

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1409/2005
and
CP 271/2005 in OA 186/2003 ✓

New Delhi, this the ^{28th} day of February, 2006

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)
Hon'ble Shri Mukesh Kumar Gupta, Member (J)

OA 1409/2005

Shri G.C. Lal
Dy. Drugs Controller
Govt. of NCT of Delhi
F-17, Karkardooma, Shahdara
Delhi – 110 032.

...Applicant

(By Advocate: Shri G.S. Lobana)

V E R S U S

1. Lt. Governor of Delhi through Chief Secretary
Govt. of NCT of Delhi, Delhi Govt. Secretariat
Players Building, ITO, New Delhi – 110 002.
2. Chairman, Union Public Service Commission
Dholpur House, New Delhi – 110 011.
3. Principal Secretary Health & Family Welfare
Delhi Govt. Secretariat, Players Building
ITO, New Delhi – 110 002.
4. The Drugs Controller, Govt. of NCT of Delhi
F-17, Karkardooma, Shahdara, Delhi – 32.

...Respondents

(By Advocate Shri Ajesh Luthra and Ms. Jyoti Singh)

CP 271/2005 in OA 186/2003

Shri G.C. Lal
Dy. Drugs Controller
Govt. of NCT of Delhi
F-17, Karkardooma, Shahdara
Delhi – 110 032.

...Applicant

(By Advocate: Shri G.S. Lobana)

V E R S U S

1. Shri S. Regunathan,
Chief Secretary
Govt. of NCT of Delhi,
Delhi Govt. Secretariat
New Delhi – 110 002.

Vh

2. Dr. S.R. Hashim
Chairman, UPSC
Dholpur House, New Delhi.

(By Advocate Shri Ajesh Luthra)

...Respondents

ORDER

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

OA 1409/2005 and CP 271/2005 in OA 186/2003, being inter connected, ¹⁵
~~have, been~~ heard together and are being disposed of by this common
order.

OA 1409/2005

Applicant has challenged the following: -

- (i) Annexure A-1 dated 4.5.2005 whereby Shri R.M. Pillai, IAS, Additional Secretary (H&FW) has been entrusted with additional charge of Drug Controller.
- (ii) Annexure A-2 dated 9.5.2005 whereby Shri R.M. Pillai has been allowed notional posting against the post of Drug Controller from 11.4.2005 onwards for purpose of pay.
- (iii) Annexure A-3 dated 1.7.2004 whereby on finding Shri R.D. Garg unsuitable for appointment to the post of Drug Controller on promotion basis, the UPSC has declared the related selection process as infructuous and directed the Govt. of NCT of Delhi to take the necessary steps to fill up the vacancies as per provisions of Recruitment Rules.

2. Learned counsel of the applicant stated that applicant belongs to a ¹⁵
Scheduled Caste and was appointed as Drug Inspector in group 'B'
through UPSC in 1973. He was promoted from time to time and in 1997 was
regularly selected as Deputy Drug Controller through DPC. He became eligible
for departmental promotion as Drug Controller as per Recruitment Rules. He had
challenged the appointment of Dr. C.M. Khanijo as Drug Controller in September
2002 through OA 186/2003. The same was disposed of vide Tribunal's order
dated 9.9.2003 with the following directions: -

15

- (a) the appointment/posting of respondent No.3 is quashed;
- (b) the respondents will take necessary steps to fill up the post on regular basis in accordance with the recruitment rules;
- (c) it has been pointed that the post has already been advertised and Union Public Service Commission shall be given a proposal within one month, and within three months thereafter the Union Public Service Commission will make its recommendations;
- (d) the applicant has no right to be appointed regularly or on ad hoc basis: At best he can be considered only for appointment; and
- (e) for the interregnum period, the respondents may fill up the post in light of what has been stated above."

3. Govt. of NCT of Delhi issued a Circular dated 17.3.2003 and published an advertisement in the Employment News dated 5.7.2003 for filling up the post of Drug Controller, Govt. of NCT of Delhi in the scale of pay of Rs.14,300-18,300 (revised) on promotion/deputation basis. Learned counsel of applicant stated that the applicant applied for consideration in response to the advertisement. However, he was not called for interview. He further stated that although Shri R.D. Garg was not qualified in terms of the prescribed qualifications for the post of Drug Controller, ^{yet} he was considered and selected. He maintained that applicant being SC candidate ought to have been accorded relaxation in qualifications etc. and considered for appointment on the post. Learned counsel also took exception on behalf of the applicant to appointment of Shri R.M. Pillai as Drug Controller. Learned counsel of the applicant relied upon the cases of **Sandeep Kumar Sharma v. State of Punjab & Ors.** (1997) 10 SCC 298 and **Ashok Kumar Uppal & Ors. v. State of J&K & Ors.** (1998 (2) SLR 167) contending that the applicant ought to have been granted relaxation in qualifications as injustice was being caused to him.

4. On other hand, learned counsel of the respondents stated that applicant has submitted his own bio-data (Annexure R-3) in accordance with which, he is M. Sc (Zoology), which is not a prescribed qualification. As such he is not eligible for consideration for the post of Drug Controller. Learned counsel of the respondents maintained that relaxation in educational qualifications cannot be accorded even to SC candidate. Learned counsel further pointed out that although Shri R.D. Garg fulfilled the academic and

experience qualifications, he was not found suitable by the UPSC as he was not provided integrity certificate thus the whole selection process in pursuance of advertisement dated 5.7.2003 has become infructuous and respondents have to undertake the fresh selection under the rules.

5. We have considered the respective contentions of the parties as also perused the available records.

6. Exception has been taken on behalf of the applicant to consideration of Shri R.D. Garg for appointment to the post of Drug Controller stating that he is not eligible under the Rules. It is observed that applicant has not impleaded Shri R.D. Garg as a party as such he cannot be allowed to object to eligibility of Shri R.D. Garg as a candidate for the post of Drug Controller. In any case, ultimately Shri R.D. Garg was found ineligible, integrity certificate having not been available to him and the whole process resorted in pursuance of advertisement dated 5.7.2003 having become infructuous.

7. Appointment of Shri R.M. Pillai, IAS has also been objected to on behalf of the applicant. Shri R.M. Pillai has not been appointed as Drug Controller on regular basis. The Tribunal had directed the respondents vide its orders dated 9.9.2003 in OA 186/2003 to take the necessary steps to fill up the post on regular basis in accordance with Recruitment Rules and in the interregnum period to fill up the post in the light of what has been discussed in the orders. While the respondents had undertaken the process of selection on regular basis through the agency of UPSC, the same has been stated to have become infructuous, the eligible candidate having not been granted the integrity certificate. The respondents have not committed any mistake in appointing Shri R.M. Pillai in the interregnum period to hold the additional charge. Such steps are taken by the Government in public interest when regularly selected candidates are not available. Here too, applicant has not made Shri R.M. Pillai a party in the case.

8. The Recruitment Rules for the post of Drug Controller, Delhi Administration, (Annexure R-2) prescribed the following educational and other

qualifications for the post of Drug Controller both for direct recruits and in the case of promotees.

"Essential"

- i) Post Graduate degree in Chemistry/Pharmaceutical Chemistry/Bio-Chemistry/Pharmacy/Pharmacology of a recognized University or equivalent;
- ii) 12 years' experience in dealing with problems connected with drugs standardization and controls of drug standards.
OR
12 years' experience in manufacturing or testing of Drugs.

Note 1 : Qualifications are relaxable at the discretion of the UPSC in case of candidates otherwise well qualified.

Note 2 : Qualifications regarding experience is/are relaxable at the discretion of the UPSC in case of candidates belonging to scheduled castes and scheduled Tribes."

9. Admittedly, the applicant possesses M. Sc. (Zoology). UPSC has held that applicant does not posses the prescribed educational qualification. In terms of the rules, even the academic qualifications are relaxable at the discretion of the UPSC in case of candidates otherwise well qualified. We cannot find fault with the UPSC in not relaxing the applicant's academic qualification as a Post Graduate Degree in Zoology cannot be said to be covered under the expression "otherwise well qualified" as the spheres of Chemistry, Pharmaceutical Chemistry, Bio-Chemistry, Pharmacy and Pharmacology are apparently different than the field of Zoology. However, no objections can be raised as to applicant's experience vis-à-vis the prescribed qualification of experience. Applicant has sought that he should be declared to be eligible as per the Recruitment Rules for promotion to the post of Drug Controller as also to consider him for ad hoc appointment. As stated above, applicant is not eligible as per the Recruitment Rules and it has already been observed in the Tribunal's earlier order dated 9.9.2003 in OA 186/2003 that "the applicant has no right to be appointed regularly or on ad hoc basis". At best he can be considered only for appointment. In our view, if the applicant is not eligible in terms of the prescribed qualifications nor can he be accorded relaxation in essential qualifications, he is ineligible and cannot be considered for appointment on regular or ad hoc basis.

(19)

10. We have also considered the possible application of the ratio of the cases of **Ashok Kumar Uppal and Sandeep Kumar Sharma (supra)**. In the first case, junior candidates had been accorded the promotions taking advantage of retrospective operation of Instructions. In the second case, general policy of the Government for relaxation of rules which was availed of by a single person was held to be in order rejecting the plea of favouritism or malafide. In the facts of the present case, which are distinguishable, applicant cannot draw any support from these judgments.

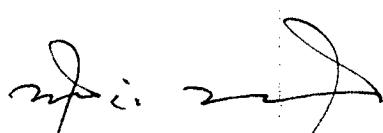
11. In the facts and circumstances of the case, as discussed above, while the earlier process of selection for the post of Drug Controller has become infructuous, respondents are again directed to take the necessary steps to fill up the post of Drug Controller on regular basis in accordance with the Recruitment Rules expeditiously and preferably within a period of four months from the date of receipt of a copy of this order.

12. Accordingly, OA stands disposed of in the above terms.

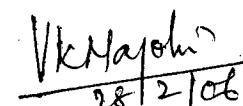
CP. 271/2005 in OA 186/2003

It has been alleged that the respondents have deliberately violated the directions of this Tribunal contained in order dated 9.9.2003 in OA 186/2003. These directions have been reproduced above. Respondents had undertaken process of selection for the post of Drug Controller through an advertisement dated 5.7.2003. While the applicant was considered ineligible for the post by the UPSC, one Shri R.D. Garg was considered eligible and interviewed by the UPSC. However, he could not be selected, as integrity certificate for Shri R.D. Garg did not become available. The whole process for selection on promotion basis for the post of Drug Controller became infructuous. Applicant was required to be considered for appointment to the post of Drug Controller. Such consideration had to be done in terms of the Recruitment Rules. His candidature was considered but he was found ineligible. He has not been able to set up a case even before us for his eligibility. He does not hold the prescribed academic qualifications. The post graduation degree in Zoology possessed by him has no connection with the subjects in which post graduate degree is

solicited for consideration for selection to the post of Drug Controller. Respondents have also taken up steps to entrust additional charge of the post to Shri R.M. Pillai. Action taken by the respondents in our view does not constitute any willful and deliberate disobedience of our directions. Thus, the CP is dropped and the notices to the respondents are discharged.



(Mukesh Kumar Gupta)
Member (J)



(V.K. Majotra)
Vice-Chairman (A)

/vikas/