

30
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 669 /1997

Date of Decision: 30 - 10-1998

Shri Dr. Bharat Singh & Anr..

APPLICANT

(By Advocate Shri Jayant Das with Ajit Pudissery

versus

Union of India & Ors. ..

RESPONDENTS

(By Advocate Shri V.S.R. Krishna

CORAM:

THE HON'BLE SHRI

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member(A)

Cases referred:

1. Syed Khalid Rizvi V. UOI 1993 Supp (3) SCC 575
2. IAS (SCS) Raan. V. UOI 1993 Suppl (1) SCC 730
- 3- Ramana Dayaram V. IAA (1979) 3 SCC 489

31

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.669/1997

New Delhi, this 30th day of October, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

1. Dr. Bharat Singh
Medical Superintendent
Lok Nayak Jai Prakash Narain Hospital
New Delhi
 2. Dr. R.K. Navlakha
Consultant in Neurosurgery
Deptt. of Neurosurgery
Safdarjung Hospital,
New Delhi
- .. Applicants

(By Shri Jayant Das, Sr. Advocate with Shri
Ajit Pudissery)

.versus

Union of India, through

1. Secretary (Health)
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi
 2. Chairman
Union Public Service Commission
Dholpur House
Shahjahan Road, New Delhi
 3. Secretary
Deptt. of Personnel & Training
North Block, New Delhi
 4. Dr. J.S. Bapna
Director
Institute of Human Behaviour &
Allied Sciences
Shahdara, New Delhi
 5. Dr. Ira Ray
Director
National Institute of Biologicals
Nirman Bhavan, New Delhi
- .. Respondents

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

ORDER

Hon'ble Shri S.P. Biswas

The applicants, Senior Administrative Grade
officers of Central ^{Govt.} Health Services in the Ministry
of Health and Family Welfare, are aggrieved because

32

of failures on the part of respondents for not deliberately processing their cases of promotions in time as well as their failures in getting ~~the~~ Departmental Promotion Committee (DPC for short) proceedings conducted for the purpose of promotion to the grade of Additional Director General of Health Services (ADGHS for short). This is all to the detriment of eligible candidates in the feeder cadre. Consequently, they are seeking reliefs in terms of issuance of directions to respondents to declare them as entitled for promotion to the rank of ADGHS in view of two clear vacancies arising out of deputation assignments of Respondents No.4 and 5 respectively. As per applicants, consideration of Respondent No.4 (Dr. J.S. Bapna) for promotion of ADGHS could be held infructuous because of his request for voluntary retirement. As regards Respondent No.5, the post of ADGHS held by her has to be treated as vacant since she is outside the cadre for more than 5 years. Because of this, the applicants have claimed additional reliefs by way of demanding for a review DPC for empanelment of 11 officials instead of 9 as proposed by Respondent No.1.

2. Shri Jayant Das, learned senior counsel appearing on behalf of the applicants argued strenuously to say that the applicants' claim for consideration of promotion to the posts of ADGHS emanate out of respondents' failure to compute correctly the number of vacancies in the category of ADGHS. Two very senior officers -- namely Dr.

g

(33)

Ira Ray and Dr. J.S. Bapna -- though entitled for promotion to ADGHS being out of the picture, the applicants would be entitled to promotion as ADGHS on their own merit and turn as tenth and eleventh persons, if evaluated alongwith others for purpose of promotion. The artificial figure of 9, wrongly calculated by Respondent No.1 has resulted in causing delays in the matter of promotion for applicants herein. Respondent No.4 was appointed as Director, Institute of Human Behaviour and Allied Science (IHBAS for short) since 19.4.96, whereas Respondent No.5 is also outside the cadre as Director, National Institute of Biologicals (NIB for short) since May, 1992. As a result, respondents could very well legally approach the DPC/UPSC for preparation of a panel consisting of 11 officials instead of 9 when it had sent its last proposal for the DPC meeting reportedly held in March, 1997. It was binding on the part of the respondents to estimate correct number of vacancies for holding DPC and this was not done.

3. As per the learned counsel for the applicants, besides faulty determination of regular vacancies, respondents have failed to initiate timely actions in several other areas forcing the applicants to agitate their grievances before this Tribunal. The frequency at which the DPC is required to meet has not been adhered to. The last DPC, so far as filling up the post of ADGHS is concerned, was held on 19.4.95 and 7.3.97 respectively. There were vacancies in early 1996 arising out of deputation

q
p

of Dr. Bapna. Again, respondents have illegally allowed officials to continue on deputation for longer periods than what is normally permissible under Rules. Dr. Ira Ray was virtually functioning on deputation from May, 1992 till she was relieved from the post on 31.7.98. Further, there have been delayed actions in issuing appropriate orders in respect of those on deputation. Order for Dr. Ira Ray could have been issued atleast immediately after 19.4.95 when she was appointed on regular basis as ADGHS, if not on 3.8.94 when she was posted on ad hoc basis to look after the work of Director/NIB in addition to the duties she was initially performing. In fact, a timely action in favour of Dr. Ira Ray would have even helped her to get the benefit of "Next Below Rule". Even when Dr. Bapna had sought for voluntary retirement in February, 1997, respondents after three months on 2.5.97 woke up only to issue "No Objection Certificate", though he was working as Director, IHBAS with effect from 19.4.96. Respondents took more than a year to issue a "No Objection Certificate" after Dr. Bapna joined IHBAS.

4. Shri V.S.R. Krishna, learned counsel for official respondents argued vehemently to deny the claims of the applicants. It was submitted that prior to 9.4.96, there were no clear instructions regarding preparation of extended panel in case persons recommended for promotion by the DPC are not available for appointment by reasons of being

9
I

on deputation etc. The guidelines of DoPT as contained in OM No.22011/5/86-Estt.(D) dated 10.4.89 provide only for consideration of officers on deputation etc. and did not provide for inclusion of additional names by the DPC by way of extended panel in the case of recommendations of names of officers in the panel who were on deputation.

As per DoPT's instructions, consideration of Respondent No.4 for the post of ADGHS of Central Health Service by the DPC was in order. He was allowed to work on deputation post with effect from 19.4.96, i.e. after the issue of instructions dated 9.4.96 on the subject of extended panel. He also submitted that necessary actions have been initiated to hold review DPC of the Original DPC held on 7.3.97 for obtaining names of officials on the basis of extended panel.

5. In the background of rival contentions of learned counsel for both parties, the issues that fall for determination are as follows:

- (i) Whether the applicants are entitled to be considered for promotion to the posts of ADGHS?
- (ii) Whether the official respondents have faulted in correct estimation of regular vacancies at the level of ADGHS, particularly after the applicants came in the zone of consideration for promotion and after deputation posts were available with the official respondents?

g
P

(iii) Whether the official respondents have acted/behaved as per their promises/standards by which they professed?

6. Before we examine the issues involved, it would be apposite to indicate, in brief, the legal position in respect of an individual's claim/right for promotion, the frequency at which DPC should be held, procedures that need to be followed for determination of vacancies and rules/regulations on the subject of extended panel.

7. It is well settled in law that fundamental right to promotion does not exist. An employee has only a right to be considered for promotion according to the rules. Chances of promotion are not conditions of service and are defeasible. Authority is legion for this purpose and it is available in the judgement of the Apex Court in the case of **Syed Khalid Rizvi V. UOI 1993 Supp (3) SCC**

575. While interest of seniority can be acquired under the relevant rules, but there is no vested right to seniority or promotion (see **Indian Administrative Service (SCS) Assn. Vs. UOI 1993 Suppl(1) SCC 730**).

8. DoPT's instructions in OM No.22011/3/91-Estt (D) dated 13.5.91, stipulate that DPC should be convened at regular annual intervals to draw panels, which could be utilised for making promotions against vacancies occurring during the course of the year. For this purpose, it is essential for the concerned authority to initiate action to fill up existing as well as anticipated

vacancies well in advance on the expiry of previous panel, by collecting relevant documents like ACRs, integrity certificates, seniority lists etc. for placing before the DPC. There are provisions for even holding DPCs on fixed dates. There are also provisions for holding fresh/supplementary DPCs.

9. Instructions of DoPT are also available on the subject of calculation of vacancies. It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long term.

10. The guidelines for preparation of extended panel, as available in DoPT's OM No.22011/18/87 -Estt(D) dated 9.4.96 provide the following. The DPCs shall prepare extended panels in the case of the following contingencies:

- (i) When persons included in the panel are already on deputation or whose orders of deputation have been issued and will be proceeding on deputation shortly for more than a year or.
- (ii) When persons included in the panel have refused promotion on earlier occasions and are under debarment for promotions or

g

- (iii) When officers included in the panel are retiring within the same year provided there is no change in the zone of consideration by the expected date of their retirement.

11. The fate of this case hinges on the determination of the issues as in para 5 aforementioned. We shall now examine the issues for dertermination in seriatim:

12. Respondents have not challenged applicants' seniority for the purpose of they being in the zone of consideration; nor have they denied that the applicants are not eligible for consideration of promotion to the grade of ADGHS. On the contrary, at the time of arguments on the previous occasion in February, 1998, former learned counsel for the respondents (Mrs. Raj Kumari Chopra) made oral submissions that the case of promotion of Dr. Bharat Singh is being processed. Respondents took the same stand when this case was heard last on 31.8.1998. Applicants' entitlement, therefore, cannot be disputed.

13. We now come to the next issue i.e. estimation of vacancies arising out of deputational assignments of R-4 and R-5. A thorough study of the records made available to us eludes comprehension as to why a formal order of deputation in favour of Dr. Ira Ray could not be issued after 19.4.95. What is surprising is the respondents' inaction in not taking advantage in terms of preparation of extended panel atleast after 9.4.96, when guidelines for working out such

panels was introduced by DoPT. We are also distressed to see that the department's latest proposal to UPSC dated 9.3.98 has not even mentioned anything with regard to extended panel with reference to Dr. Ira Ray.

14. Equally shocking is the lackadaisical approach of the official respondents in respect of settling deputation terms pertaining to Dr. Bapna. Although he proceeded on deputation with effect from 19.4.96 Ministry took more than a year to issue "No Objection Certificate", did not take any action for obtaining extended panel till March, 97 and has not even decided on the deputation of Dr. Bapna until atleast upto April, 1998. Even in the case of Dr. Bapna also, there was no request from the Respondent No.1 for giving any extended panel as indicated by UPSC in April, 1998. The resultant vacancy relating to 1996-97 could legally be filled up by holding a fresh/supplementary DPC.

15. We do not find any reason, much less convincing ones, that could explain the highly delayed actions in respect of the two aforesaid cases. A perusal of the materials placed before us reveal that delayed actions are writ large on the forehead of official respondents in dealing/processing the cases of promotion. Besides those mentioned in para 10, UPSC's letter No.F.I/40(2)/98-AP.I dated 28th April, 1998 highlights department's lapses in several areas touching upon the issues under consideration

including failure to submit ACRs of even 1992-93. In the background of aforesaid details, the applicants' contention that the respondents have not taken into consideration the vacancies caused by R-4 and R-5 in determining the exact number of total vacancies command acceptance.

16. We now come to the last issue regarding respondents' promise for processing the case of applicant No.1. Besides the oral submissions of the former counsel for the respondents as aforementioned, respondents did commit vide their counter filed on 23.7.97 that "necessary action to hold review DPC of original DPC held on 7.3.97 for obtaining extended panel will be taken". Details of UPSC's communication dated 28.4.98 forces us not to place any trust on the promises of the official respondents. Here we are tempted to extract a passage from the judgement of the Supreme Court in the case of **Ramana Dayaram V. International Airport Authority (1979) 3 SCC 489** which is as follows:

"It is well settled rule of administrative law that an executive authority must rigorously hold to the standards by which it professes its action to be judged and it must scrupulously observe those standards on point of invalidation of an act in violation of them"

The responsible respondents like the Ministry of Health & Family Welfare were expected to act as per the commitment they made. Thus, official respondents appear to have gone against their own promises in that they have failed, as per UPSC's

letter of April, 1998, not only in not seeking any extended panel against the posts of Dr. Ira Ray and Dr. Bapna but also in the case of Dr. K.K.Datta who is on foreign assignment.

17. Before we part with this OA, we are constrained to observe that such an unhappy state of affairs in processing the cases of promotion of senior officers would not have surfaced but for the failure of officers/officials dealing with establishment matters in the Ministry. One of the factors that apparently stood in the way is perhaps non-availability of upto-date ACRs. A close look at OM dated 26.8.96 hints at this deficiency. This had also come on sharp focus in UPSC's letter dated 28.4.98 wherein the DPC has sought for making ACRs of 1992-93 available for a large number of senior officers. Obviously, instructions on the subject are being violated both by officers being reported upon and those at the level of reporting and reviewing. Apparently, this aspect is in chaos with respondent department.

18. In the circumstances aforementioned, the OA is allowed with the following directions:

- (i) Respondents shall process the cases of both the applicants for the purpose of consideration of their promotions, if necessary, by convening a review/fresh DPC latest by 31.4.99. If found finally eligible, applicants shall be deemed to have been promoted to the grade of ADGHS from the date the respondents had sent their first DPC proposals to UPSC after 23.7.97, i.e. the date when respondents committed to initiate actions on extended

panels. This is for the purpose of fixation of notional seniority in the promoted cadre.

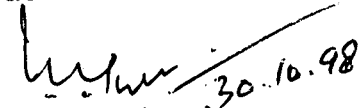
(ii) Applicants shall also be entitled for notional fixation of pay in the grade of ADGHS from the abovementioned date but shall not be paid any backwages since they are yet to shoulder the responsibility of the higher of post of ADGHS;

(iii) For the reasons mentioned in para 17, we leave it to respondent No.1 to identify those erring officers/officials responsible for causing such undue delays in processing cases of promotions/deputations. He will also be at liberty to initiate appropriate departmental action against those officers identified.

(iv) We direct Respondent No.1 to file a compliance report under Section 24 of CAT (Procedure) Rules, 1987 to the Registrar, CAT, Principal Bench, Delhi in respect of item No.18(i) and (iii) above latest by 30.6.1999.

(v) There shall be no order as to costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)

30.10.98

/gtv/