
(2001) 04 P&H CK 0077
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1221 of 1993

D.r Pyara Lal Garg

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Central Health Service Rules, 1963 — Rule 4, 8(3)
Constitution of India, 1950 — Article 14, 16, 226, 309
Punjab Medical Education State Service (Class II) Rules, 1979 — Rule 1(3), 10(1), 2, 22, 23

Citation : (2001) 2 ILR (P&H) 345

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Mr. Ashok Sharma Nabhewala, for the Appellant; Mr. Rupinder Khosla, D.A.G. and Mr. Deepak Sibal, for the Respondent

Judgement

G.S. Singhvi, J.—This is a petition for quashing the selection of respondent No. 6 for appointment on the post of Senior Lecturer (Paediatric Surgery).

2. The facts necessary for deciding the issue raised in the petition are that in pursuance of the advertisement Annexure P. 1 issued by the Punjab Public Service Commission (for short, "the Commission"), the petitioner and respondent No. 6. applied for recruitment as Senior Lecturer (Paediatric Surgery)- At one stage, the application of respondent No. 6 was rejected by the Commission on the ground that he did not possess the post graduate qualification in the speciality concerned i.e. Paediatric Surgery, but after considering his representation (Annexure p.6), which was forwarded (?) by Dr. Janak Raj Arora, Professor and Head of Department of Paediatric Surgery, Government Medical College, Patiala (respondent No. 5) with favourable recommendations, the Commission re-viewed its decision and called him for selection and ultimately recommended his name for appointment against the advertised post.

3. The petitioner has challenged the selection of respondent No. 6 on the grounds that he does not possess one of the essential qualifications, i.e., post graduate degree in Paediatric Surgery prescribed under Rule .9 read with Appendix "C" of the Punjab Medical Education State Service (Class II) Rules, 1979 (for short, "the 1979 Rules") and that one of the experts, namely, Dr. Janak Raj Arora was biased in his favour.

4. Respondents No. 1 and 4, respondents No. 2 and respondent No. 6 have filed separate written statements to contest the petitioner's challenge to the selection of respondent No. 6. According to respondents No. 1 and 4, respondent No. 6 was treated eligible for the post of Senior Lecturer (Paediatric Surgery) because in the post other persons, namely, Dr. Janak Raj Arora and Dr. Kulwant Singh were appointed on that post by promotion in 1982 and 1986 respectively despite the fact that they did not have post graduate qualification in Paediatric Surgery and Dr. Charanjit Singh, who was M.S. (Surgery) was appointed as Senior Lecturer in Urology in 1991 on the recommendations of the Commission. They have relied on the decision of the Single Bench in *Dr. Avtar Singh v. State of Punjab*, 1994(1) SCT 727 (P&H) : 1992(8) SLR 1 to support their plea that respondent No. 6 is eligible to be appointed as Senior Lecturer (Paediatric Surgery). They have also averred that M.Ch., which is a post-doctoral degree, has not been included in Appendix "C" annexed to the 1979 Rules and, therefore, the same cannot be treated as an essential qualification for appointment on the post of Senior Lecturer (Paediatric Surgery).

5. In their written statement, respondents No. 2 and 3 have also averred that the qualification of M. Ch. (Paediatric Surgery) has not been incorporated in the 1979 Rules and, therefore, the candidates having the qualification of M.S. (Surgery) were considered eligible for appointment on the post of Senior Lecturer (Paediatric Surgery). They have relied on letter No. 1/3/S5- 2ss3/17887 dated 11.9.1989 sent by the Secretary to Government, Punjab, Health and Family Planning Department to the Commission in the matter of selection for appointment on the post of Senior Lecturer (Urology) and have averred that keeping in view the policy decision taken by the government to treat a candidate possessing M.S. (General Surgery) eligible for appointment in a relating speciality, the Commission had treated respondent No. 6 eligible for the post of Senior Lecturer (Paediatric Surgery). In his written statement, respondent No. 6 has challenged the very maintainability of the writ petition by alleging that the petitioner is guilty of misleading the Court by not producing the complete copy of the advertisement. According to him, the Commission had advertised the post of Senior Lecturer (Paediatric Surgery) alongwith the post of Assistant Professor (Plastic Surgery) for which M.Ch. (Plastic Surgery) was shown as essential qualification, but with a view to mislead the Court, the petitioner has annexed only a part of the advertisement. On merits, he has averred that the degree of M.S. (General Surgery) has throughout been treated sufficient to entitle a candidate to be considered for appointment on the post of Senior Lecturer and, therefore, the decision of the Commission to interview him cannot be termed as

illegal or ultra vires to the 1979 Rules. In paragraph 5 of the written statement, he has given the particulars of Dr. S.N. Mittal, Dr. R.K. Jin-dal, Dr. A.K. Goel, Dr. Amarjeet Sharma, Dr. Charan-jit Singh, Dr. Janak Raj Arora, Dr. Kulwant Singh Ded, Dr. Balwinder Singh Gill, Dr. Navdeep Singh Gogia and Dr. Varinder Singh to show that they were appointed as Professor, Assistant Professor (Urology), Senior Lecturers (Urology)/Paediatric Surgery/Cardi-ology/Nephrology in different years despite the fact that they were having post graduate qualification of M.S. (General Surgery) or M.D. (Medicine) and not in the speciality of Urology, Paediatric Surgery, Cardiology or Nephrology. According to him, this should be treated as sufficient to confer legitimacy to his selection for appointment as Senior Lecturer (Paediatric Surgery), Respondent No. 6 has also relied on notification No. 7 (16)-5HB-III-79/15044 dated 27.9.1982 and the prospectus issued by the All India Institute of Medical Sciences for admission to post graduate courses to show that M.Ch. (Paediatric Surgery) is a super speciality and not a subject for post graduate courses to show that M.Ch. (Paediatric Surgery) is a post-doctoral qualification and not a postgraduate degree and, therefore, the decision of the Commission to consider his candidature on the strength of post graduate degree in General Surgery cannot be declared illegal.

6. Shri Ashok Sharma Nabhwala argued that the selection of respondent No. 6 for appointment on the post of Senior Lecturer (Paediatric Surgery) should be declared illegal and quashed because on the last date fixed for receipt of application; i.e. 29.3.1993, he did not possess one of the essential qualifications prescribed under the 1979 Rules, i.e. post graduate Qualification in Paediatric Surgery. Learned counsel laid emphasis on the expression "post graduate qualification in the particular speciality" used in Appendix "C" attached to the 1979 Rules and argued that a candidate who does not possess post graduate qualification in Paediatric Surgery cannot be treated eligible for appointment as Senior Lecturer (Paediatric Surgery). He referred to the Schedule appended to the Indian Medical Council Act, 1956 (for short, "the 1956 Act") to show that the degree of Master of Surgery is being awarded by different universities and institutions in the country in different specialities like General Surgery, Paediatric Surgery, Ophthalmology, Anatomy, Obst. and Gynae, E.N.T., Plastic Surgery, Forensic Surgery, Neuro Surgery and Anaesthesiology and submitted that the expression "particular speciality" used in Appendix "C" cannot be interpreted anything other than M.S. in Paediatric Surgery and a candidate not possessing that degree cannot be considered eligible for appointment as Senior Lecturer (Paediatric Surgery).

7. On the other hand, the learned Deputy Advocate General and Shri Deepak Sibal argued that the decision taken by the Commission to consider the candidature of respondent No. 6 for selection as Senior Lecturer (Paediatric Surgery) cannot be declared ultra vires to the 1979 Rules because it is consistent with the long standing practice of appointing the persons possessing the qualification of M.S. (Surgery) and M.D. (Medicine) on the posts of Professor, Assistant Professor and Senior Lecturer in Paediatric Surgery, Urology,

Cardiology. Nephrology. They relied on the decision of the Single Bench in Dr. Avtar Singh's case (supra) to show that the expression "particular speciality" is referable to M.S. F.R.C.S., M.D., M.R.C.P., D.P.H., D.T.D. and not the particular branch of M.S. (Surgery). Shri Sibal referred to the provisions of the Punjab Medical Education Service (Class-1) Rules, 1978 (for short, the 1978 Rules) and the amendments made in the Schedule appended to those rules to show that M.Ch. has been prescribed as an essential qualification only for the post of Professor and Associate Professor in the particular subjects and submitted that the absence of similar amendment in the Appendix attached to the 1979 Rules is clearly indicative of the fact that a person holding the post graduate degree in General Surgery is qualified to be appointed as Senior Lecturer (Paediatric Surgery). He further submitted that M.Ch. is post-doctoral and not a post graduate qualification and, therefore, respondent No. 6 cannot be deprived of his right to be appointed as Senior Lecturer (Paediatric Surgery) on the ground that he does not possess post graduate degree in Paediatric Surgery. In support of his submissions, Sh. Sibal relied on the decisions of the Supreme Court in Dr. Arun Kumar Agrawal Vs. The State of Bihar and others, Dr. Preet Singh v. S.K. Mangal and others, (1993) 1 SCC 714 and State of Bihar and Another Vs. Ramesh Chandra and Another, and the decision of the Single Bench in Dr. Avtar Singh's case (supra).

8. For the purpose of deciding whether or not respondent No. 6 was eligible to be considered for selection for appointment as Senior Lecturer (Paediatric Surgery), it will be useful to notice the provisions of Rules 1(3), 2(c), (d), (f), 3, 4, 9, 10(1) (a), 22 and 23, Appendix "A" extracts of Appendix "B" and "C" of the 1979 Rules. The same read as under :-

"1. Short title, commencement and application - (1) These rules may be called the Punjab Medical Education State Service (Class II) Rules 1979.

XX XX XX (3) They shall apply to all the posts specified in Appendix "F" to these rules.

(2) Definitions - In these rules, Unless the context otherwise requires - .

XX XX XX (c)"Department" means the speciality as listed in Appendix "A" to these rules.

(d) "direct appointment" means an appointment made otherwise than by promotion or by transfer of a person already in the service of the Government of India or of a State Government;

XX XX XX (f) "recognised university or institution" means -

(i) any university or institution incorporated by law in any of the States of India;

(ii) The Punjab, Sind or Dacca university; in the case of degree, diploma or certificate obtained as a result of examination held by these universities before the 15th August, 1947; or

(iii) any other university or institution which is declared by the Government to be a recognised university or institution for the purposes of these rules.

XX XX XX 3. Constitution of Service. - There shall be constituted a service to be known as the "Punjab Medical Education Service (Class II)" consisting of persons recruited to the service under rule 10 after the commencement of these rules :

Provided that the persons holding the posts specified in Appendix "B" immediately before such commencement shall be deemed to be appointed to the service in accordance with the provisions of these rules on the designation, grade and pay scale laid down in Appendix "D" or the grade and pay scale for which they duly exercised their option.

4. Number and character of posts - The Service shall comprise the posts shown in Appendix "B" :

Provided that nothing in these rules shall affect the inherent right of Government to add to or reduce the number of such posts or create new posts with different designation and scales of pay, whether permanently or temporarily.

XX XX XX 9. Qualifications - (1) No person shall be recruited to the Service by direct appointment or by promotion unless he possess the qualifications and teaching experience specified in Appendix "C".

(2) A member of the service recruited by direct appointment shall not be retained in service unless he acquires knowledge of Punjabi language of matriculation standard within a period of six months from the date of his appointment to the service. 10. Method of appointment - (1) Appointment to the Service shall be made in the following manner, namely :-

(a) In the case of Senior Lecturers :

(i) Seventy five per cent of the posts shall be filled in by promotion from amongst the members of the Punjab Civil Medical (Class II) Service possessing the qualifications and teaching experience as shown in Appendix "C".

(ii) Twenty-five per cent of the posts by direct appointment.

XX XX XX 22. Power of relaxation - When the Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules except the educational qualifications and experience with respect to any class or category of persons.

23. Interpretation of rules - If any question arises as to the interpretation of the rules, the Government shall decide the same.

..... Appendix "A"

(See Rule 2(c))

1. Anatomy 2. Physiology 3. Bio-Chemistry 4. Pharmacology 5. Pathology

including Block (Blood ?) Bank 6. Clinical pathology 7. Microbiology 8. Social and preventive Medicine 9. Forensic Medicine 10. Medicine 11. Paediatrics 12. Tuberculosis and Chest Diseases 13. Skin and Veneral Diseases 14. Psychiatry 15. Surgery 16. Plastic Surgery 17. Urology 18. Paediatric Surgery 19. Gastroenterology 20. Orthopaedics 21. Ear, Nose and Throat 22. Ophthalmology 23. Obstetrics and Gynaecology 24. Radiology 25. Anaesthesia 26. Pharmacy

Appendix "B"

(See Rules 1(3) 3 and 4)

No.

Department

Category

No. of sanction post

Py.

Ty-

Total

XX

XX

XX

8.

Social and Preventive Medicine

Senior

2

1

3.

9.

Forensic Medicine

Lecturer

5-

5

10.

Paediatric

Senior Lecturer

8

4

12

11.

Medicine

Senior Lecturer

4

1

5

12.

T.B.

Senior Lecturer

1

2

3

13.

Skin and V.D.

Senior Lecturer

2

2

4

14.

Psychiatry

Senior

2

2

15.

Surgery

Senior Lecturer

8

5

13

16.

Plastic Surgery

Senior Lecturer

1

1

17.

Urology

Senior Lecturer

1

1

18.

Orthopaedics

Senior

2

19.

E.N.T.

Senior Lecturer

20.

Ophthalmology

a Senior

4

4

21.

Obst and Gynee

Senior

2

6

8

22.

Radiology

Senior

1

3

23.

Anaesthesia

Senior

4

2

6

24.

Paediatric Surgery

Senior Lecturer

1

1

Appendix C

(See Rule 9)

1. Senior Lecturers : (1) Basic University Medical Qualification included in the First or Second Schedule or Part II of the Third Schedule to the Indian Medical Council Act, 1956, with good academic career :

(ii) Post-Graduate qualification in the particular speciality viz. M.S., F.R.C.S., M.D. M.R.C.P., D/P.H., D.T.D. and

(iii) Must possess at least 3 years teaching experience in the particular speciality as Lecturer, Registrar or Research Assistant in a teaching institution.

Note - Experience upto the extent of one year in obstetrics and Gynaecology, E.N.T. and Ophthalmology, and in the basic subjects of Anatomy, Physiology, Pharmacology, Pathology and Microbiology would be countable for the post of Senior Lecturer in the surgery and its specialities. Similarly benefit of experience upto the extent of one year in the basic subjects of Pathology, Microbiology, Anatomy, Pharmacology and Physiology would be countable for posts and the speciality of General Medicine. Experience in Anaesthesia and Radiology would be

countable for Surgery and its specialities and General Medicine. However experience in the allied subjects as Registrar or Demonstrator would be given preference over experience in the same subject as Assistant Registrar or Assistant Demonstrator and the experience in the latter would be counted as half of teaching experience in the former. Teaching experience as Assistant Registrar or Assistant Demonstrator in the main speciality would be countable as full. Credit upto the extent to one year would also be given for rural service. However, experience of the allied subjects and rural service put together, should not exceed one year as two years experience in the main speciality is essential."

9. Before proceeding further, we may mention that the word "or" appearing between clauses (i) and (ii) under the heading "Senior Lecturers" in Appendix "C", to which a reference has been made in the judgment of the Single Bench in Dr. Avtar Singh's case (*supra*), was omitted by an amendment made vide notification No. GSR/Const./Art.309/Adm.)(I) 86 dated 3.6.1986.

10. An analysis of the rules quoted above shows that in terms of Rule 2(c), each speciality listed in Appendix "A" constitutes a separate department. The specialities of Surgery and Paediatric Surgery are listed at Sr. No. 15 and 18 respectively of Appendix "A". This means that there are separate departments of Surgery and Paediatric Surgery. This is also borne out from a conjoint reading of Rules 1 (3) and (4) and column 2 of Appendix "B" in which Surgery and Paediatric Surgery have been shown as separate departments at Sr. No. 15 and 24 and the posts of Senior Lecturers have been separately sanctioned for the two departments. Rule 9, which is couched in the negative form declares that no person shall be recruited to the service by direct appointment or by promotion unless he possesses the qualifications and teaching experience specified in Appendix "C". Rule 10 prescribes the method of appointment. In terms of sub-rule (1) thereof, the post of Senior Lecturer is required to be filled 75% by promotion from among the members of the Punjab Civil Medical (Class-II) Service possessing the qualifications and teaching experience specified in Appendix "C" and 25% by direct recruitment. Rule 22 empowers the government to relax the provisions of the 1979 Rules except the educational qualifications and experience. Appendix "C" contains the qualifications and teaching experience required for recruitment to the posts of Senior Lecturers and Lecturers. For the post of Senior Lecturer, a person must possess Basic University Medical Qualification included in the First or Second Schedule or Part II of the Third Schedule to the 1956 Act with good academic career; post graduate qualification in the particular speciality viz. M.S. F.R.C.S., M.D. M.R.C.P., D.P.H., D.T.D. and at least 3 years teaching experience in the particular speciality as Lecturer, Registrar or Research Assistant in a teaching institution. Note appended below sub-clause (iii) of Clause I of Appendix "C" lays down that the experience up to the extent of one year in Obstetrics and Gynaecology, E.N.T. and Ophthalmology and in the basic subjects of Anatomy, Physiology, Pharmacology, Pathology and Microbiology would be countable for the post of Senior Lecturer in Surgery and its specialities. Similarly, the benefit of experience up to the extent of one year

in the basic subjects of Pathology, Microbiology, Anatomy, Pharmacology and Physiology would be countable for the posts in the speciality of General Medicine.

11. In the light of the above, it is to be seen whether respondent No. 6, who possessed the qualifications of M.B.B.S., M.S. (General Surgery) as on the last date fixed by the Commission for receipt of application, could be treated" eligible for appointment as Senior Lecturer (Paediatric Surgery). According to respondents No. 1 to 4 and 6, the expression "particular speciality" used in sub-clause (ii) of Clause I of Appendix "C" would derive its colour from various degrees shown in the later part of that sub-clause i.e., M.S. F.R.C.S., M.D., M.R.C.P., D.P.H. and D.T.D. They have also relied on the past practice of appointing persons with the qualification of M.S. (General Surgery) and M.D. (Medicine) as Professor, Assistant Professor and Senior Lecturers in various specialities and urged that the decision of the Commission to interview respondent No. 6 for the post of Senior Lecturer (Paediatric Surgery) should be upheld. Their plea appears attractive in the first blush but, on a closes scrutiny, the same cannot be accepted. The expression "particular speciality" has not been defined in the 1979 Rules, but there cannot be any doubt that it will have to be assigned the same meaning in both the sub-clause of Clause 1 of Appendix "C" because it is a well recognised canon of construction that the words and expressions used in the same statute or a part thereof will carry the same meaning. The official respondents have taken a categorical stand that those candidates who do not possess 3 years teaching experience in the speciality of Paediatric Surgery are not eligible to be considered for selection as Senior Lecturer (Paediatric Surgery). In the written statement filed on behalf of respondents No. 2 and 3, it has been averred that the candidature of S/Sh-Prem Kumar and Shailander Singh had been rejected because they were not having 3 years experience of Paediatric Surgery as Lecturer, Registrar or Research Assistant as required by the 1979 Rules. This shows that in the Commission's own understanding, the experience of 3 years specified in sub-clause (ii) of Clause I of Appendix "C" must be in the speciality of Paediatric Surgery and not in General Surgery. It that be so, it is not possible to accept the plea of the official respondents that respondent No. 6 could be treated eligible for appointment as Senior Lecturer notwithstanding the fact that he did not possess post graduate qualification in Paediatric Surgery.

12. Learned counsel for respondent No. 6 laid considerable emphasis on the use of the word "viz" after the expression "particular speciality" and before M.S., F.R.C.S., M.D., M.R.C.P., D.P.H. and D.T.D. in sub-clause (ii) of Clause 1 of Appendix "C" and argued that the expression "particular speciality" is referable to M.S. or F.R.C.S., or M.D: or R.C.P. or D.P.H. or D.T.D. and it is not necessary that for the purpose of appointment, a candidate should have post graduate qualification of M.S. or F.R.C.S. or M.D. etc. in the particular branch/speciality. In the first blush, this argument appears attractive, but on a closer scrutiny, we are convinced that it is meritless and deserves to be rejected. A perusal of Rules 1 (3), 2(c) and 4 and extracts of Appendix "A" and "B" shows that the posts of

Senior Lecturers are in 17 different departments, some of which require the qualifications in the field of Medicine. Therefore, post graduate qualification of M.S. or F.R.C.S. or M.D. is referable to the particular departments for which the post of Senior Lecturer is advertised and by no stretch of imagination, it can be said that the person is eligible to be appointed as Senior Lecturer in the particular speciality even though he may not possess post graduate qualification in the concerned speciality or that the person holding the qualification of M.S. or F.R.C.S. or M.D. etc. would be eligible to be appointed as Senior Lecturer in all the specialities departments. A perusal of the publication of the Medical Council of India, titled as "Schedule to the Indian Medical Council Act, 1956" (as amended up to August, 1996) shows that degrees of M.S., M.D. are awarded by the Universities listed in the First Schedule in different branches. To be precise, the degree of Doctor of Medicine, i.e., M.D. is awarded in the specialities of Pathology, Physiology, Paediatrics, Pharmacology, Obst. and Gynae., Medicine, Pathology and Bacteriology, Dermatology, Biochemistry, Anaesthesiology, Radiotherapy, Microbiology, Forensic Medicine etc. by different universities. Likewise, the degree of Master of Surgery, i.e. M.S. is awarded by different universities in the specialities of Anatomy, Obst. and Gynae., Anaesthesiology, Ophthalmology, Paediatric Surgery, Plastic Surgery, Thoracic Surgery, Neuro Surgery etc. The degree of F.R.C.S. is awarded by Royal College of Surgeons of England, Royal College of Surgeons of Edinburgh, Royal College of Physicians and Surgeons of Glasgow which have been enlisted in the Second Schedule of the 1956 Act. Likewise, the degree of M.R.C.P. is awarded by Royal College of Physicians of London, Royal College of Physicians of Edinburgh, Royal College of Physicians of United Kingdom and Royal College of Pathologists, London. The F.R.C.S. and M.R.C.P. may be in the different branches of Medicine and Surgery. Therefore, we have no hesitation to hold that the expression "post graduate qualification in the particular speciality" appearing in sub-clause (i) of Clause I of Appendix "C" means the particular branch/speciality/department in which the degree of M.S. or M.D. or F.R.C.S. is awarded and a person, who does not have post graduate qualification in the concerned speciality, cannot be appointed as Senior Lecturer simply because he holds the post graduate degree like M.S. (General Surgery) or M.D. (Medicine). As a logical corollary to this conclusion, we hold that respondent No. 6, who possessed the degree of M.S. (General Surgery) on the last date fixed for receipt of the application, was not eligible to be considered for selection for appointment as Senior Lecturer (Paediatric Surgery) and the Commission has gravely erred in selecting him for the advertised post. In this context, it will be useful to notice the decision of the Supreme Court in *The Union of India (UOI) and Others Vs. Dr. (Mrs.) S.B. Kohli and Another*, in which an issue similar to the one raised by the petitioner was considered. The facts of that case show that respondent No. 2, who possessed the degree of M.B.B.S. and F.R.C.S. awarded by the University of Edinburgh, was appointed as Professor (Orthopaedic Surgery) resulting in the reversion of respondent No. 1 who had the qualification of M.B.B.S. from Bombay University, F.R.C.S. of the Edinburgh University and M.Ch.(Orthopaedics) of the Liverpool University and also F.R.C.S. of England.

She challenged the appointment of respondent No. 2 on the ground that the latter did not possess the qualifications prescribed under the Central Health Service Rules, 1963. The Delhi High Court quashed the appointment of respondent No. 2 on the ground that she was not qualified to be appointed as Professor (Orthopaedic Surgery). In the appeal, it was argued that the degree of F.R.C.S. awarded by Edinburgh University was equivalent to a post graduate degree in the concerned speciality, i.e., Orthopaedics and therefore, the appointment of respondent No. 2 was in order. Their Lordships of the Supreme Court interpreted the expression "concerned speciality" appearing in the Second Schedule appended to the Central Health Service Rules, 1963 and held that respondent No. 2 was not qualified. The relevant portions of the decision of the Supreme Court, which have direct bearing on the case in hand, are extracted below :

"The case raises the question of interpretation of the Central Health Service Rules, 1963, as amended in the years 1966 and 1968. These rules are made Under Article 309 of the Constitution. In the earlier stages the categories into which the various posts in the Central Health Service were divided, were fairly simple. In 1966 pursuant to regulations framed by the Indian Medical Council the Government amended the rules creating the category of "Specialists". In 1968 further amendments were made in items 2 and 3 of Annexure I to the second Schedule requiring "a post graduate degree in the concerned speciality mentioned in Part A of Annexure II or equivalent" for the post of a Professor, Reader or Lecturer. The promotion in question having been made thereafter, the rules as amended in 1966 and 1968 will govern the qualifications necessary for this post.

The post in question is one which falls under Super-time Grade II in Rule 4 of the Central Health Service Rules. According to Rule 8(3) fifty per cent of the vacancies in Supertime Grade II shall be filled by the promotion of (i) General Duty Officers, Grade I with not less than 8 years of service in the category, in the ratio of 2:3 on the recommendation of a Departmental Promotion Committee on the basis of merit and seniority of the officer concerned. Provided that no person shall be eligible for appointment to any such post unless he possesses the qualifications and experience requisite for appointment to such post. The question then is: What are the qualifications and experience requisite for appointment to the post of professor of Orthopaedics ? There is no dispute that according to the Second Schedule, which deals with selection by the Union Public Service Commission a Professor in a medical college or teaching institution should have a post-graduate degree in the concerned speciality mentioned in Part A of Annexure II or equivalent. It is not necessary to refer to the other qualifications because they do not arise for decision in this case. In Annexure II to that Schedule against Item 7 (Orthopaedics), the qualifications mentioned are M.S., M.C.H. (Orthopaedics) (Liverpool), F.R.C.S. The 1st respondent, as already mentioned, had got the degree of M.C.H. (Orth.) (Liverpool). The 2nd respondent is an F.R.C.S. If F.R.C.S. mentioned therein can be considered to be a

postgraduate degree in the concerned speciality, Orthopaedics, the first respondent's petition cannot obviously succeed. It seems to us that the qualification of F.R.C.S. cannot be deemed to be a postgraduate degree in Orthopaedics. Are we then to take it that because the Annexure II has the heading "List of Post- Graduate qualifications" and F.R.C.S. is found beside the item 7 (Orthopaedics), that for the purpose of the rules it is deemed to be a qualification in Orthopaedics though F.R.C.S. is certainly a post-graduate qualification ? (sic) As pointed out by the High Court, F.R.C.S. (Edn.), which is the qualification the second respondent possesses, is in General Surgery. The Edinburgh University awards F.R.C.S. in three specialities but not in Orthopaedics. F.R.C.S. (Canada) exists in specialities including Orthopaedics. Before the growth of specialised qualifications, surgeons obtaining the F.R.C.S. in General Surgery to specialise in Orthopaedics and other specialities either by doing a diploma in Orthopaedics or simply by practice and experience. The regulations framed by the Medical Council Require that in addition to the general F.R.C.S., a surgeon must have a diploma in Orthopaedics before he could be appointed a Professor, Reader or Lecturer in Orthopaedics. That regulations has been accepted by" the Government. Though the validity of the appointment to the Central Health Service does not have to be tested by reference to the regulations framed by the Indian Medical Council for teaching staff in medical colleges, those regulations and their acceptance by the Government gives an indication of what is considered to be a post- graduate degree in the concerned speciality. Before the High Court on behalf of the Government it seems to have been contended that the amendments made in the Central Health Service Rules give effect to the regulations framed by the Indian Medical Council. Part of the difficulty in this case has arisen because Annexure II was not amended when the relevant portion of Annexure I was amended in 1968. But that does not take away this force of the argument that F.R.C.S. as such cannot be deemed to be a post-graduate qualification in the concerned speciality of Orthopaedics. To hold otherwise means that a person who has the qualification of F.R.C.S. could be deemed to be a Specialist in Tuberculosis and Orthopaedics, although he is also a Specialist in General Surgery. The various entries in Annexure II would have to be interpreted in a reasonable manner. Otherwise how could M.D., M.R.C.P., F.R.C.S. and M.S. all be considered to be specialised qualifications in Tuberculosis, or a mere M.D. of M.R.C.P. and F.R.C.S. connote a post-graduate qualification in the speciality of paediatrics. It stands to reason that these degrees must be in the subject of paediatrics if the holders of those degrees are to be considered specialists in paediatrics. As amended earlier, F.R.C.S. (Canada) has many Specialities. M.D. also can be in many specialities as indeed Annexure II itself shows. So also M.S. We are, therefore, in complete agreement with the view of the learned Judges of the High Court that F.R.C.S. by itself cannot be said to be a postgraduate degree in Orthopaedics. The mere fact that a degree is mentioned against speciality of Orthopaedics does not make it a post-graduate degree in Orthopaedics. Admittedly the second respondent does not possess the qualification of F.R.C.S. in Orthopaedics. In the circumstances the fact that

F.R.C.S is also shown against the entry "Orthopaedics" in Annexure II is not an answer to the question whether it is a post-graduate degree in Orthopaedics. It was urged that F.R.C.S. examination has an Orthopaedics content. In that sense the holder of every medical degree knows something of every subject in medicine or surgery. Nobody can contend that a mere M.B.B.S is a degree in surgery or Ophthalmology because it has a content of surgery or ophthalmology. We therefore hold that the 2nd respondent does not hold a post-graduate degree in the concerned speciality, Orthopaedics.

In view of the aforementioned decision, it must be held that the expression "particular speciality" used in sub-clauses (i) and (ii) of Clause 1 of Appendix "C" is referable to the concerned speciality of the post of Senior Lecturer and as respondent No. 6 did not have the post graduate qualification in Paediatric Surgery, he was not eligible to be considered for selection as Senior Lecturer (Paediatric Surgery).

13. The argument of the learned counsel for the respondent that the persons possessing the qualification of M.S. (General Surgery) have been treated eligible for recruitment as Senior Lecturer (Paediatric Surgery) because no University awards the post graduate degree in that speciality deserves to be rejected because there are a large number of Universities and Medical Institutions recognised by the Medical Council of India which have been awarding the degree of Master of Surgery (Paediatric Surgery) with abbreviated nomenclature of M.S. (Paediatric Surgery) or M.Ch. (Paediatric Surgery). A perusal of the publication of the Medical Council of India, to which reference has been made hereinabove shows that the University of Bombay, which is included in the First Schedule awards degree of Master of Surgery (Paediatric Surgery) with abbreviated nomenclature of M.S. (Paediatric Surgery), M.Ch. (Paediatric Surgery). Calicut University of Kerala, Dr. M.G.R. Medical University, Madras, Madurai Kamaraj University. University of Osmania, University of Poona and Post Graduate Institute of Medical Education and Research, Chandigarh, which are also listed in the First Schedule, award the degree of Master of Surgery (Paediatric Surgery) with abbreviated nomenclature of M.Ch. (Paediatric Surgery) and, in our opinion, this is sufficient to negative and argument of the learned counsel for the respondent.

14. We are also not impressed by the argument of Shri Deepak Sibal that the decision of the Commission to consider the candidature of respondent No. 6 should be upheld because there is a long standing practice of appointing persons possessing the qualification of Master of Surgery or Doctor of Medicine on the posts of Senior Lecturers and higher posts in different departments by treating them as persons possessing post graduate qualification in the particular speciality. As regards the appointment of Dr. S.N. Mittal and others, it is sufficient to make a reference to the averments made in paragraph 5 of the replication filed by the petitioner to the written statement of respondent No. 6, in which it has been averred that Dr. S.N. Mittal was appointed as Senior Lecturer before the

coming into force of the 1979 Rules and other 8 persons, namely, Dr. R.K. Jindal, Dr. A.K. Goel, Dr. J.R. Arora, Dr. Kulwant Singh Ded, Dr. Amarjeet Sharma, Dr. B.S. Gill, Dr. Navdeep Singh Gogia and Dr. Varinder Singh had been promoted on ad hoc basis as stop-gap arrangement and services of 7 of them were regularised only after they acquired post graduate qualification in their respective specialities and the remaining candidate, namely, Dr. B.S. Gill had vacated the post. This has not been controverted by the official respondents or respondent No. 6. Therefore, reliance cannot be placed on the so-called practice of appointing Senior Lecturer etc. from among the persons not possessing the post graduate qualification in the concerned speciality. Moreover, any practice which is inconsistent with the rules cannot be relied upon for upholding the selection of a person who does not possess the qualifications prescribed under the rules.

15. As regards the appointment of Dr. Charanjit Singh, it is sufficient to observe that he is not a party to the writ petition and, therefore, it would not be proper for us to make any comment which may adversely affect his status. However, in view of our interpretation of the provisions of the 1979 Rules, we do not have any hesitation to reiterate that a person who does not possess post graduate qualification of M.S., M.D. etc. in the concerned speciality cannot be appointed as Senior Lecturer.

16. The provisions of the 1978 Rules and the prospectus issued by the All India Institute of Medical Research, New Delhi for Post Graduate Institute of Medical Education and Research, Chandigarh for admission to the Post Graduate Courses are, in our opinion, not relevant for deciding the controversy raised in the petition and the mere fact that by an amendment made in 1985 in the 1978 Rules, M.Ch. has been specifically prescribed as an essential qualification for appointment on the posts of professor, Associate Professor in Paediatric Surgery, Urology, Cardiothoracic Surgery, Neuro Surgery and Plastic Surgery, whereas no such amendment has been made in the 1979 Rules, cannot lead to an inference that post graduate qualification in Paediatric Surgery is not necessary for appointment on the post of Senior Lecturer in that speciality.

17. We may now advert to the judgments relied upon by Shri Deepak Sibal. In *Dr. Avtar Singh v. State of Punjab* (supra), a learned Single Judge considered the challenge to the legality of the promotion of respondent No.3 on the post of Senior Lecturer in Plastic Surgery. The learned Single Judge referred to the use of the expression "or" between sub-clauses (i) and (ii) of clause 1 of Appendix "C" and held that if the rule is literally construed, then post graduate qualification is not at all necessary for appointment on the post of Senior Lecturer. He then referred to the meaning "viz" given in *Coupus Juris Secundum* and proceeded to observe that in order to be considered for promotion to the post of Senior Lecturer, a candidate need not possess M.Ch. in Plastic Surgery. Some of the observations made by the learned Single Judge are extracted below :

"From the above it is clear that "viz" means to particularise, rendering more specific something which has been stated in general language : to particularise

what precedes it. It is used for the purpose of restraining the generality of the preceding term; for qualifying it. That being so, it appears that a person who possesses any one of the qualifications mentioned in clause (ii) shall be, deemed to possess a "post graduate qualification in the particular speciality". By the use of "viz" the qualifications have been particularised. Nothing can be added thereto. These are restricted. Whatever could have been doubtful or obscure has been specified and restricted. A general expression like post graduate qualification in a particular speciality has been restricted and particularised. In other words, the rule cannot be read to mean any qualification other than those which have been particularly specified. One cannot add to them. It is thus clear that by the word viz. the rule-making authority has restricted the qualifications. It has not mentioned these qualifications by way of illustration but these are the only qualifications which can be mandatorily insisted upon. M.Ch. is not one of these qualifications. The rule does not require that a candidate must possess the qualification of M.Ch. in Plastic Surgery before becoming eligible for the appointment to the post of Senior Lecturer in Plastic Surgery. Even the attendant circumstances support this conclusion. Prior to promulgation of the 1977 Rules, the Govt. had issued a letter on July 20, 1970 in which it was inter alia observed that "the Governor of Punjab in consultation with the Punjab Public Service Commission, Patiala, is pleased to lay down the following essential qualification and teaching experience for appointment as Senior Lecturer Plastic Surgery :-

i) Basic University Medical qualification included in the first or the second schedule or part II of the Third Schedule to the Indian Medical Council Act, 1956 with good academic career.

ii) Post Graduate qualification Surgery viz. M.S. Surgery.

iii) Must be registered under the State/Central Medical Registration Act, and

(iv) Must possess at least 3 years teaching experience as Registrar, Plastic Surgery."

A perusal of the above shows that a person possessing the qualification of M.S. Surgery was considered eligible for appointment to the post of Senior Lecturer in Plastic Surgery. Notwithstanding the recommendations of the Medical Council of India which were, as contended on behalf of the respondents, only recommendatory and not mandatory, the Govt. had not included M.Ch. as one of the essential qualifications in the executive order or the statutory Rules. Still further, the Govt. has been appointing persons possessing the qualification of M.S. (Surgery) to various posts in Class I Service. A list of these persons has been given in paragraph 4 of the written statement filed by respondent No. 3. A perusal thereof shows that Dr. S.N. Mittal was appointed as professor in the Department of Urology which is one of the specialities mentioned in Appendix A to the Class I Rules in the year 1985. He possessed the qualification of M.S. (Surgery) only. Similarly, Dr. R.K. Jindal was appointed in the Class I service as an Assistant Professor in the Department of Urology even though he did not

possess the degree of M.Ch. (Urology). Similar is the position with regard to a number of other persons. In such a situation, it is clear that even the Govt. understood the Rules to mean that a person possessing the qualification of M.S. was eligible for appointment to one of the other specialities mentioned in Appendix A to the Rules."

In our opinion, the view taken by the learned Single Judge is contrary to the law laid down by the Supreme Court in Dr. (Mrs.) S.B. Kohli's case and, therefore, the decision of Dr. Avtar Singh's case cannot be relied upon for upholding the selection of respondent No. 6 as Senior Lecturer (Paediatric Surgery) despite the fact that as on the last date of application, he did not possess post graduate qualification in that speciality.

18. In Dr. Arun Kumar Aggarwal's case (supra), their Lordships of the Supreme Court held that the decision of the Departmental Promotion Committee to give preference to a candidate having a degree in super speciality and over a candidate having degree in M.S. (surgery) was proper,

19. In Dr. Prit Singh's case (supra) a three judges Bench of the Supreme Court considered the question as to whether the appellant was eligible to be appointed on the post of Principal of Chhotu Ram College of Education, Rohtak. The facts of that case were that the name of the appellant was recommended by the Selection Committee for appointment on the post of Principal, but the Vice Chancellor of the University declined to approve his appointment. The High Court dismissed his writ petition on the ground that he did not possess the prescribed qualifications. Their Lordships of the Supreme Court upheld the decision of the High Court and observed as under :-

"It need not be pointed out that the Degree of Master of Arts is an academic qualification, whereas Degree of Master of Education is a professional qualification. According to us, when the qualifications required "a consistently good academic record with first or high second class (55% marks/grade B in the seven point scale) Master's Degree in any subject" it shall mean an academic qualification like Master of Arts. The said requirement was prescribed with "a consistently good academic record." That Master's degree shall mean Degree of Master of Arts in any subject, is apparent also from the fact that apart from that degree the candidate was required to possess also "Degree in Education" which will mean B.Ed. or M.Ed. Normally if the expression "Master's Degree was to include even the Master's Degree in Education (M.Ed.) there was no necessity of prescribing the third requirement of a "Degree in Education."

If the claim of the appellant that "Master's Degree" shall include a Degree of Master of Education, is accepted, it will lead to an anomalous position. A person having secured third division in M. A. who cannot be considered by any University even for the post of Lecturer, will become qualified for being appointed as a principal of any College, if later he secures a high second class marks in M.Ed. Examination by completing a course of one year."

20. In Ramesh Chandra's case (supra), their Lordships of the Supreme Court held that once a person is appointed as Associate Professor, he will be deemed to be qualified for the post of Professor, Their Lordships further held that the use of the expression "M.Ch. after M.S./F.R.C.S. with 2 years special training" was indicative of the fact that M.Ch. was an alternative qualification for appointment on the post of Professor and even if a person did not have the degree of M.Ch., he could be considered eligible for appointment if he possessed the alternative qualification.

21. In our opinion, none of the aforementioned decisions of the Supreme Court has any bearing on the issue raised in this petition. The maximum which can be said is that in those cases, their Lordships of the Supreme Court treated M.Ch. as a higher qualification than Master of Surgery. However, the proposition laid down in those cases cannot be relied upon for interpreting the provisions of the 1979 Rules. The abbreviated form of M.Ch. (Paediatric Surgery) in the publication of the Medical Council of India cannot be treated as sufficient for holding that M. Ch. is a post-doctoral qualification because it only signifies the degree of M.S. (Paediatric Surgery).

22. For the reasons mentioned above, we hold that the selection of respondent No. 6 for appointment as Senior Lecturer (Paediatric Surgery) is liable to be declared as illegal because he did not possess one of the essential qualifications.

23. In view of the above conclusion, we do not consider it necessary to deal with the petitioner's plea that selection of respondent No. 6 is vitiated due to bias.

24. Before parting with the case, we deem it proper to mention that in the written statement filed on behalf of respondents No. 1 and 4, an objection has been raised to the locus standi of the petitioner to challenge the selection of respondent No. 6 on the ground that he had participated in the selection, but no argument on this point was advanced at the time of hearing. Otherwise also, this objection was liable to be rejected because on the date of interview, the petitioner had submitted written representation Annexure P.7 dated 23.9.1993 to the Chairman of the Commission to protest against the consideration of the candidature of respondent No. 6.

25. In the result, the writ petition is allowed. Selection of respondent No. 6 for appointment as Senior Lecturer (Paediatric Surgery) is declared illegal and quashed.

26. Writ petition allowed.