

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2778/2004

New Delhi, this the 19th day of June 2007

HON'BLE MR. L.K. JOSHI, VICE-CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Shri Syed Zafaryab Ali,
S/o Late Shri Hakim Syed Maqsood Ali,
R/o 1752, Gali Mir Jumla
Lal Kuan
Delhi-110006.

... Applicant.

(By Shri Syed Zafaryab Ali, applicant in person)

VERSUS

1. The Government of N.C.T. of Delhi
Through the
Principal Secretary (H &FW)
Ministry of Health,
G.N.C.T. of Delhi,
Secretariat, I.G. Stadium,
New Delhi.
2. The Administrator,
Director ISM&H/Administration
Head of the Department
A&U Tibbia College,
Government of NCT of Delhi,
Karol Bagh, New Delhi-110005.
3. Deputy Medical Superintendent,
A&U Tibbia College, Hospital
Government of NCT of Delhi,
Karol Bagh, New Delhi-110005.

... Respondents.

(By Advocate Shri Ajesh Luthra)

ORDER

By Sh. Mukesh Kumar Gupta:-

Validity of Office Order dated 10.11.2004 terminating applicant's services on the ground that he was appointed on purely adhoc basis and that too for specific period as well as that he has not been found eligible for the post of Compounder (Unani), is challenged in present OA.

2. Admitted facts of case are that on an earlier occasion, applicant filed OA No.1491/2003 apprehending his termination. Vide order dated 06.6.2003 directions were issued to maintain status-quo. Since said order had been violated, CP No.312/2003 was preferred, which was disposed of vide order dated 23.4.2004, based on respondents' statement that he will be allowed to join duty. In compliance of it, he was re-engaged w.e.f. 23.4.2004 though initially for a period of 89 days but continued till 10.11.2004 when his service was terminated. Aforesaid OA was also disposed of vide order dated 11.5.2004 with direction that respondents should consider whether he is to be regularized or not and necessary exercise should be completed within a period of six months. Till then, respondents were restrained from terminating his services.

3. Admitted facts are that on requisition placed with Employment Exchange seeking nomination for the post of Compounder (Unani), it expressed its inability to sponser suitable candidates. As "No Objection Certificate" was issued, the post of Compounder (Unani) was advertised in the year 1997 and eight applications were received. Qualification prescribed had been secondary or equivalent examination, certificate of Ayurvedic / Unani course of one year duration & three years' experience in any Ayurvedic / Unani hospital. As per Rules, said post in pay scale of Rs.330-560/- was to be filled by promotion failing which by direct recruitment. Applicant being eligible applied for it. Competent Authority though noticed that he was over-aged but relaxed said condition and in exigency of service appointed him on adhoc basis for a period of 180 days vide Memo dated 19.9.1997. Revised pay scale for said post had been Rs.3,050-4,590/-. Said appointment continued from time to time till he was terminated vide impugned order.

4. Government of NCT, Delhi took over Ayurvedic / Unani Tibbia College Board vide Delhi Tibbia College (Takeover) Act 1997, which came into force

w.e.f. 01.5.1998. As per Section 7 of said Act terms & conditions of service, such of the employees of Ayurvedic and Unani Tibbia College were declared to be employees of Government of NCT of Delhi. Government of NCT, Department of Health & Family Welfare issued corrigendum dated 25.7.2006, which contained Annexure-'A', mentioning details of employees of Ayurvedic & Unani Tibbia College Board, who had for sometime worked in college after the appointed day fixed for enforcement of takeover act, and also those who continued to work in college on the date of issuance of said corrigendum, and declared to be employees of Government of NCT of Delhi under aforesaid provisions of Section 7 of Takeover Act. In terms of said corrigendum, officials' names therein were regulated in accordance with aforesaid provisions of Section 7. His name figures at serial no.40 of said Annexure 'A', appended to said corrigendum, which was signed by Executive Officer, Joint Director ISM&H and Director (Tibbia College). Said Section 7 had been substituted vide amendment Act of 2006. As per provisions of said Section, Government may, having regard to the requirements of College, appoint an employee who has been immediately before the appointed day, employed in College as an employee of Government as a part of initial constitution. It also provides how to regulate his pay and other terms & conditions of services. As per communication issued on 28.6.2002, total number of sanctioned posts of Compounder was shown as three.

Grievance raised in present OA is that respondents terminated his services without considering regularization, which is illegal, unjust & arbitrary. Respondents discriminated with him in as much as other similarly situated persons were allowed such relief but declined the same to him, which in turn violates Articles 14 & 16 of Constitution of India. Respondents failed to initiate proper selection after public advertisement and, therefore, neither it was backdoor entry nor it is illegal appointment. On the other hand, applicant, who appeared in person, contended that his appointment by the then competent

authority was a conscious decision in terms of rules, which were relaxed to certain extent in the form of age relaxation. Since he has rendered more than 7 years' of satisfactory service and has now become over-aged, was entitled to regularization. Not only this, vacancy also remains in existence. He performed his duties and discharged responsibilities with utmost sincerity & efficiency. Not only this he has gained wide experience and, therefore, in given circumstances, he cannot be made to suffer. Moreover, he belongs to OBC community and respondents following the principle of natural justice as well as doctrine of legitimate expectation were expected to grant him relief.

5. Respondents contested the claim laid and raised preliminary objection about maintainability of present OA. Adhoc employees have no right to post until they are duly selected and appointed. Requirement of experience as prescribed under Rules cannot be relaxed. Reliance was placed on number of judgments namely ***J&K Public Service Commission vs. Dr. Narender Mohan [1994 (1) SLR 446]***, ***Union of India vs. Harish Bal Krishnan Mahajan [1996 (1) SLR 669]***, ***State of Punjab vs. Surender Singh [1997 JT (4) SC 82]***, ***Sodagar Singh vs. State of Punjab [1997 (2) SCC 554]*** and so on.

6. Respondents have placed reliance on ***2006 (2) SCC 482 [Union Public Service Commission vs. Girish Jayanti Lal Veghela & Ors.]*** to state that a person appointed to a post under the Administrator of a Union Territory on contract basis for a short period dehors the statutory rules is not a government servant. Reliance was also placed on ***(2006) 3 SCC 493 [National Fertilizers Ltd. & Ors. vs. Somvir Singh]*** to the effect that regularization is not a mode of employment and when recruitment rules are made, employer is bound to comply with the same. ***2006 (1) SCC 667 [State of U.P. vs. Neeraj Awasthi & Ors.]*** was also cited to impress that illegal appointments cannot be regularized. ***2006 (2) SCC 315 [Mohd. Sartaj & Anr. vs. State of U.P. & Ors.]*** was cited to

contend that qualifications to be seen which a candidate possessed on the date of recruitment and not at a later stage unless rules to that regard permit. **1996**

(7) SCC 562 [State of H.P. vs. Suresh Kumar Verma & Anr.] was pressed to impress that re-employment could not be granted when a project comes to an end. However, under para-5, it was noticed that respondents have become over-aged by now and, therefore, direction was issued to consider necessary relaxation of age to the extent of period of service on daily-wages. **JT 1997 (4) SC 411 [P. Sadagopan & Ors. vs. Food Corporation of India]** was cited to contend that experience of three years being a pre-condition for consideration for promotion, relaxation done by Division Bench was held to be in defeasance of regulations. Lastly reliance was placed on **2002 (9) SCC 749 [Employer in Relation to the Management of G.C. of BCCL vs. Workmen represented by Bihar Colliery Kamgar Union]**.

7. On merits, it was stated that recommendations of Screening Committee are merely recommendations and neither binding upon Executive nor can over-rule the law. It was admitted that applicant was appointed by Tibbia College Board to the post of Compounder (Unani) on temporary & adhoc basis for 180 days in pay scale of Rs.950-1,500/- with immediate effect on terms & conditions mentioned in institution's offer of appointment issued on 19.9.1997. Thereafter he was granted various extensions. Order dated 03.7.2001 was issued for extension of adhoc appointment for another six months from 09.7.2001 to 08.1.2002 or till final decision of Government on report of Screening Committee or whichever is earlier. Finance Department after careful consideration for extension of adhoc appointment accorded approval upto 31.5.2003 with the conditions that funds are available and department shall ensure regular arrangement by 31.5.2003. Department had taken up his case for adhoc appointment but it was rejected by Competent Authority. His case had been

considered in terms of order passed by this Tribunal on 11.5.2004 and reason for terminating his services was "lack of experience" at the time of initial appointment (reply para-412). No discrimination was committed. Only 93 of its employees were ultimately appointed in Government service based on recommendations of Screening Committee and, therefore, he is not entitled to regularization. As a matter of policy posts had to be filled up on regular basis and he has every right to compete with other eligible candidates.

8. By filing detailed rejoinder, applicant pointed out that Government of NCT, Delhi issued corrigendum dated 25.7.2006 wherein under Annexure-A, his name is placed at serial no.40. When Ayurvedi & Unani Tibbia College was taken over by Government of NCT, Delhi on 01.5.1998, a Screening Committee was set up to regularize services of Ayurvedi & Unani Tibbia College employees, which included his name for regular employees. Since his name was there as an initial appointee on the take over of said College, there was no rhyme & reason for not regularizing him particularly when all aspects of the matter were duly considered before his appointment. In the circumstances, plea raised now by respondents is an after-thought and cannot be justified.

9. We heard applicant in person as well as learned counsel for respondents and also perused original records produced by respondents.

10. On perusal of original records relating to his initial selection, we noticed that said post had been advertised, which was vacant for about 10 years. Many efforts to fill up said post proved futile due to non-availability of eligible candidates. Noting dated 28.8.1997 observed that work of hospital was seriously suffering in the absence of qualified Compounder. Applicant herein is a suitable candidate for said post, holding diploma in Unani of one & a half year duration, having passed high school examination besides having three & a half years'

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experience in said capacity. Only negative point noticed was that he was over-
aged, about 34 years old though as per RRs maximum age prescribed is 30
years.

11. In view of above, a proposal was made recommending his selection on
grant of "age relaxation, if rules permit." Thereafter matter was placed before
Chairman, Tibbia College Board and on his orders, he was appointed. It is not in
dispute that he continued to function since September 1997 till 10.11.2004 when
his services were terminated.

12. Shri Ajesh Luthra, learned counsel for respondents on a pointed query
raised by the Bench and on instructions pointed out that the vacancy remains
unfilled till date. Perusal of impugned order shows that his services were
terminated based on two grounds noticed therein namely his initial appointment
was purely on adhoc basis and that too for specific period. Second ground, as
described there, had been that: **"he has not been found eligible for the post
of Compounder (Unani)."** As far as first ground is concerned, it is no doubt true
that he was appointed on adhoc basis and for specific period but the fact remains
that such employment continued for more than seven years without any
interruption. Second reason assigned for terminating his services, as noticed
hereinabove, is the principal reason for said impugned action. There is no
ambiguity in said reason. Rather it says in specific that he "has not been found
eligible." This aspect and basis of action, in our considered view, is misplaced,
baseless & against the records of case. Three conditions prescribed under RRs,
as noticed hereinabove & revealed by respondents' own records, were fulfilled by
him. He had been found eligible for the post holding educational qualifications as
well as experience. The only aspect, which he had not fulfilled, was "age"
prescribed. In our considered view, age was deemed relaxed by the Competent
Authority of Tibbia College Board. We may note that rules / regulations, which

were in force at the relevant point of time, had been notified in Delhi Gazette dated 29.9.1961. Appointing authority is prescribed under appendix-1 to the regulations in force, as noticed hereinabove, which were made with previous approval of Chief Commissioner, Delhi, by Tibbia College Board under Tibbia College Act, 1952. Chairman, Tibbia College Board had been the highest authority in said organization. Said post, as noticed hereinabove, is required to be filled by promotion, failing which by direct recruitment. Qualifications prescribed had been meant for direct recruits but not for promotees. Similarly age prescribed was meant for direct recruits. When Competent Authority appointed him, it has to be taken only against direct recruitment. Moreover, it is an admitted fact that advertisement had been issued inviting applications for said post, which mode can be used only for direct recruits and not for promotion. In our considered view, concerned record relating to his appointment reveals that efforts made to fill up said post proved to be futile and as work of hospital was seriously suffering & therefore Chairman, Tibbia College Board, competent authority took conscious decision and relaxed the requirement of age by appointing him. Said deemed relaxation cannot be question at this belated stage. Moreover, respondents themselves issued corrigendum dated 25.7.2006 and included his name in Annexure-A appended thereto. Language of corrigendum reveals that those who continued to work for College after appointed date fixed for enforcement of Takeover Act were also declared to be employees of Government of NCT of Delhi under provisions contained in Section 7 of aforesaid Act, 1997. It is an admitted fact that his name figured at serial no.40 in said Annexure-A. It would be expedient to notice relevant excerpts of said corrigendum dated 25.7.2006 which reads as under:-

"The Government of the NCT of Delhi is further pleased to order that employees of the Ayurvedic and Unani Tibbia College Board whose names are included in the Annexure-A to this corrigendum and who had for sometime worked in the college after the appointed day fixed for enforcement of the takeover act and the

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individual concerned has retired from service during the period intervening falling between the appointed day fixed for enforcement of the takeover act and issuance of this corrigendum or those who continue to work for the college as on the date of the issuance of this corrigendum are also declared to be the employees of the Government of the NCT of Delhi under provisions contained in section 7 of the takeover act. In either case the terms and conditions of the service of these person shall be regulated in accordance with the provisions contained in the section 7 of the section of the takeover act." (emphasis supplied).

In such circumstances, we have no hesitation to conclude that once the applicant is declared to be employee of Government of NCT, Delhi under Section 7 of aforesaid Act, 1997, respondents are not justified to terminate his services without following due process of law. We may note that said impugned order has not been passed as a measure of penalty. We may also observe that it is not the case of respondents that his performance during the period in question was either unsatisfactory or not upto mark or he had given room to complaint. On the other hand, it is a case where he has discharged his services efficiently and satisfactorily and as on date, he is about 45 years old. We have also perused his application dated 24.6.1997. His case has been recommended by Screening Committee for regularization and there remains a vacancy too.


13. We have carefully perused aforesaid judgments relied upon by respondents and in our considered view, none of them is applicable in facts & circumstances of present case as in present case appointment has been made by competent authority after examining all aspects namely educational qualifications, experience, sufferings faced by patients, non-availability of vacancy for long time as well as age prescribed under RRs. Therefore, we are of the view that judgments relied upon are distinguishable and inapplicable in present facts & circumstances.

14. In view of the discussion made hereinabove and taking an overall view of matter, we are of the considered view that reasons assigned about his ineligibility

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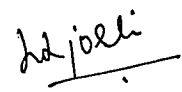
are not tenable & justified. After he has been treated & declared to be employee of Government of NCT, Delhi under provisions contained in Section 7 of Takeover Act, there was no justification at all in passing impugned order. Reliance placed on various judgments in given circumstances is misplaced as the same were rendered in altogether different facts & circumstances of cases.

15. Resultantly, OA is allowed. Impugned Office Order dated 10.11.2004 is quashed & set aside. Applicant should be reinstated in service forthwith. However, he will not be entitled to any back wages. No costs.



(Mukesh Kumar Gupta)
Member (J)

/gkk/



(L.K. Joshi)
Vice-Chairman (A)