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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No.1. OA-998/86

Dated: 13.12.1991

1. Dr. Gopal Krishan
Sachdev

.... Applicant

Versus

Union of India through
Secy., Ministry of
Health & F.W. & Ors.

.... Respondents

2. OA-2659/90

Dr. Nirmal Kumar

.... Applicant

Versus

Union of India through
Secy., Ministry of
Health & F.W. & Anr.

.... Respondents

For the applicant in
1 above

.... None

For the applicant in
2 above

.... Shri S.C. Gupta with Shri
Inderjit Sharma, Counsel

For respondents in 1
above

.... Shri M.L. Verma, Counsel

For the Intervener in
1 above

.... Shri Inderjit Sharma, Counsel

For respondent No.1 in 1 above

.... Smt. Raj Kumari Chopra, Counsel

For respondent No.2 in
2 above

.... Shri M.L. Verma, Counsel

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dhoundiyal, 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*

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

The applicants in both of these applications are
working in the G.B. Pant Hospital. In March, 1986, the
Union Public Service Commission (UPSC) issued an advertisement

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for recruitment of one Assistant Professor of Gastroenterology, Ministry of Health & Family Welfare (Deptt. of Health), Specialist Grade II of the Central Health Service, Group 'A'. Both of them were candidates for the said post. While Dr. Sachdev was not interviewed by the U.P.S.C., Dr. Nirmal Kumar was not only interviewed but was also selected for the said post. Dr. Nirmal Kumar has been working in the said post on ad hoc basis since May, 1985. On 17.11.1986, an interim order was passed in OA-998/86 to the effect that the results of the UP interview held in June, 1986 should not be declared & no appointments be made on the basis of the said int. On 18.12.1990, an interim order was passed in OA-265 directing the respondents that Dr. Nirmal Kumar shall not be reverted from the post he was holding on ad hoc basis. He is thus continuing to hold the post of Assistant Professor in Gastroenterology in G.B. Pant Hospital.

2. We have gone through the records of the case and have heard the learned counsel for the parties. The learned counsel for both parties relied upon the case law in support of their respective contentions and we have duly considered them. The applicant in OA-998/86 had not attended the hearings since 2.1.1990. During the hearing,

* Cases cited by the learned counsel for the respondents:

1987 (2) ATLT (SC) 1; 1986 (1) ATR 22; 1989 (9) ATC 286; 1988 (8) ATC 853; 1991 (1) ATLT (SC) 14; AIR 1990 SC 535; AIR 1983 S.C. 1014.

Cases cited by the learned counsel for the applicant in OA-2659/90:

AIR 1988 (2) S.C. 1048.

we have been informed by Shri S.C. Gupta, learned counsel appearing for Dr. Nirmal Kumar, that the applicant has already become Associate Professor in in some other speciality the same Hospital/and that might be the reason for his non-appearance.

3. Dr. Sachdev has prayed in his application (OA-998/86) that any interview conducted by the UPSC in pursuance of the advertisement dated 22.3.1986, ignoring him, be set aside and its results be not declared, and that the UPSC be directed to hold the interview afresh, including him and make its recommendations on merits and till then the post be not filled up. Dr. Nirmal Kumar, applicant in OA-2659/90 has prayed that the UPSC be directed to declare the result of interview held on 17.5.1986, that respondent No.1 (Union of India) be directed to appoint him on regular basis in case as per merit secured by him in the list of successful candidates, he becomes due for such appointment and that a declaration be issued to the effect that he is entitled to be regularised on the post in question which he had been holding on ad hoc basis since 7.5.1986.

4. The contention of Dr. Sachdev is that he fulfilled the requisite qualifications but he was not given a call letter for the said interview, whereas a few others,

including Dr. Nirmal Kumar, were called for the interview though they did not possess the requisite experience in the concerned speciality. On 24.11.1989, Dr. Nirmal Kumar filed MP-2533 of 1989 for being impleaded as a party/ in OA-998/86 and for vacation of the stay order passed by the Tribunal.

He was allowed to intervene in the proceedings. On 14.12.1990, he, however, filed OA-2659/90 seeking the relief mentioned in para.3 hereinabove.

5. The contention of Dr. Nirmal Kumar in OA-2659/90 is that he possessed the requisite qualifications and that he should be appointed to the post in question on regular basis in case as per merit secured by him in the list of successful candidates interviewed by the UPSC he became due for appointment as such.

6. The U.P.S.C. and Dr. Nirmal Kumar, intervenor in OA-998/86, have filed additional affidavits, pursuant to the order of the Tribunal dated 11.1.1990, whereby they were given opportunity to do so as the material on record was considered to be insufficient to come to a proper conclusion on the respective contentions. Accordingly, they have also filed additional affidavits.

7. The qualifications and experience prescribed for the post in question were the following:-

QUALIFICATIONS: ESSENTIAL

- (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 qualifications in the speciality of Gastroenterology i.e. DM (Gastroenterology), MD/MRCP in Medicine with 2 years' special training in a Deptt. of Gastroenterology. (Qualifications granted in UK shall be recognised medical qualifications only when granted on or before 11.11.78).

(iii) At least three years teaching experience as Registrar/Tutor/Demonstrator/Sr. Resident/Lecturer in the concerned speciality after the requisite post graduate qualifications.

NOTE: After 31st May, 1977 for all teaching appointments to posts higher than tutor in Higher specialities that is Gastroenterology, the candidates must possess post-graduate degree qualifications in the speciality concerned, that is, D.M./M.Ch. after M.D./M.S. or other equivalent qualification as may be approved by the Council from time to time. The existing alternative qualifications, that is, M.D./M.S. or an equivalent qualification with two years special training in a recognised training centre in the speciality concerned shall cease to be sufficient qualifications for appointment to aforesaid teaching posts from that date.

Provided that the requirements of possessing a post-graduate degree qualification in the concerned higher speciality shall not be applicable for higher appointment in the case of existing teachers holding regular teaching posts where appointment was initially made on the basis of two years special training in the speciality after the requisite M.D./M.S.

NOTE: I (The qualifications are relaxable at Commission's discretion in case of candidates otherwise well qualified).

NOTE: II (The qualifications regarding experience are relaxable in the case of candidates belonging to Scheduled Castes).

8. Dr. Sachdev had the following qualifications on the closing date, i.e., 21.4.1986 stipulated in the advertisement:

EQ (i) MBBS

EQ (ii) - Only MD, MRCP, Diplomate of National Board of Examination.

EQ (iii) - No experience after DM (Candidate was not possessing DM Degree).

Four years' experience after MD.

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9. The U.P.S.C. have stated in their additional affidavit filed on 12.3.1990 that Dr. Sachdeva was lacking

EQ(ii) as well as EQ(iii) and, therefore, was not eligible for the post and was not called for the

interview. They have also stated that he had concealed

the fact that for a period of one year, i.e., from 1st July, 1984 to 30th June, 1985, he remained in U.K.

without obtaining permission from Delhi University/G.B.

Pant Hospital while he claimed that he worked as Senior

Resident during that period. This fact was revealed by

Medical Superintendent, G.B. Pant Hospital.

10. The qualifications of the five candidates called for interview on the closing date are as under:-

Roll No.1

Dr. Deepak Kumar Bhasin

EQ(i)

MBBS

EQ(ii)

DM (Gastroenterology)

EQ(iii)

2 years' experience after DM
5 years' experience after MD.

Roll No.2

Dr. Nirmal Kumar

EQ (i)

MBBS

EQ(ii)

DM (Gastroenterology)

EQ(iii)

1 year's experience after DM
6 years' experience after MD.

Roll No.4

Dr. Premashish Kar

EQ (i)

MBBS

EQ(ii)

DM

EQ(iii)

4 years' experience after DM
7 years' experience after MD.

Roll No. 5

Dr. Yogesh Kumar Chawla

EQ (1)

MBS

EQ(11)

DM (Gastroenterology)

EQ(111)

3 years' experience after DM.

7 years' experience after MD.

Roll No. 7

Dr. Satish Kumar Jain

EQ (1)

MBS

EQ(11)

DM (Gastroenterology)

EQ(111)

7 years' experience after DM.

10 years' experience after MD.

11. In the call letter sent by the U.P.S.C. to Dr. Nirmal Kumar on 22.5.1986, it was specified that,

"This invitation is subject to your production of documentary proof from a competent authority that

after completing your M.D. you have at least 5 years' experience with 2 years' special training in a department of Gastroenterology on or before the closing date

i.e. 21.4.1986 failing which you will not be interviewed and no T.A. will be paid to you."

12. The learned counsel for Dr. Nirmal Kumar stated that the requisite documentary proof was produced and he was interviewed by the U.P.S.C.

13. The qualifications prescribed for the post in question were post-graduate degree in the speciality of ~~Medicine~~, i.e., D.M. (Gastroenterology), M.D./M.R.C.P. in Medicine with two years' special training in department of Gast., with

at least three years' teaching experience as Registrar/
Tutor/Demonstrator/Sr. Resident/Lecturer in the concerned
speciality after the requisite postgraduate qualification.

14. Before a person can do his D.M. in Gastroenterology
it is necessary that he should be a graduate in medicine
(MBBS) and thereafter, he should have done his M.D. in
Medicine (Postgraduate degree qualification). Since the
advertised post was for Assistant Professor of Gastroentero-
logy, the requisite qualification also consisted of M.D.
in Medicine (Postgraduate Qualification) with two years'
special training in department of Gastroenterology as
well as at least three years' teaching experience as
Registrar/Tutor/Demonstrator/Sr. Resident/Lecturer in the
concerned speciality after the requisite postgraduate
qualification. In other words, a total of five years'
experience in the speciality of Gastroenterology after
M.D. in Medicine becomes the requisite qualification
for the said post or three years' experience in the
concerned speciality after D.M. in Gastroenterology.

15. Dr. Nirmal Kumar has stated in his reply affidavit
that after completing his M.D. in Medicine in 1979, he
worked in the speciality of Gastroenterology in the
Department of Gastroenterology, G.B. Pant Hospital as
the Sr. Resident from 27.9.1979 to 6.5.1985 (five years
then
seven months); from onwards he has been working as

Assistant Professor of Gastroenterology on ad hoc

basis. Therefore, he not only had more than the requisite qualification but also had, in addition, his D.M. in Gastroenterology.

16. The U.P.S.C. have stated in their additional affidavit that Diplomate of the National Board of Examination (MNAMS) cannot be equated to D.M. in the concerned subject. Rather, Diplomate of the National Board of the Examination (MNAMS) with 1 year's research experience is equivalent to first postgraduate degree, that is, M.D. or M.S. D.M. is a super-speciality graduate degree which is normally obtained after M.D. or M.S. In support of this contention, they have produced photocopy of a booklet published by the Medical Council of India, according to which, the qualification of M.A.M.S./M.N.A.M.S when granted on or after 1.6.1976 granted by National Board of Examinations, New Delhi, after due examination and after fulfilling one year's research experience, is to be treated at par with M.D./M.S. awarded by Indian Universities.

17. It is clear from the judgement of the Supreme Court in Government of Andhra Pradesh Vs. Murali Babu Rao, 1988 S.C.C. (L&S) 610 that the D.M. degree is

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obtained after the postgraduate qualification of M.D./
M.S. and that D.M. Degree is second postgraduation in
a super-speciality.

18. In our opinion, Dr. Nirmal Kumar was fully
qualified for the post in question and Dr. Sachdev did
not possess the essential qualifications and he was
rightly not called for the interview.

19. Relying on G.M. No. 36012/6/88-Est. (SCT) dated
25.4.1989 issued by the Department of Personnel and
Training on the ban on dereservation in direct recruit-
ment to vacancies under the Government, the U.P.S.C. has
contended that no general candidate can be recruited against
the advertisement issued by them and no S.C. candidates
were available who fulfilled the essential qualifications
in the instant case. As such, the recruitment process
is required to be treated as infructuous. The aforesaid
O.M. is not applicable to the facts and circumstances of
the instant case. A reading of the O.M. clearly indicates
that it applies to dereservation in more than one vacancy.
It is a well recognised principle that there cannot be
hundred per cent reservation and that a single vacancy
should not be reserved (vide Arati Ray Choudhury Vs.
Union of India, 1974 S.C.C. (L&S) 73). In the advertise-
ment, it was stipulated that "the post is initially reserved
for Scheduled Castes candidates failing which, to be
treated as unreserved."

20. In the conspectus of the facts and circumstances, the applications are disposed of with the following orders and directions:-

(i) We hold that Dr. Nirmal Kumar, the applicant in OA-2659 of 1990 fulfilled the requisite qualifications for appointment to the post of Assistant Professor of Gastroenterology advertised by the U.P.S.C. and that Dr. Gopal Krishan Sachdev, applicant in OA-998 of 1986 did not fulfil the same. Dr. Sachdev is not, therefore, legally entitled to call in question the interviews held by the U.P.S.C., or the results of such interview. We, therefore, dismiss OA-998/86 as being

devoid of any merit. The interim order passed on 17.11.86, is hereby vacated.

(ii) We hold that the Q.M. dated 25.4.1989 issued by the Department of Personnel & Training is not applicable to the facts and circumstances of the instant case. It is not legally permissible to reserve a single vacancy in favour of Scheduled Caste/Scheduled Tribe persons.

(iii) We direct that respondent No.2 (U.P.S.C.) shall declare the result of the interview held on 17.6.1986 and communicate the

same to respondent No.1 (the Union of India).

(iv) Respondent No.1 (the Union of India) shall appoint Dr. Nirmal Kumar, applicant in OA-2659/90, on regular basis to the post of Assistant Professor of Gastroenterology in case as per merit secured by him in the list of successful candidates who were interviewed by the U.P.S.C., he has been found fit for appointment as such. In that event, Dr. Nirmal Kumar would also be entitled to be regularised on the said post which he had been holding on ad hoc basis since 7.5.1985. The interim order passed on 18.12.90 in OA-2659/90 is hereby made absolute.

(v) The respondents are directed to comply with the above directions within a period of two months from the date of communication of this order. There will be no order as to costs.

21. Let a copy of this order be placed in both the case files.

(B.N. Dhoundiyal) 14.12.11
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)