

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1522/2003 with OA No.1523/2003

New Delhi, this the 11<sup>th</sup> day of March, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.K. Naik, Member(A)

OA No.1522/2003

1. Dr.Mohd. Arshad Ansari  
E-61, AF Enclave I  
Jamia Nagar, New Delhi
  2. Dr.Mohd. Saleem  
1307, Zeenat Mahal  
Farash Khana, Delhi
  3. Dr. Mahmood Ahmed  
199/5, Zakir Nagar  
Okhla, New Delhi
  4. Dr.Darakhshan Khanam  
R/o Agency Hamdard Dawakhana  
Mohd. Ali Road, Aligarh
  5. Dr.Ayesha Raza  
B-4/27A, DDA Flats  
Inderlok, Delhi
  6. Dr. Naseem Akhtar Khan  
X/1717, Street No.17  
Rajgarh Colony, New Delhi
- Applicants

OA No.1523/2003

1. Dr. Dhanapunini Vinay Kumari  
22, Manocha Apartments  
Vikaspuri, New Delhi
  2. Dr.Praveen Kumar  
G-23/138, Sector 7, Rohini  
Delhi
  3. Dr. Nishi Arora  
22, Manocha Apartments  
Vikaspuri, New Delhi
  4. Dr.Srikant Kumar Panda  
16/137, Street No.5  
Joshi Road, Karol Bagh  
New Delhi
  5. Dr.(Mrs.) Sujata Yadav  
WZ-298, Shakurpur, Delhi
  6. Dr.Shashi Kant Vedi  
208, Ambedkar Nagar  
Kankarkheda, Meerut Cantt
  7. Dr.B.S. Sharma  
B-937, Shastri Nagar, New Delhi
  8. Dr. Hemant Kumar Panigrahi  
16/137, Street No.5  
Joshi Road, Karol Bagh  
New Delhi
- Applicants

(Shri Ashwani Bhardwaj, Advocate)

versus

1. Chief Secretary  
Govt. of NCT of Delhi  
Secretariat, IG Stadium  
New Delhi

For

2. Principal Secretary (Health)  
 Department of Health & Family Welfare  
 Govt. of NCT of Delhi  
 Secretariat, IG Statidum, New Delhi

3. Chairman  
 Union Public Service Commission  
 Shahjahan Road, New Delhi

... Respondents

(Shri Vijay Pandita, Advocate)

#### ORDER

Shri S.K. Naik

The issues involved and the relief sought for in both these two OAs are identical and therefore we proceed to dispose of the same through a common order.

2. Applicants, 14 in number, by virtue of the present OAs have challenged the vires of the Recruitment Rules notified in the Gazette of India on 11.12.2002 for the post of Lecturer(Unani) and also the selection process initiated by the respondents for filling up of the post of Lecturer on the basis of the aforesaid R/Rules as also on the basis of 200-point roster instead of 13-point roster.

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3. Brief relevant facts in so far as this OA is concerned are, that previously A&U Tibbia College was managed by a board constituted by the Govt. under Tibbia College Act, 1952. On 20.12.1985, respondents framed R/Rules for various posts including that of Lecturer, as per which there was no provision for consulting UPSC at that time and the Lecturers were selected by Staff Selection Board. The respondents took over the Tibbia College vide notification dated 30.4.1998 which provided

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for protection of service benefits of the employees of the college. As of today, there are 45 posts of Lecturer (23 Ayurveda and 22 Unani). While applicants No.2 & 6 have been continuously working as part-time Lecturers(Unani) from February, 1999, applicants 1 & 3 have been working as such from June, 2000. In response to the advertisement dated 14.10.2000 inviting applications for the post of Lecturer, applicants applied for the same and they were appointed as Lecturer on contract basis in March-April, year 2001 on the basis of the R/Rules framed on 20.12.1985, for a period of one year or till the posts are filled on regular basis. Their services were further extended by order dated 31.5.2002 and again by order dated 30.5.2003.

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4. Applicants in this OA were earlier working as part-time Lecturer (Ayurveda). They also applied in response to the advertisement dated 14.10.2000 and they are appointed on contract basis for a period of one year during March-May, 2001 and their services were further extended by orders dated 31.5.2002 and 30.5.2003.

5. In the meantime, respondents notified new R/Rules for the said post on 11.12.2002 and on the basis of these R/Rules respondents have sent the requisition to the UPSC for making regular appointment to the post of Lecturer (Unani)/Lecturer (Ayurveda). Aggrieved by this, they have filed the present OA.

For

6. Respondents in their reply have contested the OAs and have raised a preliminary objection, relying upon some of the judgements of the Supreme Court, to the effect that Tribunal cannot direct the govt. to frame statutory Rules or amend existing statutory rules under Article 309 in a specific manner so as to alter condition of service or civil servant in terms of direction. According to the respondents, the advertisement dated 14.10.2000 clearly shows that the posts were advertised on contract basis only and was not a regular appointment and the applicants have accepted the terms and conditions of the appointment. It is not denied that their appointments were extended further by orders dated 31.5.2002 and 30.5.2003. But it is contended that their appointment was dehors the R/Rs and was only on contract basis. New set of R/Rules, after the take over, were to be amended in accordance with the guidelines approved by the Central Council of India Medicines (Statutory Body, constituted by Govt. of India under INCC Act, 1970) and were notified on 11.12.2002, after due consultation with UPSC as well as after the approval of Hon'ble LG and the department has already sent the requisition to the UPSC on 16.4.2003 for regular appointment. According to them, post of Lecturer in Ayurveda and Unani is a Grade-I post for which only the UPSC is authorised to make selection as per Govt. of India norms. Applicants should also apply for the posts as and when notified by the UPSC. It is stated by them that since there is no department-wise sanction for posts issued separately, the 200-point

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roster has been made operational as per Govt. of India's instructions for implementing the reservation policy in this respect. In view of this position, the OA deserves to be dismissed.

7. We have heard the learned counsel for the parties and perused the records.

8. During the course of arguments, the learned counsel for the applicants has contended that the respondents have revised the R/Rules vide notification dated 11.12.2002, whereas the applicants were engaged, even though on contract basis, on the basis of the then existing R/Rules of 1985 and the posts against which they have been engaged could be filled up on regular basis only on the basis of the erstwhile R/Rules of 1985. The counsel has stated that there are a number of judicial pronouncements holding that earlier vacancies have to be filled up on the basis of R/Rules prevalent at the time of occurrence of the vacancies and could not be subjected to any change because of revision in the R/Rules on a later date. Further, the counsel has vehemently argued that the revised R/Rules are defective and untenable. In this context, he has stated that as per old R/Rules where a PG candidate in the concerned subject was not available, PG in any subject could be considered for appointment on the said post. In the new R/Rules of 2002, respondents have changed the criteria and have incorporated a provision according to which where PG in

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the concerned subject is not available. a graduate with degree would be considered for appointment to the said post. A mere degree holder could not be expected to teach PG courses. This action on the part of respondents amounts to downgrading the standard of teaching and <sup>7</sup>would be detrimental to the interest of the students. The counsel has contended that the same has been done deliberately to ensure that the applicants are excluded from their candidature being considered even though they have been in service for long periods.

9. We are not quite convinced with the arguments of the learned counsel for applicants on this point. We find that the Tibbia College was earlier managed under the Tibbia College Act, 1952 and the same was taken over by the Government during the year 1998 and the old Act of 1952 was repealed. After the take over, as has been contended by the learned counsel for respondents, they started the process of review of the entire functioning of Tibbia College which also included review of the R/Rules. It was because of this decision of the Government that the vacancies were permitted to be filled up on ad-hoc/contract basis as a temporary measure pending finalisation of the R/Rules which were finally notified during the year 2002. To contend that the vacancies which had occurred during the period prior to the take over should be filled up on the basis of erstwhile R/Rules, in our view, will not be tenable since, with the taking over of the Tibbia College by the Government vide the Act of 1998, the earlier act/regulation framed thereunder also stood repealed and thus became non-existent.

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10. On the contention raised by the learned counsel for the applicants that the revised R/Rules have the effect of diluting and downgrading standard of education, we firstly find that it is not for the applicants to raise such an objection as there are specific experts/regulatory body such as Medical Council of India and in case of Indian System of Medicine, the Central Council of Indian Medicines who are responsible to prescribe the necessary qualifications for various levels of education. Secondly, respondents have notified the Rules under their rule making power which in normal circumstances cannot be interfered with in judicial review. The apex court while commenting on this aspect in case of V.K. Sood Vs. Secretary, Civil Aviation (1993 Suppl. 3 SCC 9), has categorically held that "To prescribe the particular qualification for a particular post is not the function of the Supreme Court. The President or authorised person is entitled to prescribe the method of selection, qualification for appointment to an office or to a post under the state. No motive can be attributed to the rule making body under Service rules, Constitution of India Article 309". Similarly, in Malik Vajana Rao Vs. State of AP [1990(2) SCC 707], it has again been held that "The Court/Tribunal cannot direct the Government to frame statutory rules or amend existing statutory rules under Article 309 in a specific manner so as to alter condition of service of civil servant in terms of direction".

Quare

11. With regard to the respondents having reduced the age limit prescribed earlier from 40 to 35 in the revised R/Rules, we are inclined to agree with the arguments advanced by the learned counsel for the respondents that it is the subject matter of policy and bringing in uniformity between various educational institutions and therefore it will not be appropriate for the Tribunal to intervene in the matter. Further as already stated it is for the Central Council for Indian Medicine to prescribe such requirements and the applicants would have no locus standie to challenge the same.


12. Coming to the objection raised by the learned counsel for the applicants that respondents cannot operate 200-point roster as the vacancies are hardly two or three in a particular subject and that only 13-point roster should be made applicable, we have been informed by the learned counsel for the respondents that there is no discipline-wise sanctioned posts and all of them are in the category of Lecturers and therefore 200-point roster has been made applicable as per Government of India instructions for implementation of reservation policy. The counsel has produced the registers maintained by the department in this regard. We find that in keeping with Government of India, Department of Personnel & Training OM dated 2.7.1997, they are maintaining post-based roster and not on the basis of vacancies and since the Department has not sanctioned post for each discipline separately, there is nothing wrong in operating 200-point roster.


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13. Thus all the points raised by the applicants are devoid of merit. However, keeping in view that respondents have reduced the upper age limit from 40 to 35 in the revised R/Rules and taking into consideration the fact that the applicants are in service with the respondent-department for some time, it would be open for the respondents to consider as to whether the applicants could be granted age relaxation limited to the extent of service they have rendered with them in case the applicants make a request for the same.

14. Both OAs are disposed of in the aforesaid terms. No costs.

  
(S.K. Naik)  
Member(A)

  
(V.S. Aggarwal)  
Chairman

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