

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19010 of 2011 (O&M)
Date of decision: February 10, 2016

Manoj Kumar Dua

.. Petitioner

v.

Union of India and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Jasmeet Singh Bedi, Advocate for the petitioner.
Mr. V. K. Kaushal, Advocate for respondent No. 1.
Mr. Raman Sharma, Advocate for respondents No. 2 and 4.
Mr. Sumit Jain, Advocate for respondent No. 5.

...

Rajesh Bindal J.

The petitioner, who was an applicant for allotment of LPG distributorship at Pehowa, has filed the present petition seeking quashing of the result dated 21.11.2009 (Annexure P-6) ranking the petitioner at Sr. No. 2 and respondent No. 5 at Sr. No. 1 and further rejecting the complaint filed by the petitioner vide communication dated 30.5.2011 (Annexure P-28).

Learned counsel for the petitioner submitted that Bharat Petroleum Corporation (for short, 'the Corporation') issued advertisement for allotment of LPG distributorship at Pehowa on 9.11.2007. The petitioner as well as respondents No. 5 were the applicants. When the result was

declared on 21.11.2009, respondent No. 5 was ranked first, whereas the petitioner second. The criteria for awarding marks under different heads had been laid down in the advertisement. In the marks to be awarded on the basis of documents annexed with the applications, both got 75 out of 89. Respondent No. 5 was given march over the petitioner while awarding marks in interview. She having no experience at all was granted higher marks for business acumen, as compared to the petitioner who had rich experience in the line including petroleum trade. He further submitted that in the application filed by respondent No. 5, she claimed one year's experience as a Resident Medical Officer in different hospitals, whereas that fact was wrong as it was nothing else but internship training completed by respondent No. 5, which was part of the MBBS course before awarding the degree. In case any information is provided wrong in the application, it was otherwise liable to be rejected. It was with great difficulty by filing applications under the Right to Information Act, 2005 (for short, 'the RTI Act') to different authorities that the petitioner could get the information and copy of the application filed by respondent No. 5. Even the certificate annexed by respondent No. 5 with her application showing the experience as Resident Medical Officer could not be verified as the supporting records in all the hospitals were not available. With the aforesaid material, the petitioner earlier filed CWP No. 17430 of 2010 in this court, which was disposed of on 27.9.2010 with liberty to the petitioner to file a fresh representation, in view of the material received in response to the application filed under the RTI Act. The additional complaint so filed was rejected vide communication dated 30.5.2011 and immediately thereafter Letter of Intent was issued in favour of respondent No. 5.

In view of the aforesaid factual matrix, learned counsel for the petitioner submitted that once respondent No. 5 did not have any experience whatsoever, award of 1.50 marks to her on that account were totally uncalled for. Respondent No. 5 got only one mark above the petitioner in total, as she secured 96.50 marks, whereas the petitioner got 95.50 marks. Further award of 3 marks for business ability/acumen was also arbitrary for the reason that respondent No. 5 had merely passed out her MBBS

examination, whereas the petitioner had rich experience of 12 years in various fields including dealing with petroleum products. In fact, in that column, respondent No. 5 was given one mark above the petitioner, otherwise in all other fields both secured the same number. It was further submitted that the experience required was of minimum one year in any of the fields and not total of one year in all fields. In the case in hand, respondent No. 5 had total experience of one year working as an Intern in three different hospitals, hence, otherwise not fulfilling the conditions laid down in the advertisement. As per the information received from Medical Council of India, Medical Graduate can be appointed as Medical Officer only after completing his MBBS course and internship of one year is compulsory training, which is part of the curriculum of MBBS, without completion of which the degree cannot be awarded.

On the other hand, learned counsel for the Corporation submitted that minimum experience of one year, as required, is not necessarily under one head. It could be under different heads. Total of one year was required. It is not in dispute that respondent No. 5 had worked as a Doctor in three different hospitals for a period of one year. Even the training as Intern was considered as experience, even if she had not been paid any remuneration during that period. The Letter of Intent was issued in favour of respondent No. 5 on 20.8.2010. The distributorship is presently operational. The present petition filed one year thereafter deserves to be dismissed on account of delay and laches. The assessment of marks by the Selection Committee could not be gone into by this court. Learned counsel further referred to the registration certificate granted to respondent No. 5 by Medical Council of India on 20.11.2007.

Learned counsel for respondent No. 5, while adopting the contentions raised by learned counsel for the Corporation, submitted that respondent No. 5 is a well qualified doctor, who passed out her MD from Kharkiv State Medical University, Ukraine. There was no requirement that for experience, a person should have been paid salary also. Respondent No. 5 had worked in three different hospitals in different departments, which is part of the experience. The total is one year and she meets the basic

Criteria	Sub Head	Description	Max Marks	Evaluation
Experience		Direct Sale/Home Delivered products (including LPG distributorship) or	4	Marks to be awarded based on information in the application for experience of running or working in an establishment for minimum one year. Marks will be awarded on the quality rather than amount of experience. The quality of experience will be judged based on the response to the questions related to experience in Direct Sale, Home Delivered Products, Trade of petroleum products, hospitality/service industry etc. by the candidate in the interview
		Other Petroleum products or	3	
		----- Any other Trade	2	
		Sub Total Maximum Marks	4	
Business ability/ acumen		Assessment will be done on the following: - Management of people - Management of finance - Management of material & infrastructure - Trade related	5	Marks will be awarded based on response to specific situation related queries/questions on the following: - Management of people - Management of finance - Management of material & infrastructure - Trade related
Personality		Assessment on the following parameters Communication/ articulation skills. Polite, presentable and well mannered Enthusiasm/ energetic / Self-confidence/ convincing power	2	Assessment based on observation and leading questions
		Grand Total	----- 100	

xx

xx

xx”

The list of empanelled candidate, as was released by the Corporation on 21.11.2009, as reproduced in Annexure P-6, is extracted below:

Sr. No.		Capability to provide land & infrastructure Facilities Godown Show room	Capability to provide finance	Educational qualifications	Age	Experience	Business ability/acumen	Personality	Total marks
	Marks	25.00 10.00	35	15	4	5	5	2	100
	Name of candidate								
1	Xxx	Xxx	Xxx	Xxx	Xx	Xxx	Xxx	Xxx	Xxx
72	Manoj Kr. Dua	25.00 10.00	35	15	4	1.5	3	2	95.5
Xx	Xx	Xxx	Xxx	Xxx	Xx	Xxx	Xxx	Xxx	Xxx
94	Shivani Atri	25.00 10.00	35	15	4	1.5	4	2	96.5
Xx		Xxx		Xx				Xx	xxx

A perusal of the aforesaid table shows that the petitioner as well as respondent No. 5 were awarded identical marks on evaluation of documents produced by them along with the application. Finally, respondent No. 5 got 96.50 marks as against the petitioner, who got 95.50 marks. The petitioner has challenged award of marks to respondent No. 5 in the column of experience, business ability/acumen. In the column of experience, though both have been awarded 1.50 marks, in the column of business ability/acumen, the petitioner has been awarded 3 marks as against 4 marks awarded to respondent No. 5.

As per the criteria laid down for evaluation of marks for experience, minimum of one year's experience was required. It was not claimed that it was a condition for eligibility. The only thing was that the marks awarded for experience were to be counted towards the total marks obtained for determining inter-se merit. In the application filed by the petitioner, he claimed the following experience:

Type of experience	Name & address of the establishment/ institution etc.	Period	No. of years
		From	To
Director Sale/ Home Delivered products (including LPG Distributorship)	Dua Financiers Prop. D.S.A. of HDFC Two Wheeler Loan	1997 2005	8 years
		2004 2005	1 year

<i>Type of experience</i>	<i>Name & address of the establishment/ institution etc.</i>	<i>Period</i>		<i>No. of years</i>
		<i>From</i>	<i>To</i>	
Other petroleum products	Manager (Jai Filling Station)	1995	1997	2 years & 3 months
Any other trade	As Financial Consultant of HDFC (S.L.I.)	Sept. 2005	Nov. 2006	1 year 2 months

In the application filed by respondent No. 5, in the column of experience, the information furnished was as under. The same has been extracted from the record produced by the counsel for the Corporation in court:

<i>Type of experience</i>	<i>Name & address of the establishment/institution etc.</i>	<i>Period</i>		<i>No. of years</i>
		<i>From</i>	<i>To</i>	
Direct Sale/ Home Delivered products (including LPG Distributorship)				
Other petroleum products				
Any other trade	Safdarjang Hospital New Delhi Municipal Corp. of Delhi (Health Deptt. General Hospital, Karnal	190906 240407 090807	240407 230707 231007]	1 year

The petitioner has sought to challenge the marks awarded to respondent No. 5 in the column of experience on the ground that the period during which she claimed in her application to have worked as Resident Medical Officer was in fact the period of her internship done during the course of her MBBS study. Learned counsel for the petitioner referred to registration certificate of respondent No. 5 (Annexure P-37) dated 20.11.2007 with Medical Council of India as Doctor. He further referred to

the reply (Annexure P-36) received from Medical Council of India with reference to the application filed under the RTI Act, where the petitioner raised a question regarding designation as a Medical Officer and reply thereto by the Medical Council of India. The relevant questions and the answers are reproduced as under:

Question	Answer
1. Whether any MBBS Degree holder can designate himself/herself as MEDICAL OFFICER prior to getting himself/ herself registered with the Medical Council of India	1 & 6. No, only after getting Permanent Registration Certificate from Medical Council of India or any State Medical Council, a person can be designated as Medical Officer
2. INTERNSHIP for how much period is required to complete the course of MBBS Degree	2 & 3. After completion of MBBS course from a medical college and after getting Provisional Registration Certificate from the MCI or any State Medical Council, a candidate has to undergo one year of Compulsory Rotatory Internship. The Medical Council of the India under Clause-14 in its Regulations namely "Graduate Medical Education Regulation 1997 (Amended)", under Chapter-5 has prescribed the Regulations on internship, which is also available on the Council's website No. www.mciindia.org .
3. What is the meaning of term INTERNSHIP as per guidelines of Medical Council of India	
4. What is the meaning of term RESIDENT MEDICAL OFFICER as per the guidelines of Medical Council of India	4. The IMC Act, 1956 and the Regulations are silent with regard to the term Resident Medical Officer
5. What is the difference between the person who is doing internship in the hospitals and who is working as Resident Medical Officer in the hospital	5. A person can do internship only after completion of MBBS course with Provisional Registration Certificate but the MBBS degree cannot be issued without completion of internship and it is necessary that one year internship in various subjects prescribed under Graduate Medical Education Regulations 1997 is necessary but a person can be designated as a Medical Officer only after acquiring MBBS degree and a Permanent Registration Certificate from the State Medical Council of the Medical Council of India.
6. Whether a MEDICAL PERSON who is doing internship in hospital can designate himself/herself as MEDICAL OFFICER prior to getting himself/herself registered with the Medical Council of India	

A perusal of the aforesaid answers given by Medical Council of India, which is a regulatory body for medical institutions in the country, shows that MBBS course is complete only after completion of one year compulsory internship training. It is only thereafter the degree of MBBS is provided and further only after getting permanent registration from Medical Council of India or any State Medical Council, a person can be designated as Medical Officer.

In the case in hand, though respondent No. 5 mentioned in her application that she worked as Resident Medical Officer in three different hospitals located at New Delhi and Karnal for a period of one year, but the certificates annexed with the application in support thereof clearly mentioned that she worked as an unpaid intern in three different hospitals for the following period:

<i>“Name & address of the establishment/institution etc.</i>	<i>Period</i>		<i>No. of years</i>
	<i>From</i>	<i>To</i>	

Safdarjang Hospital, New Delhi	190906	240407]	One year
Municipal Corp. of Delhi	240407	230707]	
General Hospital, Karnal	090807	231007]	
-----			”

It was thereafter that MBBS degree was awarded to respondent No. 5 and she got permanent registration as a doctor, hence, to claim that respondent No. 5 had the experience of one year as Resident Medical Officer is not borne out from the record. The facts mentioned in the application are not supported by the contents of the certificates attached.

The contention of learned counsel for the Corporation that even the period spent by respondent No. 5 as an intern, may be during the course of her study as part of the study, is also counted as experience is merely to be noticed and rejected. The only inescapable conclusion from the facts, as noticed above, is that the award of 1.5 marks to respondent No. 5 on the ground that she had one year's experience could not have been awarded in terms of the criteria laid down. Still further, respondent No. 5, who had merely one year's experience and as against that the petitioner, who had

more experience than respondent No. 5, as has already been noticed above, including more than two years' experience in petroleum products, was also awarded the same marks, shows arbitrariness in awarding the marks. The petitioner had experience in all three columns. The maximum marks, which could be awarded for experience were 4 marks.

Besides this, even in the column of business ability/acumen, where certain parameters have been laid down for evaluation, the petitioner, who had experience in different types of business including dealing in petroleum products was awarded merely 3 marks out of total 5 marks, whereas respondent No. 5, who was having no experience as she had merely completed her studies before the last date fixed for submission of application, was awarded 4 marks. Though the courts normally do not interfere in the award of marks by the Interview Committee, but if the same is arbitrary on the face of it, if considered in the light of parameters laid down in the criteria, it cannot shut its eyes, as judicial review is meant for this purpose.

For the reasons mentioned above, in my opinion, the merit list, as prepared by the Corporation after determining inter-se merit of the candidates for allotment of LPG distributorship smacks of arbitrary misuse of power by awarding marks, hence, the same deserves to be set aside. Consequently, allotment of LPG distributorship to respondent No. 5 deserves to be cancelled.

Ordered accordingly.

Accordingly, the writ petition is allowed.

(Rajesh Bindal)

Judge

February 10, 2016

mk