

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 1231/90  
T.A. No.

199

DATE OF DECISION 30.8.1991.

Dr.P.C. Mohanty

Petitioner Applicant

In person

Advocate for the Petitioner(s) Applicant

Versus

Union of India through Secy.,

Respondent

Miny. of Health & F.W. & Ors.

Shri M.L. Verma

Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is working as a Doctor in the Indian Railways, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the selection made by the U.P.S.C. to the post of Surgeon/Assistant Director (Surgery) vide advertisement No.53/4, be set aside and quashed, and that the respondents be directed to hold fresh selection and call the applicant for interview and consideration in accordance with the rules and if found fit, he be ordered to be appointed to the said post. He has also prayed that the respondents

be restrained from giving effect to the panel prepared by the U.P.S.C. pursuant to the advertisement and from making any appointments in furtherance to the said panel.

2. On 21.6.1991, the Tribunal passed an interim order to the effect that one of the vacant posts may not be filled up during the pendency of the present application.

3. The facts of the case in brief are as follows. The U.P.S.C. issued an advertisement in the Employment News on 31.12.1988 for the recruitment to six posts of Surgeons/ Assistant Directors (Surgery), Ministry of Health & Family Welfare (Department of Health). The qualifications prescribed for the said posts were following:-

".....EQ: (i) A recognised medical qualification included in the First or the Second Schedule or Part II of the Third Schedule (Other than Licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in Part II of the Third Schedule should also fulfil the conditions stipulated in sub-Section (3) of Section 13 of the IMC Act, 1956. (ii) Post Graduate Degree/Diploma in General Surgery e.g. M.S. (Surgery), M.S. (General Surgery), Speciality Boards of Surgery (USA), FRCS or equivalent. (iii) Three years' work in a responsible position connected with the Speciality in the case of Post Graduate Degree holders and five years work in a responsible position connected with the Speciality in the case of post-graduate diploma holders."

4. The applicant claims that he was fully qualified for the said post, but the U.P.S.C. did not call him for the interview. He has alleged that the U.P.S.C. called for

the interview persons with much lesser experience and qualifications than the applicant and has, in fact, selected one, Dr. J.M. Rao (Respondent No.3), for the post of Surgeon. Repeated representations made by him to the U.P.S.C. to call him for the interview and to adjudge his suitability, did not receive any favourable response.

5. The respondents have stated in their counter-affidavit that in response to the advertisement in question, a total number of 183 applications were received (including 9 from Scheduled Castes and 5 from Scheduled Tribe applicants). In view of the large number of applicants, the U.P.S.C. short-listed the candidates by applying certain norms. According to them, the applicant did not fulfil the eligibility criteria for the post and, therefore, he was not called for the interview.

6. We have gone through the records of the case and have considered the rival contentions. Originally, there were only six posts covered by the advertisement. Subsequently, 2 more posts were added. Out of these 8 posts, 5 were unreserved and 2 reserved for Scheduled Castes and 1 for Scheduled Tribe candidate. The norm fixed by the U.P.S.C. for general candidates was that the candidates must possess essential qualifications and 8 years' experience.

7. The respondents have given the particulars furnished by the Applicant in his application, according to which, the experience of the applicant was only 7 years and 28 days. In the case of Respondent No.3, he had more than 8 years of experience.

8. While considering the experience put in by the applicant and respondent No.3, it appears that the U.P.S.C. had reckoned the period of one year put in by respondent No.3 as Junior Resident/House Surgeon in R.M.L. Hospital (1.7.1980 to 30.6.1981). The period put in by the applicant as Junior Resident/House Surgeon, has not been taken into consideration at all. This is clear from the following particulars given in the counter-affidavit filed by the respondents at pages 30-32 of the paper-book:-

Particulars of the Applicant

S.No.	Designation	From	To	Period		
				Yrs.	Mths.	Days
1.	Senior Resident in Safdarjang Hospital	22.12.83	16.1.87	3	1	26
2.	Surgeon-cum-Asstt.Dir. in R.L.T.R.I. under C.H.S.	27.2.87	6.3.88	1	0	9
3.	A.D.M.O., Indian Railways, Medical Services	7.3.88	30.1.89	0	10	23
4.	As per the criteria weightage given for EQ(ii).	-	-	2	0	0
Total:				7	0	28

Particulars of Respondent No.3

S.No.	Designation	From	To	Period		
				Yrs.	Mths.	Days
1.	Jr.Resident/ House Surgeon in R.M.L.	1.7.80	30.6.81	1	0	0
2.	Sr.Resident in R.M.L.Hospital	11.2.84	11.2.87	3	0	0
3.	Siddhartha Aroghya Nursing Home, Orissa	Aug., 83	Feb., 84	0	6	0
4.	Pool Officer (Lady Harding Medical College)	11.2.87	30.6.87	0	6	0
5.	Medical Officer in R.M.L. Hospital	31.8.87	30.1.89	1	5	0
6.	As per criteria weightage given for EQ(ii)	-	-	2	0	0
Total:				8	5	0

9. In our view, the scrutiny of the applications made in the Office of the U.P.S.C. in the instant case, leaves much to be desired. It is a matter of common knowledge that any Doctor begins his career as a Junior Resident/House Surgeon in a hospital and thereafter only he will become a Senior Resident. The applicant had also indicated in his application ~~that~~ his experience as a Junior Resident/House Surgeon but the same was not taken into account by the respondents. He has stated that had the U.P.S.C. scrutinised the application properly and taken into account his experience as Junior Resident/House Surgeon, he would have more than 8 years' total experience. In case, his experience in a private hospital is also taken into account, he would have

a total experience of 8 years, 8 months and 28 days.

10. We see merit in the aforesaid contention of the applicant. At the same time, there is nothing on record to substantiate his contention that the U.P.S.C. intentionally did not take into account the experience of the applicant with a view to favouring Respondent No.3. In our view, the scrutiny of the applications could have been done a little more carefully. The fact that there were many applications to be scrutinised, might be the extenuating factor for losing sight of the total experience of the applicant at the time of scrutiny.

11. In the conspectus of the facts and circumstances, we do not propose to set aside and quash the appointment of respondent No.3 made pursuant to the selection made by the U.P.S.C. At the same time, we direct that the respondents shall take appropriate steps for calling the applicant for interview for the post of Surgeon/Assistant Director (Surgery) in an available vacancy. In case, he is found fit by the respondents for appointment, the applicant shall be appointed as Surgeon/Assistant Director (Surgery).

12. The respondents shall comply with the above directions within a period of three months from the date receipt of

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this order. The interim order passed on 21.6.1990 directing the respondents not to fill up one of the vacant posts of Surgeon/Assistant Director (Surgery) will remain in operation till the suitability of the applicant for the appointment is considered, as directed above.

13. There will be no order as to costs.

*Dickinson - 30/8/91*  
(D.K. Chakravorty)  
Administrative Member

*Chandra - 30/8/91*  
(P.K. Kartha)  
Vice-Chairman (Judl.)