

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.4690/2014
with
OA No.3974/2015
MA No.4190/2015**

Reserved on: 04.11.2016
Pronounced on: 23.05.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

OA No.4690/2014

Dr. Pragya Shukla W/o Dr. Vinay Kumar Upadhyay,
R/o P-51, Senior Citizen Home Complex,
P-4, Kasna Road, Greater Noida-201308,
Presently working as Assistant Professor,
Clinical Oncology (Radiotherapy),
Delhi State Cancer Institute, Delhi. Applicant

(By Advocate: Ms. Jyoti Singh, Senior Advocate assisted by Mr. Amit Gaurav Singh)

Versus

1. Union of India through Secretary (Health),
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi-110108.
2. Union Public Service Commission
through Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110069. Respondents

(By Advocates: Mr. Ravinder Aggarwal and Mr. Ashok Kumar)

OA No.3974/2015

Dr. Deepti Sharma W/o Dr. Rahul Dutta,
R/o H 17/10, 2nd Floor, Malviya Nagar,
New Delhi-110017. Applicant

(By Advocate: Mr. Medhanshu Tripathi)

Versus

1. Union of India through Secretary (Health),
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
2. Union Public Service Commission
through Secretary,
Dholpur House, Shahjahan Road,
New Delhi. ... Respondents

(By Advocates: Mr. R. V. Sinha and Mr. Santosh Prasad Chaurasia)

O R D E R

Justice Permod Kohli, Chairman :

The issues in both these Applications being identical in nature, they were heard together and are being disposed of by this common order. Relevant facts as emerge from the pleadings of the parties are noted hereunder.

2. Union Public Service Commission, respondent No.2, issued advertisement No.15/2013 published in *Employment News* dated 12-18 October, 2013 inviting online recruitment applications for recruitment by selection for various posts including 14 posts of Assistant Professor (Radiotherapy) in the Ministry of Health and Family Welfare (Vacancy No.13101509112 at serial number 9). Out of the 14 posts, 2 were reserved for SC, 1 for ST and 4 for OBC. Remaining 7 posts were for unreserved category. For selection/

recruitment to the said post, following qualification/experience was prescribed:

"QUALIFICATIONS: ESSENTIAL: A.

EDUCATIONAL: (i) A recognized medical qualification included in the First or the Second Schedule or Part-II of the Third Schedule (other than licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in Part-II of the Third Schedule should also fulfil the conditions stipulated in sub-section (3) of section 13 of the Indian Medical Council Act, 1956. (ii) Post Graduate degree in the concerned speciality i.e. MD (Radiotherapy), D.M.R.T. or equivalent diploma of two years duration or equivalent.*

*The candidate holding DNB qualifications would need to get their qualification verified by NBE as to whether it is as per the recruitment 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 speciality as Lecturer/Tutor/Registrar/Demonstrator/Senior Resident after the requisite Post graduate qualification. [Teaching experience in any other post like the post of General Duty Medical Officer/Medical Officer shall not be considered for eligibility purpose for recruitment to teaching posts]."

3. The applicants in both these OAs, claiming to be possessed of the requisite qualifications and experience applied for the post of Assistant Professor (Radiotherapy) under the general category. It is stated that the recruitment results were published in the *Employment News* of 27 September – 3 October, 2014 for the post of Assistant Professor (Radiotherapy) Teaching Specialist Sub-Cadre of Central Health Services, Ministry of Health and Family Welfare.

The name of Dr. (Ms.) Pragya Shukla (applicant in OA No.4690/2014) was at number 4 out of the 8 recommended candidates. The applicant was intimated vide communication dated 07.08.2014 that her name was recommended to the Ministry of Health and Family Welfare for appointment to the post of Assistant Professor (Radiotherapy). Para 2 of the said communication, however, contained a stipulation that the offer of appointment would be made only after the Government have satisfied themselves after such enquiry as may be considered necessary that the applicant was suitable in all respects for appointment to the service. Other good mental and bodily health and physical capacity etc. were also made conditions for such appointment. Applicant Dr. Deepti Sharma in OA No.3974/2015 was at serial number 13 of the merit list in general category. One Dr. Savita Arora was placed second in the reserve list as per the result uploaded on the website of UPSC. The said Dr. Savita Arora challenged the appointment of the applicant Dr. Pragya Shukla by filing OA No.2818/2014. The Tribunal passed interim order dated 19.08.2014 to the effect that any appointment shall be subject to the outcome of the said OA. While the said OA was pending, the respondents issued letter dated 12.12.2014 cancelling the candidature of the applicant and withdrew the intimation letter dated 07.08.2014. It is this letter which is subject matter of challenge in OA No.4690/2014. The applicant has claimed following reliefs:

“8.1 Cancel the impugned letter No.F.1/264/(82)/2013-RI/Roll No.15 dated 12.12.2014 issued by UPSC in consultation with the Ministry of Health and Family Welfare thereby cancelling the candidature and thus appointment of the applicant to the post of Assistant Professor (Radiotherapy) advertised through Advertisement No.15/2013 dated 12-18 October, 2013 published in Employment News and upheld the intimation letter no.F.1/264/(82)/2013-RI/Roll No.15 dated 07.08/2014 confirming the appointment of the Applicant to the said post;

8.2 Or in the alternative, direct the Respondents to immediately withdraw the enforcement of the UPSC letter no. F.1/264/(82)/2013-RI/Roll No.15 dated 12.12.2014 (Annexure A-1) by virtue of which the candidature of the Applicant has been cancelled and intimation letter of even number dated 07.08.2014 has been withdrawn;

8.3 Direct the respondents to uphold the letter No. F.1/264/(82)/2013-RI/Roll No.15 dated 07.08.2014 issued for the appointment of the Applicant to the post of Assistant Professor (Radiotherapy) in the Ministry of Health and Family Welfare;

8.4 Direct the respondents to furnish all the verification report of the Applicant’s documents;

8.5 Pass such and other order(s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

4. In OA No.3974/2015 filed by Dr. Deepti Sharma,

following relief has been sought:

“8.1 Direct the Respondent to reassess the candidature of the present applicant in the light of disqualification of Dr. Sweety Gupta, Dr. Pragya Shukla and Dr. Asmita Jain and revise the waiting list of candidates to include the name

of the other qualified candidates including Applicant;

- 8.2 Direct the Respondent to offer the applicant the post of Asst. Professor in case other selected candidates are not joining the post of Asst. Professor and in natural course the same is falling to their merit list position.
- 8.3 Pass any other order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

5. The impugned order dated 12.12.2014 whereby the recommendation made in favour of applicant Dr. Pragya Shukla vide communication dated 07.08.2014 by the UPSC to the Ministry of Health and Family Welfare has been withdrawn, records the following reason for withdrawing the recommendation:

"2. Subsequently, Commission received a representation stating that the experience claimed by you from Delhi State Cancer Institute is not valid teaching experience as Delhi State Cancer Institute, Delhi is not a recognized teaching institution. The matter was examined in consultation with the Ministry of Health & Family Welfare as well as Medical Council of India. The Ministry of Health & Family Welfare has informed that the Medical Council of India has clarified that as on date Delhi State Cancer Institute, Delhi is not a recognized teaching institute. Accordingly, the Commission has decided to cancel your candidature for the post of Assistant Professor (Radio-Therapy) in the Ministry of Health & Family Welfare.

3. In view of the above position the intimation letter of even number dated 7th August, 2014 issued to you stands withdrawn."

6. Thus, the only issue requiring examination by this Tribunal is the validity of the teaching experience of the applicant in OA No.4690/2014. The only ground withdrawing the recommendation in favour of the applicant is that the teaching experience acquired by her while working in the Delhi State Cancer Institute is not a valid teaching experience, as the said institute is not a recognized teaching institution.

7. In the counter-affidavit filed by UPSC, it is stated that the applicant was called for interview on the basis of information furnished by her. Subsequently, upon receipt of a complaint from another candidate, the Ministry of Health & Family Welfare being the competent authority was asked to examine the issue whether the experience claimed by the applicant was a valid teaching experience. The Ministry of Health & Family Welfare in consultation with the Medical Council of India informed the Commission that Delhi State Cancer Institute was not a teaching institute, and as such the experience of the applicant as Senior Resident was not a valid teaching experience for the post of Assistant Professor. It is accordingly stated that pursuant thereto, the recommendation *qua* the applicant was withdrawn.

8. Respondent No.1, i.e., Ministry of Health and Family Welfare filed a separate counter-affidavit. It is admitted that the

applicant, Dr. Pragya Shukla, was recommended for appointment as Assistant Professor (Radiotherapy) in the Teaching Specialist Sub-cadre of CHS on the basis of the interview held by UPSC on 21st to 23rd July, 2014. It is further stated that the respondent received a complaint that UPSC had committed a big blunder in selecting three candidates having no eligibility as per the MCI criteria for selection of Assistant Professor in Radiotherapy under CHS. It is stated that the main point raised in the complaint was that the teaching experience gained from an institute which is not recognized by the MCI for teaching was treated as valid experience. A copy of the MCI's letter dated 08.08.2014 addressed to one Dr. Shanti Anand was also enclosed with the complaint. This communication dated 08.08.2014 has been placed on record as Annexure R-4. Same is reproduced hereunder:

“Sub.: Eligibility of students trained in Delhi State Cancer Institute.

Sir/Madam,

With reference to your letter dated 08.08.2014, on the subject noted above, this is to inform you that as on date Delhi State Cancer Institute, Delhi is not a teaching institute recognized by Medical Council of India as a teaching institute and the experience gained as Senior Resident is not valid teaching experience for the post of Assistant Professor in the department of Radio-therapy.”

It is further the case of respondent No.1 that the matter was taken up with the MCI vide letter dated 01.09.2014 requesting them to clarify

the position latest by 19.09.2014 failing which it would be presumed that the degree/experience of the candidate is countable for the post of Assistant Professor (Radiotherapy). MCI in response to the aforesaid communication of the Ministry, vide its reply dated 01.10.2014 intimated the respondent that the experience gained as Senior Resident from the Delhi State Cancer Institute is not a valid teaching experience. Said letter is also reproduced hereunder:

"Sub.: Recruitment to the post of Assistant Professor (Radiotherapy) – validity of experience gained at Delhi State Cancer Institute.

Sir,

With reference to your letter No.A.12025/08/2010-CHS.III dated 01.09.2014, on the subject noted above, this is to inform you that as on date Delhi State Cancer Institute is not a teaching institute and as such not recognized by Medical Council of India as a teaching institute. The experience gained as Senior Resident is not valid teaching experience for the post of Assistant Professor in the department of Radio-therapy."

Respondent No.1 accordingly communicated the opinion of MCI to UPSC vide its letter dated 19.11.2014, whereupon the impugned communication dated 12.12.2014 has been issued by UPSC.

9. Rejoinder has been filed by the applicant. It is stated that the averments contained in the reply of the respondents are false and frivolous and irresponsible. It is also stated that the recruitment rules of 1996 as were applicable at the time of the recruitment in question do not prescribe that the experience has to be from the MCI

recognized institution. It is further stated that the recruitment rules were amended in the year 2013, which contain a stipulation that the experience should be from an MCI recognized institution. The applicant has also relied upon a notification dated 01.12.2006 (Annexure RA-2) whereby the Delhi State Cancer Institute was established. Relevant extract of the said notification reads as under:

“The Lieutenant Governor of the National Capital Territory of Delhi hereby orders the development of existing Oncology Centre in the Campus of Guru Teg Bahadur Hospital, Dilshad Garden, Delhi as a centre of excellence for comprehensive treatment of cancer including teaching, training, research and its management as an autonomous body, through a society named as the “Delhi State Cancer Institute” (hereinafter referred to as “the Institute”) registered with the Registrar of Societies, Government of NCT of Delhi under the Societies Registration Act, 1860 *vide* Regn. No.S-55632 of 2006 dated the 16th May, 2006, with immediate effect.

The main objective of the Institute will be to provide ultra-modern comprehensive diagnosis and treatment facilities of all types of cancer patients in the region with strong emphasis on HRD, R&D and community service programmes.

The Institute shall function as an autonomous body on the lines of IHBAS, IL&BS and MAIDS. The main sources of funds for the Society/Institute will be the grant-in-aid from the Government of NCT of Delhi in accordance with the approved pattern of assistance, the grant-in-aid from the Government of India, project related assistance from bilateral/multilateral funding agencies, research grant/grants from other institutions/organizations, user charges for specialized services, etc.”

10. We have heard the learned counsel appearing for parties at length.

11. The only controversy, as mentioned hereinabove, in these OAs is the validity of the experience gained by Dr. Pragya Shukla, applicant in OA No.4690/2014, while working in the Delhi State Cancer Institute. The conditions incorporated in the advertisement regarding experience have already been reproduced hereinabove. The recruitment rules dated 08.10.1996 were in vogue when the advertisement was issued and selection made. For selection to the post of Specialist Grade-III Assistant Professor, the essential qualification and the experience as notified in the advertisement is the same. These recruitment rules were, however, re-visited and the new recruitment rules were notified vide notification dated 07.04.2014, called the "Central Health Service Rules, 2014". For the post of Specialist Grade-III Assistant Professor, the essential qualifications have not undergone any change. However, the relevant conditions relating to the teaching experience have been altered. The conditions under the 1996 rules and the 2014 rules are reproduced hereunder:

1996 Rules	2014 Rules
(iii) At least 3 years' teaching experience in the concerned speciality as Lecturer/Tutor/ Registrar/Demonstrator/Senior Resident after the requisite Post	(iii) At least three years' teaching experience as Senior Resident or Tutor or Demonstrator or Registrar in the concerned Speciality or

graduate degree qualification.	Super-speciality <u>in a</u> <u>recognized</u> <u>teaching</u> <u>institution after obtaining the</u> <u>first Post-graduate degree.</u>
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12. From the comparative study of the 1996 recruitment rules and the 2014 recruitment rules, we find that under the former rules there was no requirement of experience having been acquired from an MCI recognized institution, meaning thereby that the teaching experience acquired from a non-MCI recognized institution should be admissible as an experience for purposes of recruitment to the post in question. The condition of acquiring experience from an MCI recognized teaching institution after obtaining the post-graduate degree was introduced only in 2014 rules.

13. Section 33 of the Indian Medical Council Act, 1956 empowers the Council, with the previous sanction of the Central Government, to make regulations generally to carry out the purposes of the Act. In exercise of powers conferred by Section 33 the Indian Medical Council has framed regulations, namely, "The Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998". Relevant regulations are reproduced hereunder:

"3. Minimum qualifications for appointment as a teacher: Minimum qualifications for appointment as a teacher in various departments of a medical college or institution imparting graduate and post-graduate education shall be as specified in the Schedules I and II annexed with these regulations.

SCHEDULE I**xxx xxx xxx**

8. The names of the teaching posts, academic qualifications and the teaching or research experience required for each teaching post are given in Table I in respect of graduate and post graduate / higher speciality courses and in Table II in respect of super-speciality courses.”

“TABLE-1

**REQUIREMENTS OF ACADEMIC
QUALIFICATIONS, TEACHING AND RESEARCH
EXPERIENCE**

Post	Academic qualifications	Teaching/Research Experience
RADIO-THERAPY		
Assistant Professor/Lecturer	MD (Radio-Therapy)/MD (Radiology)/MS (Radiology)	<p>(i) For the candidates possessing MD/MS Degree from MCI recognized medical college.</p> <p>(ii) Three years teaching experience in the subject as Resident/Registrar /Demonstrator/ Tutor <u>in a recognised medical college either during the post-graduation course or after obtaining postgraduate degree in the subject.</u></p>

14. The applicant has raised two contentions to challenge the impugned communication – (i) that she has worked in Delhi State

Cancer Institute which is a recognized teaching institution; and (ii) that under the 1996 recruitment rules there was no requirement of acquiring the experience from a recognized teaching institution and thus the subsequent amendment in the 2014 rules would not be applicable to the present selection, said rules being prospective in nature. In support of her first contention as noted hereinabove, the applicant has relied upon notification dated 01.12.2006 whereby the Delhi State Cancer Institute was established in the campus of Guru Teg Bahadur Hospital, Delhi. From a perusal of the aforesaid notification, it appears that this notification only indicates intention to establish. Whether in fact and reality this was established as a teaching institution or not, is a question of fact, and merely the intention to make it a teaching institution does not by itself make it a teaching institution unless teaching is imparted in reality. No material has been placed on record by the applicant to demonstrate that she was involved in teaching activity and was teaching students of a particular medical college. Insofar as the second contention of the applicant regarding there being no requirement of acquiring experience from a recognized teaching institution under the 1996 rules and the rules of 2014 being prospective in nature is concerned, no doubt the 1996 recruitment rules do not prescribe that the experience should be from a recognized teaching institution. The selection process was initiated in October, 2013 when the OLD

recruitment rules OF 1996 were applicable. However, the regulations framed by the Medical Council of India under Section 33 of the Indian Medical Council Act, 1956, *inter alia* prescribe qualifications and experience for all the disciplines and teaching posts. For the post of Assistant Professor (Radiotherapy) the regulations specifically prescribe that the experience should be from a recognized medical college. MCI in its communication dated 01.10.2014 informed the Government of India that Delhi State Cancer Society is not a teaching institute and thus experience acquired in the said institute is not a valid experience for recruitment to the post of Assistant Professor (Radiotherapy). This position is in consonance with the MCI regulations. The MCI regulations were amended on 11.06.2012 with effect from 01.10.2012, and thus were in operation prior to the issuance of the advertisement. The regulations being statutory in nature in exercise of the power under Section 33 of the Indian Medical Council Act, having been framed with prior approval of the Central Government laying down the qualifications and experience would prevail even over the recruitment rules framed under proviso to Article 309.

15. Under the above circumstances, the challenge to the impugned communication dated 12.12.2014 issued by UPSC on the basis of the opinion of the Medical Council of India dated 01.10.2014

is not sustainable. No merit. This Application is dismissed. No costs.

OA No.3974/2015

16. As far as the OA filed by Dr. Deepti Sharma is concerned, she seeks a direction for release of her candidature on account of disqualification of Dr. Sweety Gupta, Dr. Pragya Shukla and Dr. Asmita Jain. There is nothing on record to indicate that these Doctors were disqualified except Dr. Pragya Shukla, applicant in connected OA No.4690/2014, who is alleged to be ineligible. Her OA has been dismissed vide this order itself. That alone cannot be a ground for a direction to appoint the applicant in this OA, she being at serial number 13 of the list in general category. Only seven vacancies were available in the general category. The respondents in their reply have stated that the life of the panel is over. This is also another reason projected by the respondents for dismissal of the OA. In any case, even if three candidates out of twelve above the applicant are excluded, she would still not make entry into the select list.

17. For the above reasons, the applicant is not entitled to any relief. This OA is dismissed accordingly. No costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/as/