

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2033/95

(13)

New Delhi this the 17th day of December, 1999.

Hon'ble Sh. S.P. Biswas, Member(A)
Hon'ble Sh. Kuldip Singh, Member(J)

Dr. R.C. Jiloha,
S/o Sh. Sohan Lal,
Professor of Psychiatry,
G.B. Pant Hospital,
New Delhi. Applicant

(through Sh. R.P. Kapur, Advocate)

versus

1. Union of India through
Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. Dr. B.R. Agnihotri,
Professor of Psychiatry,
G.B. Pant Hospital,
New Delhi. Respondents

(through Sh. VSR Krishna, Advocate)

ORDER

Hon'ble Sh. S.P. Biswas, Member(A)

The issue that falls for determination in this O.A. lie in a very narrow compass. It is an issue pertaining to the inter-se seniority between the applicant and the respondent No.2. To appreciate the legal issues involved, we would like to elaborate the background facts in brief.

The applicant was appointed as an Assistant Professor of Psychiatry (Specialist Grade-II) in the Central Health Services on 05.10.83. This was through a selection conducted

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by Union Public Service Commission and applicant was thereafter posted in G.B. Pant Hospital. On the basis of the recommendations of the DPC, in pursuance of Rule 7(9) of the Central Health Services, the applicant was placed in the higher pay scale of Rs. 1500-1800 vide order dated 07.11.86. He was also given the revised pay scale of Rs.3000-5000 as a result of acceptance of the recommendations of the Fourth Pay Commission vide order dated 08.09.87. The applicant would claim that in the Annexure-IV list which was circulated on 14.01.93, he was at S.No.205 whereas Respondent No.2 was at S.No. 206. The applicant was thus senior to Respondent No.2 and was also placed in the Non-Functional Selection Grade of Associate Professor in the pay scale of Rs.4500-150-5700 w.e.f. 22.08.90. In the seniority list dated 27.08.92 as at Annexure-VI, the applicant has been shown at S.No.3 whereas the respondent No.2 has been shown at S.No.4. Thus, the applicant continued remained senior to Respondent No.2 right upto 14.01.93.

2. In the contest of this, the applicant challenges Annexure A-1 order dated 06.10.94 by which the seniority of Respondent No.2 has been restored and he has been placed above the applicant in the seniority of Associate Professors of Psychiatry. The applicant would argue that the respondents could not have disturbed the seniority



position without putting him on notice. The applicant has thus been forced to face adverse civil consequences without an opportunity of being heard and, therefore, the revision of seniority is in violation of the principles of natural justice.

3. In the counter, the respondents would submit that both of them were considered for promotion as Associate Professor by DPC meeting held on 05.08.86. The DPC recommended the promotion of the applicant as Associate Professor w.e.f. 27.10.86 but it did not find Respondent No.2 fit for promotion probably because there were adverse entries in his C.R. pertaining to the year 1983. These adverse entries were expunged in 1987. The subsequent meeting held on 19.03.87 considered Respondent No.2 and found him fit for promotion but decided that his promotion would be prospective and not retrospective and hence, Respondent No.2 was promoted as Associate Professor w.e.f. 19.03.87. The applicant thus became senior to Respondent No.2. Subsequently, Respondent No.2 was considered and given Non-Functional Selection Grade of Associate Professor on 22.08.90. However, on 23.10.92 Respondent No.2 represented that his case was not processed in terms of law. He claims that had the case adverse remarks been communicated to him at the appropriate time, he would have represented accordingly and expunction of the adverse remarks would have taken place much earlier instead of 1987.

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He, therefore, requested that he may be given promotion as Associate Professor with effect from the due date instead of 19.03.87 so that he maintains his original seniority above the applicant. His representation was examined and it was decided to review the proceedings of the DPC held on 05.08.86. The review DPC meeting which was held on 06.01.93 recommended Respondent No.2 fit for promotion as Associate Professor w.e.f. 27.10.86 i.e. the date from which the applicant was promoted as Associate Professor. Accordingly, the date of promotion of Respondent No.2 was changed from 19.03.87 to 27.10.86. It was only in these circumstances that the Respondent No.2 regained his seniority over the applicant.

4. The issue that arises for determination is whether on expunction of adverse remarks and consequent promotion under special review, the promotion could legally date back to the time when it was due. The determination of this issue need not detain us any longer in the light of the judicial pronouncement of the Apex Court in the case of R.K. Singh Vs. State of U.P. (1991 Suppl.(2) SCC 126). Their Lordships in that case held as under:-

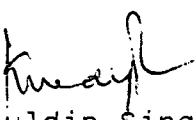
"There is no dispute that during the pendency of this appeal the appellant's representation against the adverse entries has been allowed and these entries have been expunged, the State Government by its order, dated

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24-1-1991, granted Selection Grade to the appellant with effect from the date he takes over charge. We fail to appreciate the view taken by the State Government. Once the adverse entries awarded to the appellant were expunged, the appellant is entitled to Selection Grade with effect from 1-1-1986, the date on which he was eligible for grant of Selection Grade. We, accordingly, allow the appeal, set aside the order of the Central Administrative Tribunal and modify the order of the State Government, dated 24-1-1991 and direct that the appellant shall be treated in Selection Grade with effect from 1-1-1986 and he will be entitled to all consequential benefits with effect from that date. As regards the appellant's further promotion, he will be considered for promotion in accordance with the rules."

5. The Apex Court also have had the opportunity of examining a similar issue in Civil Appeal Nos. 5996 to 6000 of 1994 decided on 12.09.94. It was held that such a review may be done in cases where adverse remarks in the officer's Annual Confidential Reports are expunged subsequently as a result of representations. We find that the A-VI seniority list relied upon by the applicants is only a draft one.

6. In the light of the detailed facts as aforementioned as well as the position of law, the O.A. has no merit and is accordingly dismissed. No costs.


(Kuldip Singh)
Member(J)


(S.P. Biswas)
Member(A)

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