

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 993/2001



New Delhi, this the 8th day of January, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Dr. A.K. Rai, S/o Shri G.P. Rai,
Aged about 46 years,
R/o A-1/6, Varun Apartments,
Sector 9, Rohini,
Delhi-110 092 and working as
Sr. Specialist (Gr.I) in E.N.T.
Department, C.G.H.S. (Wing) Safdarjung Hospital,
New Delhi

...Applicant

(By Advocate: Shri S.S. Tiwari)

Versus

1. Union of India, through
Secretary, Ministry of Health &
Family Welfare, Nirman Bhavan,
New Delhi
2. Under Secretary,
(Department of Health),
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi

..Respondents

(By Advocates: Shri S.P. Singh)

O R D E R

Hon'ble Shri S.A.T. Rizvi:

The applicant, a Gr.I Specialist in the Non-Teaching sub-cadre of Specialists of the Unified Central Health Service (CHS) cadre, is aggrieved by the contents of respondents' Office Memorandum (OM) dated 16.3.2001 (Annexure-A) by which his representation dated 1.1.2001 for grant of proforma promotion in the aforesaid sub-cadre vis-a-vis Dr. Yadu Lal and Dr. P.K. Srivastava, both Gr.I Specialists in the aforesaid sub-cadre, has been rejected though both of them were appointed as

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Gr-II Specialist on 13.1.1984, whereas Dr. P.K. Srivastava was appointed in the same grade on 30.1.1984. The applicant was appointed as Gr.II Specialist in the same sub-cadre on 27.12.1983, i.e. before the aforesaid Dr. Yadu Lal as well as Dr. P.K. Srivastava were so appointed. Proforma promotion as Gr-I Specialist in the aforesaid sub-cadre has been given to the applicant w.e.f. 29.6.1992, whereas the aforesaid Dr. Yadu Lal and Dr. P.K. Srivastava have been promoted as Gr-I Specialists in that very cadre w.e.f. 13.1.1992 and 31.1.1992 respectively. The aforesaid Dr. Yadu Lal and Dr. P.K. Srivastava are working and have been so working in Specialities different from the Speciality to which the applicant belongs. The applicant who belongs to the E.N.T. Speciality has been granted proforma promotion w.e.f. 29.6.1992 which is the date with effect from which his next junior, namely, Dr. V.P. Venkatachalam working in the same (E.N.T.) Speciality was promoted as Gr-I Specialist. Thus, in short, not giving proforma promotion with effect from the dates from which his next juniors working in different Specialities than his own, and giving of such promotion w.e.f. the date his next junior working in the same Speciality as his own, has been challenged by the applicant in the present OA. According to him, promotion and seniority are required to be determined in respect of each sub-cadre as a whole without further sub-dividing a sub-cadre into sub-sub-cadres limited to ~~various~~ various Specialities. Under challenge in the present OA is yet another order dated 21.4.1992 which lays down that the applicant's promotion as Gr-I Specialist in his own discipline/speciality will take effect from the date

he assumed charge of the post on return from his foreign assignment in Oman. The prayer made by the applicant accordingly is that both the aforesaid OM dated 16.3.2001 and Order dated 21.4.2001 be quashed and set aside and the respondents directed to promote him as Gr-I Specialist w.e.f. 27.1.1991 which is the date on which the applicant, on completion of 8 years of regular service, became due for promotion in that grade in the pay scale of Rs.4500-5700, instead of from 29.6.1992.

2. We have heard the learned counsel at length on either side and perused the material placed on record.

3. We shall first narrate very briefly the facts and circumstances of the present case which are relevant for considering the claim lodged by the applicant. The unified cadre of the CHS has been divided into four sub-cadres, namely, General Duty (GD) sub cadre, Public Health (PH) sub cadre, Non-Teaching Specialist sub-cadre and Teaching Specialist sub-cadre. Insofar as the Non-Teaching Specialist sub-cadre is concerned, a number of Specialists have been appointed in each of these sub-cadres. Thus, the applicant, who belongs to the Non-Teaching Specialist sub-cadre belongs to the Speciality known as E.N.T. There are, according to the Central Health Service Rules, 1996 (CHS Rules, 1996), around 736 posts in Grades I & II in the Non-Teaching Specialist sub-cadre. In this ^{+ very} sub-cadre, a total number of 38 posts of E.N.T. Specialists exist in various Hospitals and Institutions under the Central Government including the CGHS. Like-wise, there are very many other

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specialities forming part of the Non-Teaching Specialists' sub-cadre. On the face of it, therefore, sub-sub-cadres consisting of different specialities very much exist within the aforesaid sub - cadre of Non-Teaching Specialists. We will come back to the rule position in this regard a little later.

4. The applicant was admittedly appointed as Specialist Gr-II (ENT) in the junior scale on 27.12.1983. He was later promoted to the senior scale in the same Gr-II (ENT) within the same sub-cadre of Non-Teaching Specialists w.e.f. 27.12.1988. With effect from 23.10.1991 he was deputed on foreign assignment to Oman which ended on 22.10.1996. The same day he reported back in his own ^{✓ sub-} cadre. At the time of proceeding on deputation, the applicant was obviously working in the senior scale of Gr-II (ENT). While he was abroad on foreign assignment, he was considered along with other eligible officers for promotion to the post of Specialist Gr-I (ENT), and was indeed promoted by respondents' order dated 21.4.1992 which laid down that his placement in the aforesaid grade will take effect from the date he assumed charge of the post on return from foreign assignment. In keeping with the aforesaid order accordingly, another order dated 24.1.1997 (Annexure D-1) was issued by which the applicant was placed in Specialist Gr-I as Senior ENT Specialist w.e.f. 22.10.1996. Not satisfied with this order by which he was placed in the Specialist Grade-I (ENT) w.e.f. 22.10.1996, the applicant filed a representation on 10.11.1997 seeking ~~the~~ grant of proforma promotion from the date his immediate junior, namely, Dr.

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V.P. Venkatachalam was promoted as Gr-I Specialist (ENT). The respondents found substance in the aforesaid representation and granted proforma promotion to him as Specialist Gr-I (ENT) w.e.f. 29.6.1992, which is the date with effect from which Dr. Venkatachalam had been promoted. The relevant order passed by the respondent-authority is dated 11.2.2000 (Annexure-E). Clearly upto this point, the applicant had ~~on his own line~~ ^{already} under the belief that he was a part of the sub-sub-cadre of ENT Specialists within the sub-cadre of Non-Teaching Specialists. It appears that subsequently the applicant felt that the chance of his further promotion to a floating post in the Senior Administrative Grade (SAG) within the same sub-cadre will be adversely affected in view of the aforesaid Dr. Yadu Lal and Dr. P.K. Srivastava having been promoted as Gr-I Specialists from dates earlier than the date with effect from which the applicant himself was so promoted. We have ~~seen~~ ^{already} seen that the applicant was finally promoted as Gr-I Specialist w.e.f. 29.6.1992 whereas the aforesaid two other doctors were so promoted w.e.f. 13.1.1992 and 31.1.1992 respectively. The CHS Rules, 1996 (Schedule-III) provides for three years' regular service in the pay grade of Rs.4500-5700 (Specialist Gr-I) for the purpose of promotion to a floating post in the SAG. Such posts being not un-limited in number, the applicant felt that because of delayed promotion as Specialist Gr-I vis-a-vis Dr. Yadu Lal and Dr. P.K. Srivastava, he stood to lose in the matter of promotion to a floating post in the SAG. Relying on the rule position (Schedule-III of CHS Rules, 1996), the applicant has argued that instead of his

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promotion as Grade-I Specialist taking effect from 29.6.1992, he should be deemed to have been placed in the Specialist Gr-I on completion of 8 years of service in the pay grades of Rs.3700-5000 and Rs.3000-5000. Having joined as Gr-II Specialist on 27.12.1983, the aforesaid period of 8 years got completed on 27.12.1991. The applicant's argument is that for the purpose of promotion to a floating post in the SAG, he should be deemed to have been placed in the Specialist Gr-I w.e.f. 27.12.1991 and not from 29.6.1992. If this plea is accepted, the applicant will obviously become senior to the aforesaid Dr. Yadu Lal and Dr. P.K. Srivastava as well as to yet another person, namely, Dr. (Mrs) Atiya Sultan, who was placed in the Specialist Gr-I w.e.f. 2.4.1992.

5. We have in paragraph 4 above seen that at one stage the applicant had himself sought the relief of being placed in Specialist Gr-I with effect from the date his next junior in the same Speciality (ENT) was promoted. On the same relief being granted and consequently upon him being placed in Specialist Gr-I w.e.f. 29.6.1992, the applicant stood reconciled. Impliedly and clearly enough, on the aforesaid relief having been granted, the applicant had accepted the fact of existence of a sub-sub-cadre of ENT Specialists within the overall sub-cadre of Non-Teaching Specialists. The respondents having acted on the applicant's claim in question for according seniority to him w.e.f. 29.6.1992, the application of the principle akin to the principle of estoppel will also undoubtedly stand in his way, if he wanted to go back on the same as an after thought seeking the further and the

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extended relief of being promoted as Specialist Gr-I with effect from a different date, whether it be a date with effect from which his next juniors in the other Specialities stood promoted to the same grade or else with effect from the date he completed 8 years of service in the manner aforesated. Moreover, completion of 8 years in the pay grades of Rs.3000-4500 and Rs.3700-5000 put together merely rendered the applicant eligible for consideration for being placed in Gr-I, and it is by no means necessary that he should be promoted to Gr-I immediately on completion of 8 years as above in total disregard of rules.

6. We will now examine the rule position so as to see whether Speciality-wise sub-sub-cadres are really in existence. Sub-rule (2) of Rule 7 which provides for future maintenance of service lays down in Schedule-III the method of recruitment, the field of selection for promotion etc. in the following terms:-

"7. (2) The method of recruitment, the field of selection for promotion, including the minimum qualifying service in the immediately lower grade or lower grades as the case may be for appointment or promotion to the posts in the respective sub-cadres and specialities within the Sub-cadre concerned, included in the Service shall be as specified in Schedule-III"
(emphasis supplied)

7. Sub-rule (4) of the same rule thereafter provides as under:

"(4) If any officer appointed to any post in the Service is considered for the purpose of promotion to the higher post, all persons senior to him in the grade of the respective Sub-cadre or in the respective speciality of the Sub-cadre as the case may be shall also be considered provided they are not short of requisite qualifying/eligibility service by

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more than one year and have completed their probation period, if prescribed."
(emphasis supplied)

8. Further on in sub-rule (5) (ii) (b) there is a mention of posts belonging to Super Specialities. Rule 9 which pertains to seniority also recognises the existence of Specialities in its sub-rule (1) in the following terms:

"(1) The relative seniority of members of the service appointed to a grade in the respective sub-cadres or in the respective speciality of the sub-cadre of the service, as the case may be, at the time of initial constitution of the service under rule 6, shall be as obtaining on the date of commencement of these rules."
(emphasis supplied)

If one has regard to the aforesaid provisions, it is clear to us that there is a definitive and a distinctive place in the scheme of things for each Speciality forming part of the Non-Teaching Specialists' Sub-cadre as well as the Teaching Specialists' Sub-cadre. Rules regarding recruitment and promotion clearly enough refer to the existence of Specialities as parts of the respective Sub-cadres. The rule pertaining to seniority also makes a direct reference to various Specialities again forming part of the respective Sub-cadres. The only inference which could be drawn in the circumstances is that for the purposes of recruitment as well as for the purposes of promotion and seniority, the various Specialities forming part of the aforesaid two Sub-cadres will have to be treated as sub-sub-cadres duly sanctified as units of service. The applicant belongs to the ENT Speciality which consists of 38 sanctioned posts in existence in different Hospitals and Institutions including the CGHS. The applicant clearly belongs to the sub-sub-cadre of ENT Specialists within the overall sub-cadre of Non-Teaching Specialists. In the

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circumstances, the respondents have proceeded correctly in giving him seniority with effect from the date (29.6.1992) from which his next junior (Dr. V.P. Venkatachalam) in the same Speciality was promoted.

9. Insofar as the applicant's further promotion to a floating post in the SAG is concerned, there is no doubt that in terms of rule 4 (8) of the CHS Rules, 1996 such promotions will have to be made on the basis of a common eligibility list of Specialists (Gr-I)/Professors. Such lists will have to be drawn separately for the Teaching and the Non-Teaching Specialists Sub-cadres. Such eligibility list will cover all officers in the respective Sub-cadres without regard to Specialities. Thus, when it comes to further promotion to the floating posts in the SAG, the applicant will undoubtedly figure in the eligibility list along with Dr. Yadu Lal, Dr. P.K. Srivastava, Dr.(Mrs.) Atiya Sultan and Dr. V.P. Venkatachalam and all others who may be qualified for inclusion in the eligibility list as per Schedule-III of the CHS Rules, 1996. The aforesaid floating posts in the SAG seem to have been created for the Sub-cadres of Teaching and Non-Teaching Specialists alone. It is a different matter that separate floating posts appear to be in existence for each of these Sub-cadres. In result, we arrive at the conclusion that right upto the posts of Specialist Gr-I, promotions are required to be made Speciality-wise, and it is only thereafter, that is, when it comes to promotion in the Super Time Grade (Rs.5900-6700) that consideration based on Speciality will have to be given up. This stands to reason inasmuch as

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the posts in the Super Time Grade/SAG are administrative posts and, therefore, consideration based on speciality will have little relevance in the context of such promotions.

10. The learned counsel appearing on behalf of the respondents has placed reliance on the decision rendered by this very Tribunal on 20.11.1995 in OA No.1208 of 1988 and the CHS Rules, 1982 to bring home the point that specialities in a way do constitute sub-sub-cadres in the manner found by us without reference to the aforesaid decision or the CHS Rules, 1982. We have nevertheless gone through the aforesaid judgement as well as the aforesaid Rules, 1982. The case dealt with by the Tribunal in OA No.1208/1988 is, on facts and circumstances, totally distinguished and the aforesaid Rules of 1982 have little in common with the CHS Rules, 1996 insofar as the treatment of various Specialities as sub-sub-cadres within the sub-cadres is concerned.

11. The next below rule (NBR) so heavily relied upon by the learned counsel appearing on behalf of the applicant will, no doubt, find application but not in the manner in which the learned counsel has argued. Annexure-G placed on record by the applicant refers to the NBR in the following terms:-

".....The intention underlying the "rule" is that an officer out of his regular line should not suffer by forfeiting the officiating promotion which he would otherwise have received had he remained in the original line."

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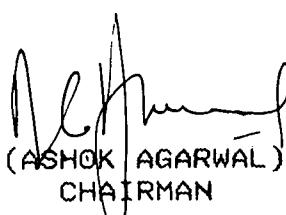
✓ The applicant's original line is ENT Speciality within the sub-cadre of Non-Teaching Specialists. He is not a sufferer inasmuch as he has been promoted from the date (29.6.1992) with effect from which his next junior in the same Speciality has been promoted. Thus, the NBR has been followed in letter as well as in spirit insofar as the applicant is concerned.

12. We also find that the OA suffers from non-joinder of necessary parties. The applicant wants to steal march over Dr. P.K. Srivastava, Dr. Yadu Lal and Dr. Atiya Sultan and presumably several others, but none of them has been impleaded as a party in this OA. For this reason also, the OA deserves to be dismissed.

13. For all the reasons mentioned in the preceding paragraphs, none of the contentions raised on behalf of the applicant is found to have substance or merit. The OA is accordingly dismissed. No costs.


(S.A.T. RIZVI)

MEMBER(A)


(ASHOK AGARWAL)
CHAIRMAN

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