

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/00027/2020

ORDER RESERVED ON 30.07.2021

DATE OF ORDER: 07.09.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Chandigarh Bench at Chandigarh)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

Ratnakaram Venkata Anilkumar
Aged about 26 years
S/o Sri Rathnakaram Venkateswarlu
C/o O.Damodar Raju
Sri Venkata Ganesh PG for Gents
No.5, 8th Main Road
Opp.Surya Sweet
Bommanahalli
Bangalore-560 068.

.....Applicant

(By Advocate Shri K.Hanifa – through video conference)

Vs.

1. Union of India

Rep: by its Additional Secretary
and Director General
Ministry of Health & Family Welfare
Room No.244 A
Nirman Bhawan
Maulana Azad Road
New Delhi – 110011.

2. Director, CGHS

Room No.545 A
Nirman Bhawan
Maulana Azad Road

New Delhi-110 011.

3. Additional Director
Central Government Health Scheme
3rd Floor, E-Wing Kendriya Sadan
Koramangala
Bangalore-560 034.Respondents

(By Advocate Shri S.Sugumaran – through video conference)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“Direct the Respondent-3 to appoint him as Allopathic Pharmacist and to draw all consequential benefits eligible to the applicant”

2. The Tribunal besides issuing notices on 14.01.2020 to the respondents for submitting their reply to the OA, directed to keep one post of Allopathic Pharmacist of OBC category vacant until further orders.

3. The applicant in his pleadings has averred as follows:

a. The respondent No.3 had invited applications for the post of Pharmacist (Allopathy) vide email advertisement(Annexure-A1) for 4 vacancies i.e. 1-UR, 2-OBC, 1-EWS for CGHS. The educational qualifications, as prescribed, were as follows:

- i. 12th class passed with Science subjects (Physics, Chemistry and Biology) or equivalent from a recognized Board or University.
- ii. Diploma in Pharmacy from recognized Institution and registered as Pharmacist under the Pharmacy Act, 1948, and

- iii. Two years' experience as Pharmacist in any recognized Hospital or Pharmacy after duly registered as Pharmacist under the Pharmacy Act, 1948.

OR

- i. Bachelor degree in Pharmacy (B. Pharma) from a recognized University or equivalent; and
 - ii. Registered as Pharmacist under the Pharmacy Act, 1948.
- b. The Central Government, on the recommendations of the Pharmacy Council of India, constituted under Section 3 of Pharmacy Act,1948,had notified, vide its notification dated 16.07.2019 (Annexure A2), that a person holding the Pharm. D qualification being higher qualification shall automatically become eligible for appointment to various posts where a person holding Diploma in Pharmacy or Bachelor of Pharmacy or Master of Pharmacy qualification is eligible to be appointed.
- c. The applicant applied for the post of Allopathic Pharmacist, vide his application ALPT1000876 dtd.08.10.2019(Annexure-A3).
- d. The respondent-3 released a Category wise merit list dated06.12.2019(Annexure-A5) wherein the applicant's application was shown at Sl.No.1. Respondent-3 directed the candidates to report along with original documents in his office on 26.12.2019 at 10:00 AM. Accordingly, the applicant attended the R-3's office and produced all the original documents, which are essential and relevant and requisite for the post of Allopathic Pharmacist.
- e. The applicant learnt that the OBC candidate shown at Sl.No.2 who had scored less marks than the applicant, was appointed by R-3. Consequently, the applicant sent his representation dated02.01.2020(Annexure-A7) stating that he has attended the certificate verification but has not been informed anything yet. The eligibility of Pharm.D qualification for the post of Pharmacist had

already been notified in the Gazette notification dated 16th July 2019 and the term “automatically” in the Gazette signifies the intention of the department and requested to take early decision.

- f. However, Respondent-3 has not responded to the representation of the applicant and kept him in dark although he has scored more marks in the Examination/Test conducted being OBC candidate and the vacancy is meant for OBC.
4. The respondents filed their reply statement. They have averred as follows:
 - a. The advertisement to the post of Pharmacist(Allopathy) was made through employment newspaper dated 05 Oct - 11 Oct, 2019 and in Deccan Herald, Prajavani and Vijaya Karnataka News Papers dated 21.9.19, apart from Rojgar Yojana(Annexures-R1 & R2).
 - b. Based on the information and documents furnished by the applicant in respect of essential qualifications, the admit card was issued to him. However, verification of original certificates later on, revealed that the applicant did not have the required essential qualifications. Therefore, his candidature was rejected.
 - c. The applicant was informed about his non-selection to the post of Pharmacist (Allopathy) in CGHS Bangalore vide letter dated 16.01.2020, giving the reasons for non-selection of his candidature. The applicant's candidature was rejected for the reasons that essential qualification is not as per Recruitment Rule/advertisement. He did not possess Biology as one of the subjects in Intermediate, being the essential qualification as per Recruitment Rules. The applicant produced the Intermediate pass with Mathematics, Physics and Chemistry, but not Biology, which is not as per recruitment criteria of CGHS, MOH&FW Govt. of India.
 - d. In the present case, the recruitment to the post of Pharmacist (Allopathy) is based on duly notified Recruitment Rules under Gazette Notification

GSR 51 dtd.11.03.2015 which are statutory rules in nature and issued under proviso to Article 309 of Constitution of India. Therefore, the Appointing Authority i.e. R-3 (Additional Director CGHS Bangalore) has no powers to alter or modify the existing Recruitment Rules(Annexure-R6). The DOPT has also clarified that the recruitment to the post of Pharmacist should be done in accordance with the provisions of RRs.

- e. As such there is no violation of natural justice and the action of the respondents is just, fair and proper.

5. In his rejoinder, the applicant has averred as follows:

- a. There are two distinct sets of essential qualifications given in the notification which are separated by the term 'OR'. The applicant falls under the second set of qualifications as he has a graduate degree in pharmacy and not a diploma.
- b. The applicant is having the qualification of Pharm.D degree which is a higher qualification than B.Pharma according to the Gazette of Ministry of Health and Family Welfare, Government of India(Annexure-A2). He is also registered as a Pharmacist in Andhra Pradesh State Pharmacy Council u/s 32(2) of the Pharmacy Act, 1948, which entitles him to all the benefits granted under the Pharmacy Act, 1948. Thus, the applicant is satisfying the requisite essential qualifications for the post of Pharmacist according to the existing Recruitment Rules.
- c. The Respondent-3 has cited two reasons in the reply statement for denying the appointment of Pharmacist (Allopathic) to him. The 1st condition is of not possessing Biology subject in 12 Class. However, this is not applicable in case of the applicant as he falls under the 2nd set of essential qualifications. The applicant was forced to choose B.Pharm. as his qualification, instead of Pharm.D since there was no other option made available in the online application for the equivalent qualification even though it is mentioned in the Gazette Notification. Further the

MoHFW Gazette at Annexure-A2 assured him to apply for the job as it clarifies the eligibility. Sudhansh Pant, the Joint Secretary to the Govt. of India had already conveyed the MoHFW Gazette at Ann-A2 to the Director, CGHS vide letter dated 16.07.2019(Annexure-A9) but the necessary action in the further recruitment notification was not taken.

- d. The Pharmacy Council of India, is the authorized and the only regulatory body of Pharmacy profession and education in India. Further, Smt. Archana Mudgal, Registrar-Cum-Secretary, Pharmacy Council of India in E-Mail vide letter (Annexure-A8) addressed to R-3, in response to the letter of the applicant, wherein in para-c pointed as '*Please find enclosed herewith as Annexure-I notification dated 16.07.2019 issued by Ministry of Health & Family Welfare, notifying that a person holding the Pharm.D qualification being higher qualification shall automatically become eligible for appointment to various posts where a person holding Diploma in Pharmacy or Bachelor of Pharmacy or Masters of Pharmacy qualification is eligible to be appointed. In view of the above, it is requested to consider the Pharm.D qualification for the post of Pharmacist and take necessary action under intimation to the PCI.*
 - e. The applicant has also topped the CGHS Bangalore Pharmacist recruitment examination but the Respondent-3 has denied the appointment based on illogical grounds without taking note of the aforesaid facts.
6. Heard the learned counsels for the parties.
7. The contention of the applicant is that he is fully eligible to be considered for the post of Allopathic Pharmacist since he holds the requisite qualification of Doctor of Pharmacy (Pharm. D.) conferred on him by the Jawaharlal Nehru Technological University, Anantapur on 02.01.2017. He has also obtained the

highest marks in OBC category i.e. 120 marks in the examination conducted by the respondents.

8. The contention of the respondents is that as per the notified Recruitment Rules issued under the Gazette Notification dated 11.03.2015, the qualifications prescribed for this post require a candidate to have a Bachelors Degree in Pharmacy. If any candidate did not possess the Bachelor Degree in Pharmacy then he should have had a Diploma in Pharmacy along with two years experience as Pharmacist and should have passed the 12th std. with Science subjects including Physics, Chemistry and Biology. Since the applicant did not possess the Bachelor Degree in Pharmacy and he has also not studied the subject Biology in 12th std., hence, he is, according to the respondents, not eligible to be appointed to the post of Allopathic Pharmacist.

9. A careful reading of the Recruitment Rules prescribed for the post of Allopathic Pharmacist reveal the following provisions relating to essential qualifications required for the post :

- i. *12th class passed with Science subjects (Physics, Chemistry and Biology) or equivalent from a recognized Board or University;*
- ii. *Diploma in Pharmacy from recognized institution and registered as Pharmacist under the Pharmacy Act, 1948; and*
- iii. *Two years' experience as Pharmacist in any recognized Hospital or Pharmacy after duly registered as Pharmacist under the Pharmacy Act, 1948;*

OR

- i. *Bachelor degree in pharmacy (B Pharma) from a recognized University or equivalent; and*
- ii. *Registered as Pharmacist under the Pharmacy Act, 1948*

10. The applicant's contention is that he is eligible as per part 2 of the eligibility criteria which specifies the qualification as a Bachelor degree in Pharmacy from a recognized University *or equivalent*. The question is whether the degree held by the applicant can be considered as an equivalent degree to the degree of Bachelor in Pharmacy as prescribed under the Recruitment Rules. This question stands already answered by the fact that the Government of India itself has issued a Gazette Notification No.Z-28020/11/2019-AHS dated 16.07.2019 wherein the Central Government on the recommendations of the Pharmacy Council of India constituted under Section 3 of Pharmacy Act, 1948, has decided that '*a person holding the Pharm.D qualification, being higher qualification shall automatically become eligible for appointment to various posts where a person holding Diploma in Pharmacy or Bachelor of Pharmacy or Master of Pharmacy qualification is eligible to be appointed*'. This notification dated 16.07.2019 is issued prior to the date of advertisement vide which the applications for the post of Pharmacist(Allopathic) had been invited by the respondents.

11. Since, the Central Government itself has declared, that the persons holding the Pharm.D qualification, being higher qualification, shall automatically become eligible for appointment to various posts, where a person holding Diploma in Pharmacy or Bachelor of Pharmacy or Master of Pharmacy qualification, is eligible to be appointed, hence, there is no doubt that the applicant's qualification is covered under the *equivalent qualification* clause of the prescribed Recruitment Rules. Hence, the applicant, having the equivalent

qualification, is eligible to be considered for appointment to the post of Pharmacist (Allopathic).

12. Keeping the above in view, the OA is allowed. One post of Pharmacist (Allopathic) has already been kept vacant as per the interim directions of this Tribunal on 14.01.2020. The respondents are directed to consider appointing the applicant, to this existing post of Pharmacist (Allopathic) within a period of one month from the date of receipt of a certified copy of this order.

13. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER(ADMN)

(SURESH KUMAR MONGA)
MEMBER(JUDL)

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