

**Central Administrative Tribunal
Principal Bench**

**OA No.4327/2018
MA No.255/2019**

New Delhi, this the 15th day of April, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Dr. Lovelina Domingos Dias,
503, 5th Floor, Sea Queen Apartments,
Moti Daman & Diu, Daman-396220,
Age about 39 years

(Appointment for the post of Public Health Dentist in
Directorate of Medical & Health Science, Union Territory
of Daman & Diu)

...Applicant

(By Advocate : Shri Preshit Surshe)

Versus

1. Union Territory of Daman & Diu,
Through its Administrator,
Daman Secretariat, Daman-396220
2. Union Public Service Commission,
Through Secretary,
Dholpur House, Shahjan Road,
New Delhi-110069.
3. Director,
Directorate of Medical & Health Science
Community Health Centre,
Union Territory of Daman & Diu,
Moti Daman, Daman-396220.
4. Ms. Roopali Ravindra Mathur,
Flat No.5, Plot No.420/1,
Ravi Apptt. Dunatha Road,
Nani Daman, Daman-396210.

...Respondents

(By Advocate : Shri S.K. Gupta
Ms. Anupama Bansal)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

With a view to select candidates for appointing two Public Health Dentists (for short, PHD) in the Daman and Diu Administration, the UPSC issued an advertisement on 11.05.2013. Out of the two posts, one was unreserved and the other was in favour of SC category.

2. The applicant responded to the notification and offered her candidature vis-a-vis the unreserved vacancy. She was selected by a panel of doctors who interviewed her, and she was also issued an offer of appointment on 09.12.2013. She joined the service on 10.12.2013. A formal order in respect of the applicant and one Dr. Brijesh Jogpal, selected against the reserved vacancies was issued on 29.01.2014.

3. Ms. Rupali R. Mathur, the 4th respondent herein, was working as PHD on contractual basis in the Daman & Diu Administration. She also made her application in response to the advertisement dated 11-17.05.2013. However, that was not accepted, as she crossed the maximum age limit, stipulated for the

post. She filed OA No.3471/2013, claiming that she is entitled to be extended the benefit of relaxation of age, in terms of various orders. The OA was allowed on 20.03.2017. It was directed that the respondents shall extend the benefit of age relaxation, in terms of Circular dated 07.02.2013. The order passed by the Tribunal was upheld by the Hon'ble Delhi High Court in WP(C) No.8052/2017 on 12.09.2017, and SLP No.3617/2018 filed against it was dismissed by the Hon'ble Supreme Court on 09.03.2018.

4. The UPSC, 2nd respondent herein, addressed a letter dated 05.11.2018 to the applicant, stating that in view of the orders passed by the Tribunal in OA No.3471/2013, as affirmed by the Hon'ble Delhi High Court and Hon'ble Supreme Court, Dr. Roopali Ravindra Mathur, was interviewed on 26.10.2018 and the Commission recommended her name against the unreserved vacancy. It is also mentioned that the 4th respondent secured the same marks, i.e. 50, in the interview, and by taking into account the age factor, it has been decided to recommend her candidature, and the name of the applicant was directed to be kept in reserve list. In view of this, the recommendation dated 04.10.2013 made by the 2nd

respondent in favour of the applicant was cancelled and withdrawn. Hence, this OA.

5. The applicant contends that neither she was made a party in the OA No.3471/2013, nor any indication was made in her appointment order that it is subject to the outcome of any proceedings. She further contends that by the time, the OA was allowed, not only she was issued the order of appointment by the Government, but also her probation was completed and in that view of the matter, it was totally incompetent for the 2nd respondent to withdraw its recommendation, which has already ripened into an order of appointment and the confirmation of service.

6. On behalf of the respondents, separate counter affidavits have been filed. It is stated by the respondent Nos.1to3 that though it was not mentioned in the order of appointment of the applicant that it was subject to the outcome of certain proceedings, there are interim orders passed in the year 2013, and it became inevitable to withdraw the recommendation made in her favour.

7. The 4th respondent states that once she has been selected in compliance with the directions issued by the Tribunal, there is no option for the respondent Nos.1 to 3 except to appoint her. It is stated that since it was the only vacancy for unreserved candidate which was occupied by the applicant, the impugned order came to be passed.

8. We heard Shri Preshit Surshe, learned counsel for applicant and Ms. Anupama Bansal and Shri S.K. Gupta, learned counsel for respondents.

9. A close scrutiny of the entire record discloses that there was total lack of coordination or harmony in the context of filling up of the post of PHD, that too against the only unreserved vacancy. The recruitment process started in the year 2013 and it was only on the basis of interview, that UPSC made its recommendation on 04.10.2013. The name of the applicant was recommended for appointment against the unreserved vacancy. The 4th respondent was not considered at all, since she had crossed the age limit. It was only in the

year 2017 that the relief in the form of relaxation of age limit was granted to her.

10. Had the respondents brought to the notice of this Tribunal that by the time the OA was decided, the post was already occupied by the applicant, necessity would have arisen for impleading her and to examine the further question as to how the relative merit as between the applicant and the 4th respondent shall be decided. Rarely, we come across a case where the merit of the applicants is decided by two Interview Boards held at separate timings. It is a clear case of adopting different yardsticks to measure the same factor. The composition of the Interview Board was different, the timing was separated by more than five years and parameters were obviously different. All this could have been avoided, had the applicant been impleaded in OA No.3471/2013, or had at least the factum of her having been appointed and completion of her probation, been brought to the notice of the Tribunal. Squarely, the blame is on the respondents in this behalf and the applicant cannot be found fault with at all.

11. Another aspect is that though interim direction is said to have been passed in OA No. 3471/2013 on 01.10.2013, the interview for one vacant post was also held, and communication in that behalf was sent on 04.10.2013, not being aware of the interim order. On their part, the respondent Nos.1&3 proceeded on the basis that the third vacancy that arose on account of taking of VRS by Dr. Himadri Howlader w.e.f. May, 2013, is available, and that can be set apart to be handled, depending upon the outcome of the OA. Nowhere in the order of appointment issued to the applicant, it was mentioned that the appointment is subject to any proceedings.

12. The 2nd respondent had to perform an unprecedented and typical exercise, consequent upon the orders passed in OA No.3471/2013. It had to undertake selection against a post which is no longer vacant and to conduct interview five years after it had interviewed and recommended a candidate for appointment. As though these extraordinary circumstances are not sufficient, it so emerges that the Interview Board awarded same marks, namely, 50, to the 4th respondent. It is not known as to whether the Board was aware of the marks

that were awarded to the applicant herein. Having done that, the 2nd respondent pressed into service, a balancing factor of age. Whether someone did it with full knowledge of all the facts and consequences, or not being aware of these things, is a matter, which can be examined, if only, all the aspects are put in issue.

13. The necessity to undertake the inquiry into these aspects is obviated on account of the fact that the respondents have set apart the vacancy that arose on account of VRS of Dr. Himadri Howlader. It is not even mentioned that the said post has been filled up by any other candidate. The only reason now pleaded is that it was earmarked for OBC. Even if, that is true, it can be now filled by 4th respondent, if it otherwise becomes inevitable and then to earmark the next vacancy available in favour of OBC.

14. We have also heard the learned counsel for the parties at some length on the resultant question of seniority as between the applicant and the 4th respondent in the event of her being appointed, so that the State as well as the parties are spared of the unnecessary

litigation in this behalf. Since the applicant was appointed in the year 2013, and her probation was also declared, she shall be treated senior in the event of the 4th respondent being appointed.

15. We, therefore, allow the OA, setting aside the impugned order, but directing that it shall be open to the respondent Nos.1&3 to appoint the 4th respondent against the vacancy that arose on account of VRS of Dr. Himadri Howlader. The decision in this behalf shall be taken within a period of two months from the date of receipt of a certified copy of this order. We also make it clear that in the event of the 4th respondent being appointed as PHD, she shall be junior to the applicant herein, in view of the fact that the appointment came to be made long after the applicant became an approved probationer. The next vacancy shall be earmarked for O.B.C.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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