

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 853/90

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T.A. No.

DATE OF DECISION 15.2.1991.Dr. C.M. Jain~~Petitioner~~ ApplicantShri Sant Lal,Advocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India through theSecy., Miny. of Health & F.W. Respondent& AnotherShri Vivek Gambhir, Advocate for the Respondent(s)

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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? */*
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 Medical Officer in the Employees State Insurance Corporation (E.S.I.C.), filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) To direct the respondents to offer the appointment of the post of Specialist in Orthopaedics to him for which he was selected by the U.P.S.C.; and
- (ii) to declare him entitled to the said post from the due date with all consequential benefits of seniority and pay, etc.

2. On 10.7.1990, the Tribunal passed an interim order directing that the post of Specialist in Orthopaedics shall not be filled up on regular basis during the pendency of the application.

3. The facts of the case in brief are as follows. The applicant was initially appointed under the ESIC as Medical Officer in 1975. He was confirmed in the said post and was promoted as G.D.M.O. Grade I in July, 1986. In April, 1987, one post of Specialist in Orthopaedics in E.S.I.C. was advertised by the U.P.S.C. The applicant applied for the said post. He was called for the interview on 17.8.1987 and was selected for the said post of Specialist. The UPSC, vide their letter dated 7.9.1987, informed him that he has been recommended for appointment to the post of Specialist in Orthopaedics. It was further stated in the letter of the U.P.S.C. that the offer of appointment will be made to the applicant only after the Government have satisfied themselves after such inquiry as may be considered necessary that he was suitable in all respects for appointment to the service, and that he was in good mental and bodily health and free from any physical defects likely to interfere with the discharge of his duties. The offer of appointment was also subject to such other conditions as are applicable to

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all such appointments under the Central Government.

4. On 14.9.1987, the applicant requested the respondents for giving him appointment to the post of Specialist immediately. He has, however, been informed verbally that he could not be allowed to join the said post as the departmental proceedings initiated vide memo. dated 31.8.1987, were pending against him.

5. The applicant has stated that a charge-sheet dated 31.8.1987, was served on him on 10.9.1987. The applicant filed UA-512/88 in the Tribunal on 21.3.1988, praying for appropriate order/direction to declare the act of the respondents in not giving appointment to him to the post of Specialist, as illegal. The said O.A. was rejected at the admission stage on 21.4.1988 on the ground that the charge-sheet had been served and an inquiry was pending against him. He was, however, given the liberty to approach the Tribunal after a period of three months if he felt aggrieved after that. It was also further directed that the post of Specialist in Orthopaedics for which he was selected, should be kept vacant till the conclusion of the inquiry and further orders of the Tribunal.

6. The Inquiry Officer submitted his report on 3.1.1989. The disciplinary authority passed the final order on 10.3.1989, whereby the penalty of

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reduction in pay by four stages (from Rs.3,500 to Rs.3100) in the scale of Rs.3000-4000 for four years was imposed on him. The applicant preferred an appeal against the said punishment order on 21.4.89. The respondents did not take any decision on the appeal within a period of six months. The applicant has filed OA-2277/89 in the Tribunal on 15.11.1989, challenging the findings of the Inquiry Officer and the punishment order issued by the disciplinary authority. This O.A. was admitted on 17.11.1989.

7. In the meanwhile, the Appellate Authority communicated the decision on the appeal, whereby the penalty has been reduced to reduction in pay by two stages for two years (in place of four stages for four years) vide order dated 31.1.1990.

8. The applicant has stated that despite the fact that the disciplinary proceedings against him have been concluded, the respondents have not yet given appointment to him for the post of Specialist for which he was selected by the U.P.S.C.

9. The applicant has contended that the action of the respondents in withholding the offer of appointment to him, is arbitrary and illegal, that his selection for the post of Specialist in Orthopaedics is by

way of direct recruitment, and that the penalty of reduction in pay in the existing post, is not a disqualification for a future employment under the Government or E.S.I.C. under the provisions of Rule 11 of the C.E.S.(CCA) Rules, 1965 and Regulation 11 of the I.S.I.C. Regulations, 1959.

10. The respondents have stated in their counter-affidavit that the applicant has been held guilty of professional negligence and irresponsible conduct in treatment of a patient who was suffering from a compound fracture which has ultimately led to the amputation of the patient's arm. He was found guilty both by the Inquiry Officer and the Appellate Authority. The Appellate Authority has reduced the punishment inflicted on the applicant only because of reduction in penalty of Dr. A.K. Dawar, another doctor who has also been held negligent in treating the same patient. The respondents have stated that due to the negligence of the applicant, the respondents had suffered monetary loss as it had to pay compensation to the patient, though ex gratia and has been further exposed to a monetary loss inasmuch as the patient has filed a suit for recovery of damages against the respondents, the applicant and other negligent doctors allegedly claiming a sum of Rs.2 lakhs.

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11. The respondents have also contended that the recommendation made by the U.P.S.C. is not binding on them. They have also contended that the applicant does not acquire any right to be appointed on the basis of the recommendation of the U.P.S.C.

12. The respondents have submitted that in view of the concurrent findings of professional negligence and irresponsible handling of a patient as a general duty Medical Officer in Orthopaedics, the applicant is not fit to be considered for being appointed to the post of Specialist in Orthopaedics, which is a responsible and onerous assignment.

13. We have carefully gone through the records of the case and have considered the rival contentions. The fact that the U.P.S.C. has selected the applicant for the post of Specialist in Orthopaedics, is undisputed. The post of Specialist in Orthopaedics is being filled up by direct recruitment for which the applicant applied and got selected. The fact of selection of the applicant has also been intimated to him. In our view, the question of any penalty having been imposed on the applicant after a departmental inquiry against him, will have relevance only in case of departmental promotion and not when he is selected through open competition by way of direct recruitment. Imposition of any penalty, except that of

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dismissal, by way of disciplinary proceedings, does not disqualify a person for fresh appointment. In Dr. Hari Dev Goyal Vs. Union of India and Another, 1987 (4) A.T.C. 678, the Principal Bench of this Tribunal has held that whereas the appointing authority has every right to withhold an appointment, if, after necessary verification of a candidate's character and antecedents, it is found that such an appointment will not be in public interest or otherwise not desirable, keeping in view a particular candidate's involvement in some matters which cast a stigma on his character, it cannot assume to itself the responsibility for assessing general suitability of a candidate for appointment to a particular post after selection has been made by the U.P.S.C., in case of direct recruitment. Vigilance clearance and the imposition of a penalty would be relevant considerations only in case of departmental promotions. We reiterate the same view.

14. The learned counsel for the respondents relied upon the decision of the Supreme Court in State of Haryana Vs. Subhash Chander Marwaha & Others, 1974(3) S.C.C. 220, and in S. Govind Raju Vs. K.S.R.T.C. and Another, A.T.R. 1986 (2) S.C., 362, in support of the contention that mere selection to a post to be filled in by direct recruitment, will not confer a

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right on the person concerned to be appointed to the said post unless it is a case of mala fides.

15. The decision of the Supreme Court in the State of Haryana Vs. Subhash Chander Marwaha is clearly distinguishable. In that case, the Supreme Court has observed that the mere entry in the Select List of the name of the candidate, does not give him the right of appointment. In that case, the advertisement mentioned about 15 vacancies to be filled up. The Supreme Court observed ^{that} ~~it~~ may happen that the Government for financial or other administrative reasons, may not fill up any vacancies. In such a case, the candidates will not have a right to be appointed.

16. In the instant case, the non-appointment of the applicant is not due to any financial or other administrative reasons.

17. The decision of the Supreme Court in GovindaRaju's case, does not advance the case of the respondents. In that case, the Supreme Court had observed that "Once a candidate is selected and his name is included in the Select List for appointment in accordance with the Regulations, he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the Select List, serious consequences entail and he forfeits his right to employment in future."

In such a situation, even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate inquiry would be necessary."

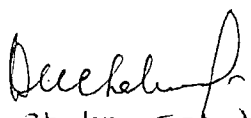
18. In the instant case, the U.P.S.C. has adjudged the suitability of the applicant for the post of Specialist in Orthopaedics. The fact that a departmental inquiry was held against the applicant and that a punishment has been imposed on him, will not be a bar to his appointment to the post of Specialist in Orthopaedics. For the alleged misconduct on the part of the applicant, he has been punished by imposing a penalty on him. The respondents cannot impose a further punishment by way of not appointing him to a post for which he has been found suitable for appointment by the U.P.S.C., which is an impartial body.


19. In the facts and circumstances of the case, we partly allow the application and direct that the respondents shall implement the recommendation of the U.P.S.C. in regard to the appointment of the

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applicant as Specialist in Orthopaedics within a period of two^a months from the date of communication of this order. The application is disposed of accordingly.

There will be no order as to costs.


(D.K. Chakravorty) 15/2/69
Administrative Member


(P.K. Kartha) 15/2/69
Vice-Chairman(Judl.)