

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1654/1999

New Delhi, this the 21st day of September, 2000

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:
Lokmanya Singh
Quarter No. 651
Type-2, Sector-2
Sadique Nagar
New Delhi - 18

Working as

Assistant Administrative Officer
Medical Store
Safdarjung Hospital
New Delhi. Applicant
(By Advocate: Sh. Arun Bhardwaj).

VS.

1. Union of India through
Secretary
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi
2. Director General of Health Services
Nirman Bhawan
New Delhi
3. Medical Superintendent
Safdarjung Hospital
New Delhi.
4. Administrative Officer
Office of the Medical Superintendent
Safdarjung Hospital
New Delhi - 16. Respondents
(By Advocate: Sh. S.M.Arif)

ORDER

By Mr. Govindan S. Tampi,

The applicant who is a graduate with post graduate diploma in Hospital Admn. joined Safdar Hospital as a Pharmacist in 1980, and became Assistant Superintendent of Stores, on ad hoc basis on 10.05.1986 and thereafter on regular basis on 28.08.86, for three years. He was reverted in 1989 as Pharmacist but was promoted again on 24.12.1992 and regularised on 29.06.93. His request in March, 1993 for the

issue of the seniority list did not evoke any response. In December, 1995, DPC approved for promotion as Assistant Admn. Officer two other Assistant Stores Superintendent - who were his juniors - alongwith two from the Accounts Department and regularised all of them thereafter, ignoring the applicant. His representation of January 1996 had not been responded. He was ultimately promoted as Assistant Admn. Officer on 31.01.1997, on ad hoc basis for three months and has been continuing on that post on ad hoc basis, inspite of repeated representations. In the seniority list of 01.04.1997, he was shown as junior to two other persons Assistant Stores Superintendent who should have been placed below him, on the basis of 1992 Selection. His representations for restoration of his seniority, for considering his three years of regular service from 1986-89 as Assistant Stores Superintendent, ^{and} for regularisation as AAO have not been successful. This was coming in the way of his promotion as Admn. Officer. To cap it all, he was, by the order dt. 22.07.99 reverted as Assistant Stores Superintendent on the ground that DGHS has not responded to his representations. Hence, this OA. Reliefs sought by him are :

- (i) quashing of the reversion order dt. 22.07.1999;
- (ii) direction to count six years of his regular service as Assistant Stores Superintendent for ^{seniority};
- (iii) direction to regularise him as Assistant Admn. Officer from 1995 when his juniors were promoted to that post with all consequential benefits like fixation of pay, arrears etc.

2. On behalf of the respondents, it is urged that the applicant was appointed as Assistant Admn. Officer only on ad hoc basis on 05.01.97 and that too for a period of three months. Seeking extension and regularisation was therefore not warranted. Though he was working as regular Assistant Stores Superintendent during 1986-89, he had to be reverted as the regular incumbent returned from deputation. At the time of his second promotion as Assistant Stores Superintendent he was placed below S/Sh. V.K. Gupta and M.L. Majjihi by the Selection Committee and he cannot claim seniority over them, merely because he was working earlier on a higher scale. Having been appointed, purely on ad hoc basis for three months, his claim that he was continuing as Assistant Admn. Officer has no basis and his appointment was liable to be terminated. His claim for counting six years of service as Assistant Stores Superintendent was also not tenable, as with his reversion in 1992, as Pharmacist the period he spent as Assistant Stores Superintendent had become irrelevant. Since, he did not possess five years' regular service in the feeder cadre for promotion as Assistant Admn. Officer he could not be promoted on regular basis. He has been, in the circumstances, correctly reverted by the order of 22.07.99 to his substantive post of Assistant Superintendent of Stores. The applicant should have no grievance against this order, argues the counsel for the Respondent.

3. In the rejoinder the applicant refutes the contentions of the respondents and states that the selection/placement of S/Sh. Gupta and Majhi above him as Assistant Superintendent of Stores in 1992 was irregular and that this ~~is~~ incorrect step has caused him loss of seniority and other inconveniences in the subsequent days.

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4. Heard both the Counsels, Sh. Arun Bhardwaj arguing for the applicant strongly reiterates the pleas and states that as he was originally senior, having been in a senior scale, vis-a-vis Gupta and Majhi, he should not have been placed below them in 1992 selection. Further, his having been Assistant Stores Superintendent for two spells i.e. 1986-89 and 1992 onwards he had a greater claim for promotion as Assistant Admn. Officer, earlier than others i.e. from 1995. This would only correctly entitle him to become Admn. Officer shortly. The application should therefore be allowed, is his plea.

5. Sh. Mohd. Arif, the learned counsel appearing for the respondents avers that having once failed before this Tribunal in OA No. 1470/94 on the selection/placement in the post of Assistant Superintendent of Stores in 1992, the applicant cannot raise that plea once again in this OA. His promotion as Assistant Admn. Officer was for only three months from 31.01.97 and therefore he has been reverted to his substantive post of Assistant Superintendent of Stores on 22.07.97. No relief is admissible to him, according to the respondents counsel.

6. We have carefully deliberated on the rival contentions. Two pleadings have been made by the applicant. First, that in the promotion as Assistant Superintendent of Stores in the selection of 1992, he should have been placed above Gupta and Majhi, who at the relevant time were ^{on} ~~as~~ a lower scale of pay. The selection/placement as Assistant Superintendent of Stores in 1992, has been agitated by two applicants including the present applicant in OA No.1470/94.

The same has been dismissed by order dt. 19.09.94, holding that selection and placement of Gupta and Majhi above the applicant was correct and justified. That order has become final and should not have been raised in this OA. That plea is rejected. 22

7. The second plea by the applicant is that he should have been promoted in 1995 itself as Assistant Admn. Officer keeping in view his two spells of service during 1986-89 and from 1992 and regularised as there were regular vacancies and he was fully eligible for being promoted. The applicants plea is partially justified. Though his claim for counting his service as Assistant Superintendent of Stores in the first spell in 1986-89 cannot be counted for purposes of seniority, its ~~being~~ ^{having been} an arrangement for a limited tenure and against a deputation vacancy, his claim for promotion to the post of Assistant Admn. Officer alongwith Gupta and Majhi cannot be gainsaid. All the three have been promoted on 24.12.97, as Assistant Superintendent of Stores and it is just not possible that the applicant would have had less time than the other two in the feeder cadre. The averment in para 4.12 of the counter that the applicant did not have the requisite period of five years in the feeder cadre for being eligible for consideration for promotion as Assistant Admn. Officer, would have applied to Gupta and Majhi as well. Then how come they came to be considered in the DPC held in December, 1995 for promotion to the post of Assistant Admn. Officer? Obviously it was a case of hostile discrimination which the respondents have not been able to explain satisfactorily. We could even justifiably surmise that the applicant's posting as Assistant Admn. Officer on ad hoc basis in July 1997, was on the basis of the Department's realising the injustice. However, on the ground

that DGHS had not considered the applicants representations that they had kept him as ad hoc Assistant Admn. Officer originally for three months but reverted him on 22.07.99. Evidently, therefore, he was working as Assistant Admn. Officer for two and a half years. Presumption has, therefore, to be that there were vacancies in the grade of Assistant Admn. Officers to accommodate him as well. No ground has been brought to our attention as to why it was not done or why it could not have been done. We are therefore, convinced that he was unjustly dealt with ^{by} not having been given the benefit given to others similarly placed and ^{by} having been reverted as Assistant Superintendent of Stores. A similar issue, decided by this very bench (in which one of us, Mr. Justice Rajagopala Reddy was a party) in the OA 2444/97, filed by Dr. Jyoti Lochab. Relevant portions of the said judgment dt. 15.09.99 is abstracted below:

" If the respondents had taken steps in 1991 or immediately thereafter the applicant would have been found eligible for appointment. Unfortunately, applicant has now become overaged in the service of the respondents as Physicist and is not eligible to apply for the said post. The principal Bench in OA-1259/90 while disposing of the OA by order dated 08.10.91 considered the ad hoc appointment of Medical Doctors and their continuously discharging the functions of Doctors for quite some time and directed regularisation of their services w.e.f their initial appointment. The Supreme Court thereafter in SLP-13578-84/92 approved the order.

In the circumstances and facts of this case, to meet the interests of justice, we direct the respondents to consider regularisation of the service of the applicant as Physicist in the pay scale of Rs. 3000-4500/- through UPSC relaxing the qualification as to age, on the basis of evaluation of the ACRs of the applicant and to continue her in service till he was so considered."

In the instant case also the applicant has been denied his due by the inaction or apathy of the respondents to consider his case along with others similarly circumstanced. This injustice would have to be undone in the interest of fairness in administration.

8. In the result, the application partially succeeds and is accordingly disposed of. The impugned order dated 2.07.99, reverting the applicant from the post of Assistant Admn. Officer to his substantive post of Assistant Superintendent of Stores is quashed and he is deemed to have continued as Assistant Admn. Officer from February 1997. The respondents are also directed to consider his regularisation, from that day itself, subject to availability of vacancy and his suitability, keeping in view his performance in that capacity. His request for placement above Gupta and Majhi in the feeder cadre is untenable, having already been decided upon in OA No. 1470/94, and is ^{thus} rejected.

9. OA is accordingly disposed of. No order as costs.

(GOVINDAN S. TAMPT)

MEMBER (A)

(V. RAJAGOPALA REDDY)

VICE CHAIRMAN (J)

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