

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00986/2016

DATED THIS THE 26th DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri Meer Adil
Aged about 31 years
S/o Meer Mehboob
Residing at No.1288/ABC/2TK Road Cross
Kalanagar
Channapatna
Ramanagar District-562 160.

....Applicant

(By Advocate Sri Izzhar Ahmed)

Vs.

1. Union of India
represented by the
Addl. Director
Central Govt. Health Scheme
3rd Floor, E-Wing
Kendriya Sadan
Koramangala
Bangalore-560 034.

2. Vidya M
Aged about 25 years
D/o Mahadevappa P.
No.24/3, Near Krishna Mandir
M.P.S.Layout
K.S.Town, Kengeri
Bangalore-560 060.

.....Respondents

(By Advocates Sri M.Rajakumar for R1 & Smt.M.V.Thanuja for R2)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that in response to the vacancy circular

dtd.5.7.2016(Annexure-A1) issued by the 1st respondent notifying five posts for Pharmacist (2 OBC & 3 UR), the applicant having the requisite qualification in terms of the notification as in-service candidate had applied under OBC category(Annexure-A2). After receipt of the applications, the 1st respondent has prepared the merit list on the basis of percentage secured in their qualifications and sent call notices to the 51 candidates. The 1st respondent issued call notice dtd.19.9.2016(Annexure-A3) to the applicant for written examination and he has written the examination on 26.10.2016. The 1st respondent has published the select list for the post of Pharmacist on 26.10.2016(Annexure-A4) wherein the applicant is placed at Sl.No.6 and whereas the 2nd respondent is placed at Sl.No.5 and both the have secured equal marks by securing 135.50 in the written test. The 1st respondent has selected 2nd respondent on the ground that the 2nd respondent is having the qualification of B.Pharm and not selected the applicant as he is having the qualification of D.Pharm. The applicant submits that the 1st respondent ought to have selected him as he is aged 31 years old and older than the 2nd respondent who is 25 years old. Aggrieved by the action of the 1st respondent, the applicant made representation dtd.31.10.2016 and on 10.11.2016(Annexures-A5 & A6) to the 1st respondent to consider his case for selection to the post of Pharmacist by deleting the name of the 2nd respondent by following the tie breaker criteria.

2. The applicant submits that CGHS, Kolkata has issued guidelines for CGHS recruitment test for the post of Pharmacist in 2016 wherein Clause 16 makes it clear that how tie breaker criteria should be followed by the selection authority(Annexure-A7). In spite of it, the 1st respondent has selected the 2nd respondent contrary to the recruitment notification. And there is no provision to give any preference to the candidates who is having a bachelor degree in Pharmacy and on the other hand, it

is crystal clear that the applicant as well as the 2nd respondent are the pharmacists. There is no reply on the two representations submitted by him. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

a) Quash the impugned select list dtd.26.10.2016 at Annexure-A4 passed by the 1st respondent in so far as it relates to the selection of the 2nd respondent for the post of Pharmacist, under the facts and circumstances of the case;

b) Direct the 1st respondent to select the applicant for the post of Pharmacist in accordance with law and in accordance with the recruitment notification and issue appointment order by extending all other consequential benefits for which the applicant is legally entitled to, under the facts and circumstances of the case.

3. On the contrary, the respondents in their reply statement have submitted that the applicant had participated in notification dtd.5.7.2016 under OBC category. As per the notification, he was overaged and hence he claimed age relaxation as he being State Government servant having Diploma in Pharmacy with two years experience under the eligibility criteria. It is a fact that the applicant and the 2nd respondent have scored same marks in the written examination conducted on 26.10.2016. Prior to the selection process, the selection committee has drawn the criteria for selection in case of tie. As the Pharmacist post is a technical one, the committee has chosen higher qualification as the criteria in case of tie break. The said criteria adopted by the UPSC, Govt. of India is produced at Annexure-R1. Accordingly, the selection panel has unanimously chosen the 2nd respondent based on her higher qualification i.e. B.Pharm compared to the educational qualification of the applicant. There is no mandatory law that the selection board has to follow/restrict to age criteria in case of tie breaker. Moreover, the applicant had already taken the benefit on the age relaxation while applying the said post as Govt. servant. Therefore, he does not have any legal right to claim the same benefits once again as he has been older than 2nd respondent. Having participated in the selection process, the applicant

cannot question the same as it is hit by law of estoppel as held by the Hon'ble Apex Court.

4. The respondents submit that the selection committee met on 25.10.2016 under the chairmanship of Additional Director, CGHS along with three members and made resolution that in case of any clash with same marks, candidates who possess highest qualification is ranked above over lower qualified candidates. Hence, the selection board has the bounden duty to select the most suitable candidate for the post of Pharmacist in the interest of public as well as Health organisation(Annexure-R2). The contention of the applicant that he is senior to the 2nd respondent is not applicable in the present selection process as they were not having the same qualification. Therefore, the entire selection process is legal and transparent and the entire process has been done within the framework of rules and regulations. Hence, the OA is liable to be dismissed.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that in reply to the representations submitted by the applicant, the 1st respondent issued a letter dtd.23.12.2016(Annexure-Re8) wherein it is submitted that 'there are no clear instructions regarding the methodology to be adopted for conducting the written examinations and policy to be adopted in case of a tie in percentage of marks'. The Hon'ble High Court of Karnataka in WP.No.35842/2018 filed against the order dtd.3.11.2017 passed in the present OA by this Tribunal, observed that 'in case of tie, the CGHS, Kolkata has followed such a rule and provision that older candidate should be selected rather than younger one in case of selection. But as far as Bengaluru zone is concerned, said rule is ignored(Annexure-Re10). The statement made by the respondent No.1 that the

claim of the applicant is hit by law of estoppel as held by the Hon'ble Apex Court is contrary to the definition of estoppel and the respondent has even not stated the similarities in the present case with the order of the Apex Court. The 1st respondent has not applied mind that the requisite qualification prescribed in the notification dtd.5.7.2016 is D.Pharmacist or B.Pharmacist. The contention of the 1st respondent that the 2nd respondent is selected due to B.Pharmacist and applicant was not selected due to D.Pharmacist is against the mandatory law as both are the same as per the notification while using the word 'or'. The applicant submitted the procedure/criteria prescribed by National Board of Education(NBE), UPSC, NBE AIPGMEE, AIPMT in the case of tie breaker wherein it states that 'in case of two or more candidates obtained equal marks in the competitive entrance examination, their inter se merit will be determined according to age, older will get reference over younger'. The respondent No.1 referred UPSC procedure without application of mind which is for recruitment on interview for Group A post. The 1st respondent has no powers to modify the recruitment rules or to add the procedure as prescribed in the notification dtd.5.7.2016 when the question of resolution does not arise on the day of selection of committee. The 1st respondent does not know the procedure of resolution and same is not permitted by the selection committee and any resolution passed by the competitive authority should be with the approval of the nodal agency. The 1st respondent had not denied that the selection procedure adopted by Staff Selection Commission for 2016 for Group B post wherein in cases of more than one candidates secured the equal aggregate marks, tie will be solved by applying the methods of (i) total marks in paper-II (ii) total marks in paper-I (iii) date of birth, with older candidates placed higher. The 1st respondent did not deny the procedure adopted by CGHS, Kolkata wherein the tie breaker criteria has (i)

candidate who has more number of correct responses in the paper shall be placed at higher merit position (ii) failing which, date of birth of the candidate will be taken into consideration. The 1st respondent has wrongly stated that there is no mandatory law that the selection board has to follow/restrict to age criteria. The mandatory law is applicable to follow the notification which is based on the recruitment rules. It is not clear when the 1st respondent has delegated powers to modify the recruitment rules by own choice and whether he has rights to pass resolution in the selection with the members of the committee. The answer is negative in the reply.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very short compass. The matter was already ordered by a Single Bench of this Tribunal vide order dtd.3.11.2017 wherein the OA was dismissed based mainly on the point of the higher qualification of the selected candidate compared to the educational qualification of the applicant. Subsequent RA No.9/2018 was also dismissed vide order dtd.18.4.2018 of this Tribunal against which a WP.No.35842/2018 was filed and the same was disposed of by remitting the matter back at the stage of preliminary hearing to this Tribunal, based on which the matter has been taken for consideration. There is no dispute that the applicant and the selected candidate i.e. 2nd respondent had obtained the same marks of 135.50 in the examination conducted by the respondents. There is also no dispute that the selection committee of the respondent organisation which met under the Chairmanship of the Additional Director, CGHS along with three members had made a resolution that in case of any clash with same marks, the candidates who possess higher qualification is ranked above lower qualified candidates. In this case, the selected

candidate i.e. 2nd respondent has the qualification of B.Pharm whereas the applicant has only a Diploma with two years of experience. Appointing a person with a higher qualification is certainly to the advantage of the respondent organisation and they have every right to do so. The applicant had also taken advantage of the age relaxation as he belongs to the OBC category as noted by the respondents. Another crucial point we have to take note of is that there are 2 OBC candidates who had scored higher marks than the applicant and were selected as Pharmacists by the respondents and these selections were against the two vacancies kept for OBCs. The respondent No.2, even though she belongs to OBC category, has in fact been selected against unreserved vacancy and not selected against OBC quota. As such the applicant does not have any ground with which to agitate the appointment of the 2nd respondent. The OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicants in OA.No.170/00986/2016

Annexure A1: The true copy of the vacancy circular dtd.5.7.2016 issued by the 1st respondent

Annexure A2: The true copy of the application submitted to the 1st respondent

Annexure A3: The true copy of the notice dtd.19.9.2016

Annexure A4: The true copy of the select list dtd.26.10.2016

Annexure A5 & A6: The true copy of the representation dtd.31.10.2016 and 10.11.2016

Annexure A7: The true copy of the guidelines issued by the CGHS, Kolkata for the year 2016

Annexures with reply statement:

Annexure-R1: Copy of the criteria adopted by the UPSC

Annexure-R2: Copy of the minutes of selection board

Annexures with rejoinder:

Annexure-Re8: A true copy of letter dtd.23.12.2016

Annexure-Re9: A true copy of order dtd.15.12.2018 in WP.35842/2018
