgery) with special paper in Orthopaedics is not equivalent to M.S. (Orthopaedics)". It is to be remembered in this context that the Executive Committee of the M.C.I. had occasion to consider the question whether the applicant is eligible for consideration for selection to the post of Professor in Orthopaedics which also is a teaching post and it was decided that the Post Graduate Degree held by the applicant can well be treated as equivalent to what is prescribed. There is also the basic circumstance that when the applicant took his Post Graduate Degree, the Delhi University was not granting a degree of M.S. (Orthopaedics) as such. When the third respondent itself had acted upon the aforesaid decision of the Executive Committee of the M.C.I. for considering the applicant for selection to the post of Professor of Orthopaedics, a teaching post, and did select the applicant on the basis of which he was appointed, and is holding the post, the stand of the third respondent that the applicant is not eligible to be considered for selection to the post of Director, which post, be it noted, is not cent percent a teaching post, because he does not possess a Post Graduate Degree of M.S. (Orthopaedics), cannot be accepted, as it is ^{unjust and inequitable, as well as} against fairness in action. More so, when the Controlling Authority which is the concerned Ministry has pointed out in unmistakable terms that there is no difference in the essential qualifications for the post of Professor and Director and that the applicant is in possession of the essential qualification for the post and as such deserves to be considered for being called for interview.

2

7. It was stated at the bar that the interview is over, but none has been selected for want of the prescribed qualifications. In the circumstances, in our view the proper course is to direct the third respondent to issue a fresh advertisement for the post of Director, Central Institute of Orthopaedics, Sufdarjang Hospital, New Delhi, indicating the essential qualifications required as per the Rules, as Post Graduate Degree or equivalent. We direct the respondents to do so. We further direct that in case the applicant submits his application pursuant to the advertisement, he shall be called for interview treating him as having the prescribed essential qualification. This application is allowed as above.


(G. SREEDHARAN NAIR)
MEMBER (J)
1-4-1987


(V. S. BHIR)
MEMBER (A)
1-4-1987