

**Central Administrative Tribunal
Principal Bench**

OA No.1051/2014

Order reserved on : 14.01.2016
Order pronounced on : 27.01.2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

Dr. Tarun Arora,
S/o Shri Vijay Kumar,
R/o B-2/45-D, MIG Flats,
Keshavpuram,
Delhi-110035.

..applicant

(By Advocate : Ms. Satya Siddiqui with Shri Sarfraz Siddiqui)

Versus

1. Union of India,
Through the Secretary/Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
2. Department of Personnel & Training,
North Block, Govt. of India,
New Delhi.

...respondents

(By Advocate : Shri J.B. Mudgil
Shri Duli Chand)

ORDER (ORAL)

Hon'ble Dr. B.K. Sinha, Member (A) :-

The applicant, in the instant OA is aggrieved by the non consideration of his representations i.e. 17.02.2014 and 20.02.2014 and the final rejection of his reminder dated 04.03.2014 submitted

to the respondent No.1. He has filed the present OA seeking the following relief (s):-

- a.) To quash and set aside the impugned order No.1/205(67)/ 2013-R-II dated 24.03.2014 passed by the Deputy Secretary UPSC respondent No.1 and to give an opportunity to the applicant to verify/scrutinize his application and documents filled On-line and to submit the hard copy of the same as was been afforded to similarly placed candidates who were called for interview for the post of Assistant Professor (Pharmacology) to be commenced from 31.03.2014 to 1st week of April, 2014.
- b) Further direct the respondent no.1 that after compliance of prayer (a) above by the respondent, the applicant be issued an interview letter/ call for interview scheduled from 31.03.2014 to 1st week of April 2014 for the post of Assistant Professor (Pharmacology) with immediate effect.
- c.) Any other relief or direction which the Hon'ble Tribunal deems fit considering the facts and circumstances of the case.”

2. The facts of the case in brief are that the respondents had issued an advertisement on 10.08.2013 inviting online applications for the post of Assistant Professor (Pharmacology) in the Ministry of Health and Family Welfare in pay scale of Rs.15600-39100 + Rs.6600 (Grade Pay). The candidates were required to hold two qualifications namely, basic MBBS degree from a college recognized by the Medical Council of India and a Post Graduate Degree in the concerned specialty i.e. MD (Pharmacology & Therapeutics), Ph.D

(Pharmacology), D.Sc (Pharmacology) or equivalent with three years' teaching experience in the Pharmacology after the Post Graduate Degree. The applicant submitted online application on 27.08.2013 but was not invited to appear before the Interview Board while his other colleagues had received call letters to this effect. The applicant, accordingly, filed OA No.925/2014 – **Dr. Tarun Arora Vs. UPSC & Ors.**, which was finally decided vide order dated 24.03.2014 directing the respondents to dispose of his representation. This representation came to be subsequently disposed of by the order dated 24.03.2014 on the grounds of not holding the essential educational qualification. The impugned order also rejects the plea of technical error. The applicant came to this Tribunal vide the instant OA against this order. He was permitted vide the order of this Tribunal dated 26.03.2014 to appear before the Interview Board provisionally subject to outcome of the instant OA. The learned counsel for applicant fairly submits that though the applicant was qualified, not being a technical person, he could not fill up the form properly and omitted to mention his Post Graduate qualification. The applicant is otherwise fully qualified to hold this job and has beseeched the equity jurisdiction of this Tribunal on the grounds that the error was inadvertent and this advertisement of post has appeared after interregnum of 14 years.

3. *Per contra*, the learned counsel for respondents while admitting the factual position submitted that the applicant had filled up the form incorrectly by not providing the Post Graduate qualification which was required under Annexure-A2 in the relevant column. Therefore, the rejection of his candidature was just and proper and it cannot be revived at this stage.

4. We have carefully examined the pleadings and such documents as have been submitted by the parties. We have also heard the learned counsels appearing for the parties. The only issue to be decided by us, other facts being admitted, is that whether this Tribunal should invoke its equity jurisdiction in favour of the applicant.

5. Before we take up the issue, we would just like to place the factual matrix relevant to the case on record.

6. The advertisement dated 10.08.2013 in respect of vacancy No.13081115110 is as follows :-

“15. Vacancy No.13081115110

Twenty three Assistant Professor (Pharmacology), Ministry of Health and Family Welfare. Of the twenty three posts, three posts are reserved for Scheduled Castes Candidates, two posts are reserved for Scheduled Tribes Candidates, seven posts are reserved for Other Backward Classes Candidates and remaining eleven posts are Unreserved. **QUALIFICATIONS : ESSENTIAL :** A. **EDUCATIONAL:** (i) Same as in item No.10 above. (ii) Post Graduate degree in the concerned specialty i.e. M.D.(Pharmacology), MD (Pharmacology) &

Therapeutics), Ph D (Pharmacology), D Sc (Pharmacology) or equivalent . (For equivalence of DNB qualifications with MD/MS or DM/M.Ch. the candidates holding DNB qualifications would need to get their qualification verified by NBE as to whether it is as per the requirement of the Gazette notification No.MCI-12(2)/2010-Med. Misc. Dated 11.6.2012 and produce such verification certificate at the time of interview. B. EXPERIENCE : Three years' Teaching experience in the concerned specialty (i.e. Pharmacology) as Lecturer/ Tutor/Registrar / Demostrator/ Sr. Resident after the requisite post graduate degree qualification. (The teaching experience in any other post like the post of DGMO/MO shall not be considered for eligibility purpose for recruitment to the Teaching posts)."

7. As against this, admittedly the applicant meets the qualification of advertisement. He also produced his MD certificate in original in the Court which appeared to be valid . For the sake of greater clarity, the MD qualification is given as below :-

"DOCTOR OF MEDICINE 2007

This is to certify that Tarun Arora having been examined in 2007 and found qualified for the degree of Doctor of Medicine was admitted to the said degree at the Convocation held in 2008.

Subject Pharmacology."

8. This leaves us in no doubt that the applicant is indeed qualified for the post and it was on account of inadvertent mistake and deficient proficiency in computer application that he failed to mention the qualification in his application form. So there is not a least doubt that the rejection of his candidature was just and proper and there is no other way that the respondents could have

acted. However, we cannot overlook the fact that in the present day Indian Government job holds a huge allurement to the prospective candidates. We have also taken a note of the fact that this advertisement has been made after a period of 14 years. It is not in dispute that this Tribunal is often beseeched by applicants who are otherwise qualified for different jobs but on account of one technical error or other in filling up the application form has been excluded from the same. In the judgment dated 30.10.2015 in OA No.4583/2014, this Tribunal was faced with large number of applicants who had the existing qualification but had failed to bubble the columns correctly in the online application form. This being an admitted position, this Tribunal after taking into account the decisions in the previous cases observed as under :-

“20. In view of the above legal position and in view of the fact that the applicants were already permitted to take the examination provisionally by virtue of the interim orders dated 23.12.2014 and results of the same are yet to be declared by the respondents, we are of the considered view that the ends of justice would be met if the respondents are directed to consider the cases of the applicants, along with others as per their merit.

21. In the circumstances and for the aforesaid reasons, the aforesaid OAs are disposed of with a direction to the respondents to consider the candidature of the applicants and further process their cases in accordance with rules with regard to the selection and appointment by declaring their results within eight 15 weeks from the date of receipt of a copy of this order. However, this order shall not preclude the respondents from verifying

the qualifications and suitability of the applicants, as per rules. No costs."

9. The same order was reaffirmed in respect of OA No.4445/2014 vide order dated 18.12.2015 by the same Bench.

10. It is well admitted that this Tribunal being the main Bench is bound by the decisions made by its Coordinate Benches and are governed by the principles of *stare decisis*. There are innumerable judgments of superior courts regarding the applicability of the principle of *stare decisis*. The one that we find apt for citation is in **Krishna Kumar Vs. UOI & Ors.** 1990 (4) SCC 207, which has been extracted for the purpose of greater clarity :-

"18. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required." This was what Lord Selborne said in Caledonian Railway Co. v. Walker's Trustees and Lord Halsbury in Quinn v. Leathem, [1981] A.C. 495, (502). Sir Frederick Pollock has also said: "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision."

11. Therefore, we stand to abide by the decision given by the Coordinate Bench in OA No.4583/2014 (supra) and we also take into consideration the fact that a person should not be deprived where his eligibility stands proven merely on the ground that he

was unable to fill up the form correctly. Moreover, no prejudice is caused to any other person in view of the fact that the recruitment has been completed but there are still vacancies that survives the recruitment process. Therefore, in view of the fact that the applicant has already appeared for interview, the OA is disposed of with a direction to the respondents to consider him for the post of Assistant Professor (Pharmacology) with immediate effect under the due process. No costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

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