

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.413/2017

Friday, this the 3rd day of February 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. Shiv Shankar Paswan,
Age 43 years, Group A
Flat No.C-25
Upper Ground Floor
Panchsheel Vihar, Malviya Nagar
New Delhi – 17

..Applicant

(Ms. Tamali Wad and Ms. Nidhi Jacob, Advocates)

Versus

1. Union of India through Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi
2. Union Public Service Commission
Through Chairman
Dholpur House,
Shahjahan Road, New Delhi – 69
3. Dr. Chandra Shekhar
Deptt. of Surgery
ESIC Hospital
Rohini, Sec 15, New Delhi
PIN – 110 089

..Respondents

(Mr. Hanu Bhasker, Advocate for respondent No.1 &
Mr. R V Sinha, Advocate for respondent No.2)

O R D E R (ORAL)

Justice Permod Kohli:

Heard.

2. Issue notice to respondent Nos. 1 & 2 only. Mr. Hanu Bhasker, learned standing counsel and Mr. R V Sinha, learned counsel, appear and accept notice on behalf of respondent Nos. 1 & 2 respectively.

3. The applicant is possessed of MBBS degree from the Darbhanga Medical College and Master's degrees in General Surgery from AIIMS. He has also served as Senior Resident in AIIMS from 05.08.2011 to 06.08.2014. He was appointed as Assistant Professor (Surgery) on contract basis and he has served in various Hospitals in Delhi. Presently, he is working as Assistant Professor (Surgery), Safdarjung Hospital, New Delhi. Respondent No.2, Union Public Service Commission (UPSC), vide its Advertisement No.13/2015, invited online applications from the eligible candidates for ten permanent vacancies in Group 'A' teaching posts of Assistant Professor (Surgery)/ Specialist Grade III in the Central Health Services. Ten vacancies, i.e., five un-reserved category – one under SC category and four under OBC category were notified. The applicant, being an SC candidate, applied for the post of Assistant Professor (Surgery) against one SC vacancy. Dr. Chandra Shekhar (respondent No.3) also applied under the same category. The selection was based on eligibility criteria and the interview, which was held on 8-9.02.2016. The UPSC prepared a panel of the candidates for selection/appointment. As many as five candidates were recommended under the general category and respondent No.3 was recommended under SC category. A reserved list was also notified wherein three candidates were listed under general category and the applicant along with one Dr. Trilok Chand under SC category. So far as ST category is concerned, the applicant ranks higher than Dr. Trilok Chand.

4. The applicant made some representations pointing ineligibility of respondent No.3 so far as his experience is concerned. One of such

representations is dated 02.08.2016 (Annexure A-6 (colly.)) to the UPSC. In reply to the aforesaid representation, the UPSC, vide its communication dated 11.08.2016 (Annexure A-7), informed the applicant that candidature of respondent No.3 is still provisional and comments have been sought from the Ministry of Health & Family Welfare regarding the validity of experience claimed by respondent No.3. Since no final decision has been taken by the competent authority regarding the appointment of respondent No.3 and on the representations of the applicant for the last more than ten months from the date of declaration of result and about six months from the date of representation of the applicant, the present O.A. has been filed claiming following reliefs:

“(a) To call for the records of the case.

(b) To direct the Respondents no.1 & 2 to forthwith take action in accordance with law to fill up the post of Assistant Professor (Surgery) in the Ministry of Health & Family Welfare reserved for Scheduled Caste Candidate, advertised by UPSC advertisement no.13/2015.

(c) To direct the Respondents to consider the candidature of the Applicant for appointment for appointment to the post Assistant Professor (Surgery)(SC) in the Ministry of Health & Family Welfare in accordance with law with all consequential benefits.

(d) Pass any other and further order which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

5. From the letter of UPSC, it appears that there is definitely some question mark on the experience of respondent No.3. Respondent Nos.1 & 2 were required to take a definite decision in regard to the eligibility of respondent No.3, which has not been done. Learned counsel for applicant submits that since the life of the panel is likely to expire, the applicant has filed this O.A.

6. Since the respondent Nos. 1 & 2 are seized of the question of eligibility of respondent No.3, it is necessary that they should take decision thereon and also the representations of the applicant under the given circumstances.

7. This O.A. is accordingly disposed of at the admission stage itself with direction to the respondent No.1 to take a decision regarding eligibility of Dr. Chandra Shekhar (respondent No.3) within a period of one month from the date of receipt of a copy of this order and in the event respondent No.1 finds that the respondent No.3 lacks requisite experience or his experience is not valid, the same shall be communicated to respondent Nos.2 & 3, and in that eventuality, respondent No.2 will consider the claim of the applicant being next available candidate under SC category in the waiting list. The said decision shall be taken up within three months from the date of communication by respondent No.1. Needless to say that the life of the panel shall remain intact till this exercise is completed. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

February 3, 2017
/sunil/