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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 505 of 1995

New Delhi, this the 22nd day of August, 1995.

HON'BLE MR J.P. SHARMA, MEMBER (J)
HON'BLE MR B.K. SINGH, MEMBER (A)

Makim (Mrs) Kausar Parveen,
working as Sr. Medical Officer,
CGHS Unani, presently posted in
CGHS Unani Dispensary, Daryaganj,
R/O 3757/C, Gali Akhrawali,
Churiwala, Delhi. Applicant.
(through Mr S.S. Tewari, Advocate).

vs.

1. Union of India, through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. Director General of Central Health
Services, Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi.
3. Dr (Mrs.) Alya Amman, Deputy Adviser (Unani)
Ministry of Health & Family Welfare,
Raam No. 530, 5th Floor,
Nirman Bhawan, New Delhi. .. Respondents

(through Mr M.K. Gupta, Advocate)

O R D E R

(delivered by Hon'ble Mr B.K. Singh, Member (A))

This O.A. No. 505 of 1995 is directed
against the promotion of Respondent No. 3 as
Deputy Adviser (Unani) against the recruitment
and
rules notified in 1976/ amended in 1986 wherein
the qualification prescribed for the post of
Deputy Adviser (Unani) is a degree or diploma in Unani
Tibba and the mode of recruitment is direct
recruitment only.

A copy of the promotion order, impugned in the O.A. is dated 8.8.1994 and is annexed as Annexure A to the OA. The reliefs sought in the O.A. are as under:

"(a) set aside and quash that portion of the impugned order dated 8.8.1994 by which the respondent No.3 has been promoted as Deputy Adviser (Unani);

(b) Declares the appointment of respondent No.3 Dr. (Mrs) Aliya Amman as null and void as the same is de hors the present recruitment rules;"

On notice, the respondents filed their reply contesting the application and grant of reliefs prayed for.

Heard Shri S.S.Tiwari, learned counsel for the applicant and Shri M.K.Gupta, learned counsel for the respondents and perused the records of the case and also the relevant file dealing with the D.P.C. meeting as a result of which respondent No.3 was promoted and the applicant was passed over. The relevant file clearly indicates that the case of the applicant was considered since she was eligible on the basis of her combined service of 9 years as Medical Officer and Senior Medical Officer, which is one of the eligibility criteria prescribed for consideration.

The main plank of the argument of the learned counsel representing the applicant was that the promotion is de hors the rules as notified in 1976 and amended in 1986 under proviso to Article 309 of the Constitution and,



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therefore, there was no case for promotion and direct recruitment should have been made after advertising the post of Deputy Adviser (Unani) affording opportunity to all eligible candidates.

According to him, no promotion can be made till the existing rules are amended. He further argued that the Tikku Committee Report cannot be acted upon till the existing rules are amended and fresh rules are notified.

It is admitted by both the parties that respondent No.3 has been promoted as Chief Medical Officer in the grade of Rs.3700-5000 and that the post of Dy. Adviser was in the grade of Rs.3000-5000 only. Thus, the post of Chief Medical Officer is an up-graded post and instead of one post of Deputy Adviser, the respondents have created two posts of Chief Medical Officers in the grade of Rs.3700-5000. It is further admitted by both the parties that Mrs Hakim Kauser was appointed to the post of Medical Officer (Unani) w.e.f. 18.11.1983 on regular basis through U.P.S.C. in the pay scale of Rs.200-4000.

The sanctioned strength of the Unani System of Medicine was 17 posts of Medical Officers (Unani) in the pay scale of Rs. 2200-4000 in the Central Government Health Scheme and one post of Deputy Adviser (Unani) in the pay scale of Rs. 3000-5000.

It is admitted that there has been cadre-restructuring in all the systems of medicines - Allopathy, Homoeopathy / Unani on the basis of the acceptance of the recommendations of the High Level Committee headed by Mr R.K. Tikku vide letter No. A.11011/1/90-CGHS-P dated 5th December, 1991.

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This is annexed and marked as Annexure R-2, with
the counter.

The cadre structuring has since been
done. The sanctioned strength of the cadre
is as under:

1. Medical Officers (Rs. 2200-4000)	9 posts.
2. Sr. Medical Officers (Rs. 3000-4500)	8 posts.
3. Chief Medical Officers (Rs. 3700-5000)	2 posts.

The learned counsel for the respondents
stated that originally there was only one post
of Deputy Adviser that too in a lower pay scale
of Rs.3000-4500. But as a result of the
acceptance of the recommendations of the
High Level Committee headed by Mr Tikku there
are now two permanent posts of Chief Medical
Officers in the pay-scale of Rs.3700-5000. By
^{Implication, the lower post of} Dy. Adviser stands abolished
two new posts of Chief Medical
officers. According to him, these one promotional
posts have to be filled up 100% by promotion.
New recruitment rules have been framed in
consultation with the DOPT and U.P.S.C. and
are likely to be notified shortly.

According to the new recruitment
rules, the post of Medical Officer(Unani) is to be
filled up 100% by direct recruitment, the
post of Senior Medical Officer(Unani) is to be filled
up 100% by promotion from amongst the Medical

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Officers(Unani) with four years regular service in the grade and similarly, the post of Chief Medical Officer(Unani) is to be filled up 100% by promotion from amongst the Sr. Medical Officers with five years regular service in the grade failing which Senior Medical Officers with 9 years combined regular service in the grade of Senior Medical Officer(Unani) out of which 2 years regular service should be in the grade of Senior Medical Officer(Unani).

Thus, it would be seen that the post of Deputy Adviser in the lower pay-scale stands abolished and in lieu two posts of Chief Medical Officers have come into existence and these posts have to be filled up 100% by promotion. It is not only the pay-scale that has undergone a change but the nomenclature of the post of Dy. Adviser has also undergone a change. Two posts of Chief Medical Officers (Unani) are in the scale of Rs. 3700-5000. With the creation of two posts of Chief Medical Officers. By implication, the post of Dy. Adviser in the lower pay scale is now non-existent, and once the cadre has been re-structured and the post up-graded, new draft rules framed by the respondents have come into play.

Creation, upgradation and re-structuring of a cadre fall strictly within the domain of the executive. Prescribing eligibility criteria, laying down the qualifications etc. also is within the domain of the executive as has been held by the Hon'ble Supreme Court in the case of J. Ranga Swamy vs. Govt. of A.P. & others

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AIR 1990 SC 535. It was laid down that it is not for the Courts to prescribe eligibility criteria or scrutinise the qualifications prescribed for posts. It is none of the business of the Courts to look into the relevancy of rules and suitability of candidates. In case of any grievance, the competent authority must be approached and Courts must refrain from looking into / relevancy of qualification and suitability of candidates for posts in the Government.

Post in a cadre pertaining to a new service can be created and filled up by making recruitment rules or in absence of recruitment rules in consultation with the U.P.S.C. and DOPT when the rules have not been notified or in the absence of any recruitment rules. In the absence of rules also, qualifications can be validly and legitimately laid down by the executive. The rule making power vests with the President and its amendment whether notified or not also vests with the President. The president is fully competent to lay down qualifications and prescribe eligibility criteria for recruitment and promotion. When administrative instructions are issued to supplement the rules they also acquire the force of a mandate as has been held by the Hon'ble Supreme Court in case of K. K. Bevin Katti vs. Karnataka Public Service Commission, AIR 1990 SC 1233.

The record of the D.P.C. was produced before us and the applicant has been considered alongwith respondent No.3, who, according to the respondents is the seniormost and the applicant

is the juniormost. Respondent No.3 has been duly selected on merit through a regularly constituted D.P.C. It is not denied that the applicant was considered. What is, however, is objected to is that this constitution of D.P.C. is de hors the rules of 1976, as amended in 1986. Once the applicant has been considered she cannot raise a protest or a howl now. She should have approached the Tribunal when the cases for promotion were being processed and finalised and she was being considered alongwith others for purposes of promotion and a D.P.C. was being constituted and she had a grievance at that time. The applicant cannot raise a grievance now since she has got the post of Senior Medical Officer in the scale of Rs.3000-4500 on the basis of the acceptance of the report of the High Level Committee headed by Mr Tikku and she was considered eligible for promotion and considered as such because she had put in more than 9 years of total service as Medical Officer and Senior Medical Officer. She did not raise any howl or protest when her case was being considered for promotion as Senior Medical and she accepted the same on the basis of the acceptance of the same recommendations. She is estopped from questioning the constitution of the D.P.C. or selection of respondent No.3. After her rejection as Chief Medical Officer, she cannot now raise a grievance as has been held by a Full Bench of the Hon'ble Supreme Court in the case of Om Parkash Shukla vs. Akhleshwar Shukla & ors AIR 1986 SC 1043. No relief can be granted after selection process is over and one is rejected.

In the conspectus of the facts and circumstances, we find no merit in the application

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and the same is dismissed leaving the parties
to bear their own costs.

(B. D. Singh)
Member (A)

John Doe
(J.P. Sharma)
Member (J)

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