

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL  
KOLKATA**

Present :-

Hon'ble Justice Soumitra Pal,  
Chairman,

-And-

Hon'ble P.Ramesh Kumar,  
Administrative Member.

**OA- 1046 OF 2017  
with MA-112 Of 2018**

Avijit Das & Others

Applicant

-Vs-

State of West Bengal & Others

Respondents.

For the Applicants

Mr. U.N.Betal, Advocate

For the State Respondent :

Mr. G.P.Banerjee

Mr.S.Ghosh, Advocates.

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Judgment delivered on 27<sup>th</sup> September, 2018.

This application has been filed “not against any order but against the purported method of marks distribution pattern adopted by the Respondent authorities concerned more particular respondent nos. 4 and 5, for adjudging the merit of the candidates for selection to the posts of Inspector of Drugs under Directorate of Drugs Control pursuant to the advertisement no. R/Insp.D/37(1)/2016 dated 22<sup>nd</sup> February, 2016”. According to the advertisement the essential qualifications for recruitment to the post of Inspector of Drugs are as under:-

- “i) A Degree in Pharmacy or Pharmaceutical Chemistry or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by Law and
- ii) Experience of work in recognised institutions in the manufacture or testing of drugs or enforcement of the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) for a minimum total period of five years.....”

In response to the advertisement the applicants applied for the post. They were called for interview. The applicants participated in the interview which was over by 12<sup>th</sup> May, 2017. However no result was published till the date of filing the application, that is 23<sup>rd</sup> November, 2017. According to the applicants on 23<sup>rd</sup> August, 2017 there was a newspaper report alleging discrepancies in the recruitment process. It has been stated in the application that one person known to the applicants made an application under the Right To Information Act, 2005 ('2005 Act' for short) wherefrom they came to know about the distribution pattern of marks for selection to the post of Inspector of Drugs. The distribution pattern of marks, as available from the reply to an application filed under the provisions of 2005 Act, has been stated in paragraph 6.10 of the application, which is as under:-

“i )A degree in	40
a. Pharmacy	
b. Pharmacy Chemistry	
c. Medicine with specialization in Clinical Pharmacology	
d. Microbiology	
ii) a. Experience of work in recognised institutions for a minimum total period of five years in the manufacturing or/ testing of drugs or/ enforcement of the provision of the provisions of the Drugs and Cosmetics Act, (1940) (23 of 1940.	30
b. Addl. Experience in excess of 5 years (per year 5 : maximum 10)	10
i) Working experience with Govt. (for 1 year or more)	05
ii) Interview	15”

According to the applicants the proviso to Rule 49 of the Drugs and Cosmetic Rules, 1945 (for short '1945 Rules') suggests that it is applicable only to the “Inspectors” and would thus come into operation only after the appointment as an Inspector since it only restricts the assigning of job to inspect only a particular class of drugs. It has been stated that the Rule has no application in the matter of recruitment for appointment of a person generally known as Drug Inspector. It has been stated that Rule 49 contains the qualification of Drug Inspector and Rule 49 A provides the qualification of Licensing Authority. Though the qualification for both the posts is more or less same, however in case of Licensing Authority under Rule 49A there is the requirement of experience of 5 years in the manufacture or testing of

drugs or enforcement of the provisions of the Act. It has been stated that thus a Drug Inspector who has experience of 5 years as mentioned in Rule 49 A can be appointed as a Licensing Authority. Although in the advertisement under the heading "Qualification" experience of work in recognised institutions in the manufacture or testing of drugs or enforcement of the provisions in the Drugs and Cosmetics Act, 1940 for a minimum total period of 5 years has been stipulated as essential qualification for relevant to the posts of Inspectors of Drugs, such 5 year experience may not be required for appointment of Inspector of Drugs which is required for Licensing Authority under Rule 49 A of the 1945 Rules. As under Rule 49 experience is not mandatory for appointment to the post of Inspector of Drugs, weightage of additional 5 marks per year over the requisite minimum 5 year experience as shown in the distribution pattern of marks in the selection process is faulty as no weightage or additional marks has been given for better academic score which has been restricted to 40 marks for all candidates. Such distribution of marks is discriminatory and arbitrary. Further weightage of 5 marks for working experience with Government is illegal as the advertisement does not make any difference between Government and non-Government Institution. According to the applicants the distribution of marks adopted by the respondent authorities gives weightage to more experience and not to higher qualification. Accordingly, the distribution of marks is contrary to the advertisement. Thus the selection process is discriminatory, arbitrary, irrational and violative of Articles 14 and 16 of the Constitution of India.

Mr.U.N.Betal, learned advocate appearing on behalf of the applicants, referring to the statements in the application and the written rejoinder, submitted that under Rule 49 for being appointed to the post of Drug Inspector experience is not an essential criteria. Hence there is no necessity at all for giving higher marks or higher weightage for experience. Besides in the Rule or in the advertisement there is no mention of giving extra weightage or preference for having experience with Government. When all candidates fulfill the minimum qualification required, they should be adjudged on the basis of merit by adopting a rational method. Submission was since the post has been created pursuant to the provisions in the 1940 Act, a Central Act, State has no power to recruit and appoint a person. In support of his submission, Mr.Betal has relied on the principles of law laid down in in Krushna Chandra Sahoo Vs. State of Orissa; 1996 AIR (SC) 352 particularly paragraphs 28, 31, 33 and 34 thereof and in Bhupendranath Hazarika Vs. State of Assam; 2013 AIR (SC)

234 particularly paragraphs 26 and 42 of the judgment. Reliance has also been placed on the judgement of Allahabad High Court passed in Civil Misc. Writ Petition No. 46079 of 2010 Kuldeep Singh & Ors. Vs. State of U.P. & Anr. and on the judgment of Central Administrative Tribunal, Principle Bench, passed on 22<sup>nd</sup> March, 2018 in OA No. 2390 of 2016 Nidhi Pandey Vs. Union Public Service Commission & Anr. in support of his submission.

Mr.G.P.Banerjee, learned advocate appearing for the respondents along with Mr.Sankha Ghosh, learned advocate, relying on the rejoinder submitted that Rule 49 of the 1945 Rules prescribes the essential qualifications of the Drug Inspectors only. It does not lay down the eligibility criteria for appointment of Drug Inspectors by an authority. An appointing authority has the liberty to fix eligibility criteria for recruitment to any post. Submission was that the advertisement for recruitment is in conformity with the recruitment rules framed by the Department of Health and Family Welfare, Government of West Bengal. The West Bengal Health Recruitment Board is only the recommending authority and has nothing to do with the recruitment rules. Submission was that the applicants applied for the post of Drug Inspectors without raising objection and thus they had agreed to the terms and conditions of the advertisement. It was further submitted that the distribution of marks was based on recruitment rules. The Board had given weightage to additional experience of over 5 years by allotting additional 5 marks per year subject to a maximum of 10 marks to recruit more experienced and suitable candidates. The selection board had no intention to deprive suitable candidates and there is no question of compromising with regard to suitability of a candidate. The distribution pattern of marks was decided by the Board which consisted of technical personnel. As it was not possible for the Board to calculate uniform academic marks for various subjects, for that reason the Board could not give weightage to academic marks and thus marks was restricted at 40 uniformly for all candidates who had passed in different subjects. The distribution pattern of marks was evolved in such a way so that academic qualification, working experience, skill and ability could be given equal weightage in order to get the best out of a candidate. There was neither any irregularity or illegality in the distribution of marks nor there is any challenge that excessive marks have been given. Moreover no prima facie case has been made out that there is illegality in the selection process. It was submitted that the 1945 Rules prescribe the statutory qualification of a Drug Inspector. It nowhere stipulates that

experience is not mandatory. Accordingly the State has framed rules prescribing minimum experience of five years as a qualification and the same has been followed. The said rules are not under challenge. Further after being aware of the advertisement and after having participated in the selection process, the applicants cannot now turn back and challenge the process. In support of his submission Mr. Banerjee has relied on the principles of law laid down in the judgements in *Bishan Sarup Gupta Vs. Union of India* 1974 (2) SLR 136, particularly paragraph 16 thereof, *Secretary (Health) Department of Health & F.W. Vs. Dr. Anita Puri*: (1996) 6 SCC 282, particularly paragraphs 7 and 9 thereof and *Ashok Kumar Vs. State of Bihar*: (2017) 4 SCC 357 in support of his submission.

Questions which require to be considered are :- i) Whether the applicants can challenge the selection process without challenging the vires of the rules framed by the State for appointment of Inspector of Drugs and ii) Whether the applicants can challenge the method of selection after participating in the selection process pursuant to the advertisement.

In order to answer the first question it is appropriate to refer to the relevant prayers sought for in the application, which are as under:-

“(c) Pass an appropriate order or direction commanding the respondents and each of them and /or their competent authorities to forthwith to adopt appropriate, suitable and rotational method of marks distribution pattern for adjudging the merit of the candidates for selection to the posts of Inspector of Drugs under Directorate of Drugs Control as per the Advertisement No.R/Insp.D/37(1)/2016 dated 22.02.2016 by abandoning the abovementioned marks distribution pattern, so that the most deserving and meritorious candidates should be appointed by that process.

(d) Pass an appropriate order or direction commanding the respondents and each of them and/or their competent authorities to publish the result of all participated candidates upon preparing and/ or adjudging their merit in an appropriate, suitable and rotational method of marks distribution as herein above prayed for”.

Evidently, there is no challenge to the vires of the rules framed by the State for appointment to the post of Inspector of Drugs. Rather the distribution pattern of marks in the selection process evolved by the selection committee comprising of experts is under challenge. So as there is no challenge to the vires of the rules enacted by the State, the application is without merit.

So far as the second question is concerned since it is evident from the statements in the application, particularly paragraphs 6.5, 6.6 and 6.7 thereof, that in response to the advertisement the applicants had participated in the recruitment process and after verification having been found eligible were called for interview, they are estopped from questioning the selection process. In this regard it is appropriate to refer the principles of law laid down in Ashok Kumar (supra) which is as under:-

“13. The law on the subject has been crystallised in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar*, this Court held that: (SCCp. 107, para 18)

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same”.

The judgement passed by the Central Administrative Tribunal, Principal Bench on 22<sup>nd</sup> March, 2018 in OA -2390 of 2016 Nidhi Pandey Vs. Union Public Service Commission & Anr., relied on behalf of the applicants, is not applicable on facts as it is evident from paragraphs 9 and 10 of the said judgement as therein the candidates were not called for interview for lack of experience, whereas in the case in hand the applicants having minimum experience under the rules were called for interview and they participated without protest. In view of the facts as noticed, the other judgements cited by the learned advocates for the parties need not be dealt with.

Hence, for the reasons as aforesaid, there is no merit in the application and is hereby dismissed. Interim order is vacated. Accordingly no order is passed on Miscellaneous Application being MA-112 of 2018 filed by the respondents and is disposed of.

P.RAMESH KUMAR  
MEMBER (A)

(SOUMITRA PAL)  
CHAIRMAN