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CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 350/00546/2015

Date of order : 21.1.2016

M.A. 350/00005/2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

VINOD KUMAR & ORS.

VS.

UNION OF INDIA & ORS. [CDSCO (Health)]

For the Applicants : Mr. S. Samanta, Counsel

For the Respondents : Mr. P. Mukherjee, Counsel  
Mr. A. K. Chattopadhyay, Counsel

## ORDER (Oral)

Per Ms. Bidisha Banerjee, Judicial Member:

This application has been filed seeking the following reliefs:-

- "a) Leave be granted to the applicants to join together and file the instant application jointly having a same and similar cause of action as stated in paragraph 4 (p) hereinabove in terms of Rule 4(5)(a) of CAT (Procedure) Rules, 1987;
- b) Direction do issue setting aside and quashing the impugned notification dated March, 2011 being Annexure "A-3" hereinabove;
- c) Direction do issue setting aside and quashing the impugned advertisement No. AR/13/2014 dated 9<sup>th</sup> / 15<sup>th</sup> August, 2014 being Annexure "A-5" hereinabove;
- d) Direction do issue setting aside and quashing the impugned order of rejection dated 16/22 October, 2014 being Annexure "A-9" herein before and declaring that the post of ADC (I) are to be filled up from the departmental candidate holding the post of Drug Inspector in the feeder cadre;
- e) Direction do issue directing the respondent authorities to reframe the Recruitment Rules for the post of ADC (I) in line with the eligibility requirements as contained in the Drug and Cosmetic Act, 1940 and Rules, 1945 as amended from time to time;
- f) Injunction do issue restraining the respondent authorities from

advertisement No. 13/2014 dated AR/9<sup>th</sup>/15<sup>th</sup> August, 2014 being Annexure "A-5" hereinabove;

g) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the impugned notification dated March 2011 being Annexure "A-3" hereinabove;

h) Declaration do issue declaring notification dated March 2011 being Annexure "A-3" hereinabove is bad in law.

i) Direction do issue upon the respondent authorities directing them / their agents and / or subordinates to produce the records of the case and on such production being made to render consonable justice by passing necessary orders thereon;

j) Costs of and incidental to this application;

k) And/ or to pass such other or further order or orders as to your Lordships may seem fit and proper;"

2. The admitted facts that could be culled out from the pleadings of the parties would be as under:-

Drugs and Cosmetic Rules, 1945 being framed under Drugs and Cosmetic Act by the Central Government in exercise of powers conferred under Section 6(2), 12, 33 and 33(n) of the Drugs & Cosmetics Act, 1940 (23 of 1940) contains various provision in relation to regulatory functions of the Drugs and Cosmetics and for the purpose it specifies qualification of the authorities as under:-

**"50-A. Qualification of a Controlling Authority – (1) No person shall be qualified to be a Controlling Authority under the Act unless –**

- (i) He is a graduate in Pharmacy or Pharmaceutical Chemistry or in Medicine with specialisation in Clinical Pharmacology or Microbiology from a University established in India by law; and
- (ii) He has experience in the manufacture or testing of drugs or enforcement of the provisions of the Act for a minimum period of five years;

[Provided that the requirements as to the academic qualification shall not apply those Inspectors and the Government Analysts who were holding those positions on the 12<sup>th</sup> day of April, 1989].

#### NOTES

R. 50-A(1)(i) Qualifications for appointment as the Controlling Authority – Graduate in Pharmacy or Pharmaceutical Chemistry or I

Medicine " with Specialisation in Clinical Pharmacology...."- MD in Pharmacology – Whether satisfies the prescribed qualification – Plea raised that MD in Pharmacology did not satisfy the criterion of specialisation in Clinical Pharmacology" – Held, the academic qualifications prescribed in R.50A(1)(ii) have to be read in their entirety – The Rule prescribes only qualification of a graduate degree in Pharmacy or Pharmaceutical Chemistry, and in the alternative, a graduate degree in Medicine with a specialisation in Clinical Pharmacology – Super speciality is not contended in this context – If however the Expert Committee which made selection, found MD in Pharmacology as an adequate compliance with the prescribed academic qualification , Court held, would not like to take a different view, *Bhagwan Singh v. State of Punjab, (1999) 9 SCC 573.*"

3. In view of such provisions, and in exercise of the powers conferred by proviso to Article 309 of the Constitution and in supersession of Director General of Health Services (Assistant Drugs Controller, India) Recruitment Rules, 2000, [hereinafter referred to as erstwhile RR] the Modified Recruitment Rules have been framed on 15.3.2011 whereunder the method of recruitment for the post of Assistant Drugs Controller (India) is specified as the method of recruitment would be 100% by promotion failing which by deputation (including short terms contract, failing both by direct recruitment). The essential and other qualifications required for direct recruitment have been specified as under:-

**"Essential :**

- (i) Graduate Degree in Pharmacy or Pharmaceutical Chemistry or in Medicine with specialisation in Clinical Pharmacology or Microbiology from a recognized University established in India by law;
- (ii) Post Graduate degree in Pharmacy/Pharmaceutical Chemistry/Biochemistry/Chemistry/Microbiology/Pharmacology from a recognized University or equivalent; and
- (iii) 5 years' experience in dealing with matter related to the Drug and Cosmetics Act, 1940 (23 of 1940) and rules thereunder or 5 years experience either in the manufacture or testing of drugs.

**Note 1: Qualifications are relaxable at the discretion of the UPSC for reasons to be recorded in writing in the case of candidates otherwise well qualified."**

Whereas in the case of promotee it is specified as 100% Promotion failing which by deputation (including short term contract) failing both by direct recruitment. In case of deputation the prescribed qualifications are:

(a)(i) holding analogous posts on regular basis in the parent cadre/departments; or

(b) with five years regular service in the grade rendered after appointment thereto on a regular basis Pay Band – 3 (Rs. 15600-39100)

+ Grade Pay Rs. 5400/- or equivalent in the parent cadre/department; or

(iii) with six years' regular service in the grade rendered after appointment thereto on a regular basis in Pay Band – 2 (Rs. 9300-34800/-) + Grade Pay Rs. 4800/- or equivalent in the parent cadre/department;"

4. The Ld. Counsel for the applicant would vociferously submit that while a Graduate in Pharmacy or Pharmaceutical Chemistry or Medicine etc. would require 5 years experience, an aspiring Drug Inspector would require 6 years experience to be eligible for promotion, whereas in terms of Drugs and Cosmetic Rules, 1945 graduates with five years experience in dealing with the matters relating to Drugs & Cosmetics Act, 1940 would become Controlling Authority which is highly discriminatory. However we noticed that a deputationist in PB-2 GP Rs. 4800/- would also require completion of 6 years regular service as against 5 years for those in PB-3 GP Rs. 5400/-.

5. The applicants being the Drug Inspectors in PB-2 GP Rs. 4800/-, aspiring for promotion to Assistant Drugs Controller are, therefore, aggrieved as the recruitment rules specified a six years experience against the minimum five years specified in the Drugs and Cosmetic Rules, 1945. They are also aggrieved as instead of resorting to filling up the posts by way of promotion, the respondents have attempted to fill up the posts by direct recruitment ignoring their rightful claim

to be promoted to the post of Assistant Drugs Controller due to completion of five years as Drug Inspector and further that several persons were considered with less than 6 years whereas they have not been so favoured. They had thus sought for a stay on filling up the posts of Assistant Drugs Controller as advertised vide notice dated 9-15 August, 2014 as contained in Annexure A-5 whereby and whereunder applications were invited for filling up 10 posts of Assistant Drugs Controller (India) by Direct Recruitment from Graduates with five years experience.

6. Our attention was drawn to the interim orders passed by the Allahabad Bench on 27.8.2014 in O.A. No. 330/01064/2014 due to which this Tribunal got tempted to issue notice to the respondents restraining them from filling up four posts of Assistant Drugs Controller till the next date of hearing.

7. Ld. Counsel for the applicants would strenuously urge that the respondents by issuing such advertisement ignored the claim of the aspiring and eligible departmental candidates by favouring outsiders although the procedure prescribed was 100% by promotion "failing which" by deputation and "failing both" by direct recruitment. He would argue that the respondents have not explored the opportunity of employing people on deputation basis before resorting to recruiting employees on direct recruitment basis, and thereby violated statutory provisions.

8. Per contra, the respondents dispelling the claim would clarify the position as under:-

They stated that in 2013-14 an attempt was made to fill up the 16 vacancies by deputation but only one candidate could be recommended within four shortlisted. The UPSC advised that unfilled vacancies could be filled up as per provisions of recruitment rules. The sole candidate was appointed on deputation in the grade of Assistant Drugs Controller vide order dated 1.5.2013 in the year 2014-2015. DOP&T was moved by the Ministry of Health & Family

Welfare for an approval to relax the qualifying years of service in respect of some Technical Officers and Drug Inspectors for their consideration against 27 vacancies but the DOP&T did not agree to the same. Therefore, it was decided to fill 10 vacancies through direct recruitment keeping 17 vacancies aside for officers in the feeder grade of Drug Inspector and Technical Officers. In 2015-2016 a DPC was convened by the UPSC on 24.4.2015 against 18 vacancies in Grade of ADC I out of which 17 vacancies were carried forward from the previous year and one additional vacancy occurred during 2015-2016 vice promotion of an officer to the higher grade of Deputy Drugs Controller (India). Out of 15 eligible officers considered by DPC 14 were recommended for promotion while the case of one was kept in sealed cover as he was not clear from vigilance angle. Such 14 officers were promoted to the grade of Assistant Drugs Controller (India). Four vacancies (1 UR, 2 SC and 1 ST) remained unfilled due to non-availability of eligible officers as on such date, over and above 10 vacancies for which direct recruitment was initiated.

9. In regard to prescribing six years for aspiring promotee departmental candidates the respondents would vociferously submit that in terms of earlier RR the qualifying experience was 8 and, therefore, the amended rules for promotion of Drugs Inspectors to the post of Assistant Drugs Controller (India) introduced in 2011, was advantageous to the present applicants. They further submitted that the applicants would become eligible for consideration for promotion on 1.4.2016, for the year 2016-2017 itself. Therefore, instead of preventing the respondents from appointing the 10 direct recruits, the applicant should sensibly allow the process to be initiated in order to get promotion in accordance with their eligibility.

10. We have carefully perused the provision of the Recruitment rules of 2011. In our considered opinion, the Drug and Cosmetic Rules (supra) only prescribed a "minimum" period of service as five years. It was the lowest limit. Therefore, the

recruitment rules in prescribing six years experience for Drug Inspectors in PB-2 GP Rs. 4800/- have not violated any provisions of the Drugs & Cosmetics Rules in any manner whatsoever. We have already noticed that even for deputationists in PB-2, GP Rs. 4800/- the experience required was 6 years. The applicants are graduates. The direct recruitment qualification was Post Graduate in Pharmacy/Pharmaceutical Chemistry etc. They are given an edge over the graduates by prescribing 5 years experience for them.

11. We noted the following decisions cited by the respondents as extracted hereunder:

**The Hon'ble Apex Court in Sanjay Kumar Manjul v. Chairman, UPSC & ors. (2006) 8 SCC 42 held as follows:-**

"25. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefor.

26. The jurisdiction of the superior courts, it is trite law, would be to interpret the rule and not to supplant or supplement the same.

27. It is well settled that the superior court while exercising their jurisdiction under Article 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post."

**The Hon'ble Apex Court in Malikarjun Rao & ors. v. State of Andhra Pradesh & ors. (1990) 2 SCC 707 have held that:**

" the power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Government of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. It was held as under: "13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under

the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The courts cannot usurp the functions assigned to the Executive under the Constitution and cannot even indirectly require the Executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the Executive under Article 309 of the Constitution of India."

The Hon'ble Apex Court in **P.U. Joshi v. Accountant General (2003) 2 SCC 632** held as under:

" Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be followed for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject of course, to the limitations or restrictions envisaged in the constitution of India.

The Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or to impose itself by substituting its views for that of the State. Similarly, it is well open and within the competence of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualification, eligibility criteria and other conditions of service including avenues promotion from time to time, as the administrative exigencies may need or necessitate."

**In Chairman, Railway Board & ors. v. C.R. Rangadhamaiah & ors.**

reported as (1997) 6 SCC 623, Hon'ble Apex Court has held as follows:-

" It can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Article 14 and 16 of the Constitution; but a rule which seeks to reverse from an anterior date, a benefit which has been granted or availed of e.g. promotion or pay scale,

can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

The Hon'ble High Court of Jammu & Kashmir in **SWP No. 782 of 2009** and **SVVP No. 1814 of 2009** in **Praveen Akhtar & others and Dr. Madhu Sharma & ors. v. State of Jammu & Kashmir** held as under:

"Matters pertaining to the constitution of service, prescription of mode of recruitment thereto, and allied issues connected therewith, operate in the field of policy which the State has the exclusive prerogative and domain to legislate on such matters.

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The impugned rules, which provide 100% direct recruitment for the post of Lecturer in the Jammu & Kashmir Education (Gazetted) College Service, therefore, do not, in any manner, offend the provisions of Articles 14 and 16 of the Constitution of India."

12. In view of the legal proposition as noted supra, meddling with the RR would be a forbidden field for the courts unless there were some pressing grounds. We would find no infirmity with the RRs of 2011 and no reason to declare it unconstitutional.
13. The applicants being not eligible in terms of the recruitment rules holding the field as on this date, could have no quarrel with the direct recruits who were recruited in scrupulous observation of the recruitment rules. We have discerned that Allahabad Bench has already vacated its interim order.
14. In view of the aforesaid, the interim order is vacated.
15. The O.A. along with the M.A. is disposed of with direction upon the respondents to act in accordance with law. No order as to costs.

(Jaya Das Gupta)  
MEMBER(A)

(Bidisha Banerjee)  
MEMBER(J)