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

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Date of Decision: 29.08.2017

% **W.P.(C.) No. 6491/2017**

BHARTI CHOPRA

..... Petitioner

Through: Mr. Rajesh Rai & Mr. Rishi Kumar,
Advocates.

versus

MEDICAL COUNCIL OF INDIA & ANR.

.....Respondents

Through: Mr. Vikas Singh, Senior Advocate
along with Mr. T.S. Singhdev &
Ms.Puja Sarkar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 31.03.2017 passed by the Central Administrative Tribunal (CAT/ Tribunal) in OA No.3860/2014. The petitioner had preferred the said original application being aggrieved by her termination. Her services were terminated by the respondent after issuing her a show-cause notice and calling for her reply on the allegation, that she had misrepresented with regard to her experience, at the time of her recruitment as Telephone Operator-cum-Receptionist in the respondent-MCI.

2. The Tribunal has held in favour of the petitioner on the aspect, that she did not misrepresent with regard to her qualification and experience at the time of her recruitment and, therefore, that could not be a reason to discontinue her services. However, the Tribunal has held against the petitioner by coming to the conclusion that she did not have the requisite experience prescribed for the said post in the Recruitment Rules, i.e. 5 years experience as Telephone PBX, Fax & Telex Operator in a Govt./ Public sector undertaking/ Statutory body or Autonomous organization/ Teaching Institution, and that her experience related to private employment. The Tribunal has held, that she did not meet the requirements under the Recruitment Rules and, therefore, her appointment was null and void/ *non-est* in the eyes of law. The Tribunal placed reliance on three decisions in support of its view, that where the appointment has been made in violation of the Recruitment Rules, the same could be terminated without holding an enquiry. The said decisions are *Ashok Kumar Sonkar vs. UOI & Ors.*, 2007 (3) SLR 501 (SC); *Pramod Kumar vs. U.P. Secondary Education Services Commission & Ors.*, (2008) 7 SCC 153; and *The District Collector & Chairman, Vizianagaram & Ors. Vs. M. Tripura Sundari Devi*, (1990) 3 SCC 665.

3. The submission of learned counsel for the petitioner is, that the respondent issued an advertisement for the post of Telephone Operator-cum-Receptionist, which prescribed the qualification of matriculation or equivalent and experience as aforesaid. The petitioner did not ever claim, that she had experience of working in a Government/ Public Sector Undertaking/ Statutory organisation or Autonomous organisation/ teaching

institution. She was found to be more meritorious than the other candidates by the Selection Committee and was, consequently, appointed on 19.06.2009. She continued to perform her duties to the entire satisfaction of the respondent. Only on account of a complaint being received by the CVC of the respondent-MCI, as forwarded by the CBI on 04.05.2012, the respondents proceeded to undertake the aforesaid action. The said complaint has been made by one Mr.Jai Bhagwan on 20.04.2011, i.e. nearly two years after the petitioner had been appointed and had been serving with the respondent. The further submission is that under the Recruitment Rules, qualifications are relaxable at the discretion of the appointing authority, in case candidates are otherwise, found suitable for the job. The petitioner claims that the requirement of experience was relaxed qua the petitioner. Learned counsel submits that when the petitioner asked for the relevant file notings under the Right to Information Act – to establish her claim of relaxation of the Recruitment Rules in her case, the response received from the respondent is that the said file notings are not available. Therefore, there is nothing to show that relaxation was not granted in respect of the petitioner's qualification/ experience.

4. Attention is also drawn by the petitioner to Note 3 in the Recruitment Rules, to contend that the meaning of the expression 'qualification' in the Note 5, which deals with power of relaxation, is wide enough to include within its ambit the experience as well. Note 3, which deals with grant of relaxation to candidates belonging to Schedules Castes/Scheduled Tribe, begins with the words '*The qualification regarding experience is relaxable at the discretion of the competent authority*' (emphasis supplied). In the

recruitment rules, the last column, i.e. Column 7 reads '*education and other qualifications required for direct recruits*'. Under the said column, both-the educational qualification and experience have been enlisted, meaning thereby that experience is considered as '*other qualifications*' required by the direct recruits.

5. Thus, the submission of the petitioner is that even experience is counted as a part of the overall qualification of the candidate.

6. The further submission is that if the qualifications are relaxable, it does not stand to reason why the requirement of experience could not be relaxed. He further submits that in the recruitment rules, there is nothing to contra-indicate that experience could not be relaxed.

7. Learned counsel for the petitioner points out that the decisions relied upon by the Tribunal are not apposite in the facts of the present case, since in all those cases, the candidature was cancelled either before appointment, or soon after appointment. The issue with regard to the candidate not meeting the requirements of the Recruitment Rules had been raised from the initial stage itself. However, in the present case, the said issue was not raised by the respondent, and it was raised for the first time only after nearly two years of the petitioner's appointment and service.

8. Learned counsel for the petitioner further submits that in case, the petitioner were to succeed, the petitioner is willing to forego wages for the period for which she has remained out of service.

9. On the other hand, the submission of learned senior counsel for the

respondent-MCI is that the Recruitment Rules, do not provide for relaxation of experience, and only the educational qualification could be relaxed. Learned counsel further submits that in the file, there is nothing to show that relaxation of experience was granted by the Competent Authority.

10. Having heard learned counsel for the parties, we are of the view that the decision of the Tribunal dismissing the Original Application cannot be sustained.

11. The Recruitment Rules in question, under the column 7 “*Educational and other qualifications required for direct recruits*” enlists both – the “*qualification*” as “*Matriculation or equivalent qualification*” and “*experience*” as “*5 years experience as Telephone, PBX, Fax & Telex Operator in a Govt./ Public sector undertakings/ Statutory body or Autonomous organization/ teaching institution*”. The aforesaid gives an indication that the expression “*qualifications*” has been understood by the rule making authority as also taking within its embrace the aspect of “*experience*”. Otherwise, the heading of the relevant column in the Recruitment Rules would have read “*Educational qualification and experience required for direct recruits*”. This view also finds strength from “**Note 3**” which opens with the words “*The qualification regarding experience is relaxable at the discretion of the competent authority in case of candidates belonging to the Scheduled Castes/ Scheduled Tribe*”. No doubt, the said Note 3 which forms part of the Recruitment Rules is in relation to the Scheduled Castes and Scheduled Tribe candidates but the said note also shows, that experience is considered by the rule making authority as an attribute of qualification.

12. Though, it is for the rule making authority to lay down the eligibility criteria/ conditions, we enquired from learned senior counsel for the respondents as to the possible reason why the experience of 5 years has to be gained by the candidate only in Government/ Public Sector Undertakings/ Statutory Bodies and Autonomous Organisation/ teaching institution and why such experience gained privately is not considered as acceptable. Mr. Singh, learned senior counsel for the respondents has submitted that the possible rationale, for the said prescription is that a candidate may be able to obtain a false experience certificate from a private employer, which he would not be in a position to obtain from a Government organization/ Public Sector Undertakings/ Statutory Body, etc. If that be the position, what is of essence is the gaining of experience by the candidate and not the nature of organization where the said experience may have been gained. Viewed in this light, Note 5 which reads “*Qualifications are relaxable at the discretion of appointing authority in case candidates are found otherwise suitable for the job*” is liable to be construed as enabling relaxation of not only the educational qualifications but also of the experience qualification.

13. We also find merit in the submission of learned counsel for the petitioner, that it does not stand to reason that while relaxation may be granted in respect of educational qualifications, the same may not be granted in respect of the experience qualification. Pertinently, in the Recruitment Rules, there is nothing to contra-indicate that the requirement of experience could not have been relaxed.

14. We have also examined the decisions relied upon by the Tribunal. We find force in the submission of learned counsel for the petitioner that the

said decisions were not apposite in the facts of the present case.

15. In *Ashok Kumar Sonkar* (supra), the appellant did not have the requisite educational qualification on the last date fixed for making the application for the advertised post of Lecturer. He acquired the said qualification after the cut-off date. He was allowed to appear before the Selection Committee; selected, and; appointed. Respondent No.4 assailed his appointment by filing a writ petition before the High Court. The same was dismissed on the ground that he had an alternate remedy. Respondent No.4 then moved the Visitor of the university, i.e. President of India. The Visitor opined that the selection process qua the appellant was illegal. The selection proceedings were, accordingly, set aside. The appellant then assailed the decision of the Visitor by filing a writ petition before the High Court, which was dismissed. The Supreme Court also dismissed the appeal of the appellant. Thus, it would be seen that Ashok Kumar Sonkar did not have the educational qualification required for becoming eligible for the post of Lecturer. It is also evident that from the very beginning, his appointment was under challenge.

16. As opposed to this, in the present case, the petitioner's appointment came to be questioned by one Mr. Jai Bhagwan only on 20.04.2011, which complaint was forwarded by the C.B.I. to the C.V.C. of the M.C.I. on 04.05.2012. Thus, the issue with regard to the so-called illegal appointment of the petitioner was raised after nearly 2 years of her appointment on 19.06.2009.

17. In *Pramod Kumar* (supra), the appellant had been appointed to a

teaching post for which the educational qualification, according to the statutory provisions, was B.Ed. degree. It was subsequently found that he had obtained the said degree from an unrecognized university. When the said shortcoming in the appellant's qualification was noticed, he was given an opportunity to obtain a degree from a recognized university. The appellant then produced only marks-sheet and not a degree from a recognized university. It was not clear whether the qualification obtained by him was through correspondence course. Consequently, he was issued a show-cause notice on the ground of having obtained appointment from fabricated and illegal B.Ed. degree, and after calling for his response, his services were terminated.

18. The facts of ***Pramod Kumar*** (supra) would show that they are starkly different from the facts of the present case. Firstly, the lacunae or shortcoming from which the appellant Pramod Kumar suffered was in respect of his educational qualification – which is not the case in hand. Pramod Kumar was appointed to a teaching post – as opposed to that, the appellant was appointed only as a Telephone Operator-cum-Receptionist. Pramod Kumar was given an opportunity to obtain the requisite qualification from a recognized university, which he apparently failed to obtain. In the present case, the petitioner had actually worked with the respondent itself for over 5 years before her services were terminated. Thus, she had already gained the experience on the day when the show-cause notice was issued to her. Even assuming – for the sake of arguments, that the requirement of experience in the Recruitment Rules was not relaxable, whereas Pramod Kumar was evidently guilty of producing a degree from a bogus university,

no such allegation with regard to the petitioner misleading the respondent has been found to be correct. In fact, the Tribunal has held in favour of the petitioner on this aspect.

19. ***M. Tripura Sundari Devi*** (supra) was a case where the respondent did not meet the educational qualifications required for the advertised post, i.e. Grade-I and II teacher posts. The eligibility conditions required possession of at least second class degree in M.A. The respondent, however, held a third class degree in M.A. Though she was selected, she was not allowed to join her services when her certificates were scrutinized and the aforesaid deficiency in her qualification was noticed. Thus, ***M. Tripura Sundari Devi*** (supra) was a case of the candidate not meeting the educational qualification and she not being allowed to join her services.

20. As opposed to that, in the present case, the petitioner meets all the educational qualifications and her termination has come about, after she had already served the respondent for over 5 years.

21. Thus, we are of the view that neither of the aforesaid decisions could have been invoked in the facts of the present case. In any event, these decisions do not apply for the reason, that experience has been treated in the Recruitment Rules as a part of the qualifications, which were relaxable.

22. The petitioner has also placed on record the response received by her to her application submitted on 11.08.2014, wherein she, inter alia, demanded copy of the Minutes of the Interview Board conducted on 30.05.2009 for appointment to the post of Telephone Operator-cum-Receptionist in the respondent Council's office; and copy of the file notings

in which the decision of issuing the appointment dated 19.06.2009 was taken. The respondent sent a reply on 14.08.2014 stating that the “*Copy of the file noting is not available, at present*”. Thus, it appears that the respondent either did not have, or withheld the said file notings, which if produced, could have established that there was indeed relaxation of the Recruitment Rules regarding qualifications, as insisted by the respondent in their Recruitment Rules, at the time of selection and appointment of the petitioner.

23. We may also observe that in the course of his arguments, Mr. Singh, learned senior counsel representing the respondents has argued that the services of the petitioner had not been confirmed and she was a probationer. Therefore, Mr. Singh submitted that her services could be even otherwise terminated at any time. We cannot accept this submission for the reason that the petitioner has continued to serve for 5 years before her termination. Moreover, her termination was stigmatic. Thirdly, it is not the respondents’ case that the performance of the petitioner was found to be lacking or unsatisfactory. This submission is, accordingly, rejected.

24. During the course of his submissions, Mr. Singh has also candidly stated that the post of Telephone Operator-cum-Receptionist, to which the petitioner was appointed, has still not been filled and the vacancy continues to exist.

25. We, accordingly, allow the writ petition and direct the respondents to reinstate the petitioner in service. She shall be entitled to continuity of service from the date of her termination. However, considering the fact that

she had not served the respondent during this period, as also her statement made before this Court, she shall not be entitled to any back wages.

26. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J.

REKHA PALLI, J.

AUGUST 29, 2017

GM/ B.S. Rohella