

**Central Administrative Tribunal
Principal Bench**

OA No.2555/2013

New Delhi, this the 18th day of September, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Praveen Mahajan, Member (A)**

Dr. Ashraf Badar S/o M. Badruddin,
R/o B-40, Sabri Medico, Abdul Fazal Enclave,
Zamia Nagar, Okhla, Delhi.

... Applicant

(By Mr. Y. K. Tyagi, Advocate)

Versus

1. Union of India through
Secretary, Ministry of Health & Family Welfare,
Department of Health, Government of India,
Nirman Bhawan, New Delhi-110001.

2. Secretary,
Ministry of Labour & Employment,
Shram Shakti Bhawan,
New Delhi-110001.

3. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110069.

... Respondents

(By Mr. Ravinder Aggarwal, Advocate for Respondent 3)

O R D E R

Justice Permod Kohli, Chairman :

The applicant appeared for the combined medical examination in the year 2006. On declaration of the result, he was declared successful, and an offer of appointment dated 20.08.2008 was given to

him by the Ministry of Health & Family Welfare. He was required to convey his acceptance within thirty days from the date of receipt of the offer of appointment in the Ministry of Labour and Employment, and also to furnish requisite documents mentioned therein. During the period the process for selection was undergoing, the applicant joined for DNB course which he was pursuing at the time he received the offer of appointment. The DNB course is said to be a post-graduation course equivalent to MD/MS. The applicant accordingly made representation dated 08.09.2008 to the respondent No.1 seeking extension for the joining to enable him to complete the course, which he stated was likely to get completed in August, 2010. The request of the applicant for revival of his offer of appointment was accepted vide memorandum dated 24.09.2008 with certain conditions, one of the conditions being that the offer would lapse after 19.02.2009 and in case the applicant did not join by the stipulated date, the lapsed/cancelled offer of appointment could be revived only in consultation with Union Public Service Commission at his formal request. He was also asked to give an undertaking that he would accept depression of seniority in case of revival of the offer.

2. Admittedly, the applicant could not join by 19.02.2009. He made another representation dated 19.08.2010 for revival of the offer of appointment along with copy of the course completion

certificate issued by the St. Stephen's Hospital. The application of the applicant was, however, forwarded to the UPSC vide letter dated 04.01.2011 communicating the acceptance of the applicant for depression of seniority as per rules and other conditions stipulated in the earlier communication. The Ministry of Health & Family Welfare also informed the UPSC that a number of posts in the grade of Medical Officers were lying vacant in the Central Health Service, and the Ministry felt that he may be allowed to join the post of Medical Officer in public interest. The aforesaid communication was followed by another communication dated 01.03.2011 wherein it was pointed out that the DNB course/training is equivalent to MD/MS and treated as PG course. The applicant was asked vide letter dated 14.07.2011 to furnish original course completion certificate issued by the Diplommat National Board for verification. In response to the said letter, the applicant informed the Ministry of Health & Family Welfare that he had applied for course completion certificate in the office of the Board, but the Board does not issue any such certificate. It was further submitted that the DNB Board had informed that the certificate issued by the supervising hospital is valid for all official purposes regarding completion of training. Vide communication dated 01.08.2011 the National Board of Examination informed the applicant that the Board does not issue such type of certificate.

Thereafter, the applicant made another representation dated 08.08.2011 to the respondent No.1 stating therein that the minimum qualification required for the post of Medical Officer is MBBS, which is possessed by him and on that basis he was selected, hence he may be allowed to join the post. The applicant was, however, informed by the respondent No.1 vide letter dated 14.02.2012 that his request for revival of the lapsed offer of appointment had been considered in the Ministry in consultation with UPSC, but his request could not be acceded to. The applicant challenged the aforesaid letter before this Tribunal in OA No.1078/2012. This OA was decided by the Tribunal vide judgment dated 01.04.2013 with following observations/directions:

“16. In view of the factual position apparent from the documentation available on record to the effect that the relevant announcement qua cancellation (of the revival of the lapsed offer of appointment) does not contain any reasoning whatsoever it would deserve to be invalidated, particularly when it is not an averment on behalf of the respondents that the impugned cancellation had been preceded by the recording of a conscious decision or affording of an opportunity of hearing to the applicant.

17. We should, accordingly, allow the O.A., quash the impugned view obtained by the competent authority and direct it (competent authority) to grant a consideration afresh to the plea raised by the applicant. Needless to state, the consideration shall compulsively come about on touch-stone of the relevant administrative instructions and the factual scenario which may have surfaced till the relevant

point of time. The fact that applicant herein has crossed the maximum age of eligibility for public employment may also ideally be taken by the competent authority into consideration, provided that no part of statutory rule-formulation is violated in the process thereof. The competent authority in the process of consideration may, take into consideration any precedents of the like nature.

18. In view of the fact that the matter has already been over-delayed; it would be incumbent upon the competent authority to conclude deliberation within a period of one month from the date a copy of this order is presented in its office.

19. The parties shall bear their own costs of the cause in the facts and circumstances of the case.”

3. Consequent upon the above said directions, the respondents considered the claim of the applicant and rejected the same vide the impugned order dated 06.06.2013. The rejection communication has been issued by UPSC. The rejection has been ordered on the following grounds:

- (1) that the applicant did not join the post of Medical Officer in Central Health Service within the stipulated period of six months, and his offer of appointment was cancelled vide memorandum dated 15.07.2009;
- (2) that the Commission found that the applicant failed to submit the course completion certificate, hence the lapsed offer of appointment may not be revived;

- (3) that it was noted by the Commission that the applicant failed to qualify the DNB theory examination held in June 2010, December 2010 and June 2011, and thus did not fulfil the condition laid down in letter dated 07.07.2011; and
- (4) that the Commission is of the view that there are no fresh grounds to revive the already lapsed offer of appointment.

It is this letter which is under challenge in the present OA.

4. The Commission has filed a separate counter-affidavit. The grounds of rejection as also the pleas in the counter affidavit are common. The other respondents in their counter-affidavit have stated that as per the guidelines issued by UPSC, extension of two and a half years is permissible for revival of lapsed offer of appointment in case of doctors recruited through examination, and any relaxation to this may be considered on a case to case basis with stipulation that the time limit may be relaxed up to three years only in cases where the reason cited is higher study of post graduation. Other averments are common to both the counter-affidavits. It is additionally stated that UPSC vide letter dated 07.07.2011 conveyed their approval for revival of cancelled offer of appointment of the

applicant. However, this was subject to the condition of verification of his course completion certificate issued by the Diplomat National Board. The Board was requested on 01.09.2011 to confirm whether the applicant had completed his DNB course or not. The Board in its reply dated 19.09.2011 informed the Ministry that the applicant had completed his three years DNB course in the speciality of General Surgery at St. Stephen's Hospital, Delhi on 03.08.2010. However, he had not qualified the DNB theory examination in June 2010, December 2010 and June 2011. The UPSC was accordingly informed by the Ministry for advice, and the UPSC vide their letter dated 30.01.2012 decided that the lapsed offer of appointment of the applicant should not be revived. Accordingly, the applicant was informed vide letter dated 14.01.2012 that his request for revival of the offer of appointment could not be acceded to. Reference is made to the Tribunal's judgment, and referring to the UPSC's decision, it is stated that the claim of the applicant cannot be allowed.

5. We have heard the learned counsel for parties at length.

6. The applicant has placed on record copy of the provisional certificate dated 16.05.2014 issued by the National Board of Examination for passing the DNB course. The certificate reads as under:

*“PROVISIONAL CERTIFICATE OF PASSING
DIPLOMATE OF NATIONAL BOARD*

Certified that Dr. ASHRAF BADAR has been declared PASS in the DNB final examination conducted by the Board in DECEMBER 2013 session with Roll No.1321121204 in the Discipline of GENERAL SURGERY.

Dr. ASHRAF BADAR is qualified for award of the Certificate of DIPLOMATE OF NATIONAL BOARD (DNB) in the discipline of GENERAL SURGERY.

As per the notification issued by Government of India from time to time DNB is equivalent to post-graduate/post-doctorate qualification awarded by Indian Universities. DNB is a recognized qualification as per 1st Schedule of the Indian Medical Council Act (1956).”

The applicant has relied on office memorandum dated 06.06.1978.

The subject of this memorandum is as under:

“Candidates recommended by the UPSC for appointment to Central Civil Services and the post – delay in joining – revival of offers of appointment after their cancellation – determination of seniority.”

This office memorandum lays down the conditions under which the offer of appointment can be revived after cancellation. Relevant clauses of the memorandum are reproduced hereunder:

“(iii) If, even after the extension(s) if any granted by the Ministry/Departments, a candidate does not join within the stipulated time (which shall not exceed a period of nine months), the order of appointment should lapse.”

“(v) In a case where after the lapsing of the offer, the offer is revived in consultation with the Union Public Service Commission as mentioned in sub-

para (iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the prescribed period of nine months; and if the candidate joins before the candidates of the next selection/examination join, he should be placed below all others of his batch. If, however, the candidate joins after some or all the candidates of the next selection/examination have joined, he should be:

- (a) In cases of selection through interview, placed at the bottom of all the candidates of the next batch.
- (b) In the case of examination, allotted to the next years batch and placed at the bottom."

7. Insofar as the facts are concerned, there is absolutely no dispute. The applicant was duly selected in the process of selection for appointment to the post of Medical Officer on the basis of competitive examination. It is also admitted position that the qualification for the post of Medical Officer was MBBS which the applicant possessed at the time of examination and appointment. Thus, he was duly qualified for such appointment. The parties are also *ad idem* that the applicant had been undergoing the DNB course at the time of his appointment, for which he sought extension to complete the course. The actual training part of the course was completed by the applicant in 2010, but he could not qualify the theory and other papers for securing a certificate even up to 2011. His request for revival of the lapsed offer of appointment was

accepted by the UPSC as also the Government, as is evident from the letter dated 07.07.2011. While accepting the recommendation of the Ministry for revival of the offer of appointment, the Commission had desired for verification of the DNB qualification of the applicant, for which correspondence continued between the parties. On account of the fact that the applicant could not finally qualify the DNB examination in theory, the offer of appointment was cancelled and withdrawn. The Tribunal in its judgment dated 01.04.2013 passed in OA No.1078/2012 setting aside the rejection of the request of the applicant for revival of the offer of appointment and directed the respondents to re-consider the same. Now vide the impugned order, the UPSC has rejected the claim of the applicant on the grounds referred to hereinabove.

8. It is pertinent to note that the grounds of rejection are not sustainable. The first ground of rejection that the applicant did not join within the period of six months has been rendered meaningless on account of subsequent grant of extension and revival of the offer of appointment on 07.07.2011. The other grounds are also not available to the respondents it is not in dispute that the applicant had joined the DNB course. Whether he successfully qualified the said course or not cannot be *per se* a ground for denial of the appointment to him when this was not the essential qualification for appointment

to the post of Medical Officer. In the present case, though the applicant had completed the training part up to August, 2010, however, he could not immediately qualify the theory examination. Assuming the applicant could not qualify the higher examination having failed a number of times, can this deprive him of seeking appointment on the basis of MBBS qualification? The respondents after having accepted the request, could not have delayed the matter merely for verification of the higher qualification, as those were not essential/relevant for purposes of the appointment. Of course, higher education is always useful to the discharge of one's duties particularly in the field of medicines, which always improve the acumen of the doctors, but failing to acquire higher qualification does not itself constitute a ground for denial of appointment despite selection. Of course, the delayed appointment will deprive the appointee of his seniority and other benefits of service. As a matter of fact, the appointment has to be prospective. This itself is sufficient punishment for a person whose appointment has been delayed for over a period of eight years. As held by us, grounds on which the claim of the applicant has been rejected are irrelevant. The condition imposed by the respondents for revival regarding depression of seniority is of course a valid condition. It goes without saying that it is now in public domain that there is deficiency of around five lac

doctors in the country. There is a dire need of doctors in the country. Even basic health care is lacking in various parts. Central Health Service is a Central organization. The applicant is a qualified doctor and he has acquired higher qualification also in the discipline of general surgery, which is going to benefit the public at large. Thus, looking to the qualification of the applicant, his selection in a competitive examination notwithstanding the delay in joining, it is in the public interest that the respondents may allow the applicant to join the service. The time period prescribed for revival of the cancelled offer of appointment, i.e., up to three years is only by the UPSC, and is not regulated by any statutory provision. We have seen that at least from 2011 onwards the delay has not been caused on account of any act of the applicant, but on account of so called administrative delays, which is in fact nothing less than red-tapism.

9. In this view of the matter, this OA is allowed. The impugned order dated 06.06.2013 is hereby set aside. The order dated 07.07.2011 to the extent the offer of appointment of the applicant has been revived is hereby restored. On revival of the offer of appointment, the applicant having already conveyed his consent shall be appointed within a period of one month. The respondents would specify the time for his joining and if he fails to join within the stipulated time, his right to appointment shall cease to exist. The

appointment of the applicant shall be prospective. He will not be entitled to seniority or any other benefit prior to the date of such appointment.

(Ms. Praveen Mahajan)
Member (A)

(Permod Kohli)
Chairman

/as/