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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2392/2016, CMs 10234-10235/2016**

Date of decision: 21st March, 2016

DR. SANJIV MAHAJAN

..... Petitioner

Through: Mr. Sachin Chauhan, Adv.

versus

UPSC

..... Respondent

Through: Mr. Arun Bhardwaj, CGSC/UOI with
Mr. Mimansak Bhardwaj, Adv.
Mr. Vardhman Kaushik with Mr.
Naresh Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. The petitioner submits that the impugned order dated 07.01.2016 dismissing O.A. No. 2087/2015 is erroneous for the UPSC had the option and could have relaxed the minimum eligibility qualification and the said power should have been exercised. It is submitted that out of six eligible candidates who were called for interview, only three candidates had appeared and the selected candidate has not joined.

2. We have considered the said contentions, but do not find

any merit in the same.

3. The advertisement No.2/2015 had a typographical error which was corrected by the corrigendum published in the Employment News dated 28th March – 15th April, 2015 to the effect that the candidates applying for the recruitment to the two posts of Specialist Grade –III Assistant Professor (Nephrology), in Teaching Specialist Sub-Cadre of Central Health Service, Ministry of Health and Family Welfare, must have Doctorate of Medicine (Nephrology). This was in conformity with the Recruitment Rule, i.e., Section A of Schedule VI which prescribes ‘Doctorate of Medicine (Nephrology)’ as the requisite eligibility qualification for appointment to the said post by direct recruitment. The Recruitment Rules being statutory in nature are binding and mandatory. An advertisement inviting applications for appointment to the said posts could not have prescribed and stipulated a different or lower eligibility qualification.

4. The advertisement No.2/2015 stipulated 05.02.2015 as the closing date for submission of online application for recruitment. As the corrigendum was published in the Employment News dated 28th March – 15th April, 2015, which is after the cut-off date, it can be urged that 15th April, 2015 could be treated as the cut-off date for acquisition of the minimum eligibility qualification. This extended date would not help the petitioner as he did not hold the requisite qualification of ‘Directorate of Medicine (Nephrology)’ either on 15.02.2015, i.e., the date on which he had submitted the application or when the corrigendum was published in the Employment News dated 28th March – 15th April, 2015. The petitioner had acquired the said

qualification of 'Directorate of Medicine (Nephrology)' in May, 2015.

5. The contention of the petitioner that power of relaxation should have exercised is unacceptable. There is a provision in the Recruitment Rules in Note 2 below Schedule V to the Recruitment Rules which stipulates that the qualification is relaxable at the discretion of the Commission, for reasons to be recorded, in case the candidates are otherwise well qualified. The advertisement did not relax the eligibility requirements. The UPSE in the present case has not exercised the said power as there were candidates who were eligible and available for selection. In *State of Orissa and Anr. Vs. Mamta Mohanty*, (2011)3 SCC 436, the Supreme Court examined the issue of relaxation of eligibility and has observed that requirement to comply with the Rules is the trite and the discretionary power of relaxation when provided for in the Rules should be exercised within the four corners and cannot be exercised to distort the Rules. In *State of Gujarat and Ors. Vs. Arvind Kumar Tiwari And Anr.*, (2012) 9 SCC 545, the Supreme Court held that this power should be exercised with care and caution to remove impediments and obstructions where working of the Rule had become impossible; to meet emergent situation where injustice might to caused to a person or group of person etc. This power cannot be exercised arbitrarily only to favour of an individual. Pertinently, in the *State of M.P. Vs. Dharma Bir*, (1998) 6 SCC 165, the Supreme Court rejected a similar plea on humanitarian grounds and had observed;-

31. "...The courts as also the tribunal have no power to

override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.”

6. Learned counsel for the respondent who appears for the Ministry of Health and Family Welfare submits that six candidates fulfilled the minimum eligibility criteria. They were called for interview. Three of them had appeared and the select list has been made. The candidate listed first the select list has not joined and an offer letter dated 29.02.2016 has been issued to the second candidate.

7. Be that as it may, we do not find the impugned order passed by the Tribunal is required to be upset or set aside by the High Court.

8. The Writ petition is dismissed. No costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MARCH 21, 2016/acm