

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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O.A. No.062/1323/2017

Date of decision: 23.04.2019

(Reserved on: 26.3.2019)

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

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1. Dr. Quanser John (aged: 44 yrs.), D/o Noor Ud Din Shah, R/o Shalimar (Opposite Skuast) Srinagar.
2. Dr. Sabia Rasool (aged:41 years) D/o Ghulam Rasool Mir, R/o Alamdar Colony, Nowpora, Srinagar.
3. Zahoor Ahmad Dar (Aged: 47 years) S/o Ghulam Ahmad Dar, R/o Sangam, Eidgah, Srinagar.

... APPLICANTS

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Health & Family Welfare, Department of Ayush, Red Cross Building, Red Cross Road, New Delhi.
2. Director General, Central Council for Research in Unani Medicine, JNLBCHAB, 61-65, Institutional Area, Opp:D-Block, Janakpuri, New Delhi-110058.
3. Assistant Director (Administration) for Director General, Central Council for Research in Unani Medicine, Ministry of Health & Family Welfare (Department of Ayush), Jawahar Lal Nehru Ayush Anusandhan Bhavan, 61065, Institutional Area, Janakpuri, New Delhi-110058.
4. Assistant Director, I/C, Regional Research Institute of Medicine, University of Kashmir, Srinagar-6.

... RESPONDENTS

PRESENT: Sh. S.A. Makroo, counsel for the applicants.
Sh. Satinder Singh, counsel for the respondents.

ORDER

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MRS. P. GOPINATH, MEMBER (A)

1. Applicants are persons working in the respondent department as Junior Research Fellow (JRF)/Senior Research Fellow (SRF) (Unani). High Court of J&K in SWP No.408/2017 in the case of other similarly placed employees directed to maintain status quo in the matter of not granting notional breaks to the applicant in their engagement. Applicants submit that the respondent requires the service of JRF/SRF (U) and this is substantiated by the fact that they are under engagement for the last ten years. In the respondent department, some of the posts of Research Officer (Unani) (RO) are vacant and applicants' legitimate expectation is for being regularized against these posts of RO (U). The applicants argue that they are discharging the duty of a regular post of RO and are entitled to the minimum pay attached to the said post and further absorption against the post of RO (U).
2. Prayer of the applicants is for allowing them to continue as JRF/SRF (U) without any hindrance and second prayer of the applicant is to regularize their service against regular departmental post of RO (U). Third prayer of the applicants is for payment for the pay scale attached to the post of R.O. keeping in view doctrine of "equal pay for equal work".
3. Respondents in their preliminary objection argue that there is no post of RO (U) lying vacant in Srinagar. Second ground put forward is that petitioners do not possess the prescribed qualification for the said post. A third argument is that JRF/SRF is a contractual

engagement for a specific project and thus does not devolve into any right for regular appointment unless they participate in the recruitment process of RO and also possess qualification for the post.

4. It is submitted that JRF/SRF are not sanctioned post in the respondent Institute and only R.O. is a sanctioned post. JRF/SRF are appointed in University and Medical Research Institutes to assist the regular faculty in research work/project. R.O. is principle investigator in any research project. JRF/SRF assist principle investigator in his work. The respondents during arguments submitted that applicants were engaged on a consolidated remuneration of Rs.8000/- per month and today they are getting Rs.30,000/- hence they have from time to time given an enhancement in their wages.
5. Heard the learned counsel for the parties and perused the written submissions made.
6. The applicants produce D-series annexures supporting their engagement as JRF. The said document in respect of one of the applicant is taken as leading case for understating the terms of their engagement. As per annexure D-4, applicant was engaged as JRF (U) purely on contractual basis for a period of one year on consolidated remuneration of Rs.8000/- + HRA with the proviso that appointment can be terminated at any time without notice or assigning any reason. Thus, their appointment was purely on contractual basis for a limited duration and there was no promise or assurance for further appointment as RO (U). The post of RO (U) is a direct recruitment post and has its own set of recruitment rules which any person needs to fulfill for appointment on merit.

7. Applicants' draw attention to G series of letters wherein it had been stated that they had worked in OPD, IPOD, Medical Camp and Mobile Clinical Research Programme. Respondents argue that these letters were issued to the petitioners on their request to seek admission to MD course of study. During arguments it was also brought out by respondent that such certificates are also issued to enable applicants for jobs as their career prospects were limited as JRF/SRF. Respondents have also denied that applicants are performing the duties of RO (U). The RO (U) are performing and discharging higher responsibilities and JRF/SRF only assist the RO. The prescribed qualification for RO is Post Graduate Degree in Unani Medicine and the applicants do not possess the requisite qualification prescribed for the post.
8. Applicants argue that they are similarly placed as one Dr. Arshad Iqbal who has been appointed as RO. The case of the applicant is differentiated from that of Dr. Arshad Iqbal on the ground that he had applied for the post of RO against vacancies advertised by the respondents, participated in the recruitment process and was recommended for the post of RO by a duly constituted selection committee on merit and after competing with other candidates for the post. No JRF/SRF has been regularized as RO by virtue of being engaged on contractual basis. Thus the case of Dr. Arshad Iqbal is differentiated from the case of the applicants as he had participated in the selection process and has been selected on merit whereas applicants in this O.A. have neither applied nor participated in any selection process of R.O. Respondent Institute has sanctioned staff of Assistant Direction and R.O. with their prescribed pay scales and

qualification as indicated in the recruitment rules. Recruitment Rules do not have a provision of regularization of JRF/SRF as R.O. and any post of R.O. falling vacant is filled up as per provisions of rules on direct recruitment basis. Applicants could have availed the opportunity of applying against such vacancy and participating in open selection process, an opportunity which they did not utilize or avail.

9. Applicants argue that they have rendered duty as assigned to them which includes treating patients and Mobile Clinical Research Program. They are also engaged in research for treatment of various diseases. It is argued that by their very designation of JRF/SRF, they are expected to perform these duties. Applicants also argue that there are 35 posts of R.O. lying vacant against which they can be regularized. Against this, respondent's argument is that Masters Degree is required for the post of R.O. Learned counsel for the applicants contends that in the advertisement No.2 of 2006, the requisite qualification was first class degree in Unani Medicine with four years of professional experience. Even if we accept this contention, there is no automatic system for appointment of JRF/SRF as R.O. and applicants need to apply against various advertisement issued from time to time for the post of R.O.
10. Prayer of the applicant to be allowed to continue as JRF/SRF without any break is allowed. However, as regards appointment to the post of RO, as there is no provision in the statutory recruitment rules for regularizing them against the post of RO, hence the Bench is of the view that applicants should apply against advertisement for the post and compete with other similarly placed candidates who apply for the

post. Only age relaxation can be given that, as and when such JRF/SRF applies against advertisement, considering their service with the respondent and experience that they have gained, they be considered for post after giving them relaxation of age. Being over-age should not disqualify them for applying or competing for the post. We are relaxing this age prescription in order to mitigate the undue hardship of the applicants noticed in this particular situation. As regards third prayer of the applicants to be given pay scale of R.O., we do not agree with this contention as JRF/SRF and R.O. are different posts with different set of responsibilities and job content and no similarity can be drawn to apply the doctrine of equal work for equal pay.

11. The O.A. is accordingly partially allowed. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 23.04.2019.
Place: Chandigarh.

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