

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.173/2004

New Delhi, this the 27th day of July, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

1. Dr. Saibal Mukhopadhyay
s/o Shri R. Mukherjee
Room No.504, New Resident Doctor's Hostel
G.B.Pant Hospital, New Delhi - 110 002.
2. Dr. Majaly Usuf
s/o Dr. E.S. Hanafi
r/o Room No.506,
New Resident Doctor's Hostel
G.B.Pant Hospital
New Delhi - 110 002.
3. Dr. Vimal Mehta
s/o Shri S.P.Mehta
r/o H.No.4, Lane No.4
Shalimar Park Extension
Shahdara, Delhi-110 032.
4. Dr. Umamahesh C. Rangasetty
s/o C.V.Rangasetty
R/o Room No.409,
New Resident Doctor's Hostel
G.B.Pant Hospital
New Delhi - 110 002. .. Applicants

(By Advocate: Sh. Sachin Chauhan)

Versus

1. Secretary
Ministry of Health and Family Welfare
Government of India, Nirman Bhawan
New Delhi.
2. Special Secretary (Health)
Health & Family Welfare Department
Government of National Capital Territory of Delhi
9th Level, A-Wing, Delhi Sachivalaya
I.P.Estate
New Delhi - 110 002.
3. Medical Council of India
Aiwane Ghalib Marg
Temple Lane, Kotla Road
New Delhi - 110 002.
through its Chairman.
4. Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi - 110 011.
through its Chairman. .. Respondents

(By Advocate:None for R-1; Shri Vijay Pandita, counsel
for R-2; Shri Maninder Singh, counsel for
R-3 and Shri Rajinder Nischal, counsel
for R-4)

O R D E R

Justice V.S. Aggarwal:-

Applicants have completed their post-doctoral course, i.e., Doctorate of Medicine (D.M) in Cardiology. They have rendered three years as Senior Resident.

2. By virtue of the present application, they seek quashing of the advertisement Annexure A-1 and to direct the respondents to consider the claim of the applicants for being appointed as Assistant Professor (Super Speciality/Cardiology) and also to set aside the essential qualifications laid down for the post of Assistant Professor.

3. Some of the relevant facts are that under the Scheme of the Central Scientific Industrial Research, the applicants had been allowed to join as Senior Research Associates in the Department of Cardiology, Govind Ballabh Pant Hospital, Delhi on a consolidated salary and added allowances. They are continuing as Pool Officers. On constitution of a High Power Committee to make various recommendations as to conditions of service and other eligibility criteria for the Doctors serving in the Government of India, i.e., the Tikku Committee, submitted its recommendations on 14.11.1991. It was implemented inter alia with a decision to make first entry level of appointment in Super Speciality Course as an Associate Professor. The Tikku Committee had done away with the post of Assistant Professor as a feeder cadre category as laid down by the Medical Council of India.

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4. The Recruitment Rules dated 8.10.1996 for the post of Assistant Professor required recognised medical qualification as stipulated by the Medical Council of India and three years' experience as Senior Resident. The post of Associate Professor in Super Speciality inter alia provided essential qualifications, i.e., five years experience as Senior Resident/Tutor/Demonstrator/Lecturer.

5. It is asserted that as per the Medical Council of India Act, 1956, requirement of special academic qualifications in Super Speciality, in so far as the post of Associate Professor is concerned, is experience as Assistant Professor in Cardiology for two years.

6. By a public notice issued by the Government of National Capital Territory of Delhi, applications were invited for filling up one post of Associate Professor (Cardiology) in Rajeev Gandhi Super Speciality Hospital, Tahir Pur on ad hoc/contract basis. Among the essential qualifications is a recognised medical qualification as prescribed under the Medical Council of India Act, 1956 as well as a post graduate degree in the concerned speciality and there is another condition that one should have five years experience as Senior Resident in the concerned Speciality.

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7. The contention of the applicants is that the said advertisement runs counter to the guide-lines of the Medical Council of India and, therefore, it is illegal. In this backdrop, the above said reliefs are being claimed.

8. The Medical Council of India files reply and supports the plea that the rules/regulations of Medical Council of India necessarily have to prevail. Other respondents have contested the application.

9. To appreciate the question in controversy, we refer to the advertisement by which applications were invited for filling up the post of Assistant Professor (Cardiology) on ad hoc/contract basis. The essential qualifications prescribed are:

Essential:

1. A recognized Medical qualification included in the first or 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 Indian Medical Council Act, 1956.
2. Post Graduate Degree in the concerned specialty mentioned in schedule VI or equivalent.
3. At least five years experience as Senior Resident/ Tutor/ Demonstrator/Lecturer in the concerned specialty in a recognized teaching institution after the first post graduate qualification.

NOTE: In the case of holder D.M/M.Ch. qualification of five years duration the period of Senior P.G. Residency rendered in the

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last part of the said D.M./M/Ch. shall be counted towards requirement of five years experience."

10. The recruitment rules in this regard have been notified on 8.10.1996 in exercise of the powers conferred under Article 309 of the Constitution. For Associate Professor (Super Specialities), the prescribed qualifications are:

"Associate Professor
(Super Specialities)
Rs.3700-125-4700-150-
5000)

Not exceeding
45 years (Relax-
able for Govt.
Servants by 5
years in accord-
ance with the
instructions
issued by the
Central Govt.)

(i) A recognised medical qualifi-
cation included
in the First or
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 Indian
Medical Council
Act, 1956.

(ii) Post-graduate degree in
the concerned specialty
mentioned in Section-A of
of Schedule-VI or
equivalent.

(iii) At least five years
experience as Sr.
Resident/Tutor/Demonstrator/
Registrar/Lecturer in the
concerned speciality in a
recognised teaching institution
after the first Post-graduate
qualification.

Note: In the case of holders of D.M./M.CH. Qualifications of five years' duration, the period of senior PG residency rendered in the last Part of the Said D.M./M.CH shall be counted towards requirement of five years' experience."

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11. The Medical Council of India has also prescribed the qualifications for the post of Reader/Associate Professor which are to the following effect:

" Reader/Associate D.M Professor (Cardio- logy)	(i) As Assistant Professor/Lecturer in Cardiology for two years in a recognised medical college/teaching institution.
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Desirable

(i) Minimum of four
Research Publi-
cations indexed
in index Medicus/
national journals."

12. On the strength of these facts, it is being asserted that the applicants are entitled to the reliefs claimed, and the advertisement and the rules in this regard should be quashed.

13. The Medical Council of India has framed the regulations in exercise of its powers under Section 33 of the Indian Medical Council Act, 1956. It becomes unnecessary for us to delve into the different provisions of the Indian Medical Council Act, 1956 because the Supreme Court has already gone into this controversy and succinctly described the effect of the provisions of the Medical Council Act as well as regulations thereto. It has been held that the regulations are mandatory in nature and would override the other provisions that might have been made by the State.

14. In the case of Medical Council of India v. State of Karnataka and others, (1998) 6 SCC 131, the Supreme Court held:-

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"24. The Indian Medical Council Act is relatable to Entry 66 of List I (Union List). It prevails over any State enactment to the extent the State enactment is repugnant to the provision of the Act even though the State Acts may be relatable to Entry 25 or 26 of List III (Concurrent List). Regulations framed under Section 33 of the Medical Council Act with the previous sanction of the Central Government are statutory. These regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in Section 33. If a regulation falls within the purposes referred under Section 33 of the Medical Council Act, it will have mandatory force. Regulations have been framed with reference to clauses (fa), (fb) and (fc) (which have been introduced by the Amendment Act of 1993 w.e.f. 27.8.1992) and clauses (j), (k) and (l) of Section 33."

A year later in the case of Dr. Preeti Srivastava and another v. State of Madhya Pradesh and others, (1999) 7 SCC 120, the same question had again been considered by the Supreme Court. Once again, the Apex Court held:-

"Section 33 of the Act gives to the Council the power to make regulations generally to carry out the purposes of the Act with the previous sanction of the Central Government. It provides that without prejudice to the generality of this power such regulations may provide, under Section 33(j) for the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained in universities or medical institutions, for grant of recognised medical qualifications, and under Section 33(1) for the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examination."

Thereupon the Supreme Court held that the scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. It held:-

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"The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a university or a medical institution have to be recognised under the Indian Medical Council Act, 1956. Unless the qualifications are so recognised, the students who qualify will not be able to practise. Before granting such recognition, a power is given to the Medical Council under Section 16 to ask for information as to the courses of study and examinations. The universities are bound to furnish the information so required by the council. The Postgraduate Medical Committee is also under Section 17, entitled to appoint Medical Inspectors to inspect any medical institution, college hospital or other institution where medical education is given or to attend any examination held by any university or medical institution before recommending the medical qualification granted by that university or medical institution. Under Section 19, if a report of the Committee is unsatisfactory the Medical Council may withdraw recognition granted to a medical qualification of any medical institution or university concerned in the manner provided in Section 19. Section 19-A enables the Council to prescribe minimum standards of medical education required for granting recognised medical qualifications other than postgraduate medical qualifications by the universities or medical institutions, while Section 20 gives a power to the Council to prescribe minimum standards of postgraduate medical education. The universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognised under the Medical Council of India Act. We, therefore, disagree with and overrule the finding given in *Ajay Kumar Singh v. State of Bihar*, (1994) 4 SCC 401 to the effect that the standards of postgraduate medical education prescribed by the Medical Council of India are merely directory and the universities are not bound to comply with the standards so prescribed."

From the aforesaid, the answer to the abovesaid question obviously is that the said minimum qualification prescribed by the Medical Council of India in terms of the regulations will have mandatory effect.

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15. As already referred to above, the stress was that the minimum qualifications prescribed run counter to the qualifications prescribed for the said post by the Medical Council of India. While giving resume of the facts, we have already referred to the other facts. For the post of Associate Professor, the requirement is of having at least five years' experience as Senior Resident/Tutor/Demonstrator/Registrar/Lecturer in the concerned speciality in a recognised teaching institution. The Medical Council on the contrary prescribes that for appointment to the said post of Associate Professor, one should be Assistant Professor/Lecturer in Cardiology for two years in a recognised medical college/teaching institution and it is desirable to have minimum of four Research Publications therein. This question was directly involved before this Tribunal in the case of Dr.(Mrs.) Simmi K.Ratan v. Union of India and others in OA No.896/2002 decided on 22.4.2003. When similar controversy had arisen pertaining to an advertisement on same lines but in another discipline, the same was quashed holding:-

"13. We fail to understand that how the experience in the capacity of Senior Resident/Tutor/Demonstrator/Registrar/Lecturer can be equated with the post of Assistant Professor for the post of Associate Professor. The Medical Council of India in exercise of its powers has prescribed the minimum experience as Assistant Professor/Lecturer in Paediatric Surgery for two years in a recognized Medical College/Teaching Institution. This is the minimum qualification prescribed by the Medical Council of India. It is, therefore, mandatory in nature. As per the advertisement for the post of Associate Professor, 5 years experience has been prescribed as Senior Resident/Tutor/Demonstrator. The regulations of the Medical Council of India

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clearly prescribe for the post of Assistant Professor or Lecturer, three years experience as Resident/Registrar/Tutor. For all practical purposes, the posts of Registrar/Demonstrator/Tutor are inferior to that of Associate Professor/Lecturer as per the guide-lines of the Medical Council of India. It is in this back-drop that we hold that the advertisement issued does not come up to the minimum qualification prescribed by the Medical Council of India. Candidates must have two years' experience as Lecturer/Associate Professor. The advertisement runs counter to the minimum qualifications prescribed by the Medical Council of India. Therefore, once the qualifications prescribed by the Medical Council of India are mandatory and the advertisement does not fulfil the same, it requires to be quashed."

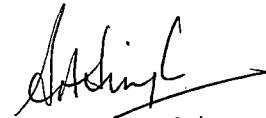
16. On parity of reasoning, it is, therefore, clear that the advertisement and the recruitment rules which prescribe lesser qualifications for the post of Associate Professor cannot be sustained. Since the qualifications prescribed by the Medical Council of India are mandatory and they are not higher than what have been prescribed by the Medical Council of India, they should be quashed.


17. It is obvious from the aforesaid that the guide-lines/regulations of Medical Council of India necessarily have to prevail. The advertisement runs counter to the minimum qualifications prescribed by the Medical Council of India. They are not higher than that, because as already quoted from the decision rendered by this Tribunal in the case of Dr (Mrs.) Simmi K. Ratan (supra), this question has already been considered. It requires no repetition. Necessarily, therefore, the advertisement and the rules in this regard cannot be sustained.

18. For these reasons, we allow the present application and direct:

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- a) the advertisement, copy of which is Annexure A-1 and the recruitment rules for the post of Associate Professor (Cardiology), copy of which is Annexure A-4, pertaining to the post of Associate Professor are quashed.
- b) Respondents may, in accordance with guidelines of Medical Council of India, take a decision for filling up the said post in accordance with law.
- c) When the Original Application was admitted, it was directed that if any appointment/selection is made, that would be subject to the final outcome of the present Original Application. Resultantly, it is directed that necessary consequence should follow in accordance with law.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman