

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1590/91

Date of decision: 26.02.1992.

Shri A.K. Madan

...Applicant

Vs.

Delhi Administration & Others

...Respondents

For the applicant

...Shri K.N.R.Pillai,
Counsel

For Respondent No.1

...Shri M.K. Sharma,
Counsel

For Respondent No.2

...Shri Jog Singh,
Counsel

CORAM:

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

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

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

The applicant is an Assistant Professor in the College of Pharmacy and is presently on deputation to ITI, Delhi. He has prayed for quashing the selection initiated by issue of the advertisement at Annexure A-1 and direct that the recruitment for the post of Professor (Pharmaceutics/Hospital Pharmacy) in the College of Pharmacy, Delhi Administration, be undertaken afresh notifying the qualifications as prescribed for the post in the revised scale of Rs.4500--7300.

2. On 15.7.1991, when the application was

admitted; the Tribunal passed an interim order directing the respondents not to act upon the recommendations made by the UPSC and appoint any person to the post of Professor (Pharmaceutics/Hospital Pharmacy). The interim order was continued thereafter till the case was finally heard on 4.11.1991.

3. The applicant has stated that he is the seniormost Assistant Professor in the College of Pharmacy, Delhi Administration, taking all the departments together. In his own particular discipline, (Pharmaceutics/Hospital Pharmacy) there were two posts of Professors which were unfilled. Thus there were bright chances for his career advancement. He was also incharge of the Deptt. since the post of Professor was unfilled. It was at this stage that in April 1988 Dr. J.L. Kaul, a retired Drugs Controller, Delhi Administration, was posted temporarily to look after the duties of Principal with the designation Professor-in-charge, and given extension from time to time for six months or till the post of Principal is filled, whichever is earlier.

4. The applicant has alleged that Dr. Kaul has been biased against him and he has been wanting to bring his candidate Dr. R.K. Khar, then a Lecturer in the Jamia Millia

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Institute as Professor of Pharmacy.

5. The applicant has stated that when the Govt. of India accepted the recommendations of the National Expert Committee under the Chairmanship of Prof. R.N. Dogra, the post of Professor was upgraded to Rs.4500-150-5700-200-7300 and the following qualifications were prescribed for the post by Govt. of India Ministry of Human Resource Development letter dated 28th February, 1989 at Annexure

A-II:-

"Professor

Qualifications

(i) Ph.D. with Ist Class degree at Bachelor's or Master's level in Engineering/Technology.

OR

Ph.D. Degree with Ist Class M.Sc. in appropriate branch for teaching posts in Humanities and Sciences.

(ii) 10 years experience in teaching/industry/research out of which 5 years must be at the level of Asstt. Professor or equivalent.

Note: Candidates from Industry/Profession with recognised professional work of high standard recognised at National/International Level equivalent to Doctorate would also be eligible".

6. The UPSC approved the Recruitment Rules for the post of Professor by their letter dated 25.9.1989 but the scale of pay of the post was mentioned as Rs.4500-150-5700 and not Rs.4500-7300. The UPSC had added in their letter as follows:-

"If any change(s) take(s) place in the designation of the post(s), the same may be incorporated in the notification but a specific intimation in this behalf may be sent to this office for noting the change in our records. If, however, any change in the scale of pay, number of post(s) qualification etc. takes place, a reference may please be made to this office for obtaining the Commission's approval to amend, if need be, the approved rules".

(Signature)

7. The applicant has stated that the UPSC was kept in the dark about the changes in the scale of pay of the post of Professor. The Delhi Administration asked the UPSC to recruit inter alia a Professor (Pharmaceutics/Hospital Pharmacy) for the College of Pharmacy. The Commission issued the advertisement at Annexure A-I mentioning the qualifications as follows:-

"Essential (i) Ph.D. Degree with 1st Class Master's Degree in Pharmaceutics/Hospital Pharmacy from a recognised University or equivalent (ii) 10 years teaching experience at post-graduate/degree level and/or research/post graduate/research guidance experience".

The revised scale of pay was mentioned in the advertisement but the qualifications mentioned were those in force prior to February, 1989.

8. The applicant has contended that the above provision in the advertisement ~~not only~~ ^{violated} the Central Government's notification of qualifications for the upgraded post, but also the statutory provisions of the All India Council for Technical Education Act, 1987. Under this Act which came into force in March, 1988, the Norms and Standards for Pharmacy Institutions (Degree Programmes), copy of relevant portion at Annexure A-III, prescribed that the following are the essential qualifications for the post of Professor:-

"Master's degree in Pharmacy after obtaining 1st Class basis degree in Pharmacy followed by a Doctorate Degree or equivalent published work of high standard in appropriate branch of Pharmacy with 10 years experience in teaching at degree level/industry/research out of which at least 5 years must be as Assistant Professor or equivalent".

(Signature)

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9. The applicant applied for the said post but he was called for interview. He filed OA No.1439 of 1991 praying that the respondents should be directed to include his name also in the list of eligible candidates for interview. In this OA the applicant had made allegations of mala fide against the 3rd respondent Dr. J.L. Kaul alleging that he was biased against the applicant and was out to get Dr. R.K. Khar selected. The Tribunal passed an interim order directing that the applicant should also be admitted for the interview on 21.6.1991, but the result should not be announced till the next date of hearing, also 4.7.1991. The applicant was interviewed pursuant to the interim order. By order dated 4.7.1991, the Tribunal disposed of OA 1439/91 with the following observations:-

" Now in view of this fact, that the applicant has already been interviewed and his eligibility to appear in the interview for the said post of Professor is not being questioned by the counsel for the respondents, so his result may also be announced. Nothing survives now in this Original Application. The OA is, therefore, disposed of accordingly with cost to the parties as having become infructuous".

10. The applicant has stated that at the hearing on 4.7.1991 the applicant had submitted that although the relief prayed for in OA 1439/91 was only that the applicant be interviewed, his challenge was to the selection itself which was based on wrongly advertised qualifications different from those notified by the Central Government for the upgraded posts and the qualifications notified under the statute, the

All India Council for Technical Act. The Court however held that this would be a fresh cause of action. That is how the present application came to be filed.

11. The respondents have denied the allegations made by the applicant. Respondent No.3 against whom allegations of bias and mala fides have been made has not filed any affidavit denying the allegations. According to them, the advertisement was issued in accordance with the recruitment rules, that the applicant was not qualified for the post though he was interviewed pursuant to the interim orders passed by the Tribunal, that respondent No.3 was not biased against the applicant and that the UPSC has already recommended the name of Dr. D. Ramakrishna for appointment to the post in question.

12. We have gone through the records of the case and have considered the rival contentions. The technical educational institutions fully financed by the Central Government, like the College of Pharmacy in the instant ~~case, were~~ the report of the National Expert ~~case, were~~ required to implement/Committee under the Chairmanship of Prof. R.N. Dogra as approved by the All India Council of Technical Education which was accepted by the Central Government. The institutions were required

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to make necessary changes in their statutes, ordinances, rules, regulations etc. to incorporate the provisions of the scheme. The scheme provides that the revised scale can be operated only after "the college concerned has made the necessary changes in their statutes, ordinances, rules, regulations etc. to incorporate the provisions of the scheme". The revised pay scale and revised qualification go together. In the advertisement issued by the UPSC, the revised pay scale was given but the qualifications under the recruitment rules as approved by the UPSC vide their letter dated 25.9.1989.

13. In our opinion, the respondents should have apprised the UPSC about the change in the qualifications consequent upon the revision of pay scale of the post of Professor. There is nothing on record to indicate that this was done. The qualifications for Professor's post which had been prescribed by the All India Council for Technical Education pursuant to the provisions of Section 10(1)(i) of the All India Council for Technical Education Act, 1987, which are mandatory in nature, could not have been ignored by the respondents while issuing the advertisement in question or processing the applications of the candidates. This would vitiate the selection made by the UPSC.

14. The further question arising for consideration is whether the participation of Dr. J.L. Kaul as the departmental representative during the interview would

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vitiating the selection made by the UPSC.

15. In OA 1439/91, the applicant had alleged bias on the part of Dr. J.L. Kaul who was interested in some particular candidate. Admittedly when the applicant was interviewed for the post of Professor pursuant to the interim order passed by the Tribunal on 20.6.1991, Dr. Kaul had participated in the proceedings of the Selection Board.

16. Bias is an attitude of mind leading to a predisposition towards the issue. In ^{AIR 1975 SC 425, 9} Manak Lal V. Dr. Prem Chand, a complaint alleging professional misconduct against Manak Lal an Advocate of the Rajasthan High Court, was filed by Prem Chand. The Bar Council appointed the Chief Justice of the High Court to enquire into the alleged misconduct of Manak Lal consisting of the Chairman and two other Members. The Chairman had earlier represented Prem Chand in a case. He was, however, a senior advocate and was once the Advocate General of the Rajasthan High Court. The Supreme Court assumed that he had no personal contact with his client and did not remember that he had appeared on his behalf in certain proceedings. The Court was thus satisfied that there was no real likelihood of bias. But still it held that Chairman was disqualified on the ground that "justice not only be done but must also appear to be done to the litigating public". Actual proof of

prejudice was not necessary; a reasonable ground for assuming the possibility of a bias was sufficient. The court emphasised that a judge should be able to act judicially, objectively and without any bias. In such cases, the test is not whether in fact bias has affected the judgment, but whether a litigant could reasonably apprehend that bias attributable to a Member of a Tribunal might have operated against him in the final decision of the Tribunal. The same position was reiterated by the Supreme Court in Kraipak's case, 1969 (2) S.C.C. 262.

17. In Smt. S.M. Swaran Lata and Another Vs. Union of India etc., the petitioner who had appeared before an Interview Board for the post of Lady Principal, alleged that respondent No.5 who was a Director Technical Education, Chandigarh Administration and a member of the Board was against her. The Chandigarh Administration deputed respondent No.5 to sit on the Selection Board of the UPSC. The UPSC had contended in their counter-affidavit that respondent No.5 had been associated on the Interview Board as representative of the Chandigarh Administration in order to apprise the President of the Board of the precise nature of the duties expected to be performed by the candidate selected for the post and he was in no other way connected with the selection of the candidate and that it was incorrect to say that he influenced the Board in

selecting the candidate for the post. Respondent No.5 in his counter-affidavit admitted that he has assisted the commission in their deliberations during the interview held on 23rd April, 1975 as a representative of the Administration. Thus his presence at the Interview Board stood established. The only controversy raised was what part he had played in selection and to what extent he was responsible for rejection of the petitioner, while respondent No.6 who had been selected, had been in service of the State of Haryana, but was admittedly junior to the petitioner.

18. In the instant case, it was not prudent on the part of the respondents to have deputed Dr. Kaul to be present at the meeting of the Interview Board while the applicant was being interviewed by the Board. We are not convinced with the argument of the respondents that as a departmental representative, he was incapable of influencing the decision arrived at by the Interview Board. In the light of the observation made by the Delhi High Court in Smt. Swaran Lata's case, we are of the opinion that the Selection made by the Interview Board was vitiated and is liable to be struck down.

19. In the light of the foregoing discussion, we set aside and quash the selection initiated by issue of the

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advertisement at Annexure-I to the application and direct that the recruitment for the post of Professor (Pharmaceutics/Hospital Pharmacy) in the college of Pharmacy, Delhi Administration, be undertaken afresh notifying the qualifications as prescribed for the post in the revised scale of Rs.4500-7300. The respondents shall comply with the above directions as expeditiously as possible and preferably within six months from the date of receipt of this order.

There will be no order as to costs.

B N. Dholiyal
(B.N. DHOUDIYAL)
MEMBER (A)
26.02.1992

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(P.K. KARTHA)
VICE CHAIRMAN (J)
26.02.1992

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