

(1997) 05 DEL CK 0058

In the Delhi High Court

Case No : Civil Writ Appeal No. 1681 of 1997

Akim Syed Ahmed

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 70 DLT 334

Hon'ble Judges : Kripa Shankar Gupta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : S.S. Tiwari and B. Babbar, for the Appellant;

Judgement

K.S. Gupta, J.

(1) In this petition challenge is to the order dated 2/04/1997, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, dismissing O.A. No. 2520/96 filed by the petitioner.

(2) Facts giving rise to this petition lie in a narrow compass. On 1/01/1987, petitioner was appointed on monthly wage basis in Cghs and by an order dated 28/06/1987, he was appointed as Medical Officer (Unani) on the strength of Cghs, Delhi, on ad hoc basis in the pay scale of Rs. 2,200-4,000. Pursuant to the advertisement No. 1 dated 13/01/1996, inviting applications for the post of Medical Officer (Unani) in Cghs, the petitioner applied for that post by making application dated 23/01/1996 which was duly acknowledged in the respondent's office vide receipt No. 448161 dated 23/01/1996. Subsequently, petitioner was allotted roll No. 326 vide letter dated 12/04/1996 by the respondent. It is alleged that on 3/12/1996 when the petitioner visited the office of the respondent to enquire about the recruitment to the post of Medical Officer (Unani) pursuant to the aforesaid advertisement No. 1, he was orally informed that interviews are to be conducted on 9/12/1996 and call letters have already been dispatched to short listed candidates. Petitioner was not called for interview. Aggrieved by the

arbitrary action of the respondent the petitioner filed O.A. on 5/12/1996 out of which the present petition arises. By way of interim direction respondent was ordered to interview the petitioner but his result was directed to be kept in a sealed cover. It was stated that the petitioner has a right to be considered to the post of Medical Officer (Unani). Relief claimed by the petitioner was that the respondent be directed to declare the outcome of the interview held on 9/12/1996 and in case the petitioner is selected he may be issued offer of appointment to the aforesaid post.

(3) In the reply it is not denied that the petitioner applied in response to the respondent's advertisement for three posts of Medical Officer (Unani) and he was allotted roll No. 326, as alleged. It is further not denied that the petitioner fulfilled all the essential and minimum qualifications prescribed under recruitment rules for appointment to the said post by direct recruitment. However, it is alleged that 445 applications were received for the post. The petitioner was not called for interviews he did not meet the short-listing criteria adopted by the respondent for calling general candidates for interview. As per the interim order of Central Administrative Tribunal dated 6/12/1996, the petitioner was interviewed provisionally on 9/12/1996. It is stated that the respondent's right to short-list the candidates for interview has been upheld in many judgments passed by the Tribunal /Courts.

(4) It is urged by Mr. S.S. Tewari for the petitioner that on identical facts by an order passed on 2/04/1997 in O.A. No. 19/1997 by another Bench of the Central Administrative Tribunal one Dr. Ali Murtaza has been directed to be considered by the respondent to the post of Medical Officer (Unani) against the vacancies available along with others and on the parity of the reasoning of the said order, respondent deserves to be directed to declare the outcome of the interview held on 9/12/1996 in respect of the petitioner and in case he is selected, direction may be issued to offer appointment to the petitioner against the aforesaid post. Copy of the order passed on 2/04/1997 by the Central Administrative Tribunal in O.A. No. 19/1997, Dr. Ali Murtaza v. Director General, Cghs & Ors., has been placed on record. Para 6 of this order which is relevant reads thus :

"In our opinion, whatever be the criteria adopted by the respondents for short-listing, since the petitioner has been holding the post for more than seven years, to the satisfaction of the respondents, and when a situation comes when a regular incumbent is selected by Upsc and the petitioner is likely to be replaced by a regular incumbent in accordance with the rules, and the petitioner's application for candidature for the said post and instead of being considered Along with others for the said vacant post, were wrongly excluded by the respondents by adopting undisclosed criteria of short-listing. The petitioner may not have any right for regular appointment/promotion and the petitioner's case is not that he may be considered for regularization on account of his seven and a half years ad. hoc service either. His only request was that he may be considered Along with others when the vacancy available is being filled up by the

respondents, which will have an effect of replacing him and his adhoc service."

(5) Learned Counsel for the respondent states as per her instructions, the above order has not been challenged either in writ petition or in appeal before Supreme Court by the respondent. Reasoning recorded aforementioned in para 6 of the order is the basis for allowing O.A. No. 19/1997 by the Tribunal.

(6) Indisputably the petitioner has been working as Medical Officer (Unani) on ad hoc basis for the last about 10 years and he possesses all the essential and minimum qualifications prescribed under the recruitment rules for appointment to the said post by direct recruitment. Obviously, the service rendered on ad hoc basis by the petitioner has neither been taken into consideration while short-listing the general candidates for interview by the respondent nor by the Tribunal while passing the order under challenge. In the facts and circumstances of the case, we are of the view that on the same reasoning as recorded in aforementioned para 6 of the order dated 2/04/1997, relief deserved to be granted to the petitioner. Since THE petitioner's case is akin to Dr. Ali Murtaza, he is entitled to the relief claimed for Impugned order, thus, deserves to be quashed and set aside.

(7) In the result, the petition is allowed and the order dated 2/04/1997 is set aside. Respondent is directed to declare the petitioner's result of interview held on 9/12/1996 which has been kept in a sealed cover. In case he is selected he will be offered appointment to the post of Medical Officer (Unani) within a period of two months of the declaration of the result. No order as to costs.