A

DR. ASIM KUMAR BOSE

v.

UNION OF INDIA & OTHERS

December 15, 1982

B

[D.A. DESAI AND A.P. SEN, JJ.]

Central Health Service Rules, 1963 as amended by the Central Health Service (Amendment) Rules 1966, sub-rules (2) and (2A) of Rule 8 and paragraphs 2(b) and 3 of Annexure I to the Second Schedule, construction of—Whether, for a specialist grade II in a teaching hospital belonging to the Central Health Service to be eligible for appointment or promotion as a Professor or Associate Professor of the concerned speciality, the condition prerequisite is actual teaching experience of the Specialist or the capacity in which such teaching experience is gained—Words and Phrases—Meaning of the word "as"—Court's role in service Jurisprudence, pertaining to appointment, explained.

C

D

In pursuance of r. 7A(1)(b) of the Central Health Service Rules, 1963 as amended by the Central Health Service (Amendment) Rules. 1966 and all other powers enabling in that behalf, the President of India issued a notification dated June 8, 1967 making the substantive appointment of the appellant Dr. Asim Kumar Bose as Radiologist, Irwin Hospital, New Delhi. By virtue of his post as Radiologist-cum-Associate Professor of Radiology, the appellant was teaching the under-graduate and post-graduate students as an Associate Professor of Radiology of the Maulana Azad Medical College for the M.D., M.S., D.M.R.T. and M B.B.S. courses of studies of the Delhi University. In 1973 the Central Government promoted Dr. K.P. Mittal, Lecturer in Radiology in the Maulana Azad Medical College as Associate Professor of Radiotherapy ignoring the claim of the appellant who thereupon made a representation. The Government of India, Ministry of Health & Family Planning, Department of Health by its letter dated February 23, 1974 rejected the representation holding that the appellant could not be considered for appointment to the post of Associate Professor of Radiotherapy in the Maulana Azad Medical College inasmuch as he did not possess at least five years' teaching experience as Reader/Assistant Professor in the concerned speciality as required under r. 8(2A) and paragraph 3 of Annexure 1 to the Second Schedule of the 1966 Rules.

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The appellant filed a writ petition in the Delhi High Court challenging the impugned order, but the High Court rejected the writ petition holding that the requirement rules required that the requisite teaching experience must be the experience gained while working in a medical college or in a teaching institution i.e. as a Teacher in a teaching department.

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Allowing the appeal.

H

HELD : (1) There was a failure on the part of the Government of India in the Ministry of Health to draw a distinction between teaching and non-

teaching hospitals under the Central Health Service. The Irwin Hospital and the G.B. Pant Hospital are the two associate hospitals of the Maulana Azad Medical College and the teaching in the medical college is undertaken by Professors and Associate Professors as well as by the Specialists attached to the two hospitals affiliated to the College. Thus the teaching experience gained by the appellant while holding the post of Radiologist-cum-Associate Professor of Radiology (ex-officio) had to be taken into consideration to determine his eligibility for appointment as Professor or Associate Professor of the concerned speciality. [35 G-H, 36 A-C, 43 F-G]

(2) On a construction of r. 8(2) and paragraph 2(b) of Annexure 1 to the Second Schedule of the 1966 Rules, it was held that the appellant possessed the qualifications and experience requisite for appointment to the post of Professor of Radiotherapy in the Maulana Azad Medical College which is a post belonging to Specialist Grade I equivalent to Supertime Grade II carrying a pay-scale of Rs. 1800-2250, which had fallen vacant during the pendency of the appeal. The Union Public Service Commission must therefore re-advertise the post of Professor and call the appellant for an interview for being considered for appointment to the post. [38 C-D, F-H]

(3) The action of the Central Government in the Ministry of Health ignoring the claim of the appellant for appointment to the post of Associate Professor of Radiotherapy in the Maulana Azad Medical College in 1973 was based on a misconstruction of r. B(2A) and paragraph 3 of Annexure I to the Second Schedule. The word "as" in these provisions must, in the context in which it appears, be interpreted to mean "in the capacity of". These provisions must be interpreted in a broad and liberal sense as it would otherwise work great injustice fo persons in Specialists Grade II like the appellant who, while holding a non-clinical post in a teaching hospital iike the Irwin Hospital, has actually been teaching the students of the Maulana Azad Medical College to which it is affiliated. The Ministry of Health cannot be heard to say that the appellant had not acquired the status of an Associate Professor of Radiology with effect from October 9, 1964, particularly when the Central Government have been utilizing his services as such for teaching the post-graduate and under-graduate students of the Maulana Azad Medical College for the M.D., M.S., D.M.R.T. and M.B.B.S. courses of studies for the last 17 years. The arrangement has continued for all these years with the approval of the Delhi University which has conferred the designation of Associate Professor of Radiology on the appellant presumably with the tacit sanction of the Medical Council of India.
[37 F-G, 38 A-B, 42 D-F]

(4) The recruitment rules nowhere provide that the teaching experience gained by a Specialist in a teaching hospital in the capacity of an Associate Professor (ex-officio) shall not count towards the requisite teaching experience for purposes of sub-rs. (2) and (2A) of r. 8 and paragraph 2 (b) and 3 of Annexure I to the Second Schedule of the 1966 Rules. There is no provision made in the Rules that the teaching experience must be gained on a regular appointment. There is hardly any difference so far as teaching experience is concerned whether it is acquired on regular appointment or as a Specialist in a teaching hospital with the ex-officio designation. As the statutory rules do not

A provide that the teaching experience gained in an ex-officio capacity shall not count towards the requisite teaching experience, the teaching experience gained by the appellant while holding the post of Radiologist-cum-Associate Professor of Radiology (ex-officio) in the Irwin Hospital can not be ignored in determining his eligibility for appointment as Professor or Associate Professor of the concerned speciality. [35 C-E]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 598 of 1980.

Appeal by Special leave from the judgment and order dated the 9th November, 1979 of the Delhi High Court in CWP No. 885 of 1974.

C *N.C. Sikri* for the Appellant.

Hardayal Hardy, Girish Chandra and *R.N. Poddar* for the Respondents.

D The Judgment of the Court was delivered by

SEN, J. This appeal by special leave from a judgment and order of the Delhi High Court dated January 9, 1979 raises a question of some complexity. The question is whether a Specialist Grade II in a teaching hospital belonging to the Central Health E Service is eligible for appointment or promotion as a Professor or Associate Professor of the concerned speciality. The appeal turns on a construction of sub-rs. (2) and (2A) of r.8 and paragraphs 2(b) and 3 of Annexure I to the Second Schedule of the Central Health Service (Amendment) Rules, 1966.

F The Central Health Service was formed more than two decades ago and was intended to replace the Indian Medical Service, but the recruitment rules were not framed till the year 1963. The Service was constituted for providing doctors for manning the medical, public health and medical research and teaching posts in the Central Government hospitals, dispensaries scientific research institutions and institutions of higher education. The members of this Service are also meant to man posts in the Union Territories and the various autonomous bodies.

H In exercise of the powers conferred by the proviso to Art. 309 of the Constitution, the President on May 1, 1963 made the Central Health Service Rules, 1963 which came into force

on May 5, 1963. R.3 provided for the constitution of the Central Health Service. Under r.4 the Service was divided into two classes viz. Class I and Class II. The rules envisaged categorization of personnel manning the service into five different categories viz. Categories 'A' to 'E'.. Rule 5 provided for the authorized permanent and temporary strength of the Service. Under r.5 (3), the controlling authority had the power to interchange any post included in the junior scale with any post included in the senior scale without altering the authorized strength in each category. R.8 provided for the future maintenance of the Service. 80% of the vacancies in Category 'B' of the supertime scale were to be filled by promotion through Departmental Promotion Committee of officers holding the post in the senior scale who had rendered not less than six years of service in that scale and 20% of the vacancies thereof were to be filled by direct recruitment in the manner prescribed in the Second Schedule. By a notification dated January 1, 1965 the initial appointments were notified. The essential pre-condition for the inclusion of a post in the Central Health Service was that a medical qualification recognized under the Indian Medical Council should be prescribed for it.

By the Central Heath Service (Amendment) Rules, 1966, the Central Health Service was recrganized with effect from September 9, 1966 and the concept of General Duty officers and Specialist Grade Officers was introduced for the first time. R.3 provides that there shall be a Service constituted to be known as the "Central Health Service" consisting of (a) persons appointed to the Service under r.7 or r.7A, and (b) persons appointed to the Service under r.8. R.4 classifies the Service into four categories viz. Category (1) Supertime Grade, apart from the post of (i) Director-General of Health Services on a fixed pay scale of Rs. 2750/- and (ii) Additional Director-General of Health Services on a fixed pay of Rs. 2250/-; a Supertime Grade I carrying a pay-scale of Rs. 1800-2250; Supertime Grade II with a pay-scale of Rs. 1300-1800; Category (2) Specialists' Grade with a pay-scale of Rs. 600-1300; Category (3) General Duty Officers Grade I with a pay-scale of Rs. 450-1250; and Category (4) General Duty Officers Grade II on a scale of Rs. 350-900. Under r 5 the authorized strength of the various categories was to be as specified in the First Schedule. R.7 provides for the initial appointment to the Service. R.7A provides for the appointment of departmental candidates. R.7A is in two

A parts. Part A deals with the departmental candidates who were initially appointed in Categories 'A' and 'B' of the Service prior to the 1966 Rules. All of them are to be appointed to the corresponding Supertime Grade I and Supertime Grade II of the new Categories. Part B provides that every departmental candidate who was initially appointed to a category "other than Categories B 'A' and 'B' shall be appointed to the newly-formed appropriate Category "after selection". That had to be so because the new Categories were different and the conditions of eligibility had also been revised. Accordingly, officers from Category 'C', Category 'D' and Category 'E' and were selected by the Departmental Promotion C Committee for appointment to the Specialists' Grade—General Duty Officers Grade I and General Duty Officers Grade II—after taking into account the qualification, experience and conditions of eligibiity. Several Officers who were in former Category 'C' were placed in General Duty Officers Grade I.

D R.8. provides for the future maintenance of the Service. After appointments have been made to the Service under rs. 7 and 7A, future vacancies have to be filled in the manner provided therein. R.8 (2) provides that every vacancy in the Specialists' Grade shall be filled by direct recruitment in the manner provided by the Second Schedule through the Union Public Service Com- E mission, subject to the exception made in r.8(2A) with regard to Associate Professors and Assistant Professors. R.8(3) provides for 50% of the vacancies in Supertime Grade II to be filled by promotion of General Duty Officers Grade I and Specialists' Grade Officers in the ratio of 2 : 3 on the basis of merit and seniority and the remaining 50% of the vacancies are to be filled by direct F recruitment in the manner specified in the Second Schedule.

It would therefore appear that there is 50% direct recruitment in Supertime Grade II which practice is in the public interest and is essential for the maintenance of efficiency. Further, Supertime G Grade II serves as a promotion avenue to GDOS Grade I also. In view of this, the Third Pay Commission found it difficult to recommend the merger of the Specialists' Grade with the Supertime Grade II, but at the same time it appreciated present difficulties in promotion of Specialists to Supertime Grade II. It accordingly H recommended a structural reorganization of the cadre of Specialists to get over these difficulties and to ensure that the GDOS Grade I, Hospital Specialists and Teaching Specialists have reasonable

promotional opportunities in their respective fields. It therefore directed taking of the following steps ;

> "The administrative posts in Supertime Grade II should be reserved for GDOS Grade I except where GDOS Grade I with the required specialists qualifications are not available. *The posts which cannot be filled by direct recruitment through the Union Public Service Commission and it would be open to the Specialists' grade officers to compete for such posts.* These posts should not be filled by hospital specialists or teaching specialists by promotion in the normal course. The Supertime Grade II will thus consist only of administrative posts in future for which the revised scale will be Rs. 1500-2000.
>
> The teaching posts (Professors) and hospital specailists' posts (comprising other than admininistrative and teaching posts) at present included in Supertime Grade II should be placed in the revised scale of Rs. 1800-2250. This new grade may be called Specialists' Grade I and the existing Specialists' Grade may be called Specialists' Grade II. *50% of the vacancies in the new grade (i.e., Specialists Grade I) should be filled by direct recruitment as at present, the remaining 50% being filled by promotion from the new Specialists' Grade II. There could be interchange between hospital specialists and Professors in the higher grade subject to the candidates satisfying the prescribed qualifications.* We notice that at present out of 27 clinical specialities only a few have posts in Supertime Grade, II. We would suggest that *there should be at least one post in the higher grade of Rs. 1800-2250 for every speciality.* The proportion of hospital specialists' posts in the new grade should not exceed 20% of the number of hospital specialists' posts in the lower grade (Specialists Grade II) and additional number of posts as may be necessary to make up the 20% may be created."
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> (Emphasis supplied)

As a result of the recommendation of the Third Pay Commission, the Specialists' Grade is now bifurcated into specialists

Grade I or Supertime Grade II carrying a pay-scale of Rs. 1800-2250 and Specialists Grade II carrying a pay-scale of Rs. 1100-1800.

As at present constituted, the Central Health Service has the following grade structure as per the recommendations of the Third Pay Commission :

S. No.	Grade	Pay (Rs.)
1.	(a) Supertime Grade I	
	(i) Director-General Health Services	3500
	(ii) Commissoner of Rural Health	3000
	(iii) Additional Director General Health Services	3000
	(iv) Other post (a) Level I	2500-2750
	(b) Level II	2250-2500
	(b) Supertime Grade II & Specialists Grade I	1800-2250
2.	Specialist Grade II	1100-1800
3.	General Duty Officers Grade I	1100-1600
	General Duty Officers Selection Grade	1500-2000
	General Duty Officers Grade II	700-1300

The Commission also recommended a scheme of special merit promotion for the medical services on the following lines :

"Doctors in Specialists' Grade I in the revised grade of Rs. 1800-2250 and Supertime Grade II (Rs. 1500-2000) who have outstanding performance to their credit, deserving the recognition, may be promoted to Supertime Grade I scale, while continuing in their original posts, without

having to wait until a vacancy arises in the Supertime Grade I. Such upgradations of the post consequent upon merit promotions will be personal to the individuals concerned.

Eminent specialists and doctors in Suprertime Grade I should be considered for merit promotion to the grade Rs. 3000-3500. There will be no non-pratical allowance in addition."

Such being the infra-structure of the Central Health Service, the question is as to the promotional prospect of a Specialist Grade II in a teaching hospital to Specialists Grade I. The whole controversy turns on the question whether such a person is eligible for appointment as a Professor or Associate Professor of the concerned speciality, and that depends on whether for purposes of sub-rs. (2) and (2A) of r. 8 and paragraphs 2 (b) and 3 of Annexure I to the Second Schedule, the condition prerequisite is actual teaching experience of the Specialist or the capacity in which such teaching experience is gained.

It is common ground that the appellant has the requisite essential qualifications for appointment as a Professor or an Associate Professor of Radiology. After obtaining his M.B.B.S. degree from Calcutta University in the year 1955, the appellant went for further studies to the United Kingdom. There he studied Radiotherapy for two years at the Liverpool Radium Institute and obtained the Diploma in Medical Radiology & Therapy (D.M.R.T.) from the University of Liverpool in 1958. During the course of his studies there, he held the appointment of Registrar in Radiotherapy at the Liverpool Radium Institute from August 1957 to December 1958. Besides gaining teaching experience in that post which under Indian Medical Council Rules is a teaching post, he also had the privilege of visiting some important London hospitals like Mt. Verman and Hammersmith which institutions have a unique and distinguished position in the area of Cancer-therapy by irradiation.

On his return to India, the appellant worked as Junior Lecturer and Clinical Assistant in the Department of Radiology at the Christian Medical College & Hospital, Vellore from February 6, 1959 to December 26, 1960. This post required the appellant to take up

A teching classes in Radiotherapy for the Master of Surgery (M.S.), Diploma in Gynaecology & Obstetrics (D.G.O.) and M.B.B.S. courses. During his stay there he was placed in charge of the Department of Radiotherapy during the absence of Professor Scudder, and as he had considerable experience in the United B Kingdom in the practical aspect of handling such cases, he proved to be extremely useful to the institution. The certificate of the renowned Neuro-Surgeon Dr. Jacob Chandy, Medical College & Hospital, Vellore pays high encomiums to the services rendered by the appellant and records that his work there was well appreciated by colleagues and teachers both as a surgeon and as a teacher.

C

As a consequence of a successful academic career as a teacher of post-graduate courses in the Christian Medical College & Hospital, Vellore, the appellant was appointed as a Lecturer in Radiology under the West Bengal Health Scheme and held that post from January 2, 1961 to January 12, 1963. During this period as a D Lecturer in the Medical College, Calcutta, he had the privilege of teaching post-graduate classes in Diploma in Medical Radiology & Electrology (D.M.R.E.). While he was employed in that capacity, he was asked by the authorities of the Christian Medical College, Vellore, his erstwhile employers, to assist them in organizing the newly installed Tele-Cobalt Therapy Unit under the E Colombo Plan Aid from Canada in that institution. The State Government of West Bengal were pleased to depute him for the task and he apparently performed and fulfilled his duties to the entire satisfaction of the authorities.

On January 14, 1963 the appellant was appointed as a Lecturer F in Radiology in Maulana Azad Medical College, New Delhi, a post placed in Category 'E' of the Central Health Service and continued to work in that capacity till October 8, 1964. He was also employed as a part-time Lecturer in Delhi University with effect from 1963 and even now continues to be employed as such. On October 9, G 1964 he was appointed as a Radiologist in the Irwin Hospital which was a post in Category 'C' of the Central Health Service. By Letter dated April 6, 1965, the Delhi Administration informed the Principal, Maulana Azad Medical College in answer to a communication made by him, that consequent upon the appointment of the H appellant in Category 'C' of the Central Health Service, the Administration had no objection to designating him as Associate Professor of Radiology (ex-officio) in the Maulana Azad Medical

College provided it was not detrimental to his normal duties as a Radiologist and no financial implications were involved. A

In pursuanee of r. 7A (1) (b) of the Central Health Service Rules, 1963, as amended by the Central Health Service (Amendmed) Rules, 1966 and all other powers enabling him in that behalf, the President of India issued a notification dated June 8, 1967 making substantive appointments of 80 officers to the Specialists' Grade with effect from September 9, 1966. The appellant was listed at Sr. No. 80 and the entry giving his name and designation reads : B

"80. Dr. Asim Kumar Bose Radiologist, Irwin Hospital, New Delhi." C

As a result of this, the appellant has continued to hold the post of Radiologist in the Irwin Hospital which is attached to the Maulana Azad Medical College and treated as an Associate Professor of of Radiology (ex-officio) both by the University of Delhi as well as by the Maulana Azad Medical College. D

By the early 70s, the appellant had acquired the requisite teaching experience of an Associate Professor of Radiology as well as acquired higher academic qualification. On August 19/20, 1968 the Principal, Maulana Azad Medical College addressed a letter to the appellant conveying that the Vice-Chancellor of the Delhi University in exercise of his emergency powers, had granted him recognition as an Associate Professor of Radiology for teaching the post-graduate and under-graduate students for the D.M.R.T. and M.B.B.S. courses of studies. In 1970, the appellant was conferred the degree of Doctor of Philosophy (Medicine) in Radiotherapy by the Calcutta University. The Faculty of Medical Sciences, University of Delhi by its letter dated July 10, 1972 informed the appellant that the Board of Research Studies for Medical Sciences had at its meeting held on January 15, 1972 appointed him as a Supervisor for the post-graduate students for the M.D. (Radiotherapy) course of study. It would therefore appear that the appellant was not only holding the post of Radiologist in the Irwin Hospital, but was also actively associated with teaching the under-graduate and post-graduate students as an Associate Professor of Radiology of the Maulana Azad Medical College for the M.D., D.M.R.T. and M.B.B.S. courses of studies of the Delhi University. E F G H

A It appears that subsequent to his substantive appointment by the President to Specialists' Grade with effect from September 9, 1966, the appellant was called by the Banaras Hindu University for an interview on August 7, 1972 for the post of Professor of Radiotherapy but since the post of Associate Professor of Radiotherapy in Maulana Azad Medical College was falling vacant in 1973, he B did not appear for the interview. In 1973, the Government of India promoted and appointed Dr. K.P. Mittal, Lecturer in Radiology in the Maulana Azad Medical College as Associate Professor of Radiotherapy ignoring the claim of the appellant.

C The appellant accordingly made a representation to the Government of India but the same was rejected. The Government of India, Ministry of Health & Family Planning, Department of Health by its letter dated February 23, 1974 informed the Delhi Adminisration that the appellant could not be considered for appointment to the post of Associate Professor of Radiotherapy D in the Maulana Azad Medical College inasmuch as he did not possess at least five years' teaching experience as Reader/Assistant Professor in the concerned speciality as required under the Central Health Service (Amendment) Rules, 1966. The Ministry of Health was of the view that although the appellant had the essential qualification prescribed for teaching post, the teaching experience gained E by him while holding the post of Radiologist-cum-Associate Professor of Radiology (ex-officio) in the Irwin Hospital since October 9, 1964 cannot be taken into considration.

The appellant assailed the impugned order by filing a writ F petition in the Delhi High Court on July 24, 1974 complaining that the action of the Government of India in the Ministry of Health disregarding his claim for appointment to the post of Associate Professor of Radiotherapy was in denial of equal opportunity in matters of employment and thus violative of Arts. 14 and 16 of the Constitution. The contention upon which the writ petition was based G was that on a true construction of r. 8 (2A) and paragraph 3 of Annexure I to the Second Schedule, he was clearly eligible for appointment to the post of Associate Professor as he had the essential educational qualification and had also the requisite teaching experience while holding the post of Radiologist-cum-Associate H Professor of Radiology (ex-officio) in the Irwin Hospital which is a teaching hospital attached to the Maulana Azad Medical College. The respondents Nos. 1 and 2 filed a return reiterating the stand

taken by the Government of India in the Health Ministry that the experience gained by the appellant as an Associate Professor of Radiology (ex-officio) by virtue of his holding the post of Radiologist in the Irwin Hospital cannot be taken into consideration for the purpose of determining the question of his eligibility for appointment as Associate Professor. It was pleaded that the impugned order was thus perfectly legal and valid and had been issued on a correct interpretation of the Central Health Service Rules, 1963 as amended by the Central Health Service (Amendment) Rules, 1966. In support of the plea, it was averred :

> "The teaching experience gained by the petitioner while holding the post of Radiologist in the Irwin Hospital, New Delhi by virtue of his having ex-officio status of Associate Professor of Radiotherapy from the 9th of of October, 1964 cannot be counted as requisite teaching experience under the Central Health Service Rules."

It appears that while the writ petition was pending in the High Court, the appellant was in 1976 selected by the Haryana Public Service Commission for the post of Professor of Radiology (Radiotherapy) in the Medical College, Rohtak, but was not relieved of his duties by the Government of India in the Ministry of Health & Family Planning. A letter of the Registrar of the Rohtak University dated December 9, 1976 requesting the Central Government to place his services on deputation with the Rohtak University for a period of three years in the first instance as the appellant, having put in 17 years' service, was not inclined to resign his post as Radiologist in the Irwin Hospital. The Ministry of Health by its letter dated January 17, 1976 however informed the Secretary (Medical), Delhi Administration that it was not possible to relieve the appellant of his duties or place his services on deputation with a lien on his post as Radiologist in the Irwin Hospital, and if he wanted to join as Professor of Radiology (Radiotherapy) in the Medical College, Rohtak, he should "give up all connections with the Central Health Service".

By the judgment under appeal, the High Court, while observing that the appellant admittedly holds high academic and professional qualifications and has also good teaching experience to his credit,

A rejected his writ petition on its construction of the Rules. It observed that the recruitment rules required that the requisite experience must be the experience gained while working in a medical college or in a teaching institution i.e. as a teacher in a teaching department. It also observed that "it is a well-known fact that after acquiring the requisite medical qualifications there B are different careers open to a medieal graduate, and in fact it is so in all professional careers." According to the High Court, "some people opt for a teaching career while others opt for a regular professional career as Doctors. The medical graduates who opt for a teaching career, join a cadre C different from that of the career of Doctors." In the words of the High Court, "they tie down their fate to the teaching career and expect promotions to various posts in their channel of promotion i.e. in the cadre of teachers." While rejecting the claim of the appellant, the High Court observed :

D

> "It is a fortuitous circumstance that a medical graduate regularly working as a doctor is also permitted by the authorities to take up a teaching assignment. The normal duty of such a doctor is in the hospital and in the cadre of doctors in hospital. If the person who is working as a doctor is allowed to compete, with teachers in the teaching E cadre, such teachers are at a disadvantage. Their chances of promotions are adversely affected by recruitment of people who do not initially opt for a teaching career. This being the rationale behind the respondents' decision, we do not find that there is any illegality or arbitrariness in the decision of the respondent."

F

It is difficult to support the reasoning or the conclusion reached by the High Court on a construction of the Rules.

The appellant has placed on record a number of documents emanating from the University of Delhi as well as from the Dean, G Maulana Azad Medical College showing that his services were utilized as an Associate Professor of Radiology (ex-officio) for delivering lectures to the post-graduate and under-gradate students for ths M.D., M.S., D.M.R.T. and M.B.B.S. courses during the last 17 years.

H

In response to a query from the Court, the Ministry of Health prepared a note on the structure of the Central Health Service

drawing our particular attention to r. 8 (2A) and paragraph 3 of Annexure I to the Second Schedule and Sr. No. 4 of Annexure II to the Second Schedule and on the basis of these provisions it is asserted that for promotion to the post of Associate Professor at least five years' experience as Reader/Associate Professor in the concerned speciality in a medical college/teaching institution after the requisite post-graduate qualification is absolutely essential. It is said that in response to an advertisement of the Union Public Service Commission for the non-teaching post of Radiologist in the former Category 'C' the appellant who had joined the Central Health Service in Category 'E' as Lecturer in Maulana Azad Medical College with effect from January 14, 1963 on selection to that post, switched over from teaching to non-teaching post of Radiologist. After setting out his teaching experience as a Lecturer of Radiology in Maulana Azad Medical College from January 14, 1963 to October 8, 1964 and elsewhere, it is said that the appellant was not eligible for appointment as Associate Professor as he was not holding the post of Reader/Assistant Professor. In trying to refute the appeallnt's allegation that there was denial of equal opportunity, it is asserted :

> "In the absence of the particular advertisement for the post of Associate Professor, it is not possible to indicate as to when the applications were first called for the appointment to the post of Associate Professor of Radiology in a teaching institution participating in the CHS. According to the provisions of the CHS Rules, all posts of Lecturers, Assistant Professors and Associate Professors were required to be filled through the UPSC before the rules came to be amended w.e.f. 18.09.1971. After the amendment of the CHS Rules, only Assistant Professors possessing five years exeperience were eligible for appointment as Associate Professor. Since Dr. Bose was holding the clinical post of Radiologist, he was not in direct line of and eligible for promotion to the post of Associate Professor."

It is somewhat strange that alongwith the aforesaid note, the Ministry had produced a letter of the Dean, Maulana Azad Medical College dated January 25, 1982 addressed to the Secretary, Ministry of Health & Family Welfare which tends to show that

A the appellant as Radiologist-cum-Associate Professor of Radiology (ex-officio) was not actually teaching the post-graduate and under-graduate students of the Maulana Azad Medical College. The letter is self-explanatory and reads :

> "With reference to the telephonic conversation with
> B Sri R. N. Tewari with respect to the question received from the Supreme Court regarding Dr. A. K. Bose I have to state that Dr. Bose while performing his duties as Radiologist was not lecturing to the students as an Associate Professor is required to do."

C It is rather difficult to act on the letter of the Dean particulary when it runs counter to his own affidavit sworn in February, 1982 the relevant extracts of which are given below :

> "That since 1964 the Appellant continues to be a Radiologit and is not holding any *teaching designation* assigned by the Central Health Service and is not is receipt
> D of the teaching allowance of Rs. 200.00 which is admissible in the case of an Associate Professor. Dr. Bose has never worked as Assistant Professor/Reader to become eligible for promotion as Associate Professor. He is working in the Radiology Department. The Head of the Radiology Department, uses the services of some of the
> E Radiologists who do not have any teaching designat ion to take lectures. Over the years as an internal arrangement the non-teaching Radiologists such as Dr. I. Sahai, Dr. D.P. Garg, Dr. A.R. Dar, Dr. B.L. Jain, Dr. S. C. Gupta etc., in addition to Dr. A.K. Bose, have been assigned lectures
> F to under-graduate students.
>
> Dr. A.K. Bose has been delivering lectures to post graduates of Delhi University and has guided some thesis. Delhi University has recognised him as a Supervisor of
> G Thesis and a teacher. However in the matter of post-graduate teaching the Delhi University also recognises and ultilises the services of Specialists of non-teaching hospitals like Safdarjang Hospital, Army Hospital and Dr. R.M.L. Hospital (Willingdon).
>
> H The Specialist in Safdarjang Hospital and Dr. R.M.L. Hospital do not have teaching designation assigned by

the Central Health Service. The Army Hospital is not under the Central Health Service."

As regards the documents placed on record by the appellant, the Dean goes on to aver in the affidavit :

"That the Appellant has produced the Under-graduate lecture programme, the post-graduate lecture programme, prospectus of Maulana Azad Medical College for the year 1966-67 and Annual Report of Maulana Azad Medical College for the year 1980. The Under-graduate teaching programme is only an internal arrangement of the Radiology Department. The post-graduate programmes have been drawn up by the Delhi University. The prospectus and the Annual Report are informative bulletins only. All that they state is that Dr. A.K. Bose is an ex-officio Associate Professor."

The Ministry has also filed the affidavit of Shri N.S. Bakshi, Deputy Secretary to the Government of India, Ministry of Health & Family Welfare to the effect :

"That according to the Central Health Service (Amendment) Rules, 1966, atleast 5 years experience as Reader/Assistant Professor in the concerned speciality in a medical college/teaching institution is after the requisite post-graduate qualification is absolutely essential for promotion to the post of Associate Professor.

That the appellant does not fulfil the above mentioned requirement and thus cannot be considered for promotion to the post of Associate Professor as per CHS Rules.

That according to the provisions of the CHS Rules, all posts of Lecturers, Assistant Professors and Associated Professors were required to be filled through the UPSC before the Rules came to be amended with effect from 18-9-1971. After the amendment of the CHS Rules, only Assistant Professors possessing five years experience were eligible for appointment as Associate Professor. Since Dr. Bose was holding the Clinical post of Radiologist, he was not in direct line of and eligible for promotion to the

post of Associate Professor. As such the question of the Appellant becoming due for promotion to the post of Associate Professor does not arise."

After the conclusion of the hearing, the Health Ministry at our behest prepared a note on the pattern of teaching and non-teaching staff as laid down in the Central Health Service Rules, 1963 amended from time to time. It would be convenient to re produce the note in its entirety and it reads :

TEACHING POSTS

Specialists' Grade (new Specialist Grade II)

Lecturers

All vacancies in this Grade are filled by direct recruitment through the UPSC at the level of Lecturers in the scale of pay of Rs. 1100-1800 plus NPA at graded rates.

Assistant/Associate Professors

All vacancies in the posts of Assistant Professor and Associate Professor are filled by promotion through the Departmental Promotion Committee from amongst officers holding the posts of Lecturers and Assistant Professor respectively. The officers are required to possess the qualification and experience prescribed for the post in question. The officers promoted to the posts of Assistant Professor and Associate Professor are allowed a special pay of Rs. 100/- p. m. and Rs. 200/- p.m. respectively

In case no departmental officer is available for promotion to the posts of Assistant/Associate Professor, such vacancy is filled by direct recruitment through the U.P.S.C.

Composite Supertime Grade II (Revised Specialist Grade I) Professor

On the recommendation of the Third Pay Commission, the Composite Sureprtime Grade II has been bifurcated into Specialist Grade I (Rs. 1800-2250) and Supertime Grade II revised (Rs. 1500-2000). Vacancies in the Specialist Grade I posts of Professor are filled by direct recruitment and promotion in the ratio of 1 : 1.

For promotion to the posts of Professor, Associate Professor/ Asssistant Professor with 8 years service are eligible. A

Supertime Grade I (Level II) — Rs. 2250-2500

All the vacancies in the posts of Principals of Medical College, Heads of teaching institution, Deans are filled by promotions of Professors. B

NON-TEACHING POSTS

Specialists' Grade (now Specialist Grade II)

All vacancies in this Grade (Rs. 1100-1800) are filled by direct recruit through the UPSC. C

Composite Supertime Grade II (now Specialist Grade I Rs.1800-2250)

Vacancies in the Specialist Grade I posts of Senior Specialists are filled by direct recruitment and by promotion to the ratio of 1 : 1. For promotion in the posts of Senior Specialists, Specialist Grade II officers with eight years of regular service and considered. D

E

Supertime Grade I (Level II) Rs. 2250-2500

Vacancies in Supertime Grade I posts of Consultants etc. are filled by promotion of officers of composite Supertime Grade II. The officers must, however, possess the requisite qualifications and experience for appointment to a particular post in this grade." F

The aforesaid note is in consonance with the view that there is no inflexible rule that Specialists in a teaching hospital cannot be promoted as Associate Professor or Professors of their concerned speciality. On the contrary, the note clearly brings out that vacancies in Specialists Grade I posts of Professors are filled by direct recruitment and by promotion in the ratio of 1 : 1. G

The Health Ministry has also submitted a separate note regarding persons imparting teaching in various disciplines who are neither Professor, Associate Professor, Assistant Professor or Lecturer. The note runs as under : H

A "There is no provision in the C.H.S. Rules, whereby the officers who do not possess the requiste teaching experience is appointed to a post of Professor in CHS. However, the University College of Medical Sciences which is under the administrative control of the University of Delhi has been utilising the services of the Medical officers B of the CHS working in the Safdarjang Hospital, New Delhi, for clinical teaching of the students of the University College of Medical Sciences. These persons who are participating in the teaching programme have been recognised by the University of Delhi as Professors/Readers/ Lecturers/Teachers without specific teaching designation on C the condition that such designations will be valid "for the period till such time the Safdariang Hospital continues to impart instructions in clinical subjects to the under-graduate students of University College of Medical Sciences and the persons continue to take part in the said teaching". The D conferment of teaching designations by the University of Delhi does not mean that these officers are recognised as teachers for the purposes of their service conditions in the Central Health Service."

Instances are not uncommon where Specialists have been E promoted as Professors of their concerned speciality. One instance of this as given by the appelllant is of his immediate predecessor Dr. O. P. Bhardwaj, Radiologist-cum-Reader in Radiology ex-officio) in the Irwin Hospital who was appointed as Professor of Radiology in the Maulana Azad Medical College; and presently is Dean, Jawaharlal Institute of Post-Graduate Medical Education F & Research, (JIPMER), Pondicherry. The other instances that we we could gather with dfficulty are these. One is that of Dr. (Kum.) P. Nirupma Nayak, Specialist in Gynaecology, Central Hospital, Dhanbad, promoted as Professor of Obstetrics & Gynaecology, JIPMER, Pondicherry; later promoted to Supertime Grade I as G Medical Superintendent at JIPMER, Pondicherry. Another is that of Dr. Prakash Chand Sikand, Specialist Physician, Safdarjang Hospital, promoted as Professor of Medicine, Medical College, Simla; later transferred as Professor of Medicine to Lady Hardinge Medical College, New Delhi. The other is that of Dr. Harinandan H Prasad Verma, Specialist in Anaesthesia, promoted as Professor of Anaesthesiology, Maulana Azad Medical College, New Delhi. A

further instance is furnished by the case of *Dr. N. C. Shinghal* v. *Union of India.*(1) On the recommendation of the Medical Superintendent, Willingdon Hospital, the post of Specialist in Ophthalmology which was an unspecified Specialist Grade post was upgraded by the Central Government as a specified post in Supertime Grade II, and Dr. B. S. Jain, Chief Ophthalmologist-cum-Associate Professor of Ophthalmology, Medical College, Simla was transferred to that post. In the vacancy caused thereby, Dr. Shinghal who was Specialist in Ophthalmology attached to the Willindon Hospital, was offered the post of Chief Opthalmologist-cum-Associate Professor of Ophthalmology, Medical College, Simla. There may be other instances as well.

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It is necessary to emphasise that the recruitment rules nowhere provide that the teaching experience gained by a Specialist in a teaching hospital in the capacity of an Associate Professor (ex-officio) shall not count towards the requisite teaching experience. There is no provision made in the Rules that the teaching experience must be gained on a regular appointment. There is hardly any difference so for as teaching experience is concerned whether it is acquired on regular appointment or as Specialist in a teaching hospital with the ex-officio designation. As the statutory rules do not provide that the teaching experience gained in an ex-officio capacity shall not count towards the requisite teaching experience, the teaching experience gained by the appellant while holding the post of Radiologist-cum-Associate Professor of Radiology (ex-officio) in the Irwin Hospital cannot be ignored in determining his eligibility for appointment as Professor or Radiology in Maulana Azad Medical College.

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There is a failure on the part of the Ministry of Health to draw a distinction between teaching and non-teaching hospitals under the Central Health Service. The two general hospitals under the Central Health Service are the Willingdon Hospital & Nursing Home, New Delhi and the Safdarjang Hospital, New Delhi. The Service also runs Central Hospital, Asansol, Central Hospital, Dhanbad, Goa Medical College & Hospital, Panaji, G. B. Pant Hospital, Port Blair, and Government Hospital, Lakshadweep. In contradistinction, the teaching hospitals under the Central Health

G

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(1) [1980] 3 S.C.R. 44.

A Service are : (1) Irwin Hospital, New Delhi and (2) G. B. Pant Hospital, New Delhi which are both associate hospitals of Maulana Azad Medical College. The Lady Hardinge Medical College also has a separate hospital attached to it.

B The medical colleges run by the Central Health Service are : (1) Maulana Azad Medical College, New Delhi ; (2) Lady Hardinge Medical College, New Delhi; and (3) Jawaharlal Institute of Post-Graduate Medical Education & Research (JIPMER), Pondichery.

C Besides the medical colleges, the Central Health Service also runs several medical institutions, viz. Hospital for Mental Diseases, Ranchi, Patel Chest Institute. Delhi etc. The teaching in these medical colleges is undertaken by Professors and Associate Professors as well as by Specialists attached to the hospitals affiliated to the respective colleges.

D The modern pattern in medical education during recent years is the organization of clinical units. As medical education has developed, the distinctive feature is the thoroughness with which theoretical and scientific knowledge are fused with what experience teaches in the practical responsibility of taking care of human beings. The clinical teacher has an immediate and absolute responsibility, Physicians and surgeons still go round their wards at stated hours, followed by groups of students to whom they point out the features of each case, expound the nature of the malady and explain the reasons for the treatment adopted. But no longer, as formerly, is the student dependent upon "walking the wards", attending lectures and reading about the illnesses of which the cases he has seen are illustrations. The clinical unit is a far more efficient training centre. The importance of the clinical years is brought out in the Encyclopaedia Britannica Macropaedia, 15th edn. p. 810 :

> "The two or more clinical years of un-effective curriculum are characterized by active student participation in small group conferences and discussions, a decrease in the number of formal lectures, and an increase in the amount of contact with patients in teaching hospitals and clinics. Through work with patients, under the supervision and guidance of experienced teachers, students learn methods of obtaining comprehensive, accurate and meaningful accounts

> of illness, how to conduct physical examinations and how to develop judgments in the selection and utilization of laboratory diagnostic aids. During this period, they learn to apply the knowledge gained in their pursuit of the basic medical sciences to the study of general medicine and the medical and surgical specialities."

We must first deal with certain amendments in the Rules precribing the mode in which the posts of Professors and Associate Professor can be filled in. By amendments dated February 21, 1968 and September 18, 1971, paragraphs 2 (b) and 3 of Annexure I to the Second Schedule and sub-r. (2A) of r. 8 were inserted respectively. These amendments have brought about a change inasmuch as there is now a vertical channel of promotion to the teaching posts upto the post of Associate Professor. The Third Pay Commission in its Report at p. 173 observes :

> "While the Specialists on the teaching side can hold posts of hospital specialists, the latter cannot be promoted to teaching posts because of lack of teaching experience."

On a literal construction of these Rules, the effect of these amendments appears to be this. Normally, a Professor or an Additional Professor in a medical college or teaching institution can be appointed by direct recruitment from amongst persons holding the post of Associate Professor or Assistant Professor in the concerned speciality in a medical college or a teaching institution having at least six years' teaching experience out of 12 years' standing in the Grade through the Unian Pubiic Service Commission. An Associate Professor in the medical college or a teaching institution can only be promoted from amongst persons holding the post of Assistant Professor having at least five year's teaching experience in the concerned speciality by the Departmental Promotion Committee. We are inclined to the view that the word "as" in the collocation of the words used "at least six years" experience as Associate Professor/Assistant Professor/Reader" in paragraph 2 (b) and of the words "at least five years' experience as Reader/Assistant Professor" in paragraph 3 and sub-r. (2A) of r. 8 must be interpreted in its ordinary sense as meaning teaching experience gained "in the capacity of". In Black's Legal Dictionary, 5th edn., p. 104 the meaning of the word "as" as given is : "Used as an adverb, etc: means like, similar to of the same kind, in the same manner, in the

manner in which". In Shorter Oxford Dictionary 3rd edn. p. 111, the word "as" is stated to mean : "The same as, in the character capacity, role of". In our view, the Ministry of Health is apparently wrong in assuming that the word "as" in paragraphs 2 (b) and 3 of Annexure I to the Second Schedule and sub-r. (2A) of r. 8 makes holding of a post in the cadre a condition precedent to the appointment of a Professer or an Associate Professor.

The question that falls for consideration is whether the appellant possessed the qualification and experience requisite for appointment to the post of Associate Professor of Radiotherapy in Maulana Azad Medical College, New Delhi, and if not, whether the appellant is eligible for appointment to the post of Professor of Radiotherapy in that College. That depends on whether he fulfilled the conditions laid down in r. 8 (2) and 2 (A) and paragraphs 2 (b) and 3 of Annexure I to the Second Schedule. R. 8 provides that after appointments have been made to the Service under rs. 7 and 7A, future vacancies shall be filed in the manner provided thereunder. R. 8 (2) provides that every vacancy in the Specialists' Grade shall be filled by direct recruitment in the manner specified in the Second Schedule. That is to say, 100% of vacancies in the Specialists' Grade have to be filled by direct recruitment through the Union Public Service Commission. The post of Professor of Radiotherapy in the Maulana Azad Medical College is a post belonging to Specialist Grade I which is equivalent to Supertime Grade II carrying a pay-scale of Rs. 1800-2250. Annexure I to the Second Schedule prescribes the age limit, educational qualifications and experience for direct recruitment to the various categories of the Service. Paragraph 2 (b) thereof reads :

"Supertime Grade II Rs. 1300-1800	50 years and below relaxable for Govt. servant.	*For Professors/Additional Professors in medical colleges/teaching institutions.* A post-graduate degree in the concerned speciality mentioned in Part A of Annexnre II or equivalent

** ** ** **

For Professors/Additional Professor, in medical colleges or tea-

ching institutions, at least 6 years experience as Associate Professor/ Assistant Professor/Reader in a medical college or teaching institution after the requisite post-graduate degree qualification out of the aforesaid 12 years' standing. (Qualifications relaxable at Commission's discretions in the case of candidates otherwise well-qualified)."

R. 8 (3) provides that 50% of the vacancies in Supertime Grade II to be filled in by promotion of General Duty officers Grade I and Specialists Grade II officers in the ratio of 2:3 and the remaining 50% of the vacancies to be filled by direct recruitment in the manner specified in the Second Schedule. That is to say, there is certain amount of flexibility and it cannot be that the appellant who is a Radiologist in the Maulana Azad Medical College which is a post belonging to Specialists Grade II, cannot be appointed by direct recruitment as Professor of Radiotheraphy under r. 8 (2).

The Ministry of Health seems to quite oblivious of the fact that during the pendency of appeal, the post of Professor of Radiotheraphy in Maulana Azad Medical College having fallen be vacant, the vacancy in the post has to be filled up in the manner provided by r. 8 (2) i. e. by direct recritment through the Union Public Service Commission. It is not disputed before us that the Union Public Service Commission has the power to relax the qualifications prescribed in the case of candidates otherwise well-qualified. That being so, the appellant who admittedly is a highly qualified person and has the requisite teaching experience as Radiologist-cum-Associate Professor of Radiologist (ex-officio) is clearly eligible for appointment as Professor of Radiotherapy under r. 8 (2). The Union Public Service Commission while advertising the post of Professor Radiotherapy which has fallen vacant, must, as it rightly did, invite the appellant for an interview for being considered for appointment to that post.

That conclusion however does not relieve us from dealing

A with the main question viz. whether the appellant possessed the qualifications and experience requisite for appointment to the post of Associate Professor of Radiotherapy. The question must turn on a construction of r. 8 (2 A) and paragraph 3 of Annexure I to the Second Schedule of the Rules. As stated above, r. 8 (2) provides that every vacancy in the Specialists' Grade shall be filled by direct B recruitment in the manner specified in the Second Schedule. R. 8 (2A) however makes an exception in the case of Associate Professors and Assisstant Professors Sub-r. (2A) of r. 8 contains a *non-obstante* clause and it reads :

> C "Notwithstanding anything contained in sub-r. (2) the vacancies in the post of Associate Professor and Assistant Professor in the medical colleges and teaching institutions shall be filled by the appointment of Assistant Professors and Lecturer respectively in the Specialists' Grade, possessing the qualifications and experience prescribed in Annexure I to the Second Schedule for the respective post, on the recommendation of a Departmental Promotion Committee.
>
> D Provided that if no suitable officer is available for appointment to the post of Associate Professor or Assistant Professor in any medical college or teaching institution from the Grades of Assistant Professor or Lecturer, as the case may be, such vacancy shall be filled by direct recruitment in the manner specified in the Second Schedule."

F Paragraph 3 of Annexure I to the Second Schedule reads as follows :

"Specialists' Grade (Rs. 600-1300)	45 years and below (relaxable for Govt. servants.)	*For Associate Professors/Readers Assistant Professors/Lecturers.* A post-graduate degree in the concerned speciality mentioned in Part A of Annexure II or equivalent.
		For Associate Professors :
		At least 5 years' experience as Reader/Assistant Professor in

the concerned speciality in a medical college/teaching institution after the requisite post-graduate qualifications.

(Qualifications relaxable at Commission's discretion in the case of candidates otherwise well-qualified.)"

The contention on behalf of the respondents is that the appellant could not be considered for appointment to the post of Associate Professor of Radiotherapy in Maulana Azad Medical College because the teaching experience gained by him while holding the post of Radiologist-cum-Associate Professor of Radiology (ex-officio) in the Irwin Hospital since October 9, 1964 cannot be taken into consideration. It is urged that there is a distinction between the two posts of Radiologist and Associate Professor of Radiology as the post of Radiologist is a clinical post while that of Associate Professor of Radiology is a teaching post. That being so, it was urged that the channels of promotion to the two posts are different and the appellant who had been substantively appointed to the post of Radiologist in the Irwin Hospital must seek his own channel of promotion in Supertime Grade II for a non-teaching job. It is further urged that since the appellant was not holding the post of an Associate Professor, he was not drawing the teaching allowance of Rs. 200/- p.m. to which he would otherwise be entitled. It is also urged that the status of Associate Professor of Radiology (ex-officio) which the appellant holds in the Irwin Hospital is akin to that of honorary Professor or Associate Professsor in the Willingdon Hospital or the Safdarjang Hospital and the mere designation of the appellant as Associate Professor of Radiology (ex-officio) by the University of Delhi does not give him a right to hold the post of Professor of Radiology in Maulana Azad Medical College. It is pointed out that a similar question arose in connection with the conferral of honorary teaching designations on certain medical officers in the Willingdon Hospital and Safdarjang Hospital, New Delhi in the year 1973. It is said that the President of India was pleased to direct that the conferral of such teaching designations would not entitle the Specialists to claim seniority or eligibility for promotion merely by virtue of these honorary designations, nor would it entitle the incumbent any special benefit with regard to any teaching

A allowance which may be given to the teachers in a medical college. By parity of reasoning, it is urged that the designation of the appellant as a Radiologist-cum-Associate Professor of Radiology (ex-officio) did not make him eligible for appointment to the post of Associate Professor of Radiotherapy in Maulana Azad Medical College. We are afraid, we cannot subscribe to this line of B argument.

We find it rather difficult to support the impugned action of the Government of India in the Health Ministry in holding that the teaching experience gained by the appellant as Radiologist C cum-Associate Professor or Radiology (ex-officio) with effect from October 9, 1964 cannot be taken into consideration. The view taken by the Health Ministry appears to proceed, on a misconstruction of r. 8 (2A) and paragraph 3 of Annexure I to the Second Schedule. As already stated, the word "as" in these provisions must, in the context in which it appears, be interpreted to mean D "in the capacity of". The Ministry of Health cannot be heard to say that the appellant has not acquired the status of an Associate Professor of Radiology with effect from October, 9, 1964, particularly when the Central Government have been utilizing his services as such for teaching the post-gradudate and under graduate students of the Maulana Azad Medical College for the M.D., E M.S., D.M.R.T. and M.B.B.S. courses of studies for the last 17 years. The arrangement has continued for all these years with the approval of the Delhi University and presumably with the tacit sanction of the Medical Council of India. In our opinion, the provisions contained in r. 8 (2A) and paragraph 3 of Annexure I to the Second Schedule must be interpreted in a broad and liberal sense as F it would otherwise work great injustice to persons in Specialists Grade II like the appellant who, while holding a non-clinical post in a teaching hospital like the Irwin Hospital, has been actually teaching the students of the Maulana Azad Medical College to which it is affiliated. The contention that the position which the G appellant enjoys as Radiologist-cum-Associate Professor of Radiology (ex-officio) in the Irwin Hospital is similar to that of honorary Professor or Associate Professor in the Willingdon Hospital or the Safdarjang Hospital and the mere designation of the appellant as such does not give him a right to hold the post of H Associate Professor of Radiology, cannot prevail. There is no order placed before us of the President of India directing that conferral of honorary teaching designations on Specialists in the Willingdon

Hospital and the Safdarjang Hospital would not entitle such Specialists to claim seniority or eligibility for promotion. Even if it were so, that would hardly make any difference. The submission overlooks the distinction between a teaching and a non-teaching hospital. There cannot be a medical college without a teaching hospital as its integral and inseparable part. The mere fact that the appellant was not drawing a teaching allwance of Rs. 200/- p.m. is of no legal consequence because the allowance is attached to the post of Associate Professor.

We wish to make it clear that it is not for the Court to give the appellant promotion or make his appointment to the post of Professor of Radiotherapy. The Court can only on a true construction of r. 8 (2A) and paragraph 3 of Annexure I to the Second Schedule determine the question of his eligibility for such promotion or appointment. If the appellant is eligible to hold the post of Professor of Radiotherapy, he can always apply irrespective of the fact whether or not he is in the line of promotion. It is for the Union Public Service Commission to advertise the post of Professor of Radiotherapy and everyone who satisfies the required qualifications can make an application. That is because the Commission undoubtedly has the power to relax any of the qualifications.

The result therefore is that the appeal must succeed and is allowed with costs. The judgment and order of the High Court is set aside and the impugned order passed by the Government of India, Ministry of Health & Family Planning, Department of Health New Delhi dated February 23, 1974 is quashed. It is declared that the appellant had acquired the requisite teaching experience as nvisaged by r. 8 (2A) and paragraph 3 of Annexure I to the Second Schedule of the Central Health Service Rules, 1963, as amended by the Central Health Service (Amendment) Rules, 1966, and was therefore eligible to be considered for appointment to the post of Associate Professor of Radiotherapy in Maulana Azad Medical College which had fallen vacant in 1973. The second respondent shall give effect to the declaration. As a necessary consequence, we direct the Union Public Service Commission to re-advertize the post of Professor of Radiology in Malulana Azad Medical College, New Delhi which had fallen vacant during the pendency of the appeal and call the appellant for an interview for being considered appointment to that post.

A We wish to clarify that the declaration shall not adversely affect or act to the detriment of any person who was and is senior to the appellant in the Central Health Service or had already been appointed as Associate Professor in the concerned speciality.

B S.R. *Appeal allowed.*