

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

OA-3860/2014

Reserved on : 27.03.2017.

Pronounced on : 31.03.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Smt. Bharti Chopra, Aged 29 years
W/o Sh. Neeraj Sharma,
R/o Flat No. 414, Pocket-I, Phase-2,
Radhika Apartment, Sector-14,
Dwarka. Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Medical Council of India through
its President,
Pocket-14, Sector-8, Dwarka Phase-I,
New Delhi-77.
2. The Deputy Secretary (Admn.),
Medical Council of India,
Pocket-14, Sector-8, Dwarka Phase-I,
New Delhi-77. Respondents

(through Sh. A.K. Behera with Ms. Manpreet Bhasin and Ms. Puja Sardar, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

In the year 2009, the respondents invited applications for various posts including the post of Telephone Operator-cum-Receptionist in Medical Council of India. The applicant applied for the same. She appeared for an interview conducted by a Selection

Committee comprising of 04 Members. All together, 13 candidates were called, out of which 09 attended the interview. The applicant was placed at No.1 in the panel by the Selection Committee. Based on the recommendations of the Selection Committee, she was appointed on the post on 19.06.2009 on regular basis. According to the applicant, her probation period was of 02 years, which she had completed successfully and was confirmed on the post. Her performance on the post was also satisfactory. However, on 06.08.2014, she was issued a charge sheet under Rule-14 of CCS (CCA) Rules, 1965, the relevant part of the charge sheet is as follows:-

"Therefore, in accordance with Rule 14 of CCS(CCA) Rules, 1965 you are directed to explain why you should not be removed or dismissed from the service of the Council in view of the submission of experience certificate from a private company for the purpose of obtaining employment in the Council as Telephone Operator-cum-Receptionist.

Your explanation should reach the undersigned within 7 days from the date of issue of this Memorandum, failing which it would be deemed that you have nothing to say in the matter and the undersigned shall proceed against you in accordance with law."

2. She replied to the aforesaid Memorandum on 26.08.2014 wherein she denied that she had submitted any fabricated document or false information. Her contention was that she applied like any other candidate. The respondents themselves after considering her application had called her for interview. As per the

Recruitment Rules (RRs), qualifications were relaxable at the discretion of the Appointing Authority in case the candidate was otherwise suitable for the job. She was under the impression that the Selection Committee/Appointing Authority had relaxed the requirement of experience while appointing her. Thus, there was no fraud or fault committed by her. She further submitted that she was appointed in the year 2009 and had since been confirmed on the post. She prayed that the aforesaid Memorandum dated 06.08.2014 be withdrawn and that she may be allowed to perform her duty as usual.

3. After considering her reply, the respondents passed the impugned order dated 19.09.2014 whereby the respondents imposed a penalty of dismissal/removal on the applicant. She has, therefore, approached this Tribunal seeking the following relief:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 19.09.2014 (**Annex.A/1**) and memorandum dated 06.08.2014 (**Annex.A/2**) declaring to the effect that the same are illegal, arbitrary and against the rules and consequently pass an order of reinstatement of the applicant in service with all consequential benefits including the arrears of pay and allowances of the intervening period.
- (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.”

4. In their reply, the respondents have submitted that the applicant's O.A. deserves to be out rightly dismissed because Hon'ble Supreme Court in a catena of judgments has held that a candidate can be considered against a vacancy only if he/she possesses the requisite qualification/experience as on the last date of submission of applications. It has also been held that no appointment can be made in violation of the Recruitment Rules (RRs), as such, appointment would be a nullity. In the instant case, the experience possessed by the applicant was of a private company against the requirement of 05 years experience in a Public Sector Undertaking/Statutory Body/Autonomous Body/Teaching Institution. Thus, the applicant did not meet the eligibility conditions and was, therefore, not eligible to be appointed to the aforesaid post.

5. We have heard both sides and have perused the material placed on record.

5.1 Arguing for the applicant, learned counsel Sh. Yogesh Sharma submitted that the applicant did not furnish any false information. She had experience of working in a private company and had furnished certificate supporting that experience only. The respondents even then considered her suitable for appointment. The applicant's impression was that the respondents had relaxed the

requirement of experience in a Govt. Undertaking while appointing her in view of her impressive credentials and performance in the interview. Thus, the applicant had not committed any fraud or made any false representation to secure appointment as has been alleged in the charge sheet dated 06.08.2014. The applicant had denied the charge of securing appointment by furnishing false information. Yet, without proceeding to hold an enquiry, the respondents have passed the impugned order imposing penalty of dismissal/removal on her after holding her guilty of obtaining wrong and illegal gains of employment as Telephone Operator-cum-Receptionist and misleading the Council in so far as her experience was concerned. Sh. Sharma further argued that in a similar case decided by a Co-ordinate Bench of this Tribunal in OA-2351/2015 (Sh. Hari Om Singh Vs. DTC & Ors.) on 26.10.2016 along with other connected cases, this Tribunal had quashed the order of DTC removing the applicant therein from service and giving liberty to DTC to initiate and conduct regular departmental enquiry for alleged misconduct.

5.2 Per contra, Sh. A.K. Behera appearing for the respondents relied on several judgments of the Apex Court to say that the applicant's appointment itself was a nullity in law. Sh. Behera argued that the Apex Court has ruled that when a person not possessing the advertised qualification is appointed, it amounts to a

fraud on public until and unless it is clearly stated in the advertisement inviting applications that the qualifications were relaxable. In this regard, he relied on the judgment of Hon'ble Supreme Court in the case of **The District Collector & Chairman, Vizianagaram and Anr. Vs. M. Tripura Sundari Devi**, 1990(4)SLR 237 (SC), in para-6 of which it has been held as follows:-

"6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

He further relied on the judgment of Apex Court in the case of **Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others**, (2008) 7 SCC 153 wherein in para-16 it has been observed as follows:-

"The qualifications for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity."

Further, he relied on the judgment of Apex Court in the case of **Ashok Kumar Sonkar Vs. UOI & Ors.**, 2007(3)SLR 501(SC) wherein the following has been laid down:-

"34.It is not a case where appointment was irregular. If an appointment is irregular, the same can be regularized. The court may not take serious note of an irregularity within the meaning of the provisions of the Act. But if an appointment is illegal, it is non est in the eye of law, which renders the appointment to be a nullity.

35. We have noticed hereinbefore that in making appointment of the appellant, the provisions of Articles 14 and 16 of the Constitution and statutory rules were not complied with. The appointment, therefore, was illegal and in that view of the matter, it would be wholly improper for us to invoke our equity jurisdiction."

The respondents have also relied on the judgment of Apex Court in the case of **Alka Ojha Vs. Rajasthan Public Service Commission and Anr.**, (2011) 9 SCC 438 on the same issue.

5.3 Sh. Behera further argued that the applicant's contention that the Selection Committee had relaxed the requirement of experience in her case was baseless as in the advertisement inviting applications for the aforesaid post, no relaxation had been prescribed. This is evident from page-103 of the paper-book (Annexure R-1/6) wherein a copy of the advertisement issued is available.

5.4 Sh. Behera further submitted that even the contention of the applicant that she was confirmed on this post was not tenable as no confirmation order had been passed in her case. She cannot be deemed to have been confirmed due to efflux of time as this would be contrary to the law laid down by the Apex Court in a catena of judgments. In this regard, he has relied on the following judgments:-

(i) **Head Master, Lawrence School, Lovedale Vs. Jayanthi Raghu and Anr.**, (2012) 4 SCC 793.

(ii) **Dr. Ajit Singh Nayyer Vs. UOI & Anr.**, [WP(C) No. 10446/2005].

(iii) **Dr. Ajit Singh Nayyer Vs. UOI**, LPA-1753/2006.

6. We have considered the submissions of both sides. From the facts narrated above, it is clear that the applicant applied for the post of Telephone Operator-cum-Receptionist in response to the advertisement issued by the respondents. She had experience of working in a Private Sector Company and not a Government Undertaking as was the requirement under the RRs. There is nothing on record to show that she had hidden this fact from the respondents or had submitted any false or forged document. Even then the Selection Committee constituted by the respondents selected her and the respondents appointed her. Thus, the respondents offered her appointment with open eyes knowing fully well that she had experience only of a private sector company and not of a Government Undertaking. Under these circumstances, it cannot be held that she was guilty of securing appointment by committing a fraud or by misleading the respondents. It is, therefore, beyond comprehension as to on what basis the respondents arrived at this conclusion while passing impugned order and holding her guilty of misconduct. No evidence had been collected by them to

prove this charge against the applicant. They had issued a charge memorandum on 06.08.2014 in which this allegation was made. With this charge memorandum, neither a list of relied upon documents nor a list of witnesses to be examined was attached. The applicant had denied that he had submitted any false document to secure appointment. In fact, her contention was that the Selection Committee in its wisdom had relaxed the experience requirement in her case while selecting her. She had even asked for extracts of file notings to substantiate this assertion. However, the respondents refused to supply her same but arrived at the conclusion that the charge against the applicant of securing appointment by furnishing false information stood proved. From the material placed on record, it is evident that this finding could not have been arrived at by the respondents at least not without holding an enquiry into the matter.

6.1 We are, however, in agreement with learned counsel for the respondents that since the applicant was not meeting the eligibility conditions, her appointment itself was a nullity in law and void ab initio. We are also in agreement with him that the applicant cannot claim that she had been confirmed on the post as no confirmation order had been passed in her case. Be that as it may, even if it is presumed that the applicant had been confirmed, yet due to the fact that she did not possess the eligibility condition, her appointment was non est in the eyes of law.

6.2 Sh. Sharma had relied on the judgment of a Co-ordinate Bench of this Tribunal in the case of **Hari Om Singh** (supra) to say that before passing the impugned order, the respondents should have held an enquiry under the Rules. However, in our opinion, the facts of the case of **Hari Om Singh** (supra) are clearly distinguishable from the instant case. In the case of **Hari Om Singh** (supra) the applicant's appointment as Driver had been terminated by the respondents on the ground that he possessed a fake driving licence. When a show cause notice was issued to **Hari Om Singh** (supra) as to why his appointment should not be cancelled on this ground, **Hari Om Singh** denied that his licence was fake. Since the applicant therein had denied the charge of securing appointment by producing a fake licence, it was necessary in that case to hold an enquiry and establish the fact that **Hari Om Singh's** licence was fake. However, in the instant case, the applicant has not denied that she did not meet the eligibility conditions of the post inasmuch as her experience of 05 years was in a Private Sector Company and not in a Government Undertaking as was the requirement of the RRs. Thus, it is not disputed that the applicant did not meet the eligibility conditions. Consequently, there is no necessity of holding an enquiry as that would be a futile exercise.

6.3 Even then the respondents could not have terminated the applicant's appointment by passing the impugned order dated 19.09.2014 by holding her guilty of securing appointment by making false representation and imposing a penalty of dismissal/removal on her. As has been stated above, the applicant had not submitted any forged or false document. She had furnished the certificates showing that her experience was of a Private Sector. Yet, the respondents had appointed her with open eyes. While her appointment is still invalid, yet she cannot be held guilty of misrepresentation or of furnishing false document.

6.4 We notice from the judgments relied upon by the respondents, such as, **Ashok Kumar Sonkar** (supra), **Pramod Kumar** (supra) and **The District Collector & Chairman, Vizianagaram and Anr.** (supra) that in all these cases the appointment were annulled without issue of a formal charge sheet as they were found to be non est in the eyes of law. Herein also the respondents need not have issued a formal charge sheet under Rule-14 of CCS (CCA) Rules, 1965 before annulling the applicant's appointment.

7. In view of the above discussion, we quash and set aside the Charge Memorandum dated 06.08.2014 and the impugned order dated 19.09.2014. O.A. is allowed to that extent. However, since the appointment of the applicant has been held to be void ab initio, the

respondents shall be at liberty to pass a fresh order annulling her appointment, if so advised. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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