
(2012) 10 DEL CK 0128
In the Delhi High Court
Case No : Writ Petition (C) 3865 of 2012

B.K. Tiwari

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0128

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : V.S.R. Krishna, for the Appellant; Ruchir Mishra with Mr. Mukesh Kumar Tiwari, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The petitioner is aggrieved by the order dated 14.12.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 4362/2011. The petitioner had approached the Tribunal seeking a direction that the age of superannuation of Advisor (Nutrition) under the Ministry of Health and Family Welfare be also increased from 60 to 62 years, as was done in the case of non-teaching medical specialists. The petitioner had submitted a representation to this effect, which is asunder:

DIRECTORATE GENERAL OF HEALTH SERVICES SUB: Representation to increase the age of superannuation for the post of Advisor (Nutrition) as non-teaching specialist-reg.

As per copy of the Order No. A.12034/3/2005-CHS-V dated 16th November, 06 at F/A the superannuation of specialist doctors of Central health Service belonging to teaching, non-teaching and public health sub-cadre has been increased from 60 to 62 years.

In this connection the undersigned would like to bring the following facts:

? The post of Advisor (Nutrition) is a non-teaching specialist sub-cadre, as the essential minimum qualification required for the post is doctorate in Bio-

Chemistry, Nutrition/M/D in Bio-Chemistry or equivalent. Copy of the recruitment rules is at F/B.

? It may be pointed out that for the recruitment of specialist whether teaching, non-teaching or public health sub-cadre, the essential minimum qualification is MD/MS in the specialist subject, while for GDMO cadre, it is MBBS Degree only, copies of both GDMO and specialist cadre are at F/C.

? The Deptt. Of Health Research of MoHFW has also increased the age of superannuation of scientist of Indian Council of Medical Research from 60 to 62 year vide order No. V.25011/146/07 HR dated 30th October, 2008. Copy enclosed for ready reference at F/D.

? Hon"ble Supreme Court vide its judgment on 15th November, 1989 clearly gave directions 1043 Group "A" non-medical scientist/specialist of DGHS, MoHFW to make promotion policy, grant of various allowances which are given to the medical counterpart and tenability to claim of equal pay-scale.

? The undersigned was Secretary-General of Group "A" non-medical scientist/specialists of Dte. C.H.S., MoHFW when the aforesaid historical judgment was delivered.

? All the specialists sub-cadre, whether teaching, non-teaching or public health, are recruited through UPSC with minimum essential qualification of Post-Graduate degree i.e. MD/MS in specialized subject.

? The post of Advisor (Nutrition) fulfil the criteria for non-teaching specialist sub-cadre and is open for medical as well as non-medical persons through while for other posts of Group "A" non-medical scientists, the minimum qualification required is Master Degree in Science of specified subject. For this particular post of Advisor Nutrition the essential minimum qualification required is doctorate degree in subject or MD degree in the subject F/B.

? Copy of OM No. A. 12034/2/2007 CHS-IV (Pt.) dated 12/2/2009 of MoH & FW for implementation of cabinet decision about enhancement of age of superannuation for non CHS specialist which include non medical specialist to be issued by respective administrative division of this Ministry at F/B.

In view of facts explained above, it is requested to kindly look into the matter to issue appropriate order to increase the age of superannuation for the post of Advisor (Nutrition) from 60 to 62 years similar to that non-teaching specialist sub cadre, please.

Dr. B.K. TIWARI

ADVISER (NUTRITION)

Director Admn. (Hq.)

Dte, G.H.S.

2. However, the said representation was rejected by the Ministry of Health and Family Welfare on the ground that no proposal for enhancement for the age of superannuation from 60 to 62 years in respect of non-medical scientists is pending with the Ministry at present. Consequently, the said file was sent back to the Administration Section of the Directorate General of Health Services.

3. The learned counsel for the petitioner submitted that the representation which was submitted by the petitioner has not been given due consideration and the same has only been rejected on the ground that there is no proposal for enhancement of the age of superannuation in respect of non-medical scientists. The question was not whether there was or was not a proposal pending but, as to why the petitioner who was an Advisor (Nutrition) should not also be given the superannuation age of 62 years, when similarly placed individuals were retiring at the age of 62 years.

4. According to the learned counsel for the petitioner, the case of the petitioner was similar to that of non-teaching medical specialists in whose case the age of superannuation has been increased from 60 to 62 years. It was further submitted that the petitioner as well as the non-teaching medical specialists all function under the Central Health Service. A point was taken by the learned counsel for the respondent that the post of Advisor (Nutrition) was a solitary post and was not a sub-cadre like non-teaching medical specialists under the Central Health Service. However, we do not see as to how that would affect the petitioner's case if the petitioner is to be treated as equivalent to that of non-teaching medical specialist. The learned counsel for the petitioner also drew our attention to the essential qualification necessary for the appointment to the post of Advisor (Nutrition) under the Central Health Service under the Ministry of Health and Family Welfare. The essential qualification, inter alia, is as under:

Doctorate degree in Bio-Chemistry/Nutrition or MD in Bio-Chemistry of a recognized University or equivalent

5. From the above, it is apparent that a person could be appointed as an Advisor (Nutrition) if he either held a Doctorate degree in Bio-Chemistry or was an MD in Bio-Chemistry, which meant that the post of Advisor (Nutrition) could also be held by a medical person having a post graduate degree.

6. According to the learned counsel for the respondent, the letters MD signify "Master's Degree" in Bio-Chemistry and does not refer to a person having a medical lineage. Unfortunately, such a contention cannot be accepted because the scale of pay indicated against the pay of Advisor (Nutrition) specifically provides that a person possessing a medical qualification would be given Non-Practicing Allowance (NPA) Rs. of 600/-. As such, the position is clear that a person who is appointed as an Advisor (Nutrition) will have to possess either a Ph. D in Bio-Chemistry/Nutrition or an MD in Bio-Chemistry (i.e. a post-graduate degree in medicine) from a recognized university or equivalent.

7. This leads us to the next question and that is that if the petitioner had, instead

of having a Ph. D in Bio-Chemistry, been an MD in Bio-Chemistry, would he, then, not be equivalent to a non-teaching medical specialist? This is the question which needs to be addressed. And, if that were to be so, there should be some tangible reasons for not treating the petitioner in the same way as "other" non-teaching medical specialists. This aspect of the matter has not been considered by the respondent at all.

8. We, therefore, feel that it would be appropriate if the petitioner's representation, which we have extracted above, is considered once again by the respondents in the light of what we have stated above. The said consideration be completed within four weeks. The decision arrived at should contain reasons and should be communicated to the petitioner. Any observation made by the Tribunal in the impugned order will not be taken into account by the respondents in arriving at a decision as directed above.

9. The writ petition stands disposed of. Dasti.