

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

OA No. 1479/2012

This the 21st day of September, 2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

1. The Indian Speech and Hearing Association (ISHA)
Department of Speech and Hearing
Manipal College of Allied Health Sciences
Manipal University, Manipal – 576 104
Karnataka
Through its Authorized Representative
Y. Krishna, Gen. Secretary of ISHA
Dept. of Speech and Hearing, MCOAHS
Manipal University, Manipal

2. Dr. Gauri Shanker Patil
S/o Sh. Ram Shetty P.
R/o H. No. 3-6-416/2/1
Flat No. 3b, Gruhashilpi Towers
ST No. 4, Himayat Nagar
Hyderabad-500029 Applicant

(By Advocate: Ms. Ishita Baruha for Mr. Gaurav Dua)

VERSUS

1. All India Institute of Medical Sciences (AIIMS)
Through its Director
Ansari Nagar
New Delhi

2. Ministry of Health and Family Welfare
Through Secretary,
Nirman Bhawan,
New Delhi

3. Medical Council of India (MCI)
Through its Secretary
Pocket-14, Sector-8, Dwarka
Phase-1, New Delhi-110077

4. Rehabilitation Council of India
Through its Member Secretary
Ministry of Social Justice and Empowerment
B-22, Qutub Institutional Area
New Delhi-110016 Respondents.

(By advocate: Mr. R.K. Gupta)

ORDER (ORAL)

By Hon'ble Mr. P.K. Basu, Member (A):

The matter was taken up today when learned proxy counsel for the applicant Ms. Ishita Baruha, stated that the learned main counsel for the applicant is not able to appear today as he is busy in another Court. This is a 2012 matter and we find that on 25.07.2016 none was present for the applicant. Similar is the case on 25.04.2016. On 28.03.2016 adjournment had been sought by the proxy counsel for the applicant; on 10.03.2016 none appeared for the applicant and on 23.12.2015 adjournment was sought through proxy counsel by the applicant. In view of these facts, we decided to hear the matter under the provisions of Rule 15 of CAT (Procedure) Rules, 1987.

2. Learned counsel for the respondents was heard and we perused the OA filed by the applicant along with the reply by the respondents. The fact of the case are summarised below:-

3. AIIMS is a premier medical institute in not only in India but also Asia and the world. AIIMS had advertised for the post of Assistance Professor of Speech Pathology & Audiology in the

department of E.N.T on 08.07.2011. The education qualifications required for the candidates were as follows:-

- i) "A post graduate qualification e.g. Master's degree in Speech Pathology/Audiology.
- ii) A Doctorate Degree from a recognized University.
- iii) Three years teaching and/or research experience in a recognized Institution in the discipline/subject after obtaining the Doctorate Degree or a qualification recognized equivalent thereto."

4. From the above it would be clear that only non-medical candidates could apply.

5. AIIMS thereafter issued a corrigendum on 21.07.2011 and medical candidates were made eligible as well and the new advertisement, therefore, prescribed the following essential minimum qualification and experience for both candidates.

"For medical candidates

- i) A medical qualification included in Schedule I & II or part II of the third Schedule of the Indian Medical Council Act of 1956 (candidates possessing the qualification included in Part II of the third Schedule should also fulfil the conditions specified in Section 13(3) of the Act.)
- ii) A postgraduate qualification i.e. MS in E.N.T. or a recognized qualification equivalent thereto.
- iii) Three years teaching and/or research experience in a recognized Institution in the subject of speciality after obtaining the qualifying degree of MS in E.N.T. or qualification recognized equivalent thereto.

For Non-Medical Candidates

- i) Master's Degree in Speech & Audiology from a recognized institution or a recognized qualification equivalent thereto.
- ii) Doctorate Degree of a recognized University.
- iii) Three years teaching and/or research experience in a recognized institution in the discipline/ subject concerned after obtaining the Doctorate Degree."

6. The applicants are aggrieved with this advertisement as the post is now open to the medical candidates also. The grounds for challenging the new advertisement primarily is that Speech and Audiology is a separate branch of study altogether for which Masters Programmes are run separately whereas for the Masters Degree in ENT only a small part of the syllabus is devoted to speech and hearing. It is their further contention that by including medical category as well, AIIMS is diluting the standards of medical facility by hiring inferior quality persons.

7. Learned counsel for the respondents states that applicant No. 2 had participated in the interview in accordance with the revised advertisement but failed to qualify. Therefore, his first ground of objection is that the law settled in this regard is that a candidate who has participated in the process of selection and failed cannot thereafter question the process of selection [Om Prakash Shukla Vs. Akhlesh Kumar Shukla & Ors., Supreme Court of India order dated 18.03.1996]. It is stated that this ground itself is sufficient on which the OA needs to be dismissed.

8. Learned counsel for the respondents also states that the candidate who has been selected against the post of Assistant Professor of Speech Pathology/Audiology (a medical candidate) has not been made a party to this proceeding and therefore this OA deserves to be dismissed even on the ground of non-joinder of parties. He relied on the judgments of Hon'ble Supreme Court,

dated 19.10.1962 in *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue* 1963 AIR 786, 1963 SCR Supl. (1) 676 as well as order dated 20.03.1997 of the Hon'ble Supreme Court in University of Cochin Vs. N.S. Kanjoonjamina & Ors. in Civil Appeal No. 2224 of 1985.

9. As already stated, AIIMS is a premier institute and what kind of qualification would be prescribed for which post is not to be decided by the Tribunal and can only be decided by specialists in the field which have no reason to doubt AIIMS possesses. Therefore, the main contention of the applicant that by including medical candidates standards are being lowered cannot be entertained at all. Secondly, applicant No. 2 participated in the selection process in accordance with revised advertisement but unfortunately he failed. In the light of the settled law he cannot challenge the process now. Lastly, the OA also suffers from the defect of non-joinder of parties.

10. In view of the above, we find no merit in the OA and the OA is therefore dismissed. No costs.

(Dr. B.A. Agrawal)
Member (J)

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(P.K. Basu)
Member (A)