

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1671/2003

New Delhi, this the 31st day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

Pankaj Tyagi
s/o Sh. Ashok Kumar Tyagi
r/o House No.D-27/B
Shyam Park Extension, Sahibabad
Ghaziabad, U.P. ... Applicant

(By Advocate: Sh. S.C.Singhal)

Versus

1. Govt. of NCT of Delhi
through Chief Secretary
Secretariat
Delhi.
2. Principal Secretary
Health & Family Welfare Department
Govt. of NCT of Delhi
9th Level, Secretariat
Delhi.
3. Drugs Controller
Govt. of NCT of Delhi
Drug Control Department
15 Sham Nath Marg
Delhi.
4. Smt. Anita Sahni,
Jr. Scientific Officer (Chemistry)
w/o Sh. S.K.Sahni
r/o AG-49, 2nd Floor
Shalimar Bagh
New Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra with Sh. Ashwani
Bhardwaj)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Pankaj Tyagi) by virtue of the present application seeks declaration that he has been in continuous service and benefits of the same should be awarded to him. In the alternate, a direction could be given to absorb the applicant to the post of Junior Scientific Officer (Chemistry) on regular basis. He also seeks quashing of the order passed by the official respondents dated 4.4.2003. It reads:



"The Chief Secretary, Delhi is pleased to order the appointment of Smt. Anita Sahani, Senior Scientific Assistant, Drug Control Department, Govt. of NCT of Delhi as Junior Scientific Officer (Chemistry) in the Drug Control Department of Govt. of NCT of Delhi in the pay scale of Rs.6500-10500 plus usual allowances, with immediate effect.

The services of Sh. Pankaj Tyagi, presently working as JSO (Chemistry) in the Drug Control Department on contract basis are also terminated with immediate effect.

(Arun Bakoka)
Additional Secretary(Health)

2. The relevant facts are that in pursuance of the public notice issued by the Ministry of Health and Family Welfare Department, Government of National Capital Territory of Delhi, the applicant had applied for the post of Junior Scientific Officer (Chemistry). On 5.2.2002 an order was issued appointing him on contractual basis for a period of six months. The order reads:

"The following candidates are appointed as Junior Scientific Officer in the pay scale of Rs.6500-10500/- + allowances as admissible under rules under the disposal of Drug Control Department on contractual basis for a period of six months w.e.f. 16.1.2002.

Sl. No.	Name of the candidates	Name of the post
1.	Sh. Pankaj Tyagi	Junior Scientific Officer (Chemistry)
2.	Sh. Hemant Kr. Pant	Junior Scientific Officer (Microbiology)

The above candidates have been medically examined.

(N.C. Ray)
Additional Secretary (Health)"

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3. The contractual appointment was extended from time to time till the impugned order was passed. Vide impugned order, Respondent No.4 has been appointed as Junior Scientific Officer and the services of the applicant which were on contractual basis were terminated. This has prompted the applicant to file the present application contending that the applicant has a right to be permanently absorbed to the post of Junior Scientific Officer (Chemistry) on regular basis and that the appointment of Respondent No.4 is illegal.

4. Before proceeding further and dealing with the above said contentions, we make reference to the relevant rules on the subject. The post of the Junior Scientific Officer had been notified and the recruitment rules were framed in exercise of the powers conferred under Article 309 of the Constitution. It is a Central Group 'B' Gazetted (Non-Ministerial) post which can be filled up first by promotion, failing which by deputation and failing both by direct recruitment. The required educational qualifications mentioned in Column (8) are:

Educational & Other qualification required for
direct recruits

Essential:

- (A)(i) Post Graduate Degree in Chemistry/Pharmacy/ Pharmaceutical Chemistry of a Recognised University or Equivalent.
- (ii) Three Years' Experience in the field of Chemical Analysis of Drugs from a Recognised Institution or Equivalent.

OR



(B)(i) Degree in Pharmacy/Science (with Chemistry, Botany and Zoology) from a Recognised University or Equivalent.

(ii) Five years Experience in the field of Chemical Analysis of Drugs from a Recognised Institution or Equivalent.

Note 1: Qualification (s) are relaxable at the discretion of the U.P.S.C. in case of candidate others so well qualified.

Note 2: The qualification(s) regarding experience is/are relaxable at the discretion of the Union Public Service Commission in the case of candidates belonging to Scheduled Castes or Scheduled Tribes if at any stage of selection the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

5. In Column 12, it is further prescribed that in case of recruitment by promotion the person would be eligible to be so appointed and the same reads:

In case of rectt. by promotion/deputation/absorption grades from which promotion/deputation/absorption to be made.

Promotion

Senior Scientific Assistant (Chemistry) with 3 years regular service in the grade.

Deputation (Including short-term contract):

1. Officers of the Central/State Govts./Union Territory/Autonomous Body/Statutory Body/Research Institutions-

(a)(i) Holding analogous posts on regular basis or

(ii) With 3 years regular service in posts in the scale of pay of Rs.5500-9000 or equivalent and

(b) Possessing the educational qualifications and experience prescribed for direct recruitment under column 8.

The Departmental Officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment by deputation. Similarly deputationists shall not be eligible for consideration for appointment by promotion.

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(Period of deputation/contract including the period of deputation/contract in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the central Government shall ordinarily not exceed three years)

(The maximum age limit for appointment by deputation (including short-term contract) shall be not exceeding 56 years as on the closing date of the receipt of applications)."

6. The Senior Scientific Assistant is the feeder post to the post of Junior Scientific Officer. The recruitment rules for the said post had also been notified in the year 2001. The relevant portion of the Recruitment Rules and the educational qualifications for the feeder post are:

Educational and other qualifications
required for direct recruitments

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Essential:

1. A Degree in Pharmacy of Pharmaceuticals Chemistry or Post Graduate Degree in Chemistry of a recognised University.
2. Three years experience of manufacture and/or testing of Drugs.

Earlier in the Govt. of National Capital Territory of Delhi, for the post of Senior Scientific Assistant, the recruitment rules had been notified on 1.7.1982. In the said recruitment rules, there was no division pertaining to Senior Scientific Assistant (Chemistry) or any discipline. To this extent, there was no dispute at either end.

7. The application has been contested by the official as well as the private respondents. The

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official respondents contended that applicant was appointed to the post of Junior Scientific Officer (Chemistry) purely on contractual basis for meeting the exigencies of the Department. He was appointed only for a period of six months. It is not in dispute that for filling up the said post, as per the recruitment rules, a person has to have three years regular service as Senior Scientific Assistant (Chemistry). Respondent No.4 has been working as Senior Scientific Assistant in the Drug Control Department. She has been handling the work of analysis of drugs since her appointment. There was no division of posts between various departments like Chemistry, Microbiology, Pharmacology, etc. The qualifications for the post of Senior Scientific Assistant are the same as that of Senior Scientific Assistant (Chemistry). Therefore, Respondent No.4 was eligible.

8. Almost identical has been the reply of Respondent No.4

9. We have heard the parties' counsel.

10. So far as the right of the applicant for regularisation is concerned, at the outset, we have mentioned that the appointment of the applicant was on contractual basis. It was not on regular basis.

11. To be eligible for the post of Junior Scientific Officer, one has to have three years

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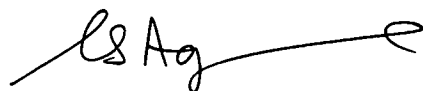
regular service to be considered for the promotion. The applicant did not fulfil the requirement, he has rightly not been appointed on regular basis.

12. Not only that, firstly the post has to be filled up by promotion. Once they found the person eligible, in that event, question of resorting to the other method of filling up the post on deputation or by direct recruitment would not arise. There was no advertisement even to fill to the post by direct recruitment. In addition to that, no person can be regularised or appointed de hors the rules. When there are recruitment rules they have to be strictly followed and in that view of the matter, a plea that he has a right to be regularised must be rejected.

13. Great stress has been laid as to whether the appointment of Respondent No.4 is invalid or not~~in~~

14. During the course of the submissions, it was shown and not disputed that educational qualifications for the post of Senior Scientific Assistant (Chemistry) are the same as Senior Scientific Assistant. Respondent No.4 had fulfilled the required qualifications.

15. Before the recruitment rules of the year 2001, the recruitment rules of 1982 were prevalent. We have already referred to the same above. It clearly shows that there was no difference made between Senior Scientific Assistant (Chemistry) or any



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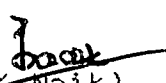
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other Senior Scientific Assistant in other disciplines. There was no post of Senior Scientific Assistant (Chemistry). Thus private respondents can not be de-barred keeping in view the above facts, when she was having the qualifications of the post.

16. It was explained during the course of submission that Respondent No.4 has been doing the work of Senior Scientific Assistant (Chemistry). Necessarily one has to apply the rules harmoniously to bring the necessary result. It cannot be that we have to allow the head long clash. When Respondent No.4 had been doing the said work and in the feeder cadre there were posts of Senior Scientific Assistant without any further bifurcation, it cannot be stated that she would be not eligible.

17. No other argument has been raised.

18. For these reasons, we find that present Original Application is without merit. It must fail and is accordingly dismissed.


(S.K. Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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