

• CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA-2832/92

(9)

New Delhi this the 15th day of December, 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)  
Hon'ble Sh. S.P. Biswas, Member(A)

Hakim Wadudul Hasan,  
S/o Maulana Nurul Hasan,  
3878, Gali Nimwali,  
Kalan Mahal, Daryaganj,  
New Delhi-2.

.... Applicant

(through Sh. A.K. Behra, advocate)

versus

Union of India through

1. Secretary,  
Ministry of Health & Family  
Welfare, Nirman Bhawan,  
New Delhi.

2. Director General of Health  
Services, Govt. of India,  
Nirman Bhawan,  
New Delhi.

3. Secretary,  
U.P.S.C.,  
Dholpur House,  
Shahjahan Road,  
New Delhi.

.... Respondents

(None present)

ORDER(ORAL)

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)

The applicant in this case has been appointed on ad hoc basis as Unani Physician (Hakim) vide para-1 of the reply on merits w.e.f. 30.6.83 to which post he joined on 9.8.83. At the time when the said ad hoc appointment was made, the relevant rule pertaining to the post was the one dated 7.1.75 according to which the essential qualification for the post was degree or diploma. It is submitted that the applicant has been given appointment to the said post on ad hoc basis with a view to subsequent revision or up-gradation of the

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post, which finally took place by amending the existing Recruitment Rules on 24.9.86. By amendment, the essential qualification for the post of Unani Physician has now become a degree in the concerned field. The essential qualification under the Recruitment Rules dt. 7.1.75 is reproduced here below:-

"i) Degree or Diploma in Unani Tibb from a University or a statutory State Board/Council/Faculty/Examining Body in Indian Medicine recognised in part II of the Second Schedule and in the Third Schedule to the Indian Medicine Central Council Act, 1970 (48 of 1970) duration of the training course being four years and above.

ii) 5 years' experience in the profession including 2 years' experience in a recognised Unani Hospital/dispensary or as a Research Assistant in a Government or Government sponsored research Institution."

(Emphasis added)

2. The essential qualification under the amended Recruitment Rules dated 24.9.86 is also reproduced here below:-

i) A recognised degree in Unani System of medicine included in Part II of the Second Schedule to the India Medicine Central Council Act, 1970 (48 of 1970) duration of which is not less than 5 years.

ii) Enrolled on the Central/State Register of Indian Medicine.  
(Emphasis added)

3. The short question that is to be considered in this case is whether the applicant is entitled to be considered for the post of Unani Physician on regular

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basis in accordance with the then existing rules or in accordance with the amended rules or not. On the basis of a number of decisions in this regard, we are of the opinion that the appointment to a post shall be in accordance with the Recruitment Rules that is available at the time when the vacancy arose and on the basis of the said rule the respondents should have considered appointment of the applicant to the post of Unani Physician between 1983-1986 atleast till the time when the Recruitment Rules came into force.

4. The applicant has also claimed regularisation of the said post of Unani Physician on the basis that he has been holding the said post without any interruption since 1983 till today and by way of interim order one of the posts advertised out of the total 4 posts had been directed not to be filled by the respondents.

5. It is also stated by the applicant that appointment against all those posts, referred to in the advertisement dated 11.6.92 had been deferred and none of those posts have yet been filled up. Moreover, a number of posts of Unani Physician are still lying vacant. In any event we need not examine these facts stated at the Bar for the purpose of disposing of this O.A. but we direct that the applicant's claim for the post of Unani Physician shall be considered in accordance with the Recruitment Rules notified on 7.1.75 that being the Recruitment Rule available at the time when the vacancy arose and the appointment to the said

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post shall be given to the applicant if found eligible in accordance with the said rules. The consideration in this regard shall be done within three months during which the claim of the applicant shall be considered by the appropriate authorities. In any event since the applicant is working without interruption since 1983, he shall not be removed from service except in accordance with the rules and his services shall be considered if he is selected as regular from the date of his initial appointment. It is further clarified that in case the applicant is found eligible in accordance with the erstwhile Recruitment Rules existing at the time when the vacancy arose, the applicant will be entitled to all consequential benefits in accordance with the said Recruitment Rules.

6. With the above observations/directions, this O.A. is disposed of. No costs.

  
(S.P. Biswas)  
Member (A)

  
(Dr. Jose P. Verghese)  
Vice-Chairman (J)

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