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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3159/2002

New Delhi, this the 25th day of November, 2004

Hon'ble Sh. Shanker Raju, Member (J)
Hon'ble Sh. Sarweshwar Jha, Member (A)

Sh. P.R.Mittal
S/o Late Sh. Amrit Lal
R/o B-1/93, Yamuna Vihar
Delhi – 53.

(By Advocate Sh. S.K.Sinha)

- Applicant

V E R S U S

Union of India through

1. Secretary

Ministry of Health
Govt. of India,
New Delhi.

2. Director General of Health Services

Directorate General of Health Services
Nirman Bhawan, New Delhi.

3. Director

National Institute of
Communicable Diseases
22, Sham Nath Marg, Delhi – 54.

- Respondents

(By Advocate Sh. K.C.D.Gangwani)

O R D E R (ORAL)

By Shri Sarweshwar Jha,

This application has been filed against the orders of the respondents dated 26-11-2001 and 13-9-2002 whereby the applicant's request for promotion to the post of Sr. P.A. with retrospective effect has been rejected by the respondents. The applicant has prayed for the said orders being set aside and the respondents being directed to treat him as deemed to have been promoted to the said post w.e.f. 1-6-97, i.e, the date from which a clear vacancy in the said post was available or at least from the



date of the meeting of the DPC, i.e, 28-5-98 with all consequential benefits.

2. The applicant was initially appointed as a Stenographer in the year 1964 and upgraded in the year 1982 as Stenographer Gr.II in the National Institute of Communicable Diseases (NICD). He was also confirmed in the service and claims to have an unblemished service record. He was promoted as Sr. P.A. on ad-hoc basis in the scale of pay of Rs. 6500-10,500/- for a period of six months vide order dated 26-3-99. He has claimed that he was earlier officiating as Sr. P.A. to Additional Director (TNM) and accordingly he had to work with the successor Additional Director (TNM). He has complained that he has not been given the designation of Sr. P.A. nor the scale of pay during the said period, as he has been informed that his case for regular appointment against the said post had been under active consideration of the DGHS from the date of superannuation of one Sh. O.P.Kaura who retired on superannuation on 31-5-97. This has adversely affected his pensionary benefits. He has made several representations in the matter to the authorities concerned. Incidentally, one of his representations also relates to his request for his promotion to the post of Administrative Officer. In support of his claim for promotion to the post of Sr. P.A., he has submitted that he has rendered 35 years of service and hence his request for regularization in the post of Sr. P.A. He has also sought promotion to the post of Administrative Officer as an alternative, and in support, he has referred to the case of one Sh. Sukhpal Singh who was appointed as Administrative Officer in pursuance of the recommendations of the DPC held on 28-5-98.

3. The post of Sr. P.A. in the NICD has since been re-designated as Private Secretary (P.S.), whereafter his request for promotion to the said post was rejected by the DGHS vide their letter dated 26-11-2001, as mentioned above. He has also made a reference to the Recruitment Rules for the post of Sr. P.A. Gr.I (Gazetted) not having been finalized earlier, leading to denial of his promotion to the said post.

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4. In support of his claim, he has referred to the decisions of the Hon'ble Supreme Court in the case of **Rattan Lal v. State of Haryana** (1985 (4) SCC 43), **Karnatka State Private Colleges Stop Gap Lecturers Association's case** (1992 (2) SCC 29) and also **Central Welfare Board v. Ms. Anjali Bepari** (1996 (10) SCC 133). He has claimed that he has been denied the benefit of being treated as Sr. P.A. (Gazetted) w.e.f. 1-6-97 or from the date the DPC was held, wrongfully and that he has been discriminated against.

5. On perusal of the reply as submitted by the respondents, it is observed that two posts of Sr. P.A. (now P.S.) in the NICD, Delhi which is filled by promotion from the feeder grade of Stenographer Gr.II, were duly filled during 1994 as well as on 31-5-97. One of these posts fell vacant on 1-6-97 due to retirement of its incumbent Sh. O.P.Kaura. Accordingly, the contention of the applicant that he was performing the duties of the post of Sr. P.A. since 1994-95 on officiating basis is wrong and baseless. The respondents, however, have confirmed his having been promoted to the post of Sr. P.A. Group B (Gazetted) on ad-hoc basis in the pay scale of Rs. 6500-200-10,500/- w.e.f. 26-3-99 with the approval of Secretary (Health). The question of giving him the designation of the said post from 1994-95, therefore, does not arise. The said ad-hoc appointment of the applicant was extended up to the date of his retirement, i.e., 30-11-2001 on six monthly basis after obtaining the approval of the DoPT or till the Recruitment Rules were finalized. Incidentally, this post had been earmarked for ST category as per roster after it had been rendered vacant with the retirement of Sh. O.P.Kaura on 1-6-97. It was only because no such candidate was available in the feeder grade of Stenographer Grade II that it was filled on ad-hoc basis from the general category after de-reservation of the post. In the meantime, instructions of the DoPT as issued on 2-7-97 to maintain post based reservation roster instead of vacancy based roster w.e.f. 2-7-97 was received. While the post of Sr. P.A. was earmarked for unreserved category as per the new roster, Recruitment Rules for the said post were yet to be finalized. The DPC for the post of Administrative Officer was held on

28-5-98, but it had no relevance to the post of Sr. P.A. as both the posts were different and were not in the same hierarchy. The respondents have also not agreed to the claim of the applicant that his appointment as Sr. P.A. may be regularized from the date the post fell vacant w.e.f. 1-6-97, as the recommendations of the DPC were approved by the competent authority only on 4-3-99 and hence his promotion from 26-3-99, i.e., the date from which he assumed the charge of the post. The applicant could not have been given regularization against the said post w.e.f. 1-1-97 as claimed by him in view of the above.

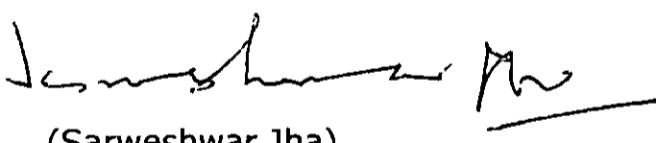
6. The position in regard to the appointment of Sh. Sukhpal Singh as Administrative Officer on ad-hoc basis w.e.f. 28-5-98 with the approval of the Director General of Health Services, who was the competent authority for such appointment in regard to said post, has been explained by the respondents in paragraph 4.9. His case is, therefore, not relevant to the case of the applicant. It has been submitted by the respondents time and again that the applicant could not have been given the benefit of the post of Sr. P.A. on regular basis in the absence of finalisation of Recruitment Rules till he retired.

7. From what has been submitted by both the parties, it is thus observed that the applicant who has since retired on superannuation w.e.f. 30-11-2001, did not have the benefit of regular appointment as Sr. P.A. only for the reason that Recruitment rules for the said post had not been finalized till he retired. He, however, continued to hold the said post till his superannuation. He could not have been deemed to have been appointed to the said post with effect from the date of occurrence of the vacancy. It is, however, not clear why he cannot be given the benefit of promotion to the said post from the date the DPC met and recommended him for such promotion on ad-hoc bases. It is also not clear from the submissions of the respondents as to why he could not be given the benefit of promotion with effect from the date the said recommendations were approved by the competent authority, i.e., the Secretary (Health) on 4-3-99, though this is not the prayer of the applicant. The claim of the applicant that he



should be given promotion to the said post from the date the recommendations of the DPC were made appears to be justified on the ground that he was already working as Sr. P.A. as claimed by him, though not formally appointed to the said post. In other words, he was already performing the duties of the said post even on the date on which his name was considered by the DPC for promotion to the said post and when he was recommended for the said promotion. Moreover, when the DPC had met on 4-3-99 and recommended his name for promotion, any delay on the part of the respondents in obtaining the approval of the competent authority was their responsibility and the applicant should not be allowed to suffer on that count.

8. Having regard to the above, we direct the respondents to extend to the applicant the benefit of promotion to the post of Sr. P.A. (now P.S.) in the NICD from the date his name was recommended by the DPC, i.e., *4-3-99^{28.5.1998} with necessary consequential benefits. The respondents shall complete the exercise in the matter keeping in view the above observations/directions within a period of three months from the date of receipt of a copy of this order. No order as to costs.

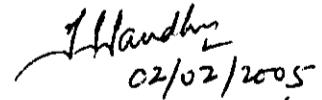


(Sarweshwar Jha)
Member (A)

/vikas/



(Shanker Raju)
Member (J)


T. H. Andhra
02/02/2005

* correction made vide order dated 25.1.2005.