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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 447 of 1999

New Delhi this the 12th day of February, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Dr. N.K. Pal
Son of Shri R.K. Paul (Late)
Aged 67 yrs (DOB: 24/9/31)
R/o B-391 Nirman Vihar
New Delhi-110092

-Applicant

(By Advocate: Shri D.C. Vohra)

Versus

Union of India
Through
The Secretary
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi-110011

-Respondent

(By Advocate: Shri V.S.R. Krishna)

O R D E R

Mr. V.K. Majotra, Member (A)

The applicant has challenged orders dated 12.4.96, 7.4.97 and 29.7.97 (Annexures A1, A2 & A3 respectively) issued by the respondent contending that inspite of clear orders dated 1.12.92, 7.7.93 and 6.1.97 passed in OAs 974/87, 1974/89 and 589/94 respectively he has not been accorded promotion (now only notional) since 1983 when his junior was promoted to the post of Chief Medical Officer (for short 'CMO') with consequential benefits. The applicant superannuated on 30.9.89. His grievance is that he was not given in situ promotion to the upgraded post of Senior Medical Officer (for short 'SMO') to CMO during 1983 on the basis of seniority-cum-fitness from the date of his juniors' promotion.

2. In an earlier OA 974/87 the applicant had asked for the above relief but pending adjudication, he was promoted as CMO w.e.f. 10.7.88. Although the relief claimed was for promotion as CMO from the date

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his junior was so promoted in 1983 and the recommendations of DPC were kept in a sealed cover on account of a pending enquiry and a subsequent punishment order dated 10.7.86 was assailed by the applicant in the said OA, the applicant challenged his delayed promotion w.e.f. 10.7.88, instead of 1983, in another OA titled 1974/89. According to the applicant while the aforesigned OAs were pending in view of assurance of the respondents, he was permitted to withdraw his later OA-1974/89 with liberty to agitate the matter if the grievance survived. During the pendency of both the OAs, respondents passed an order dated 2/3.11.1989 which gave the applicant another cause of action because his grievance about non-promotion since 1983 still survived. He challenged that order in OA 589/94. ^{Respondent b} The applicant passed another order dated 12.4.96 against which he made a representation on 28.5.96. The Court ordered on 6.1.97 the respondents to dispose of the applicant's representation by a detailed and speaking order in accordance with law. Vide order dated 29.7.97 (Annexure A-11) the respondents rejected his representation stating that his case was considered for promotion during 1983 but he was not recommended for promotion. He made another representation dated 8.9.97 to the Minister of State, Ministry of Health and Family Welfare. According to the applicant, his punishment orders were quashed vide Tribunal's order dated 1.12.92 passed in OA 974/87. Thus, no impediment existed against applicant's in situ promotion from SMO to CMO from 1983 since the date his juniors were promoted. The applicant has sought the Tribunal's orders dated

1.12.92 in OA 974/87, dated 7.7.93 in OA 1974/89, and dated 6.1.97 in OA 589/94 should be given effect and he should be accorded in situ promotion of CMO from the date his juniors were given promotion in 1983. He has sought consequential reliefs along with interest @ 18% per annum.

3. The respondents have filed a short reply stating that the application is not maintainable on the ground of limitation as also under the doctrine of res judicata and constructive res judicata. According to them by the issuance of the order dated 7.4.97 the grievance of the applicant stands finally concluded and this order dated 7.4.1997 does not give him any cause of action.

4. We have heard the learned counsel of both sides and perused the material on record.

5. The learned counsel of the respondents has first raised the objection of limitation. The learned counsel of the applicant stated that OA-2027/98 was to be amended by him. It could not be amended within the time prescribed by the Court. In the circumstances, the applicant was given permission to withdraw that OA on 10.12.98 with liberty to file a fresh OA, if deemed fit. Thus, vide order dated 10.12.98 the OA was dismissed as withdrawn with liberty to the applicant to file a fresh OA in accordance with law. The learned counsel stated that the present OA has been filed in the background of liberty granted to the applicant as per order dated 10.12.98. In our considered view, as the applicant had been accorded liberty to file a fresh OA on withdrawing the earlier OA-2027/98 the objection relating to limitation in filing the present OA does not sustain.

6. The learned counsel of the respondents has next raised the objection relating to res-judicata contending that the applicant has been filing original applications ^{on} one or the other ground with the same cause of action. The learned counsel of the applicant stated that unless the matter directly and substantially in issue in the present case had been directly and substantially in issue in a former case and was heard and finally decided by the Court, the objection of res-judicata will not apply. OA No. 589/94 was disposed of vide order dated 6.1.97 with a direction for a detailed and speaking order on applicant's representation dated 28.5.1996. The respondents issued order dated 7.4.97 (Annexure A-2) in compliance of directions contained in order dated 6.1.97 in OA-589/94 and applicant's representation dated 28.5.96 was disposed of. According to respondents nothing new has happened thereafter to give a fresh cause of action to the applicant. If by the orders of the respondents passed on representation made by the applicant after Court's orders, the applicant has remained aggrieved on the issue that he was not accorded promotion when due his challenge to such orders will not be barred by res-judicata. Thus, in our considered view, the present OA is not barred by res-judicata and it has to be adjudicated whether the applicant has been given in situ promotion as CMO as per the recommendations of the DPC or not.

7. Drawing attention to order dated 7.4.97, the learned counsel of the respondents stated that applicant's case for promotion to the grade of CMO was considered by the DPC held in the UPSC in 1983 but his name was not recommended by the DPC. His

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case for promotion was considered again by the DPC in the UPSC on 12/13.5.1986. He was again not recommended for promotion. It is further stated in the said Memorandum that he was considered for promotion as CMO next year by the DPC in its meeting held on 12/13.8.1987. It was conveyed that "[T]his DPC recommended your name in the panel of officers for promotion as Chief Medical Officer for the vacancies

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Substituted
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in RANO. 2/2002 in
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for the year 1984 and recommended that you should be placed above Dr. (Smt.) I Sahai and below Dr. P.K. Mukherjee. These recommendations were subject to obtaining vigilance clearance in respect of a disciplinary case pending against you. The recommendations of DPC were kept in sealed cover as disciplinary proceedings were pending against you.

On the Vigilance Section exonerating you of the charge against you, orders of your promotion were issued on 22.8.88 promoting you as Chief Medical Officer with effect from 9.10.1987". Subsequently, it came to notice that there was another vigilance case pending against the applicant initiated in 1980 for which a penalty of reduction of pay was imposed on him for a period of two years, without cumulative effect on 10.7.86. Applicant's orders of promotion dated 22.8.88 were reviewed and his date of promotion was changed from 9.10.1987 to 10.7.1988 in view of the penalty imposed on him on 10.7.86. In the same Annexure-A-2 dated 7.4.1997, it is also mentioned that the penalty of reduction of pay imposed vide order dated 10.7.1986 was later on withdrawn in pursuance of Tribunal's judgment in OA-974/87. Accordingly, the date of promotion as CMO of the applicant was reviewed again and the promotion was antedated to 9.10.1987. The learned counsel of the

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applicant states that when the applicant had been recommended by DPC for promotion as CMO for vacancies for the year 1984 and his placement above Dr.(Smt.) I Sahai and below Dr. P.K. Mukherjee was also recommended and when the punishment of reduction in pay for two years was withdrawn vide Court's orders in OA-974/87, he should have been accorded promotion w.e.f. 1984 instead of 9.10.87 and he should have been placed between Dr. P.K. Mukherjee and Dr. (Smt.) I Sahai in seniority.

8. We are in agreement with the learned counsel of the applicant that when the punishment against the applicant which had resulted in delay in applicant's promotion inspite of recommendations made by the DPC was set aside by a Court's order, there was no ground for the respondents to have given promotion to the applicant w.e.f. 9.10.1987 instead of 1984 and not placed the applicant between Dr.P.K. Mukherjee and Dr.(Smt.) I Sahai.

9. In the result, the OA succeeds and orders dated 12.4.96, 7.4.97 and 29.7.97 (Annexures/A1, A2 & A3 respectively are quashed and set aside and the respondents are directed to accord *in situ* promotion to the applicant as CMO as per the recommendations of the DPC held on 12/13.8.1987 promoting him against a vacancy for the year 1984 and placing him above Dr.(Smt.) I Sahai and below Dr. P.K. Mukherjee. It is clarified that his pay would be notionally, fixed on *in situ* promotion as CMO in 1984 for the purpose of revising his pension accordingly. The respondents are further directed to revise and pay him retiral

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benefits within a period of three months from the date of communication of this order. No costs.

S. Raju

Majotra

(Shanker Raju)
Member (J)

(V.K. Majotra)
Member (A)

cc.