IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

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D.14.2.92

O.A. No. 463/86 &

O.A. No. 525/86

Dr. Sudhir K. Kapoor — Applicant

Shri G.D. Bhandari, counsel for the applicant.

Vs.

Union of India and another — Respondents

Shri M.L. Verma, counsel for Respondent Nos. 1 and 2.

Shri G.D. Gupta, counsel for Respondent No. 3

CORAM

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

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

(Judgment of the Bench delivered by Hon'ble Shri I.P. Gupta, Member (A)).

JUDGMENT

The two applications filed by the applicant u/s 19 of the Administrative Tribunls Act of 1985 are being dealt with together, as the issues are similar. The applicant was appointed as GDMO II CHS, on the recommendation of the UPSC in 1980, in LNJP Hospital, New Delhi. On 8.2.86, Union Public Service Commission advertised the post of Asstt. Professor of Orthopaedic Surgery, Jipmer Pondicherry and also on 26.4.86 for the post of Asstt. Prof. under the Ministry of Health. The applicant submitted his applications but was not called for interview. The learned counsel for the applicant argued that:-

(1) LNJP Hospital is an Associate Hospital of MAM College, Delhi.

(2) The applicant had teaching experience of 4-1/2 years. The certificate issued by the Head of the Department of Orthopaedic Surgery MAM College and Associate LNJP Hospital, New Delhi, is at flag 'D'. It said that during his tenure as Medical Officer in Orthopaedic Deptt., Dr. Sudhir K. Kapoor (the applicant) has been actively taking part in all the professional and academic programmes of the Department. He had been teaching to undergraduate students and had taken active participation in the teaching of postgraduates like a Sr. Resident/Registrar for 4-1/2 years. Another certificate issued by the Head of the Deptt. Orthopaedic Surgery said, he (the applicant) has been teaching the undergraduates and has taken active participation in teaching programme for postgraduates. Thus, he has teaching experience (as M.S.) of 3-1/2 years after postgraduation till date. This period of his working is equivalent to that of a Registrar/Sr. Resident for counting teaching experience.

3) The applicant was appointed as Asstt. Professor of Ortho Surgery, MAM College, New Delhi, on ad hoc basis by letter dated 10.2.86 of Ministry of Health on the basis of the same teching experience.

(4) Two Doctors, Dr. Jaspal Singh Dali GDMO II, and Dr. H. Hira GDMO II, were interviewed by Union Public Service Commission and they were similarly situated - one was interviewed for Anaesthesiology Deptt. and the other for Medicine Deptt. The applicant was also called for interview in selections prior to 1986 and in fact was selected in 1989.

(5) The Recruitment Rules provide for at least 3 years teaching experience inthe speciality of Ortho Surgery as Lecturer/Tutor/Demonstrator/Registrar/Sr. Resident, after the requisite post graduate qualifications. As M.S. and

like a Sr. Resident/Registrar the applicant had the requisite teaching experience. He quoted in this connection the case of Dr. Asim Kumar Bose vs. U.O.I. (AIR 1983 SC 509) where the Supreme Court had held that the word 'as' in the collocation of the words used 'at least 3 years experience as Lecturer/Tutor/Demonstrator/Registrar/Sr. Resident in Rule 8 (2.A) as also in para 3(iii) of UPSC advertisement must be taken to mean in the capacity of' and Ministry of Health is wrong in assuming that the word 'as' makes the holding of a post in a cadre a condition precedent to the appointment of a Professor or an Associate Professor. In the Black's legal dictionary, word 'as' as given is 'like', 'similar to', 'of the same kind', 'in the same manner'. Oxford Dictionary defines 'as' as 'the same as in character, capacity, role of'. The applicant, therefore, has the required teaching experience. The applicant has, therefore, prayed for the relief that the respondents be directed to treat the applicant eligible for appointment as Asstt. Professor, Ortho Surgery as advertised on 8.2.1986.

2. The learned counsel for the respondents argued that:

(1) The applicant was found ineligible for interview.

(2) The certificate of teaching experience has been issued by the Head of the Deptt. to the effect that his teaching experience was as 'GDMO II' or as M.S. and this was equivalent to that of a Registrar/Sr. Resident. What was required was teaching experience as Registrar and Sr. Resident. There are 4 different cadres, GDMO, Public Health, Teaching and Non-teaching and teaching experience in teaching cadre was needed.

(3) The candidature of Dr. Dali was still provisional and Dr. Hira (SC)'s application was rejected earlier but he was later called for interview.

(4) The following extracts may be quoted from the case of Dr. Asim Kumar Bose referred to earlier:-

> "We find it rather difficult to support the impugned action of the Government of India in the Health Ministry in holding that the teaching experience gained by the appellant as Radiologist-cum-Associate Professor of Radiology (ex-officio) with effect from October 9, 1964 cannot be taken into consideration. The view taken by the Health Ministry appears to proceed, on a misconstruction of Rule 8(2A) and paragraph 3 of Annexure I to the Second Schedule. As already stated, the word 'as' in these provisions must, in the context in which it appears, be interpreted to mean "in the capacity of". The Ministry of Health cannot be heard to say that the appellant has not acquired the status of an Associate Professor of Radiology with effect from October 9, 1964, particularly when the Central Government have been utilising his services as such for teaching the post-graduate and under-graduate students of the Maulana Azam Medical College for the M.D., M.S., D.M.R.T. and M.B.B.S courses of studies for the last 17 years. The arrangement was continued for these years with the approval of the Delhi University and presumably with the tacit sanction of the Medical Council of India. In our opinion, the provisions contained in Rule 8(2A) and paragraph 3 of Annexure I to the Second Schedule must be interpreted in a broad and liberal sense as it would otherwise work great injustice to persons in Specialists Grade II like the appellant who, while holding a non-clinical post in a teaching hospital like the Irwin Hospital, has been actually teaching the students of the Maulana Azad Medical College to which it is affiliated. The contention that the position which the appellant enjoys as Radiologist-cum-Associate Professor of Radiology (ex-officio) in the Irwin Hospital is similar to that of Honorary Professor or Associate Professor in the Willingdon Hospital or the

Safdarjung Hospital and the mere designation of the appellant as such does not give him a right to hold the post of Associate Professor of Radiology, cannot prevail. There is no order placed before us of the President of India directing that conferral of honorary teaching designations on Specialists in the Willingdon Hospital and the Safdarjung Hospital would not entitle such Specialists to claim seniority or eligibility for promotion. Even if it were so, that would hardly make any difference. The submission overlooks the distinction between a teaching and a non-teaching hospital."

(5) DR. Asim Bose, the learned counsel for the respondents argued, had acquired the requisite teaching experience of an Associate Professor as well as acquired higher academic qualification. He was granted recognition as an Asstt. Professor for teaching post-graduate and under-graduate students. Even while he was working as Radiologist, the ex-officio status of Asstt. Prof. was given to him. Therefore, his case is different and the applicant cannot take shelter under the judgment in that case.

(6) As far back as 16.3.79, the Dean of M.A.M. College had issued instructions that certificates of teaching experience should be issued by him alone, under his signature.

3. Analysing the facts and issues in the case, it is observed that the teaching experience required was clearly as Sr. Resident/Registrar etc. Even Dr. Ajay Kumar, intervener, who was appointed in pursuance of 1986 advertisement, was asked whether he was actually assigned teaching duties while working as Sr. Resident in the Hospital. The teaching cadre is a separate cadre. The Dean had clearly spelt out in his letter of 16.3.79 that certificates of teaching experience should be issued under the signature of the Dean himself. In Ram Manohar Lohia Hospital, which is a teaching Hospital, there is no Dean and, therefore, it is another matter that the certificate of MS (Medical Suptd.) could be treated as valid. The case of Dr. Asim Bose is not on all fours with that of the applicant. There Dr. Bose had the designation of ex-officio Asstt. Professor. Besides,

he had a rich teaching experience. The applicant did not have teaching experience even in the capacity of 'Sr. Resident/Registrar' not to speak of 'as Sr. Resident/Registrar'. The certificate of teaching experience was issued by the Head of the Deptt. and not the Dean who was authorised to give certificate. Sporadic teaching by taking a class off and on as GDMO would not constitute teaching experience as required.

4. However, the facts remain that the advertisement did have a clause for relaxation of qualifications at the discretion of the Commission. 'Qualification' included 'teaching experience'. The applicant was a candidate on earlier occasions for the same post. On one occasion, he was interviewed on reconsideration of his application on the basis of certificate from the Head of the Deptt. The applicant was appointed on ad hoc basis as Asstt. Professor by letter dated 10.2.86. There has been not much of consistency in the past in treating the teaching experience as Sr. Resident/Registrar etc. only as valid for the post of Asstt. Professor. Dr. Hira was called for interview on the basis of experience of certificate from Medical Suptd. LNJP Hospital (as opposed to certificate from Dean). The applicant has also been selected at a later interview, perhaps 1989, as mentioned by the learned counsel for the applicant. In view of these factors, it would only be just and proper that the applicant is interviewed by the Union Public Service Commission, by treating him eligible, against the advertisements issued on 8.2.86 and 26.4.86 and in case he is selected, he may be regularly appointed from a date when Dr. Ajay Kumar was appointed. If he has been working continuously from 1986 as Asstt. Prof. on ad hoc basis, the question of any payment as arrears of pay would not arise. Even if he has not been so working, no arrears of pay need be paid and his pay in the post of Asstt. Professor, if selected by UPSC on the basis of 86-advertisement, be fixed notionally on the date of regular appointment, taking into account the period between the date of appointment of Dr. Ajay Kumar and the date of actual regular appointment of the applicant into reckoning. The applicant should

not replace or displace the regularly appointed incumbent Dr. Ajay Kumar and if necessary a supernumary post may be created to accommodate him in the event of his selection by the Union Public Service Commission. The U.P.S.C. after interviewing the applicants should indicate the merit list between the applicant and Dr. Ajay Kumar in the event the applicant is selected on the basis of 1986 advertisement for purposes of inter se seniority. This case should not be a precedent in future more so when the respondents have now clarified beyond doubt that teaching experience only as Registrar/Sr. Resident/ Lecturer/Tutor/Demonstrator would be relevant.

5. The applications are disposed of with the directions as in the preceding paragraph. There is no order as to costs.

(I.P. GUPTA) 14/2/92
MEMBER (A)

(RAM PAL SINGH) 14.2.92
VICE-CHAIRMAN (J)