

**Central Administrative Tribunal
Principal Bench**

OA No.4285/2013

New Delhi, this the 17th day of October, 2016

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

Dr. Mayank Singh
S/o Shri Sohan Veer Singh
Presently residing at
2nd Floor, Greater Kailash,
New Delhi 110 048.
Last employed at AIIMS Rishikesh,
Virbhadra Road, Uttrakhand.

... Applicant.

(By Advocate : Shri A. K. Behera and Shri Mukul Singh)

Versus

1. Ministry of Health and Family Welfare
Through Secretary Health
Government of India,
PMMSY Division, Nirman Bhawan,
New Delhi 110 001.
2. Amrit Lal
Deputy Secretary to Government of India
Ministry of Health and Family Welfare
PMMSY Division, Nirman Bhawan,
New Delhi 110 001.
3. Prof. (Dr.) Raj Kumar
Director, AIIMS, Rishikesh,
Virbhadra Road,
Rishikesh 249201.

... Respondents.

(By Advocate : Shri D. S. Mahendru for respondents No.1 & 2)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

MA No.1520/2015.

Mr. A. K. Behera, learned counsel for the applicant submits that he has instructions not to press this MA. Dismissed as not pressed.

OA No.4285/2013.

Vide advertisement notice dated 28.12.2011, applications were invited to fill up different posts of faculty members in various disciplines in six new All India Institutes of Medical Sciences (AIIMS) in the process of being established at Rishikesh, Bhopal, Jodhpur, Patna, Raipur and Bhubaneswar under Pradhan Mantri Swasthya Suraksha Yojana. Online applications were to be submitted up to 31.01.2012, and hard copies were also to be submitted accordingly. Advertisement notice required following qualifications and experience to be possessed by the candidates for various posts as is indicated in paras XII and XIII, which read as under:-

“XII Qualifications: Qualifications may be relaxed for highly experienced, trained or reputed candidates at the discretion of the search cum selection committee. However, they generally are:

1. PG degree recognized by the MCI or Equivalent in the concerned subject. A PG degree Lab Medicine will be considered for application to Posts in Pathology.
2. PhD or Equivalent in the Anatomy, Physiology, Biochemistry, Pharmacology, Microbiology, Pathology recognized in India for non Medical Candidates.
3. Nursing: As per recommendations of the Nursing Council of India.

XIII. Experience:

1. Professor: 13 years of Teaching/Research Experience after Qualifying degree or 4 years as Additional Professor.
2. Additional Professor: 9 years of Teaching/Research Experience after Qualifying degree or 3 years as Associate Professor.
3. Associate Professor: 6 years of Teaching/Research Experience after Qualifying degree or 3 years as Assistant Professor.
4. Assistant Professor: 3 years of Teaching/Research Experience after Qualifying degree or 3 years as Senior Resident or Equivalent.
5. Senior Residents: Candidates with less than 3 years teaching experience after qualifying degree will be considered.

6. For Super specialists: 3 years pre MCh/DM degree residency will be counted as teaching experience.”
2. The applicant applied for the post of Assistant Professor/Senior Resident in the discipline of Biochemistry in response to the said advertisement notice. Qualification for the post of Assistant Professor in the discipline of Biochemistry was Ph.D or equivalent in the said discipline from a recognized Institute in India for non medical candidates. For the post of Assistant Professor, prescribed experience mentioned at serial no.4 of Para XIII was three years of teaching/research experience after qualifying degree or three years as Senior Resident or equivalent. Insofar as the post of Senior Resident is concerned, candidates with less than three years’ teaching service after qualifying degree were also eligible in terms of clause 5 of Para XIII.
3. At the time of submitting his application, the applicant claimed to be Ph.D in Biochemistry having qualified the same in July, 2009. He has placed on record copy of his Ph.D Degree (Annexure A-3) which indicates that he has acquired Ph.D Degree in Biochemistry after qualifying examination in July, 2009. He has also placed on record two certificates to demonstrate his experience. First certificate regarding his Employment Verification, Ph.D (Annexure A-6) is issued by Southwestern Medical Centre, University Hospitals & Clinics, Department of Radiation Oncology Division of Molecular Radiation Biology, Dallas, Texas. It is stated in the certificate that the applicant was under the employment of the department of Radiation Oncology at the UT Southwestern Medical Centre (UTSW), Dallas, Texas in the capacity of a Ph.D Postdoctoral Researcher II since December, 2009, and his annual salary effective from July 19, 2012 till August 7th, 2012 is also indicated. The second certificate has been issued from the Penn State Hershey, College of Medicine showing the applicant under their employment as a

Postdoctoral Scholar in the department of Neural and Behavioural Sciences from July, 2009 to December, 2009.

4. It is submitted by Shri Behera that under the first experience certificate, applicant has served Southwestern Medical Centre, Dallas Texas for a period of two years, seven months and seven days, and with regard to second experience certificate referred to hereinabove, he has served at least five months, and thus his combined service experience at the time of submission of application was three years, which was the prescribed service experience for the post of Assistant Professor/Senior Resident in the Department of Biochemistry, and thus the applicant is fully eligible. On the basis of his application and selection process having been completed, applicant was issued letter dated 18.07.2012 (Annexure A-7). Vide this letter, applicant was offered appointment to the post of Assistant Professor/Senior Resident of Biochemistry at the All India Institute of Medical Sciences, Rishikesh. The appointment was, however, subject to receipt of satisfactory police verification report on his character and antecedents. Para 3 of the appointment letter, however, stipulates that the appointment could be terminated at any time with a three months' notice by either side, viz., the appointee or the appointing authority without assigning any reason whatsoever. Consequent upon this, applicant joined as Assistant Professor/Senior Resident on 18.08.2012 after resigning from the post/assignment he was holding in the department of Radiation Oncology at the UT Southwestern Medical Centre (UTSW), Dallas, Texas. The applicant continued to perform his duties when he was served with the impugned order dated 06.12.2013 (Annexure A-1). Reasons for termination of services of the applicant in the impugned order read as under:-

“Whereas on re-examination of records, eligibility conditions and joint communication dated 12 August 2013 sent by Director,

AIIMS Bhopal and Director, AIIMS Patna it has been concluded in this Ministry that shortlisting of the aforesaid Dr. Mayank Singh was in contravention of the advertised eligibility conditions:

Whereas on re-examination of records, eligibility conditions and joint communication dated 12 August 2013 sent by Director, AIIMS Bhopal and Director, AIIMS Patna it has been concluded in this Ministry that the recommendations of Selection Committee jointly signed and forwarded by Director, AIIMS Bhopal and Director, AIIMS Patna had incorrectly recommended the aforesaid Dr. Mayank Singh as selected candidate for the post of Assistant Professor in Department of Biochemistry in AIIMS, Rishikesh;

Whereas Dr. G. K. Singh, Director, AIIMS, Patna and Dr. Sandeep Kumar, Director, AIIMS, Bhopal, Chairman of Selection Committee have jointly communicated in writing to the Ministry vide letter dated 12 August 2013 that the experience of Mayank Singh application No.0266 selected at AIIMS Rishikesh has been found short as per advertisement.”

From the above, it is found that services of the applicant have been dispensed with/terminated on account of deficit experience at the time of his appointment. Till passing of the impugned order, applicant had served the department for a period of one year and four months. Shri Behera, learned counsel appearing for the applicant has submitted that the impugned order is liable to be quashed primarily on the ground of violation of principles of natural justice. The grounds taken for applicant's removal/termination are contrary to the facts on record. His further submission is that the applicant was fully eligible and qualified at the time of making application. He was duly selected by a committee comprising Director, AIIMS, Bhopal and Director, AIIMS, Patna. Apart from that, he has referred to para IX of the advertisement notice wherein the selection committee was required to undergo shortlisting, which reads as under:-

“IX. Short Listing: Based on bio-data, the Search cum Selection Committee may short-list candidates for interview. Candidates called for interview will have to produce all relevant original documents in proof of details furnished in their application at the time of interview.”

5. It is submitted by Shri Behera that according to the aforesaid para, the candidates were required to produce all the original documents at the

time of their interview, and the applicant has duly complied with this para, and it was only after verification of his experience that his selection was made.

6. Be that as it may, the fact remains that the services of the applicant have been terminated for alleged deficiency in the experience without affording him any opportunity of being heard or providing him an opportunity to explain with regard to his experience etc. The impugned order is thus liable to be set aside on this count alone.

7. In view of the above, this OA is allowed. Impugned order dated 06.12.2013 is hereby quashed and set aside. Respondents are directed to reinstate the applicant on the post of Assistant Professor/Senior Resident forthwith without any back-wages. It is, however, made clear that in the event respondents intend to initiate any fresh action, they are at liberty to do so after observing principles of natural justice and in accordance with law.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

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