

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 2766/2003

New Delhi this the 23rd day of January, 2004.

**HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN**

**HON'BLE SHRI S.A.SINGH, MEMBER (A)**

1. Dr. Saibal Mukhopadhyay  
S/o Shri R. Mukherjee  
Room No. 504, New Resident Doctors Hostel  
G.B. Pant Hospital,  
New Delhi-110002.
2. Dr. Jamaly Usuf  
S/o Dr. E.S. Hanafi  
Room No. 506,  
New Resident Doctors' Hostel  
G.B. Pant Hospital  
New Delhi-110002.
3. Dr. Vimal Mehta  
S/O Shri S.P. Mehta  
R/o H. No. 4 Lane No. 4  
Shalimar Park Extension  
Shahdara  
Delhi-110032.
4. Dr. Umamahesh C. Rangasetty  
S/o Shri C.V. Rangasetty  
Room No. 409, New Resident Doctors' Hostel  
G.B. Pant Hospital  
New Delhi-110002. .... **Applicants**

( Shri <sup>02</sup> with Shri Sachin Chauhan,  
Advocates )

vs.

1. Secretary  
Ministry of Health and Family Welfare,  
Government of India  
Nirman Bhawan  
New Delhi.
2. Special Secretary (Health)  
Health and Family Welfare Department  
Government of National Capital  
Territory of Delhi  
9th Level, A Wing,  
Delhi Sachivalaya  
I.P. Estate  
New Delhi-110002.

3. Medical Council of India,  
Aiwan-e-Ghalib Marg,  
Temple Lane, Kotla Road,  
New Delhi-110002  
through its Chairman

..... Respondents

(Shri V.S.R.Krishna, counsel for respondent No.1  
Shri Vijay Pandita, counsel for respondent No.2  
None for respondents 3)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

Applicants, by virtue of the present application, seek setting aside of the advertisement issued by the respondent No.3 to fill up the post of Associate Professor (Cardiology) and further setting aside of the qualifications prescribed for the post of Associate Professor in the recruitment rules in so far they are de-hors the Medical Council of India guide-lines. Lastly, they pray for a direction to consider their claim for being appointed as Assistant Professor (Super Speciality/Cardiology).

2. During the course of submissions, the learned counsel for the applicants conceded that the applicants do not press their claim to consider their experience as Pool Officer in the present application.

3. Some of the relevant facts are that the recruitment rules have been framed by the Ministry of Health and Family Welfare dated 8.10.1996. For

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the post of Associate Professor (Super Specialities), the recruitment rules provide:-

"Associate Professor (Super Specialities)  
Rs. 3700-125-4700-150-  
5000)

Not exceeding 45 years (Relaxable for Govt. Servants by 5 years in accordance with the instructions issued by the Central Govt.)

(i) A recognised medical qualification included in the First or Second Schedule or Part II of the Third Schedule (other than licentiate qualifications) to the Indian Medical Council Act 1956. Holders of educational qualifications included in Part II of the Third Schedule should also fulfil the conditions stipulated in sub-section (3) of section (13) of the Indian Medical Council Act, 1956.

(ii) Post-graduate degree in the concerned specialty mentioned in Section-A of Schedule-VI or equivalent.

(iii) At least five years experience as Sr. Resident/Tutor/Demonstrator/ Registrar/Lecturer in the concerned speciality in a recognised teaching institution after the first Post-graduate.

Note: In the case of holders of D.M./M.CH. Qualifications of five years' duration, the period of senior PG residency rendered in the last Part of the Said D.M./M.CH shall be counted towards requirement of five years' experience."

An advertisement had been issued to fill up the posts of Associate Professor (Cardiology) in

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G.B.Pant Hospital on ad hoc basis and the essential qualifications besides experience were in terms of the recruitment rules to the following effect:-

1. A recognised Medical qualification included in the first or second scheduled or Part II of the third scheduled (Other than licentiate qualifications) to the Indian Medical Council Act, 1956. Holder of educational qualifications included in Part II of the third schedule should also fulfil the conditions stipulated in sub-section (3) of Section (13) of the Indian Medical Council Act, 1956.
2. Post Graduate Degree in the concerned speciality mentioned in schedule VI or equivalent.
3. At-least five years experience as Senior resident/Tutor/ Demonstrator /Registrar/ Lecturer in the concerned speciality in a recognized teaching institution after the first post graduate qualification."

At this stage, it is relevant to mention that the Medical Council of India has also prescribed the qualifications for the post of Reader/Associate Professor which are to the following effect:-

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| " Reader/Associate D.M<br>Professor (Cardio-<br>logy) | (i) As Assistant<br>Professor/Lecturer<br>in Cardiology for<br>two years in a<br>recognised medical<br>college/teaching<br>institution. |
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Desirable

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| (i) Minimum of four<br>Research Publi-<br>cations indexed |
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in index Medicus/  
national journals."

4. The basic argument advanced on behalf of the applicants was that the qualifications prescribed in the recruitment rules are totally contrary to the qualifications prescribed by the Medical Council of India. They are otherwise unconscionable, and, therefore, the same as well as the advertisement should be quashed.

5. The application has been contested. The respondent No.2 states that the application is an abuse of the process of the court. The advertisement was issued for filling up the post of Associate Professor in the pay scale of Rs.12000-16500/- for a period of one year. It had been issued as per the qualifications prescribed in the Central Health Service Rules, 1996. They contend as to what qualifications have to be prescribed is not the function of the court nor the court should interfere in policy matters.

6. The Medical Council of India has filed a separate reply. They insist that the experience gained as Pool Officer cannot be taken as equivalent experience to a Lecturer nor teaching experience. However, the Medical Council of India insists that under Section 33 of the Indian Medical Council Act, 1956 it can prescribe the minimum

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qualifications for appointment of teachers in the medical colleges and institutions. This has been done to maintain standards in teaching.

7. The Medical Council of India has framed the regulations in exercise of its powers under Section 33 of the Indian Medical Council Act, 1956. It becomes unnecessary for us to delve into the different provisions of the Indian Medical Council Act, 1956 because the Supreme Court has already gone into this controversy and succinctly described the effect of the provisions of the Medical Council Act as well as regulations thereto. It has been held that the regulations are mandatory in nature and would override the other provisions that might have been made by the State.

8. In the case of **Medical Council of India v. State of Karnataka and others**, (1998) 6 SCC 131, the Supreme Court held:-

"24. The Indian Medical Council Act is relatable to Entry 66 of List I (Union List). It prevails over any State enactment to the extent the State enactment is repugnant to the provision of the Act even though the State Acts may be relatable to Entry 25 or 26 of List III (Concurrent List). Regulations framed under Section 33 of the Medical Council Act with the previous sanction of the Central Government are statutory. These regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in Section 33. If a regulation

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falls within the purposes referred under Section 33 of the Medical Council Act, it will have mandatory force. Regulations have been framed with reference to clauses (fa), (fb) and (fc) (which have been introduced by the Amendment Act of 1993 w.e.f. 27.8.1992) and clauses (j), (k) and (l) of Section 33."

A year later in the case of **Dr. Preeti Srivastava and another v. State of Madhya Pradesh and others**, (1999) 7 SCC 120, the same question had again been considered by the Supreme Court. Once again, the Apex Court held:-

"Section 33 of the Act gives to the Council the power to make regulations generally to carry out the purposes of the Act with the previous sanction of the Central Government. It provides that without prejudice to the generality of this power such regulations may provide, under Section 33(j) for the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained in universities or medical institutions, for grant of recognised medical qualifications, and under Section 33(1) for the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examination."

Thereupon the Supreme Court held that the scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. It held:-

"The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a university or a medical institution have to be recognised under the Indian Medical Council Act, 1956.

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Unless the qualifications are so recognised, the students who qualify will not be able to practise. Before granting such recognition, a power is given to the Medical Council under Section 16 to ask for information as to the courses of study and examinations. The universities are bound to furnish the information so required by the council. The Postgraduate Medical Committee is also under Section 17, entitled to appoint Medical Inspectors to inspect any medical institution, college hospital or other institution where medical education is given or to attend any examination held by any university or medical institution before recommending the medical qualification granted by that university or medical institution. Under Section 19, if a report of the Committee is unsatisfactory the Medical Council may withdraw recognition granted to a medical qualification of any medical institution or university concerned in the manner provided in Section 19. Section 19-A enables the Council to prescribe minimum standards of medical education required for granting recognised medical qualifications other than postgraduate medical qualifications by the universities or medical institutions, while Section 20 gives a power to the Council to prescribe minimum standards of postgraduate medical education. The universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognised under the Medical Council of India Act. We, therefore, disagree with and overrule the finding given in Ajay Kumar Singh v. State of Bihar, (1994) 4 SCC 401 to the effect that the standards of postgraduate medical education prescribed by the Medical Council of India are merely directory and the universities are not bound to comply with the standards so prescribed."

From the aforesaid, the answer to the abovesaid question obviously is that the said minimum qualification prescribed by the Medical Council of India in terms of the regulations will have mandatory effect.

9. As already referred to above, the stress was that the minimum qualifications prescribed run

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counter to the qualifications prescribed for the said post by the Medical Council of India. While giving resume of the facts, we have already referred to the other facts. For the post of Associate Professor, the requirement is of having at least five years' experience as Senior Resident/Tutor/Demonstrator/Registrar/Lecturer in the concerned speciality in a recognised teaching institution. The Medical Council on the contrary prescribes that for appointment to the said post of Associate Professor, one should be Assistant Professor/Lecturer in Cardiology for two years in a recognised medical college/teaching institution and it is desirable to have minimum of four Research Publications therein. This question was directly involved before this Tribunal in the case of Dr. (Mrs.) Simmi K. Ratan v. Union of India and others in OA No. 896/2002 decided on 22.4.2003. When similar controversy had arisen pertaining to an advertisement on same lines but in another discipline, the same was quashed holding:-

"13. We fail to understand that how the experience in the capacity of Senior Resident/Tutor/Demonstrator/Registrar/Lecturer can be equated with the post of Assistant Professor for the post of Associate Professor. The Medical Council of India in exercise of its powers has prescribed the minimum experience as Assistant Professor/Lecturer in Paediatric Surgery for two years in a recognized Medical College/Teaching Institution. This is the

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minimum qualification prescribed by the Medical Council of India. It is, therefore, mandatory in nature. As per the advertisement for the post of Associate Professor, 5 years experience has been prescribed as Senior Resident/Tutor/Demonstrator. The regulations of the Medical Council of India clearly prescribe for the post of Assistant Professor or Lecturer, three years experience as Resident/Registrar/Tutor. For all practical purposes, the posts of Registrar/Demonstrator/Tutor are inferior to that of Associate Professor/Lecturer as per the guide-lines of the Medical Council of India. It is in this back-drop that we hold that the advertisement issued does not come up to the minimum qualification prescribed by the Medical Council of India. Candidates must have two years' experience as Lecturer/Associate Professor. The advertisement runs counter to the minimum qualifications prescribed by the Medical Council of India. Therefore, once the qualifications prescribed by the Medical Council of India are mandatory and the advertisement does not fulfil the same, it requires to be quashed."

10. On parity of reasoning, it is, therefore, clear that the advertisement and the recruitment rules which prescribe lesser qualifications for the post of Associate Professor cannot be sustained. Since the qualifications prescribed by the Medical Council of India are mandatory and they are not higher than what have been prescribed by the Medical Council of India, they should be quashed.

11. However, it was further prayed that a direction should be issued to the respondents to fill up the post of ~~Associate~~<sup>5</sup> Professor. We at the outset must state that the it is a policy matter.

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The respondents rightly contend that what qualifications have to be prescribed for a particular post and whether it necessarily has to be filled up or not and what decision in this regard has to be taken are within the domain of the respondents. We, therefore, do not intend to tread on it.

12. However, it was pointed by the applicants' learned counsel that the recruitment rules for the post of Associate Professor are in existence though it was admitted and had been pleaded that in pursuance of Tikku Committee report, they have been done away with ~~and~~ <sup>ie</sup> the posts ~~of Associate Professor~~ are not being filled up. However, it was pointed that if the applicants are not considered, it would adversely affect their rights for further promotion to Associate Professor.

13. As already observed in the preceding paragraphs, we reiterate that it is a policy decision and this Tribunal will not interfere in this regard, but we can only, keeping in view the peculiar situation mentioned, point out that the respondents can take a decision taking note of the facts referred to above as to if they would like to fill up the post of ~~Associate~~ <sup>or</sup> Professor or not keeping in view the guide-lines of the Medical Council of India.

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14. Accordingly, we dispose of the present application with the following directions:-

- (1) the advertisement at Annexure A-1 and the recruitment rules for the post of Associate Professor in so far as they are against the Medical Council of India guide-lines are quashed; and
- (2) the respondents may, in accordance with the Medical Council of India guide-lines, take a decision regarding filling up of the posts of Associate Professor.

No costs.

Announced.



(S.A. Singh)

Member (A)

/sns/



(V.S. Aggarwal)

Chairman