

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH  
HYDERABAD**

**Original Application No.020/00539/2014**

**Date of C.A.V. : 09.01.2018**

**Date of Order : 11.01.2018**

Between :

Dr.T.Anuradha,  
W/o D.Murali Mohan, aged 36 years,  
Occ : Ex-Dental Surgeon (on contract basis),  
South Central Railway, Secunderabad.  
R/o D.No.B-34, Shanthi Sikara Apartments,  
Somajiguda, Raj Bhavan Road, Hyderabad.

... Applicant.

And

1. Union of India, rep. by  
The General Manager,  
South Central Railway,  
Secunderabad.

2. The Chief Medical Director,  
South Central Railway,  
Rail Nilayam, Secunderabad.

3. The Chief Personnel Officer,  
South Central Railway,  
Rail Nilayam, Secunderabad.

4. Dr.Lakshmi Rekha,  
R/o Srinagar Colony,  
Hyderabad.

... Respondents.

Counsel for the Applicant

...Mr.K.R.K.V.Prasad, Advocate

Counsel for the Respondents

...Mr.N.Srinatha Rao, S.C.for Rlys (R-1 to R-3)  
Dr.A.Raghu Kumar, for R-4

***CORAM:***

***Hon'ble Mr.K.N.Shrivastava***

***... Member (Admn.)***

***ORDER***

***{ As per Hon'ble Mr.K.N.Shrivastava, Member ( Admn.) }***

This Original Application has been filed under Section 19 of the Administrative Tribunal's Act. The applicant prayed for the following relief :

*“To call for the records pertaining to notification dated 20.12.2013 issued by South Central Railway for engagement of Doctors on Full-Time Contract basis along with Railway Board proceedings No. 2013/E(GR)/II/15, dated 20.05.2014 and declare the action of not notifying the Dentist posts to be filled up with SC category as illegal and arbitrary and is in violation of Article 16 (4A) of the Constitution and also declare the action of not stopping the process relating to the said Notification on receipt of the above said Railway Board letter, as illegal, arbitrary and accordingly direct the respondents to re-engage the applicant forthwith as Dentist on full-time Contract basis at Central Hospital, Lallaguda in South Central Railway with all consequential benefits.”*

2. The brief facts of the case as noticed from the records are as under :

The applicant was initially appointed as Dental Surgeon under South Central Railway (SCR), Secunderabad vide letter dated 23.05.2005 as per the terms and conditions stipulated therein. The appointment was for a period of one year, which was subsequently extended year after year. The last extension was granted vide office order dated 12.11.2012 (page-32). Through this order the applicant was appointed for the 8<sup>th</sup> term which apparently was the maximum as per the guidelines / rules prevailing then.

3. The respondents vide impugned Annexure-A-1 notification dated 20.12.2013 invited applications for appointment of Doctors on contract basis. One of the posts advertised was that of Dentist at Central Hospital, Lalaguda, against which the applicant had worked for 8 terms. The applicant participated in the selection process. However, in terms of the rules / guidelines, she could not be

considered apparently due to the fact that she had already completed the maximum of 8<sup>th</sup> term. Respondent No.4 was appointed against the said post.

4. The applicant challenged the appointment of Respondent No.4 by filing the instant OA, in which an interim direction was issued on 28.05.2014 directing the respondents to keep the appointment of Respondent No.4 in suspension till the next date of hearing. However, the interim direction was not complied with by the respondents. Consequently the applicant filed the C.P.021/00132/2014. The Tribunal decided to hear the CP and OA together, as a result of which the matter got prolonged and in the meanwhile Respondent No.4 completed her engagement of one year on contract basis.

5. Pursuant to the notice issued, the respondents filed reply.

6. The matter was taken up for hearing arguments of learned counsel for the parties on 09.01.2018. Heard Sri.K.R.K.V.Prasad, learned counsel for the applicant, Sri.Srinatha Rao, learned counsel for the official Respondents 1 to 3 and Dr.A.Raghu Kumar, learned counsel for the Respondent No.4.

7. Sri.K.R.K.V.Prasad, learned counsel for the applicant contended that interviews of the candidates who had applied for the post of Dentist was conducted on 06.01.2014, in which there was no expert member with a dentistry background and hence the interview process was not correct. He further contended that after the Annexure-A-1 advertisement dated 20.12.2013, the Railway Board issued a direction vide its letter dated 20.05.2014 (Anx-A-2) to all the General Managers of

the Indian Railways informing that Contract Medical Practitioners (CMPs) could be appointed upto a maximum of 10 terms. He thus argued that the applicant could have been considered for another 2 terms by the respondents in terms of the Anx-A-2 letter.

8. Mr.N.Srinatha Rao, learned counsel for the official respondents (R-1 to R-3) argued that the applicant had participated in the selection process vis-a-vis the Anx-A-1 advertisement. After having declared unsuccessful, she has no right to challenge selection. In this regard the learned counsel placed reliance on the judgement of Karnataka High Court in the case of ***R.Jagannatha and Another Vs The Hon'ble High Court of Karnataka & others decided on 11<sup>th</sup> October 2004 in Writ Petition Nos.2232 and 7774 of 1999 ( Equivalent citation: ILR 2005 KAR 3125)***. He drew my attention to para-15 of the judgement, which reads as under :-

“15. POINT NO. 1: It is now well settled that if a candidate takes a calculated chance and appears to the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee did not follow the prescribed procedure. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* it has been clearly laid down by the Supreme Court that the High Court could not have granted relief to the petitioner who appeared for the examination without protest and after realising that he could not succeed in the examination, has filed a petition challenging the said examination. The said view has been reiterated in the case of *Madanlal v. State of Jammu and Kashmir* where it was held that results of the interview cannot be successfully challenged by a candidate who takes a chance to get himself selected at the said interview and ultimately finds to be unsuccessful. Similar is the view expressed in the case of *University of Cochin v. N.S. Kanjoonjamma* where it was held that having participated in the selection, a candidate is estopped to challenge the correctness of the procedure. This view has again been reiterated by the Supreme Court in the case of *G.N. Nayak v. Goa University* where it has been held that when a candidate knew that there was a change in the eligibility criteria for the post, yet he cannot be allowed thereafter to contend that the eligibility criteria was wrongly framed.”

9. Dr.Raghu Kumar, learned counsel for Respondent No.4 also questioned the credibility of the applicant in challenging the selection of Respondent No.4 pursuant to Anx-A-1 advertisement. He relied on the judgement of Hon'ble Apex Court in the case of ***HC Pradeek Kumar Rao and Ors. V. Dinesh Kumar Pandey and Ors. (Civil Appeal No.6549/2014, judgement dated 11.05.2015)***, He drew my attention to para-16 of the judgement, which reads as under :-

*“16. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus,, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approve and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted. (See Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Ors., (2011) 1 SCC 150, and K.H.Siraz Vs. High Court of Kerala and Ors. (2006) 6 SCC 395).*

10. I have considered the arguments of learned counsel for the parties and also perused the pleadings and documents annexed thereto. It is quite apparent from the records that the applicant has served the respondents as a Dental Surgeon for 8 terms and her services were found to be satisfactory. The sole reason why the respondents could not extend her engagement appears to be that she had already served the maximum of 8 terms and extant guidelines / rules did not permit engagement beyond that. As a result of this, the respondents advertised the post vide the impugned Annexure-A-1 notification dated 20.12.2013. The applicant was obviously not entitled for consideration and hence I do not find any fault on the

part of the respondents in not considering the applicant for further selection and in selecting Respondent No.4 for the said post on contract basis. It is also to be noted that the respondents themselves have increased the number of terms of engagement of CMPs from 8 to 10 vide Annexure-A-2 letter dated 20.05.2014. Hence the applicant has now acquired eligibility for consideration as CMP for another 2 terms. The Respondent No.4 has also completed her engagement as CMP in terms of the impugned Anx-A-1 advertisement. It would, therefore, be appropriate to direct the respondents to advertise the post afresh. Let private respondent No.4 as well as the applicant apply for the post along with other candidates. The respondents may select the more suitable candidate for the post.

11. In the conspectus of the discussions in the foregoing paragraphs, the OA is disposed of with the following directions :

- (i) The respondents shall advertise the post of Dentist of Central Hospital, Lalaguda, South Central Railway, afresh. The applicant and Respondent No.4 shall have liberty to apply for the post.
- (ii) The respondents shall constitute a proper Selection Committee having at least one member in the Committee with specialization in Dental Surgery. The selection for the post shall be done as per the recommendation of the Selection Committee.

12. There shall be no order as to costs.

**(K.N.SHRIVASTAVA)**

***MEMBER (ADMN.)***

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