
(2020) 12 CAT CK 0030

In the Central Administrative Tribunal

Case No : Original Application No. 1929 Of 2020

Inder Kumar

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 04-12-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2020) 12 CAT CK 0030

Hon'ble Judges : Pradeep Kumar, Member (A); R.N. Singh, Member (J)

Bench : Division Bench

Advocate : Rajendra Sahu, Esha Mazumdar

Final Decision : Disposed Of

Judgement

R.N Singh, Member (J)

1. The present application is filed under Section 19 of the AT Act 1985 seeking quashing of the order dated 09.11.2020 (Annexure A-1) whereby the

respondents have issued notice of termination of the appointment of the applicant from the post of Pharmacist (on probation) which is to take effect on

8.12.2020, on the ground of finding him ineligible for the said post for lacking the essential qualification i.e. 10+2 in Science Stream

(Physics/Chemistry/Biology). In the present OA, the applicant has also prayed for interim order in the form of staying said impugned order dated

09.11.2020.

2. Short notice was issued and the respondents have filed their reply to oppose the prayer of the applicant for grant of interim relief in the matter.

3. The brief facts leading to the present OA are that in response to the advertisement no. 02/2018 dated 05.07.2018 issued by DSSSB, the applicant

has applied for the post of Pharmacist (Post Code 2/2018, Group C) in the Health and Family Welfare Department of the respondents as per the

requisite educational qualification prescribed in the advertisement. The requisite educational essential qualification in the said advertisement has been

provided as under:

â??Educational Qualification:

Essential:

(a) B.Pharmacy from a recognized institute. Or

(b) 10+2 with science stream (Physics/Chemistry/Biology) from a recognized Board.

Technical Qualification:

(i) Approved Diploma in Pharmacy from the Institute recognized by the pharmacy council of India and registered as Pharmacist under the Pharmacy

Act, 1948.â??

4. The applicant applied for the said post under OBC category and he participated in the relevant selection process. Vide result notice number 632

dated 15.06.2020, the applicant was provisionally nominated for the said post of Pharmacist. Offer of appointment dated 10.07.2020 was issued by the

respondents and vide order dated 28.08.2020, the applicant was taken on the strength of Pharmacist in Lal Bahadur Shastri Hospital from 14.08.2020.

Since then, the applicant has been working under the respondents. However, the impugned notice dated 09.11.2020 was issued by the respondents on

the ground that the applicant was found ineligible for the post of Pharmacist as he is lacking 10+2 with Science stream (Physics/Chemistry/Biology). It

is asserted that in place of Biology, he had passed with Mathematics.

5. Learned counsel for the applicant argues that the claim of the applicant is squarely covered by the order/judgment dated 11.03.2020 passed by this

Tribunal in OA No. 1309/2009 titled as Sandeep Chikkara vs. Govt. of NCTD & Ors. which has been upheld by the Honâ??ble High Court of Delhi

vide common order/judgment dated 12.11.2010 titled as GNCTD & Ors. vs. Naresh Kumar, WP (C) No. 4769/2010, etc.

6. In response to the notice of the Tribunal, the respondents have filed their reply and with assistance thereof, Ms. Esha Mazumdar, learned counsel

appearing for respondents, vehemently argue that the present OA is not

maintainable in as much as, the applicant has not approached the Tribunal with clean hands.

She submits that even the applicant has asserted in the OA that the applicant's claim is covered by the judgment passed by this Tribunal in the

matter of Sandeep Chikkara (supra) and the same has subsequently been upheld by the Hon'ble High Court of Delhi. However, the fact is

otherwise, in as much as, the said order/judgment of this Tribunal was partly upheld by the Hon'ble High Court. She further adds that Hon'ble

High Court has granted the relief to the applicants in Sandeep Chikkara (supra) only on the ground of legitimate expectation and has quashed the

findings and directions of this Tribunal with regard to the Recruitment Rules being declared to be ultra vires.

She further submits that essential qualification has specifically been provided in the advertisement and applicant in spite of knowing the fact that he is

not having the requisite educational qualification of 10+2 with Science stream (Physics/Chemistry/Biology), had participated in the selection process.

Applicant has no enforceable right to be appointed to continue in the service of the respondents on the post of Pharmacist.

7. However, the other ground taken by the applicant is that a few similarly placed persons have been given opportunity to explain before their

termination. It is pleaded that such an opportunity has not been provided to him by the respondents. The applicant is stated to have made a

representation dated 17.11.2020 (Annexure A-12) on being aggrieved by the impugned order of the respondents and the same is stated to be pending

consideration by the respondents.

Counsel for applicant submits that even otherwise also, before passing the impugned order, the respondents have not complied with the principles of

natural justice.

8. Learned counsel for applicant further submits that the applicant will be satisfied, if the present OA is disposed of with direction to the respondents

to consider the pending representation dated 17.11.2020 (Annexure A-12) and to pass a reasoned and speaking order along with a further direction not

to give effect to the impugned order dated 09.11.2020 till then.

9. In view of the aforesaid, without going into the merits of the case, we hereby dispose of the present OA with direction to respondent No.3, to

consider the applicant's aforesaid representation dated 17.11.2020 (Annexure A-12) keeping in view all material facts into consideration, and to

dispose of the same by passing a reasoned and speaking order as expeditiously as possible and in any case within two weeks from today, under advice

to the applicant. Till such time this order is passed, the respondents shall not give effect to the impugned order dated 09.11.2020.

OA is disposed of in aforesaid terms.

10. Applicant shall have liberty to approach the Tribunal, if any grievance still subsists. No order as to costs.