

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.806/1999

DATED: TUESDAY this, the 17TH DAY OF OCTOBER, 2000

Shri A.B. Singh, Applicant.

(Applicant Shri M.S. Ramamurthy,Adv. with Shri R.Ramesh
Advocate)

Versus

Union of India & Ors Respondents

(Respondents by Shri S.S.Karkera, Adv. for Shri
P.M.Pradhan, Advocate)

CORAM

Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Shri B.N. Bahadur, Member (A)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to No
other Benches of the Tribunal?

(3) Library. No

B.N. Bahadur
(B.N. Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 806/1999
Dated: Tuesday, this the 17th Day of October, 2000.

Coram: Hon'ble Shri Justice Ashok Agarwal, Chairman
And
Hon'ble Shri B.N. Bahadur, Member (A)

Shri A.B.Singh,
employed as Stores Superintendent,
CGHS Medical Store,
Koliwada, Antop Hill,
Mumbai 400 037. Applicant

(Applicant represented by Shri M.S.Ramamurthy along with Shri R.Ramesh, Advocates)
vs.

1. Union of India,
through the Secretary,
Ministry of Health and
Family Welfare, Government
of India, Nirman Bhavan,
New Delhi 110 011.
2. The Director General of
Health Services,
Govt. of India,
Nirman Bhavan,
New Delhi 110 011.
3. The Deputy Director (Admn.)
(CGHS-I), DGHS
(CGHS-I Section), Govt.
of India, Nirman Bhavan,
Maulana Azad Road,
New Delhi 110 011.
4. The Addl. Director (CGHS)
DGHS, United India Bldg.
2nd floor, Sir P.M. Road,
Fort, Mumbai 400 001.
5. Dharamvir SinghLochab
working as Assistant Depot
Manager C/o. M.S.Depot.
(CGHS), Nirman Bhavan,
New Delhi 110 011.
6. Shri S.N.Sharma,
presently employed as
Assistant Depot Manager,
C/o Addl. Director,
CGHS, Kendriya Swathy Bhavan
(Near Airpool)
Begumpet, Hyderabad.



7. Shri V.B. Gupta,
working as Assistant Stores
Superintendent, C/o Addl.
Director, CGHS, United India
Bldg., 2nd floor, P.M.Road,
Bombay 400 001.

(Respondents represented by Shri S.S.Karkera, Adv. for Shri P.M. Pradhan, Adv.)

ORDER (ORAL)

[Per B.N.Bahadur, Hon'ble Member (A):

This is an Application made by Shri A.B.Singh, working as Stores Superintendent, CGHS, Medical Store, Mumbai seeking the relief from this Tribunal that the provision in the Recruitment Rules known as Central Govt. Health Scheme (Assistant Depot Manager) Recruitment Rules, 1990 which stipulates that for an incumbent to be promoted to the post of Asst. Depot Manager should be registered as pharmacists under section 31 or 32 of the Pharmacy Act, 1948 are arbitrary, unconstitutional. He seeks deletion of this provision from the Rules. Secondly, he also seeks the declaration that the selection of Respondent 5 to 7 to the posts of Assistant Depot Manager is bad in law and prays that it be set aside and that the applicant be declared promoted to that post.

2. The case of the Applicant as put forth by him is as follows: The Applicant entered the service of the Respondents as Stores Keeper and, through a series of promotions, reached the post of Stores Supdt. He is however, aggrieved that he has not been promoted to the posts of Assistant Depot Manager, (ADM) only because of the condition in the Recruitment Rules which requires that the persons in the feeder grade, who are being considered for promotion should have been registered as pharmacists under Sec. 31 or 32 of the Pharmacy Act, 1948. This, in fact, is the short point of the applicant's grievance and the question that would need to be settled in the present case.



3. The Respondents in the case has filed a Written statement resisting the claim of the Applicant and taking the stand that the Recruitment Rules, which were finalised in 1990 consciously prescribe this condition, because of the onerous responsibilities and duties required at the level of ADM in the CGHS. This point is expounded in specific terms in para 8 of the written reply of the Respondents and is sought to be further buttressed by the documents filed at Ex. R.2 by the Respondents. This Exhibit is titled as "Duties and responsibilities expected of Assistant Depot Manager under CGHS organisation."

4. Learned Counsel for the Applicant argued the case in detail first making the point that he was in fact looking after the work of the Assistant Depot Manager since 1986, when admittedly, there were no Recruitment Rules for the posts of Assistant Depot Manager. These Rules were framed in 1990 and it was also the contention of the learned Counsel, that before this (1990), he could have been, and should have been, promoted on the basis of his qualifications. The learned Counsel sought to take support from the case of *Rangayya* (AIR 1983 SC 852) and asserted that the Recruitment Rules of 1990 need not apply.

5. Another argument taken by the learned Counsel was that provision itself was not legal/constitutional. It was asserted that there was no logic in this requirement. The lower posts in the hierarchy leading up to the posts of ADM did not contain the requirement of registration as pharmacist and the introduction of this requirement was an unreasonable and arbitrary. Learned Counsel asserted that the Applicant was a Degree holder in Science with Mathematics and Physics, and that this particular Rule had resulted in other people who were both junior and only matriculaires being promoted over the head of the Applicant, just because they had acquired the registration as pharmacists.



...4/-

6. Learned Counsel for the Respondents took support from their Written Statement especially para 8 and the duties and responsibilities of the Assistant Depot Manager as annexed at Exh. R.2 to Respondents' Written Statement.

7. He asserted that the responsibilities of the Assistant Depot Manager were onerous and it was perfectly justifiable for Respondents to prescribe the requirement of registration as pharmacist. In fact this was much lower than the qualification prescribed for Direct Recruits.

8. At the outset, we would like to recapitulate the hierarchy of the system. At the bottom rung is the Store Keepersw/UDCs/Pharmacists. The next rung is Assistant Stores Supdt. leading to the further post of Stores Supdt. and finally to Assistant Depot Manager (ADM). Admittedly, there were no Recruitment Rules for the posts of Assistant Depot Manager upto 1990. Upto the level of Stores Supdt., the Recruitment Rules contain the provision for promotion along the hierarchy shown above. We note that the Respondents, in their Written Statements have denied that the Applicant has been formally assigned the work of Assistant Depot Manager from 1986. It is stated that as per oral arrangement, he was made to look after work of ADM, in the absence of regular incumbent. Such an arrangement afforded no rights to the Applicant. Since there is no written order of appointment, it is to be concluded that the argument that rights would come to the applicant by virtue of his looking after the work of ADM has to be rejected.

9. The other argument made by the Learned Counsel for the Applicant was that an appointment by promotion to the post of ADM

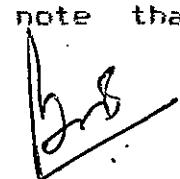


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should have been made before 1990. Admittedly, there were no Rules till then and hence it would not be for this Tribunal to assess and decide as to when a post should have been filled in. No right can accrue to Applicant, in this regard, through a judicial determination and the ratio in well known case of *Rangayya* cannot be held to be applicable to the present case in the face of the fact that no Recruitment Rules for the posts of Assistant Depot Manager existed till 1990.

10. Shri Ramamurthy learned Counsel has made a reference to the decision of the Supreme Court in the case of *Nagpur Improvement Trust vs. Yadav Rao Jagannath Kumbhare* (1999) SC LAS 1430, in support of his contention that even in the absence of Recruitment Rules, Respondents could have legitimately made an appointment way back in 1986. The judgement in the aforesaid case has no application to the facts and circumstances of the present case, The ratio of this case does not imply that the Department is duty bound to make appointments.

11. We now come to the argument that the Rules requiring the registration as pharmacists are illegal and arbitrary. We have carefully perused the duties of ADM listed in the Exh.R.2 mentioned earlier, and have also considered the point made in paragraph 8 of the Written Statement of Respondents. The Assistant Depot Manager is a Supervisory post of responsible nature We need not go into the aspect of obvious . Suffice to say that the Govt has formulated Rules under Article 309 of the Constitution where it has been considered necessary to introduce the requirement of registration as pharmacists. We also note that this requirement is considerably lower than the qualifications prescribed for direct recruitments. We further note that certain other provisions where only matriculates and



who are non graduates are also gone ahead and acquired the qualification of Registration. We do not therefore, see how this requirement introduced in the Recruitment Rules can be termed to be either arbitrary or illegal. The vires of these provisions cannot be questioned.

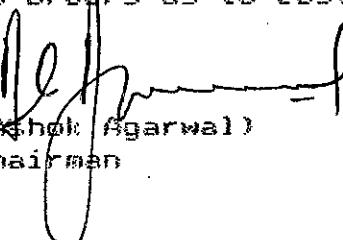
12. It is well settled that in the absence of any illegality in the Recruitment Rule, it will not be appropriate for Tribunals and Courts to determine what the Recruitment Rules of a particular posts should be like. The competent authority in the Govt. has framed the Rules and we would not like to go into examining their correctness or otherwise beyond that has already done.

13. In view of the discussions above, we are not convinced that there is any case for our interference in this matter. The D.A. is, therefore, hereby dismissed. No orders as to costs.

B.N.Bahadur,

(B.N.Bahadur)
Member (A)

sj*


(Ashok Agarwal)
Chairman