

17

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 2205/1999

New Delhi, this the 9th day of February, 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri R.N. Bhardwaj,
S/o Shri Sher Singh Bhardwaj,
Librarian,
Maulana Azad Medical College.
New Delhi Applicant
(By Advocate: Ms Meenu Mainee)

VERSUS

Union of India through

1. The Secretary to the Govt. of India,
Ministry of Home Affairs,
North Block,
New Delhi
2. The Chief Secretary,
Govt. of National Capital
Territory of Delhi,
Old Secretariat,
Delhi
3. The Secretary,
Govt. of N.C.T. of Delhi
Deptt. of Medical & Public Health
5, Sham Nath Marg,
Delhi - 54 Respondents
(By Advocate: Shri Vijay Pandita)

O R D E R

By Hon'ble Shri S.A.T. Rizvi, Member (A) :

The applicant in this OA is not aggrieved by any specific order made by the respondents, but by the non-consideration of his claim for promotion to the post of Senior Librarian despite the fact that two posts of senior Librarian have been lying vacant in the Maulana Azad Medical College (hereinafter MAMC) and Mrs. Asha Sinha, junior to the applicant, was being considered for promotion to the post of senior Librarian in MAMC on the strength of the order passed by this Tribunal in her favour. He has filed a detailed representation dated 28th May, 1999, but

2/

(2)

there has been no response thereto from the respondents. Hence this OA.

2. The facts of the case, briefly stated, are like this. The applicant was first appointed as LDC in the Irwin Hospital on 5.6.1971 and thereafter he was promoted as Assistant Librarian in the MAMC w.e.f. 24.7.1972. Subsequently, he was further promoted to the rank of a Librarian under the Directorate of Education w.e.f. 28.2.1983. He was placed in the pay scale of Rs.1400-2600 w.e.f. 1.1.1986. The applicant was thereafter transferred to MAMC in the same position i.e. as a Librarian by a Notification dated 25.8.1994. The respondents' Notification dated 14.4.1988 (Annexure A-3) shows that two posts of Librarian in the same pay scale (Rs.1400-2600) existed in the MAMC. Referring to respondents' Notification dated 23.9.1992 (Annexure A-4), the applicant has further shown that two posts of senior Librarians have been sanctioned for MAMC. These posts carried the pay scale of Rs.1640-2900. According to the applicant, the aforesaid posts were lying vacant and he himself happens to be one of the senior most Librarians working in a Medical Hospital, who is eligible for promotion to the rank of Senior Librarian. Having been promoted the rank of Librarian way back in 1983, the applicant is, according to the OA, fully entitled and eligible to be considered for promotion.

3. Furthermore, according to the applicant, while he has not been promoted as above, the Librarians

2

working under the Directorate of Education were being considered for the grant of time bound promotion to the next higher grade after 12 years of service. He is, therefore, in a way doubly handicapped. He has referred to the recommendations of the 5th Central Pay Commission (CPC) to suggest that despite the Commission's recommendations the scheme of Assured Carrier Progression (ACP) has not been implemented though amongst others he is also stagnating. The applicant has then referred to the case of Smt. Asha Sinha, who, according to the applicant, was placed in the pay scale of Rs. 1400-2600 in 1992 i.e. long after the applicant had been placed in that scale. Like the applicant, Smt. Asha Sinha was also stagnating as a Librarian and, therefore, she approached this Tribunal, which has granted relief to her by its Order dated 4.12.1998 (OA No. 2957/1997). Accordingly Smt. Asha Sinha was likely to be considered for promotion fairly soon. The applicant being senior has a prior claim and he would like his case also to be considered for promotion. Following the aforesaid judgement of this Tribunal in favour of Smt. Asha Sinha, the applicant has filed a representation on 27.9.1999 praying for preparation of a seniority list of Librarians so that the claims of senior persons like him could be considered by the DPC to be held to consider the case of Smt. Asha Sinha. There has been no response to the aforesaid representation either.

4. We have hear the learned counsel on either

90

(4)


side and have carefully perused the material placed on record.

5. We find that the applicant has built up a story of promotions which is factually incorrect. For instance, he was not in fact promoted to the rank of Librarian in 1983. From a copy of the offer letter dated 21.2.1983 brought to our notice (taken on record), we find that the applicant was appointed afresh as a Librarian in the pay scale of Rs.440-750, later converted to Rs.1400-2600. A copy of the order of appointment dated 28.2.1983 also brought to our notice and taken on record reveals that the applicant was appointed on the recommendations of the Staff Selection Board. Similarly, on an earlier occasion when he was working as LDC in the Irwin Hospital, New Delhi, he was again appointed, and not promoted, to the post of Assistant Librarian through the Staff Selection Board. This is revealed from a copy of the Office Order dated July, 1972 issued by the MAMC, and placed on record. Thus on the post of Assistant Librarian also the applicant was directly appointed/recruited. His theory that he was promoted from the rank of LDC to the rank of Assistant Librarian and thereafter promoted again to the rank of Librarian, therefore, collapses, and with this the applicant's attempt to show that he was free to move on from the Directorate of Education to the Hospital side and vice versa and seek promotion as per his seniority as if in one and the same cadre, can also be said to have come to nought.

2/

6. It is true that he has been transferred from his post under the Directorate of Education to MAMC to work as a Librarian in MAMC against a vacant post available there by the respondents' order dated 25.8.1994. This will not mean, however, that it was a simple case of transfer from one post to the other under the same set up or in the same cadre. The aforesaid order clearly lays down that it was a case of inter institutional transfer. From the circumstances surrounding the aforesaid transfer it appears that the applicant was so transferred specially to accommodate the applicant and as an exceptional measure.

7. The nature of his posting in MAMC has been clarified by the respondents in their reply. According to the respondents, the applicant was working in MAMC on an ex-cadre post. The applicant, according to the respondents, belongs to a cadre different from the Hospital cadre. The applicant belongs to the Educational Cadre under the Directorate of Education. In support of this contention the respondents have placed on record a seniority List (Annexure R-1) of Librarians working under the Directorate of Education. The same is dated 22.9.1999 and the applicant figures in the said list at serial No. 440. The respondents have also placed on record another seniority list of staff working in MAMC (Annexure R-4). The same is the final seniority list of Librarians working in MAMC. The name of Smt. Asha Sinha figures in the aforesaid list along with that of

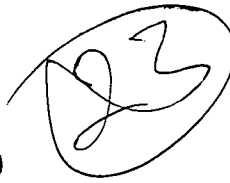


another. The applicant's name does not figure in that list at all.

8. The applicant has, as already stated, referred to the notification/amendment to the Recruitment Rules issued on 14.4.1988. The aforesaid Notification provides for clubbing of posts in the Directorate of Education, MAMC etc, all under the Government of N.C.T. of Delhi. According to the respondents, this would not mean that all the posts so clubbed would thereby belong to one and the same cadre. The respondents have placed on record copy of an Office Memorandum dated 30th November, 1988 (Annexure R-6) to show that where more than one department of the Government is involved, Recruitment Rules in respect of similar posts are issued from the Services-II Department of the Government of NCT of Delhi. This is what has been done by the respondents. The cadre of Librarians under the Directorate of Education remains different from the Hospital cadre of Librarians. There can be no question, therefore, according to the respondents, for considering the claim of the applicant against posts belonging to a different cadre. That the applicant belongs to the Education cadre under the Directorate of Education is clearly established by the aforesaid letters dated 21.2.1983 and 28.2.1983. For this reason alone he cannot seek promotion to the post of Senior Librarian in MAMC which belongs to the Hospital cadre.

9. In regard to the applicant's suggestion that

Dr



the ACP scheme has not been introduced/implemented by the respondents, and therefore, along with others he too has been stagnating, the respondents have clarified by saying that the Government of N.C.T. of Delhi has since accepted the aforesaid ACP scheme for the employees included in Group 'B', 'C', and 'D'. According to the respondents, the applicant will also benefit under the aforesaid scheme as recommended by the 5th CPC. He cannot, therefore, complain of stagnation any more.


10. On the question of consideration of the claim of the applicant for promotion as senior Librarian in MAMC (Hospital cadre), the respondents have further clarified the position by stating that in accordance with the Recruitment Rules notified by them there is no provision for filling up the post of Librarian by transfer method, by transferring Librarians from one Department to the other.

11. In the background of the detailed discussions contained in the preceding paragraphs, it is clear to us that the applicant has filed this OA with the sole purpose of securing promotion to the post of senior Librarian and that too in MAMC where he has already worked in the past as an Assistant Librarian for more than 10 years. In order to achieve his object, he has resorted to influence peddling at the highest level and succeeded in getting himself transferred to MAMC as an exceptional measure and by way of inter-institutional transfer. Having achieved that much, he

Qj,

started looking for further promotion in the same set up (MAMC). The theory of promotion which he has propounded in his OA has been invented by him just in order to secure promotion to the post of senior Librarian in MAMC. We have already seen in the preceding paragraphs that he is a directly recruited Librarian in the Education Cadre and cannot, therefore, prefer a claim for promotion in the Hospital cadre. The fact that he could secure a posting in MAMC as an exceptional measure cannot help him either. We have also noted that the applicant has after filing the present OA in October, 1999 been reverted to his parent cadre on 30th March, 2000. The word used in the relevant order of 30th March, 2000 (Annexure R-8) is 'repatriation', which has the same implication as reversion in the present context. Under the Directorate of Education, where he will now work, he will be entitled to further promotion under the ACP scheme and cannot, therefore, have any grievance whatsoever here after.

12. In the circumstances, the OA fails and is dismissed without any order as to costs.


(S.A.T. RIZVI)
MEMBER(A)


(ASHOK AGARWAL)
CHAIRMAN

(pkr)