

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA NO.186/2003

New Delhi, this the 9th day of September, 2003

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

HON'BLE SHRI R.K.UPADHYAYA, MEMBER (A)

Sh. G.C.Lal  
Dy. Drug Controller  
Office of Drug Controller  
Govt. of NCT of Delhi  
15, Sham Nath Marg, Delhi-54

.... Applicant

(By Shri G.S.Lobana, Advocate)

vs.

1. Lt. Governor of Delhi  
through Chief Secretary  
Govt. of NCT of Delhi  
Delhi Govt. Secretariat  
Inderprastha Estate  
New Delhi-2
2. Principal Secretary  
Health & Family Welfare  
Delhi Govt. Secretariat  
Inderprastha Estate  
New Delhi-2
3. Dr. C.M. Khanijo  
Drug Controller  
Govt. of NCT of Delhi  
15, Sham Nath Marg  
Delhi-54
4. Chairman, Union Public Service Commission  
Dholpur House, Shahjahan Road  
New Delhi-11

... Respondents  
(Shri Ajesh Luthra for respondent Nos. 1 to 2  
None for respondent No.3  
Smt. B. Rana for respondent No.4)

O R D E R (ORAL)

Justice V.S. Aggarwal:

Applicant (Shri G.C. Lal) is a Deputy Drug Controller in the Office of the Drug Controller. In the National Capital Territory of Delhi, there is a post of Drug Controller. Needless to state that Drug Controller has certain important duties

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to perform. The recruitment rules for the post referred to above had been notified on 1.9.1986 in exercise of the powers conferred under Article 309 of the Constitution. They provide that the method of filling up of the post is by promotion/transfer on deputation including short-term contract. It reads:-

"Promotion/transfer on deputation (including short term contract).

Officers under the Central/State Governments/ Public Sector Undertakings and recognised Research Institutions.

a) i) Officers holding on a regular basis posts in the scale of Rs.1800-2000 or Rs.2000-2250 or equivalent or

ii) with 3 years' regular service in posts in the scale of Rs.1500-1800 or equivalent and

b) possessing the qualifications and experience prescribed for direct recruits.

The departmental Deputy Drug Controller with 3 years' regular service in the grade shall also be considered and in case he is selected for appointment to the post, the same shall be deemed to have been filled by promotion.

(The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly deputationists shall not be eligible for consideration for appointment by promotion. Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same organisation/department shall ordinarily not exceed 4 years.)"

In case of direct recruitment, the qualifications provided are:-

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"Essential:

i) Post Graduate degree in Chemistry/ Pharmaceutical Chemistry/ Bio-Chemistry/Pharmacy/ Pharmacology of a recognised University or equivalent.

ii) 12 years' experience in dealing with problems connected with drugs standardisation 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 U.P.S.C. in case of candidates belonging to scheduled castes and scheduled Tribes. If, at any stage of selection, the U.P.S.C. 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.

Desirable : Adequate experience of Administration of the Drugs Act and the rules there under and/or of manufacture and testing of drugs and/or dealing with...."

The grievance of the applicant is that though he is eligible, the respondents are appointing persons who are not eligible ignoring his claim.

2. On 5.9.2002, Dr. C.M. Khanijoo had been posted as Drug Controller on repatriation of the earlier incumbent Dr. L.L. Aggarwal. His order reads:-

"The Chief Secretary, Government of National Capital Territory of Delhi, is pleased to order the posting of Dr. C.M. Khanijoo as a Drugs Controller in Drugs Control Department in place of Dr. L.L.

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Aggarwal who will stand repatriated to his parent Department with immediate effect."

3. The application has been contested both by the Union Public Service Commission and also the respondent Nos. 1 and 2. Respondent Nos. 1 and 2 pointed out that the proposal for filling up the post of Drug Controller was sent to the Union Public Service Commission. A meeting was held. The names of the applicant and Shri G.P. Saxena were considered in June 1989. None of the two officers came-up to the bench-mark of 'Very Good'. Consequently, the applicant was promoted on ad hoc basis to the post of Deputy Drug Controller. So far as the posting of Dr. L.L. Aggarwal and Dr. C.M. Khanijoo is concerned, it was pointed that they were not regular appointments but only temporary arrangements, till a suitable or regular candidate was appointed. A circular had been issued by the Department for filling up the post of Drug Controller to which the eligible candidates could apply.

3. The Union Public Service Commission in the separate reply points out that the selection has to be made in accordance with the recruitment rules. The departmental candidates have to be considered along with the applicant who has applied for appointment on transfer on deputation. The recruitment rules do not contemplate that the post must be filled up primarily by promotion. The Union Public Service Commission states that

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respondent Nos. 1 & 2 have not forwarded any proposal for filling up the post of Drug Controller in accordance with the provisions as yet.

4. The learned counsel for the applicant in the first instance contended that the claim of the applicant had been ignored. At the outset, it must be mentioned that a person does not have a right to be appointed. There is no fundamental right that a person must be appointed. The right only exists to be considered for the post subject to his being duly qualified. Therefore, so far as the personal claim of the applicant is concerned, except for that he has a right to be considered, he cannot at this stage claim any further relief.

5. However, it was pointed that for the past more than almost a decade, the post is not being filled up and different persons who are not qualified are being appointed. We have already referred to above the recruitment rules for the post. They clearly provide that a person whether appointed on transfer on deputation including short-term contract basis must possess the qualifications and experience prescribed for direct recruits. The qualifications indicate that there should be Post Graduate degree in Chemistry/Pharmaceutical Chemistry/Bio-Chemistry/Pharmacy/ Pharmacology besides certain experience of 12 years in dealing with problems connected with drugs standardisation and control of drug standards



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or 12 years' experience in manufacturing or testing of drugs.

6. However, the learned counsel for the respondents has drawn our attention to the fact that it was not a regular appointment that had been made, but it is only a posting since September, 2002. We have not the least hesitation in rejecting the said contention. It cannot be termed to be a short-term posting since 2002. He is already working for more than one year and it cannot be termed even ad hoc appointment. The recruitment rules, keeping in view the nature of duties performed, ~~normally~~ <sup>here</sup> prescribe that even short-term contract appointments should be governed by the recruitment rules. In this process, the authorities cannot perpetuate a wrong by allowing a person to continue in this regard.

7. We know from the decision of the Supreme Court in the case of **A. P. Aggarwal v. Government of NCT of Delhi and another**, 2000 SCC (L&S) 206 that State action in order to be valid must be susceptible to vice of arbitrariness. This is the essence of Article 14 and the rule of law upon which Indian system of governance is based. Similarly, in the case of **Indian Railway Construction Co. Limited v. Ajay Kumar**, 2003 (2) SC SLJ 109, it was held that judicial review is permissible when a decision is manifestly arbitrary

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or on account of illegality, irrationality and procedural impropriety. The Supreme Court held:-

"12. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See State of U.P. and Ors. V. Renusagar Power Co. and Ors. (AIR 1988 SC 1737). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In General, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it, must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant consideration and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories : (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fattered

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because irrelevant consideration have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires."

Thereupon, the principle of judicial review in such like cases was again re-stated:-

"18. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:-

"..... Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality' the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

Lord Diplock explained "irrationality" as follows:-

"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is to outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

19. In other words, to characterize a decision of the administrator as

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"irrational" the Court had to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

20. These principles have been noted in aforesaid terms in Union of India and Ahr. v. G. Ganayutham (1997 [7] SCC 463). In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself."

It is on the ratio of the same that the present controversy can be examined.

8. Our attention was drawn towards the educational qualifications of respondent No.3 Dr. C.M. Khanijoo. He is holding the M.B.B.S. degree. He does not have the minimum qualifications for the post of Drug Controller. We have already referred to above that even if a person is appointed for short-term contract he must be qualified. Otherwise also his appointment after he has worked for one year cannot be termed to be on short-term contract. Once he is not qualified in this process, the law cannot be subverted.

9. To our query, counsel for the Union Public Service Commission informed that whenever the recommendations are received, a decision shall be taken within three months. The counsel also informed that steps are being taken in this regard.



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10. Taking stock of the reasons given above, the application is disposed of with the following directions:-

- 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.

No costs.

ANNOUNCED

  
(R.K. Upadhyaya)  
Member (A)

/sns/

  
(V.S. Aggarwal)  
Chairman