

(25)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No. 1284 of 1997

New Delhi, dated this the 29<sup>th</sup> February 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Dr. P.K. Pandey,  
S/o Shri R.J. Pandey,  
R/o A-44, Pocket-B,  
Mayur Vihar Phase-II,  
Delhi-110092.

... Applicant

(By Advocate: Shri B.N. Singhvi)

Versus

1. Union of India through  
the Secretary,  
Ministry of Health & F.W.,  
Nirman Bhawan, New Delhi.
2. The Dean,  
Maulana Azad Medical College,  
New Delhi-110002.
3. Dr. (Mrs.) Usha Yadav,  
Professor of Ophthalmology,  
M.A.M.C.  
C/o The Dean,  
Maulana Azad Medical College,  
New Delhi-110002.

.... Respondents

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

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns the seniority list dated 1.1.96 (Annexure A) whereby Respondent No.3 has been shown senior to him as also respondents' letter dated 7.4.97 (Annexure A) communicating rejection of his representation. He seeks refixation of his seniority above that of Respondent No.3.

2. Heard both sides.
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3. Admittedly applicant as well as Respondent No.3 belong to the Teaching Specialist Sub-Cadre of Ophthalmology of the Central Health Service. Applicant himself states that Respondent No.3 took charge in Maulana Azad Medical College, Delhi as Associate Professor on 12.4.91, upon her return from Australia and he also confirms in his rejoinder, what respondents have stated in their reply, that Respondent No.3 was promoted as Professor of Ophthalmology in Maulana Azad Medical College, Delhi by order dated 26.10.94 w.e.f. 23.11.92. Admittedly on 26.10.94 applicant was working as Associate Professor of Ophthalmology in M.A.M.C., Delhi. Applicant's cause of action thus arose, not with the publication of the seniority list dated 1.1.96 but with the promotion of Respondent No.3 by order dated 26.10.94, because both were working in the same medical college, and applicant cannot claim to have been unaware of the promotion of Respondent No.3 as Professor. Yet this O.A. was filed on 27.5.97 and is, therefore, clearly hit by limitation u/s 20 A.T. Act.

4. Coming to the merits of the case, admittedly Respondent No.3 was appointed as Asst. Professor, Ophthalmology, M.A.M.C., New Delhi w.e.f. 23.11.84, while applicant was appointed as Asst. Professor of Ophthalmology w.e.f. 23.12.85 i.e. over a year later. Respondent No.3 was promoted as Associate Professor w.e.f. 7.3.88, while applicant was promoted as Associate Professor w.e.f. 8.3.89, which is again over one year later.

5. Admittedly Respondent No. 3 was permitted to visit Australia to meet her husband for the period 5.9.88 to 17.12.88 and she was allowed E.O.L. upto 12.7.89.

Respondents do not deny that she remained absent from duty till 11.4.91 and joined duty on 12.4.91. Respondents have stated in their reply that on her request the period of her unauthorised absence was treated as E.O.L., keeping in view that a quasi-permanent Government servant ~~was~~ was entitled to E.O.L. for five years. The fact that Respondent No. 3 was a quasi-permanent servant has not been denied by applicant in rejoinder, and Rule 32(6) CCS (Leave) Rules specifically permits the authority competent to grant leave to commute retrospectively the period of absence without leave, into extraordinary leave. Under the circumstances, we see no infirmity in respondents granting Respondent No. 3 E.O.L. for the period from 12.7.89 to 12.4.91 in continuation of the E.O.L. already granted to her from 17.12.88 to 12.7.89 even if that second spell of E.O.L. was granted to her on her own request, after she resumed duty on 12.4.91.

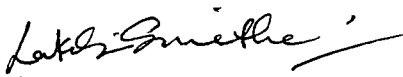
6. Applicant's counsel has urged that no special circumstances existed to warrant grant of E.O.L. under Rule 32 CCS (Leave) Rules but in this connection it needs to be mentioned, that if the rules empower the competent authority to act in a particular manner, it must be presumed that the exercise of that power has been bonafide and reasonable, unless the contrary is established, and it is, therefore, not for respondents to establish that the circumstances did not warrant grant of E.O.L.

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7. Applicant's counsel has also raised the point that the period of EOL could not count as qualifying service for eligibility for promotion. No rule or instruction has been cited in support of this contention. Respondents in their reply have pointed out that the nodal Ministry i.e. Deptt. of Personnel & Training had advised in another case that all periods of leave including E.O.L would count towards eligibility for promotion (irrespective of the fact that E.O.L. otherwise than on medical grounds would not count for pension) and it is on this basis that after obtaining clearance from DP & T, and approval of ACC, Respondent No.3 was promoted as Professor w.e.f. 26.10.94. No rule or instruction has been furnished by applicant to rebut this position, and the mere fact that respondent No.3 upon being permitted to rejoin duty on 12.4.91 was placed at the bottom of the relevant scale, cannot be construed to mean that her rejoining duty on 12.4.91 was to be treated as a fresh appointment.

8. Applicant's counsel has also furnished written submissions in which certain rulings have also been cited but in the light of the facts and circumstances noticed above, it is clear that those rulings are not applicable and both on grounds of limitation as well as merit the OA warrants no interference.

9. The OA is therefore, dismissed. No costs.

  
(MRS. LAKSHMI SWAMINATHAN)  
MEMBER(J)

  
(MR. ADIGE)  
VICE CHAIRMAN(A).