

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A.No.62 of 1994

Date of decision' 1.6.1995

Shri Karuna Kanta Saikia

PETITIONER(S)

Shri G.K. Bhattacharyya

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others

RESPONDENT(S)

Shri B.K. Sharma, Railway Counsel.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? ye
2. To be referred to the Reporter or not? — YES
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. Whether the Judgement is to be circulated to the other Benches? NO

Judgement delivered by Hon'ble Vice-Chairman,

M.G. Chaudhary

X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.62 of 1994

Date of decision: This the 1st day of June 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Karuna Kanta Saikia
Pharmacist,
N.F. Railway,
Jogighopa.

.... Applicant

By Advocate Shri G.K. Bhattacharyya

-versus-

1. The Union of India, in the Ministry of Railway
Through the Secretary,
Rail Bhawan, New Delhi.

2. The General Manager (Construction)
N.F. Railway,
Guwahati.

3. The Chief Personnel Officer,
N.F. Railway,
Guwahati.

4. The Deputy Chief Engineer(Construction)
N.F. Railway,
Jogighopa.

..... Respondents.

By Advocate, Shri B.K. Sharma, Railway Counsel.

....

ORDER

CHAUDHARI.J. V.C.

Mr G.K. Bhattacharyya for the applicant.

Mr B.K. Sharma for the respondents.

An interesting question relating to Railway
Recruitment Rule for appointment of Pharmacist and
Sections 31 and 32 of the Pharmacy Act, 1948 arises for
consideration in this case.

hell

2. The applicant was registered as a Pharmacist under Section 33 of the Pharmacy Act, 1948 (as amended) by the West Bengal Pharmacy Council. The certificate of registration was issued on 25.2.1969 and is at Annexure-1. The certificate shows that the registration was granted under clause (d) of Section 31 of the Pharmacy Act, 1948 (hereinafter referred to as the Act).

3. On the strength of the aforesaid certificate the applicant applied for registration as Pharmacist to the Pharmacy Council of the State of Assam. In pursuance of that application he was registered by that Council. The certificate of registration issued by the Assam Pharmacy Council is at Annexure-A1. That shows that the registration is granted under Section 32(2) of the Act. It was issued on 4.9.1969. The said registration was renewed on 2.3.1994 vide Annexure-1(1).

4. It appears that at the request of the authorities of the Railway Department (Deputy Chief Engineer/Construction, Silghat), the District Employment Exchange, Nagaon, had sponsored the name of the applicant alongwith two others for being considered to be recruited as Pharmacist on 16.3.1983 vide Annexure-III. Thereafter, the applicant was called by letter dated 18.3.1983, Annexure-IV, by the Deputy Chief Engineer for an interview for the selection to the post of C.L. Pharmacist. Thereafter, by order dated 25.3.1983, Annexure-V, he was appointed as Pharmacist on casual rate of pay of Rs.20 per day purely on temporary measure vide Annexure-V. He was awarded temporary status from 1.1.1984 vide Annexure-VI dated 6.10.1986.

hll

5. On 7.9.1987 the applicant applied to the General Manager(P), N.F. Railway, requesting for screening so that he may get the chance of regular absorption against the existing vacancy in the Railway Medical Department. Copy of the application is at Annexure-VIII. He was called upon by letter dated 19.5.1992 of the Deputy Chief Engineer(Con) (Annexure-X) to submit original certificates and other information in order to consider his request for regularisation. He was directed to appear for a written test in connection with regularisation of service by letter dated 5.4.1993 (Annexure-XI) from the General Manager(Con). He appeared at the written test on 26.4.1993. However, four other members of the staff were screened and were regularised with effect from 1.6.1993, but the applicant was not so regularised. The matter was pursued by the applicant and eventually he was replied by the Deputy Chief Engineer(Con) by letter dated 24.1.1994(Annexure-XVII) that as for the post of Pharmacist required qualification should be a matriculate with Diploma in Pharmacy the General Manager has expressed his inability to regularise his service as Pharmacist as he does not fulfil the said requirement. At the same time he was asked to exercise his option for regularisation in Group 'D' category if he was willing to do so. It may be mentioned that the post of Pharmacist is a Group 'C' post. The applicant has thereafter approached this Tribunal on 23.3.1994 praying for quashing and setting aside the order dated 24.1.1994 (Annexure-XVII) and for a direction to the respondents to regularise his service as Pharmacist.

hll

6. The respondents resist the application. They contend that since as per norms of appointment of a Pharmacist he should be a Matriculate and Diploma holder from a recognised school of Pharmacy run by the Health Department of local Government and as the applicant has failed to produce the said certificates he is not qualified to be appointed and, therefore, the impugned order is rightly passed. They contend that the mere fact that the applicant is a registered member of Pharmacy Council is not sufficient qualification for appointment with the respondents.

7. Mr G.K. Bhattacharyya, the learned counsel for the applicant, submitted that since the applicant is a Pharmacist registered by the Pharmacy Council he is eligible to be appointed and that the contention of the respondents that the candidate is required to be a Matriculate and Diploma holder from a Pharmacy school is not correct.

8. Mr B.K. Sharma, learned counsel for the Railways, submit; that those are the norms being followed by the Railways all along and that is consistent with the norms laid down by the Railway Board. The above contentions of the learned counsel for the parties need^a reference to the relevant recruitment rules of the Railways and the provisions of the Pharmacy Act.

9. Our attention has been drawn to paragraph 162 of the Indian Railway Establishment Manual (IREM) Vol.I, which lays down the eligibility criteria for Pharmacist under the Railways. It provides that the vacancies in the grade of Pharmacist Gr.III will be filled by direct recruitment through the Railway Recruitment Boards. Then the qualifications are prescribed as follows:

hsh

"(2) Qualification etc. are as under:-

- i) Qualifications for recruitment to the post of Pharmacist are as indicated in Sections 31 and 32 of the Pharmacy Act, 1948.
- ii) Age : Between 20 and 30 years."

After sub-para(3) following is the note:

"(Authority: Railway Board's letter No.E(NG) 64 CFP/8 dated 23.12.64 and para 176 in Section 'B' of IREM-2nd Edition, 1968)."

The aforesaid para 176 of IREM, 1968 Edition prescribed the qualifications as follows:

- "a) Age : Between 20 and 30 years
- b) Education : A certificate of training and proficiency in dispensing granted by a recognised school or by other examiners appointed by Government and must be registered if belonging to a State in which the state medical faculty maintains a list of registered compounders

Such Staff will be required to pass the first aid examination."

The Railway Board's letter dated 23.12.1964, however, has not been made available to us.

10. The combined effect of old para 176 and new para 162 shows that a certificate ^{of} training and proficiency in dispensing granted by a recognised school would be sufficient for the purposes of ^{fulfilling the} qualifications indicated in Sections 31 and 32 of the Pharmacy Act. Para 162 does not itself specify any qualifications of the nature prescribed in Sections 31 and 32, but merely provides that the qualifications for recruitment are as indicated in those Sections.

11. Turning, therefore, to Sections 31 and 32 of the Pharmacy Act, 1948, these sections contain provisions for registration....

well

✓

registration in the Register of Pharmacist maintained by the Central Council under the Act. Whereas Section 31 lays down qualification for entry on first register, Section 32 refers to qualifications for subsequent registration, i.e. to say registration effected after the date appointed under sub-section (2) of section 30 of the Act. Section 31 makes a person who has attained the age of 18 years entitled to apply for entry ^{of his name in the} on first register if, (a) he holds a degree or diploma in pharmacy....., ^{or} (b) holds a degree of an Indian University other than a degree in pharmacy ^{or} (c) has passed an examination recognised as adequate by the State Government for compounders or dispensers, ^{or} ~~and~~ (d) has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than five years prior to the date notified under sub-section (2) of Section 30. What is, however, pertinent to note is that clauses (a), (b), (c) and (d) are separated by the use of the word 'or'.

12. The certificate of registration obtained by the applicant from West Bengal Pharmacy Council dated 25.2.1967 (Annexure-1) shows that he has been registered under clause (d) of Section 31 of the Act. The certificate issued by the Assam Pharmacy Council, however, shows that he has been registered as a Pharmacist under Section 32(2) of the Pharmacy Act, 1948. This certificate was issued on 4.9.1969. Since the applicant has based his claim on the certificate of registration issued by the Assam Pharmacy Council Section 32(2) is attracted. Section 32 provides that a person who has attained the age of 18 years shall be

entitled.....

hull

entitled to have his name entered in the register if he resides or carries on the business or profession of pharmacy in the State and if he (a) satisfies the conditions prescribed for entitling a person to have his name entered on the first register as set out in Section 31, or (b) is a registered Pharmacist in another State, or (c) possesses a qualification approved under Section 14; provided that no person shall be entitled under clause (a) or clause (c) to have his name entered on the register unless he has passed his matriculation or an examination prescribed as being equivalent to a matriculation examination.

13. Sub-section 2 under which the Assam Pharmacy Council has granted the registration reads as follows:

"(2) After the Education Regulations have, by or under section 11 taken effect in the State, a person shall on payment of the prescribed fee be entitled to have his name entered on the register if he has attained the age of eighteen years, if he resides, or carries on the business or profession of pharmacy, in the State and if he has passed an approved examination or possesses a qualification approved under section 14, or is a registered pharmacist in another State."

(Emphasis supplied)

14. It is submitted by the learned counsel for the applicant that once ^{by} the operation of sub-section (2) of Section 32 the applicant has been granted registration under Section 32 it implies that he was qualified and ~~he~~ ^{thus he} has duly qualified for the purposes of para 162 of the IREM and the respondents cannot insist upon fulfilment of the requirement of Section 31 independently thereof. He submits that the respondents have been erroneously insisting upon a Diploma in Pharmacy or matriculation as the required qualification for recruitment as Pharmacist in the Railway Service.

well

15. The stand of the respondents as revealed from the written statement is that as per the norms of appointment of a Pharmacist he should be matriculate or Diploma holder from a recognised school of Pharmacy run by the Health Department of the Government and since the applicant did not obtain the Diploma of Pharmacy nor succeeded in the Matriculation examination he is not qualified for being appointed as a Pharmacist in the Railways. Mr B.K. Sharma, learned counsel for the respondents, submitted that at all times the Railway Administration has been treating these as requisite qualifications and these are the norms according to them that are required to be followed.

16. It appears to us that the Railway Establishment Manual does not prescribe such qualifications as required for recruitment to the post of Pharmacist. Para 162 of the Manual leaves that to be determined by reference to Sections 31 and 32 of the Act. The Manual does not specify as to which of the qualifications under Sections 31 and 32 are specifically applicable. It is not clear to us as to why the Manual does not incorporate the requisite qualifications independently of Sections 31 and 32. In the absence of the same it is inevitable that the question has to be resolved by reference to Sections 31 and 32 itself.

17. Sub-section (2) of Section 32 which is relevant for the present purpose stipulates one of the qualifications for registration as a Pharmacist that the person is a registered Pharmacist in another State. That clause is ^{separated} supported by the use of the word 'or' and, therefore, has no connection with the earlier stipulations or qualifications prescribed either in clauses (a), (b) or (c) of Sub-section

(1).....

hsc

(1) of Section 32, or the provision in the earlier portion of sub-section (2). The primacy given to the registration in a State by the Pharmacy Council appears to be based upon the scheme provided under the Act regulating the registration. Clause (h) of Section (2) defines 'register' to mean a register of pharmacists prepared and maintained under Chapter IV. Clause (i) of the said section defines 'registered pharmacist' to mean a person whose name is for the time being entered on the register of the State in which he is for the time being residing or carrying on his profession or business of pharmacy. Section (12) provides for approved courses of study and examinations. Section (15A) provides for the Central Register of Pharmacist to be maintained by each State Council. It is deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by the production of a copy of the Register as published in the Gazette of India. Section (15B) provides for Registration in the Central Register on the basis of a person's registration in the register for the State. Chapter III provides for State Pharmacy Councils. Chapter IV deals with registration of pharmacists and Sections 31 and 32 form part of this Chapter. Thus a registration by the State Council of a person as pharmacist presupposes fulfilment of requirements prescribed ^{under} in the Act and the State Council will be presumed to have done so only on he being eligible to be registered. Such ^{registration} ~~registration~~ by itself is sufficient to fulfilment of the requirements of Section. 32 and if Section 32 is complied with then that becomes fulfilment of the requirements for recruitment as Pharmacist under the Railways under para 162 of the Manual.

llk

18. We enquired from the learned counsel for the applicant as to whether the applicant has completed any course of Pharmacist. Although the learned counsel has stated that he has no instructions as to whether he has so done or not we find from Annexure-III which is a letter from the Employment Officer to the Deputy Chief Engineer (Con), N.F. Railway, which shows that the applicant has passed pharmacy course and he has studied upto Class IX. The registration of the applicant, therefore, cannot be disregarded and it must be held that the applicant fulfils the requisite qualification for recruitment as pharmacist as prescribed under para 162 of the Manual. In fact the letter of the Deputy Chief Engineer dated 18.3.1983 (Annexure-IV) had required the applicant to produce Pharmacist Course Passed Certificate. After scrutiny of this document it appears that the applicant was appointed as Pharmacist on casual basis by order dated 25.3.1983 (Annexure-V). He was also given temporary status with effect from 1.2.1984 by order dated 6.10.1986 (Annexure-VI). He was also medically examined in 1986 and was declared fit for service and continued to work as pharmacist. He was called to appear at a written test in connection with regularisation of his service by order dated 5.4.1993 (Annexure-XI). However, although he appeared at the written test he was not called for viva-voce which was held on 18.5.1993 and the explanation of the respondents is that since at that time it was discovered that he was not a matriculate and did not hold a Diploma in Pharmacy he was not called for the viva-voce and his case for regularisation was not considered and he was given an option for being absorbed in Group 'D' category. We are of the view that the respondents have not acted correctly in

dropping....

hll

17

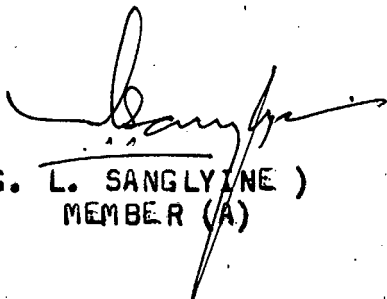
dropping the applicant from the viva-voce test on untenable ground, namely that it was essential to have Diploma in Pharmacy and to be a matriculate as qualifications. As discussed earlier this cannot be regarded as qualification prescribed for recruitment under para 162 of the Act. ^{REM.} The impugned action of the respondents, therefore, cannot be sustained.


19. Apart from the fact that the applicant appears to have passed the Pharmacist course he has been working although on a casual basis since he had taken up private employment in pharmacy and had registered under the District Employment Exchange for suitable employment. It was, therefore, that his name was sponsored by the Employment Exchange to the Railways when the names were called for. The fact that the applicant had acquired temporary status shows that his service was not deficient in any way as pharmacist. We are, therefore, satisfied that the applicant is entitled to be regularised as a pharmacist in the service of the respondents. Since the applicant was dropped at the stage of the viva-voce, we pass the following order:

The respondents may hold a viva-voce examination for the applicant and if he qualifies then consider his regularisation as a Pharmacist with due date.

20. The original application is partly allowed in above terms. No order as to costs.

21. Interim stay to continue till the aforesaid formality is completed and ^{shall} stand vacated thereafter.


(G. L. SANGLYNE)
MEMBER (A)


(M. G. CHAUDHARI)
VICE-CHAIRMAN