

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

O.A.No.3167/2013

Thursday, this the 15th day of October , 2015

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

Mr. Bipin Kumar s/o Mr. Dinesh Prasad Singh
56-A, Pocket A3
Mayur Vihar, Phase III
Delhi-96

..Applicant

(Mr. Fidel Sebastian, Advocate)

Versus

1. All India Institute of Medical Sciences
Through the Director
Ansari Nagar, New Delhi-29

2. Mr. Giridhari Lal
Administrative Officer
All India Institute of Medical Sciences
Ansari Marg, New Delhi-29

..Respondents

(Mr. A K Singh for Mr. R K Gupta, Advocate)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

The prayer made in the Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 reads thus:-

“It is, most humbly prayed that this Hon'ble Court may be pleased to direct the Respondent to appoint the applicant in pursuance of order dt. 18.3.13 and to pay him his wages w.e.f. 15.7.13 in the interest of justice.”

2. According to the applicant, though he was duly selected for appointment to the post of Operation Theater Assistant (OTA), he is not allowed to join the post. The stand taken by the respondents in the reply is

that the applicant has not approached the Tribunal with clean hands, as when the offer of appointment dated 18.3.2013 given to him was subject to production of certain of age in addition to certain other documents, he initially did not produce the certificate and subsequently it could be revealed that on the last date of submission of application, he had already crossed the age of limit. Paragraphs 4.2 and 4.7 of the reply read thus:-

“4.2 That the contents of para No.4.2 of the application are denied. It is stated that the applicant has not come with clean hands and has concealed relevant and material facts. It is submitted that the letter dated 18.03.2013 of offer of temporary appointment of the applicant clearly states at para. 3.(ii).(b) that the appointment will be further subject to production of the certificate of age in addition to certain other documents. The relevant portion of para 3 of the letter of offer of temporary appointment is reproduced herein below (the same is Annexed as Annexure B oat page 14 of the present application).

“3) The appointment will be further subject to”

- i) ***
- ii) Production of following original certificates:
 - a) ***
 - b) The Certificate of age
 - c) ***

It is also submitted that the said letter of offer of appointment at para 13 clearly states that, “if he/she accepts the offer on these conditions, he/she should communicate his/her acceptance to the undersigned immediately within a week of receipt of this communication and report himself/herself for duty immediately but not later than 17.04.2013..”

It is further submitted that as per the advertisement published in Employment News for the week of 28th August-3rd September, 2010, the last date of receipt of application by the Respondent institute was 13.09.2010 and the relevant date for determining eligibility was the closing date of application i.e. 13.09.2010.”

3. When the reply was filed on 11.2.2014, i.e., more than one and half years back, the applicant has not filed any rejoinder to rebut the stand taken by the respondents.

4. It is *stare deices* that once as on the closing date for receipt of applications the applicant is not within the age limit prescribed for the post, he cannot be considered eligible for appointment. In **State of Uttar Pradesh v. Vijay Kumar Misra**, (2003) ATJ (2) 197, Hon'ble Supreme Court ruled thus:

“7. The question for consideration is whether the High Court, in the facts and circumstances of the case, could issue a direction for appointment of the respondent as SDI (Basic) in a vacant post.

8. The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut off date, if any, described under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possess the prescribed qualifications and was considered and appointed to the post. Therefore, the so-called confession made by the officer in the Court that persons haying lower merit than the respondent have been appointed as SDI (Basic), having been based on misconception is wholly irrelevant. The learned single Judge clearly erred in relying on such a statement for issuing the direction for appointment of the respondent. The Division Bench was equally in error in confirming the judgment of the learned single Judge. Thus the judgment of the learned single Judge as confirmed by the Division Bench is unsustainable and has to be set aside.

9. The appeal is allowed. The judgment of the learned single Judge in Writ Petition No. 4756(SS) of 1997 as confirmed by the Division Bench in Special Appeal No. 381 (S) B of 1999 is set aside. There will be no order as to costs.”

5. In view of the aforementioned, the Original Application is found bereft of merit and is accordingly dismissed. No costs.

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

(**A.K. Bhardwaj**)
Member (J)

October 15, 2015
/sunil/