

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

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OA No.161/2002

New Delhi, this the 17th day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri V. Srikantan, Member(A)

Ganga Lal Sharma
F-113, Road No.2
Andres Ganj, New Delhi-110049

Applicant
(Shri R.N. Singh, Advocate)

versus

1. Director General
Indian Council of Medical Research
Ansari Nagar, New Delhi
2. H.L. Arora) To be
3. Ashok K. Nagrani) served through
4. S.C. Dang) R-1
5. L.D. Sharma)
6. R.K. Sharma)
7. Secretary
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi

Respondents
(Shri Rv.K. Rao, Advocate)

ORDER

Shri V. Srikantan

The applicant Shri Ganga Lal Sharma has filed the present application for calling all the records relating to the ACR of the applicant and the minutes of DPC and to quash the impugned order dated 23.12.2001 (should be 24.12.2001 as per Annexure 1) and for directions to the respondents to hold a review DPC for promotion to the post of Administrative Officer (AO, for short) and to further direct R-1 to promote the applicant to the grade of AO from the date his juniors have been promoted.

2. Brief relevant facts are that the applicant was promoted as Section Officer (SO) from 1.1.87 and on completion of 8 years service as SO was eligible for consideration for promotion to the post of AO. The post of AO is a selection post and the bench mark for the same is Good. Applicant has not been communicated any adverse remarks. Respondents had held the DPC on 14.12.2001 for

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preparing a panel for promotion of eligible officers to the post of AO and based on the panel the impugned order was issued whereby R-2 to R-6, who are junior to the applicant, were promoted to the post of AO. Aggrieved by his non-promotion to the post of AO, applicant has filed the present OA.

3. Heard the learned counsel for the parties and perused the records.

4. Applicant's contention is that he has satisfied the bench mark of Good; there were no adverse remarks communicated to him and he has a good record of service and though the post of AO is a selection post, respondents were required to prepare the panel for promotion on the basis of seniority-cum-fitness and not on the basis of seniority-cum-merit as has been done by the respondents. It is further argued that had the correct procedure been followed by the OPC, applicant's name would have appeared in the panel and he would have consequently been promoted to the post of AO. In support, applicant has relied on the OM dated 30.3.88. Applicant's contention is that promotions made to the post of AO were on ad hoc basis and hence the contents of this OM are applicable.

5. Respondents have clarified that there are two kinds of AO posts, first being regular post of AO and second that of Project posts. Such project posts are co-terminus with the project, financed by outside agencies. It is because of this that vacancies are required to be filled on ad hoc basis and accordingly in the case under consideration ad hoc promotions were made

to the post of AO. Further, respondents contend that promotions were to be made in terms of Govt. of India OM dated 27.3.97 according to which eligible officers were required to be graded by the DPC and thereafter according to the grading obtained panel is drawn up on the basis of gradings and promotions thereof are made after the panel so prepared is approved. Respondents anticipated 3 vacancies and accordingly DPC was constituted which met on 14.12.2001 and prepared a panel on the above basis and promotion orders were issued on 24.12.2001. R-2 to R-6 were rightly promoted based on the recommendations of the DPC. However, case of the applicant was also considered by the DPC but the grading given to the applicant was lower than what have been obtained by R-2 to R-6 and hence he could not be promoted, though R-2 to R-6 were junior to the applicant.

6. The admitted facts are that the applicant was eligible for being considered for promotion to the post of AO, which is a selection post and that applicant possessed bench mark of Good and there were no adverse remarks against him. It is also an admitted fact that promotions were made on ad hoc basis. The only question to be decided in this case is regarding the criteria to be adopted for filling up of the post of AO, which is a selection post. According to the respondents, DPC was required to adopt the procedures as laid down in OM dated 27.3.1997 and to prepare the panel on the basis of the gradings obtained by the eligible candidates on the basis of merit as reflected therein and in terms of this order candidates having better merits would be placed in higher position in the panel and irrespective of seniority they

would supersede the candidate having lower merit. Relevant portion of OM dated 27.3.1997 is extracted below:

(iv) Notwithstanding the provisions mentioned above, in the case of promotion made for induction to Group A posts/services from the lower groups, while the bench mark would continue to be Good, the DPC shall grade the Officers as Outstanding, Very Good, Good, Average and Unfit as the case may be and the officers will be arranged according to the grading obtained, placing the Outstanding Officers on top followed by those grade as Very Good and so on in the select panel upto the number of vacancies, with the officers having the same grading maintaining their inter-se seniority in the feeder cadre.

Respondents also contend that OM dated 30.3.88 is not applicable in the case under consideration.

7. Applicant, on the other hand, contends that since promotions are made on ad hoc basis, the procedure to be adopted for filling up even the selection post is in terms of OM dated 30.3.88. The relevant para 4(iii) of OM dated 30.3.88 is extracted below:

4(iii) Where ad hoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness even where promotion is by selection method.

8. We have considered submissions made by the counsel for the parties and also gone through both the OM's dated 30.3.88 and 27.3.1997. On going through the OM dated 27.3.1997, it is seen that the procedure contained there is applicable in the case of regular promotion and this being so the same could not have been followed in case of ad hoc promotion. In the case of ad hoc promotions instructions contained in OM dated 30.3.1988 are required to be followed. Respondents have however contended that in the facts and circumstances of the case, OM dated 30.3.88 is not applicable since this OM is applicable

under certain conditions as mentioned in this OM, such as non-finalisation of Recruitment Rules, revision of R/Rules, revision of seniority list and shortage in direct recruitment quota and in the present case these conditions are not attracted. However, respondents themselves have admitted that they had to resort to ad hoc promotions to the post of AO in view of the fact that some of these posts are project posts whose life are co-terminus with the project. Accordingly, we are of the considered opinion that OM dated 30.3.88 is applicable and the DPC was required to prepare the panel on the basis of seniority-cum-fitness though the post is to be filled up by selection method. In the above circumstances, the panel prepared by DPC on 14.12.2001 is not sustainable.

9. Accordingly, the application is allowed and the impugned order dated 24.12.2001 which has been issued on the basis of the panel prepared by the DPC which met on 23.12.2001 is quashed. Respondents are directed to hold review DPC and consider the case of the applicant for promotion to the post of AO in terms of OM dated 30.3.88 and thereafter promote him to the post of AO if found fit from the date his so called juniors were promoted to the said post. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.


(V. Srikantan)
Member (A)


(V.S. Aggarwal)
Chairman

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