

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

(order reserved on 20.5.2021)

O.A.No.060/01367/2019
 M.A.No.060/00815/2021 &
 M.A.No.060/00910/2021

Chandigarh, this the 31st day of May, 2021

**CORAM: HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. ASHISH KALIA, MEMBER (J)**

Dr. Mahesh Chandra S/o Late Sh. Devi Sahai, Aged 55 years, Associate Professor (CAS), Department of Urology, Govt. Medical College & Hospital, Sector-32, Chandigarh-160032.

(BY: MR. ROHIT SETH)

Applicant

Versus

1. Union of India through the Secretary, Government of India, Ministry of Health & Family Welfare, Nirman Bhavan, New Delhi-110011.
2. Chandigarh Administration through its Administrator, Union Territory, Secretariat, Sector-9, Chandigarh-160009.
3. Chandigarh Administration through the Secretary Medical Education and Research, Deluxe Building, Sector-9, Chandigarh-160009.
4. Government Medical College & Hospital, Sector-32, Chandigarh through its Director-Principal-160032
5. Union Public Service Commission through its Secretary, Dholpur House, Shahajan Road, New Delhi-110069
6. Union of India through Secretary to Government of India, Ministry of Personnel, Public Grievances & Pensions, DoP&T, North Block, New Delhi-110001.
7. Dr. Rohit Dadhwal, Assistant Professor, Department of Urology, Govt. Medical College & Hospital, Sector - 32, Chandigarh-160032.
 2nd Address: Village Chudhrer, Tehsil Dehra, Distt. Kangra (HP)-177101.

**(BY ADVOCATE: None for Respondent No.1.
 Mr. K.K. Thakur for R.No.2to4.
 None for other respondents.**

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Respondents





ORDER
HON'BLE MRS.AJANTA DAYALAN, MEMBER(A)

1. Heard the counsel for the applicant. He states that in the O.A., the applicant is challenging order dated 14/28.6.2017 (Annexure A-19) as well as advertisement published in December 2019 for filling some posts including post of Assistant Professor (Urology) on regular basis through Union Public Service Commission. He states that in case this selection is made, the applicant who joined Government Medical College and Hospital in 2005 as Senior Lecturer (General Surgery) through UPSC, will be denied the chance for selection to this post. The learned counsel for the applicant further states that right from 2005 onwards, the applicant was working in the field of urology and has conducted number of procedures in urology. He also took DNB course of 3 years in urology during 2008 to 2011. And as such, he is eminently suitable for the post. The applicant's counsel also pleads that in 2010, post of Assistant Professor was shifted from Department of General Surgery to Department of Urology. So, after creation of new Department in 2017, he should also have been shifted. But, this was not done and vide order dated 14/28.6.2017, he was deputed till the regular incumbent joins, which is improper. The counsel for the applicant further pleads urgency as the respondent department has already advertised the post through UPSC.

2. On the other hand, the respondents have stated that in their Institute, urology has always been a branch of Department of Surgery till 2017. The substantive post of the applicant is in Department of General Surgery only. As earlier urology was part of Department of Surgery, hence



his services were being used for training students and for urology procedures etc. as and when demand arose. However, in 2017, a separate Department of Urology has been created. This Department has two faculty posts – one each of Assistant Professor and Associate Professor. The Recruitment Rules for these posts namely Government Medical College and Hospital, Chandigarh, Assistant Professor and Associate Professor (Group 'A') (Gazetted) (Non-Ministerial) for the Department of Urology Recruitment Rules, 2018 (Annexure R-9) have already been published on 29.10.2018. As such, the Presidential Notification of 13.1.1992 for applying the rules of corresponding posts in Punjab Government to these posts is no longer applicable. Further, as per Column 10 of Schedule to the Recruitment Rules (Annexure R-9), the post of Associate Professor (Urology) is to be filled by Composite Method (deputation (ISTC) plus promotion). The Composite Method is explained in detail in Column 11 of the Schedule. The post of Assistant Professor (Urology) is to be filled by direct recruitment. Hence, these posts are not available for transfer from other departments. The respondents have also stated that the applicant has in fact applied for the post of Associate Professor through UPSC. However, this post was vacant since 2010 and has to be revived before it can be filled up. The proposal for filling up the post of Assistant Professor under direct recruitment quota has already been sent to the Union Public Service Commission and the applicant can apply for the same and compete with other candidates.

3. We observe that as Urology was a branch within the Department of Surgery in the respondent Institute, the



services of the applicant were being utilized by the respondent Institute in the field of urology. This situation prevailed right from 2005 till 2017. During this period, the applicant did work in urology and conducted number of procedures and also underwent a 3-year DNB Course in this field. However, the position has completely changed in 2017 when a separate Department of Urology has been created. Recruitment Rules for the newly created posts stand notified in 2018 (Annexure R-9). The respondents have argued that with the coming in the force of these Recruitment Rules, the Presidential Notification of 1992 for applying the conditions of service of corresponding posts in Punjab Government to the U.T. employees, is no longer applicable. This is because of the provisions of 1992 Notification itself which, *inter-alia*, state "subject to any other provision made by the President in this behalf".

4. It is clear from above that unless the matter regarding applicability of the 1992 Notification or otherwise is settled, no decision in the instant case can be taken. Meanwhile, the applicant is free to apply for the post advertised (he is understood to have already applied for the post of Associate Professor) and compete against other candidates if he so desires.

5. The applicant is not only questioning the Recruitment Rules but is also questioning creation of a separate department. Hence, no interim relief can be granted to the applicant unless these fundamental questions are decided in his favour.

6. It is also observed that after creation of Department of Urology in 2017, order deputing the



applicant to Department of Urology was issued on 14.6.2017 (Annexure R-4). This order clearly stated that the applicant is on deputation "for the time his services are required or till the regular incumbent joins on the said post". The applicant joined on these terms. So, he does not now *prima facie* have any right to restrain the respondents from filling up the post on regular basis – and definitely not till the O.A. is finally decided.

7. In view of all above, prayer for interim relief is rejected.

8. Needless to mention that the observations made hereinabove would not have any effect on the ultimate decision in the case.

9. Both the M.As, are, dismissed.

(ASHISH KALIA)
MEMBER(J)

Place: Chandigarh
Dated: 31st May, 2021

HC*

(AJANTA DAYALAN)
MEMBER (A)