

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 89/97

New Delhi, this the 9th day of February, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

(27)

Dr. Lakshman Das,
Specialist Grade I, Neurosurgery
Safdarjung Hospital, New Delhi.
R/o DII/C-10, Moti Bagh,
New Delhi.Applicant

(By Advocate: Shri S.S.Tiwari)

Versus

Union of India through

1. The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Chairperson,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
3. The Secretary,
Department of Personnel & Training,
Ministry of Home Affairs,
North Block, New Delhi.Official respondents

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

4. Dr. S.P. Aggarwal,
Addl. Director General,
Health Services, Nirman Bhavan,
New Delhi.private respondent

(By Advocate: Shri P.P.Khurana)

O R D E R

Hon'ble Shri T.N.Bhat, Member (J):

1. The applicant, who is presently working in the Non-teaching sub-cadre of the Central health Service in the Speciality of Neuro Surgery, has filed this O.A. seeking the following reliefs:-

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"a) Issue Writ order or direction to the respondents calling for the records of the case and after perusing the same quash and set aside the illegal and fraudulent promotions granted to respondent no. 4 at the level of Specialist Grade I and all subsequent promotions;

"b) Issue writ order or direction to the respondents to reconsider the case of promotion of the applicant and respondent no. 4 to Specialist Grade I and all subsequent promotions from the date of their eligibility for the same under the Rules;

"(c) Alternatively direct that the applicant is also entitled to be considered for promotion to Specialist Grade I in 1983 and all other subsequent promotions granted to respondent no. 4;

"(d) Issue writ order or direction to the respondents to check and verify each and every ACR of the respondent no. 4 before the same are considered for promotion and only take into account such ACRs which have been found to have been written in accordance with the instructions regarding writing of ACRs.

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"(e) Alternatively, quash and set aside para 2 of the order dated 11/7/1991 and direct that the applicant will be entitled to the promotion/placement from the date of his eligibility and all subsequent promotions on the basis of the placement/promotion to the post of Specialist Grade I;

"(f) Grant all consequential benefits of the promotions that may be granted to the applicant;

"(g) Grant costs of the application and;

"(h) Pass such other and further order/orders as are deemed fit and proper in the facts and circumstances of the case".

2. The applicant did his M.B.B.S. in 1970, M.S. in Surgery in 1977 and M.Ch. in Neuro Surgery in May, 1981. While working as a Lecturer in Neuro Surgery in a Medical Institute in Trivandrum the applicant got selected as a direct recruit in the Central Health Services as Specialist Grade II on the basis of an interview held in 1981. Respondent no. 4 herein, namely, Dr. S.P. Aggarwal, was also a candidate for that selection and he too got selected but he joined the post earlier to the applicant who took some time to get relieved from the Medical Institute at Trivandrum. The applicant eventually joined on 4.2.1982. However, according to the applicant he had been placed higher than respondent no. 4 in the merit list by the U.P.S.C.

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3. Admittedly, respondent no. 4 also did his M.Ch from AIIMS. But the grievance of the applicant is that the said respondent had been granted undue favours in the form of accelerated promotions from time to time. The applicant has given a comparative chart in para 3 of the OA, to which we shall be advertizing shortly. The applicant has further given the details of the alleged undue favour shown to him not only by the higher authorities in matters of promotion right from the year 1983 but also by the AIIMS in allowing him to complete the M.Ch course in two years instead of the normal period of three years which the applicant was made to undergo. In the year 1983 there were two posts of Specialist Grade I but nobody in Grade II had acquired the requisite eligibility but even so respondent no. 4 was granted promotion on 16.9.1983. This is one of the main grievances of the applicant. According to him the Grade I posts should either have been thrown open to direct recruitment or the applicant should also have been considered for promotion like respondent no. 4. According to Rule 8(3) read with Schedule III of the recruitment rules relied upon by the applicant one of the essential requirements was seven years' regular service in Grade II which could be reduced by two years in case of a person having a second post graduate degree, while the respondent no. 4 had only two years' service in that Grade at the time of his consideration for the higher Grade.

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4. The other post of Specialist Grade I was filled up in 1984 with the result that when the applicant became eligible for being considered for promotion there was no post available against which he could be considered and he, therefore, continued in Grade II for a long time. (31)

5. Thereafter respondent no. 4 got promotions to Supertime Grade and Higher Administrative Grade and has now been promoted to the post of Director General, the highest post in the Service. This, according to the applicant, has happened due to the manipulations in the ACRs which fact has come to light only in 1996 when the Health Secretary, Respondent no. 1 herein, admitted in the Office Memorandum dated 26.8.1996 that there were several infirmities in the entries in the ACRs of respondent no. 4 as well as of other officers. The aforesaid OM, we may state was issued as a decision on the representation of one Dr. V.P.Bansal who had also filed original applications in this Tribunal challenging the promotions of respondent no. 4 herein to Supertime Grade and Higher Administrative Grade. This Tribunal had directed the Health Secretary to consider the aforesaid representation and to take a decision thereon.

6. When the applicant did not get promotion to Grade I alongwith respondent no. 4 he admittedly applied for a foreign assignment and was sent on deputation to Saudi Arabia in 1989 and he continued to be on deputation till 1994. In the meantime he was considered for and given placement in Non-Functional Selection Grade (NFSG) w.e.f. 1.3.1994, and the grievance of the applicant is that he ought to have been placed in the NFSG from

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11.7.1991 when his juniors had been so placed in the Grade, even though the applicant was on deputation at that time.

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7. He accordingly made a representation for protection of his seniority on 21.9.1996. However, according to the applicant, he and his other colleagues were led to believe that the promotions granted to respondent no. 4 were on the basis of relaxation of the C.H.S. Rules, which fact has now been proved to be untrue as admitted in the Health Secretary's O.M. dated 26.8.1996.

8. It is further averred by the applicant that the respondents are now considering the promotion of more candidates to the Supertime Grade (Senior Administrative Grade) and Higher Administrative Grade and if the applicant's seniority in Specialist Grade II and Specialist Grade I is protected and restored he would also become eligible for consideration for the higher grades from much earlier dates.

9. Reverting back to the basic question as to whether respondent no. 4 was eligible for promotion to Specialist Grade I in 1983, the applicant contends that the said respondent did not have the requisite experience in Neuro surgery as he was working only as a General Surgeon and that it was only on the basis of the claim made by respondent no. 4 himself coupled with a certificate of the then Medical Superintendent that a proposal was sent

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to the UPSC by the DGHS forwarding and recommending the name of respondent no. 4 with the plea that he had been attending to Neuro surgery cases.

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10. The applicant has further assailed the O.M. dated 26.8.1996 on the ground that its contents are factually incorrect and that it is only an attempt to justify illegal acts done in the past by the higher authorities of Central Health Service to grant undue benefits to respondent no. 4.

11. Respondents 1 & 4 have filed separate counter replies contesting this O.A. on several grounds. However, no counter has been filed either by respondent no. 2 or respondent no. 3.

12. It is emphatically denied by the respondents 1 and 4 that the applicant was senior to respondent no. 4 in Grade II or that any undue benefit was ever granted to respondent no. 4. It is further averred that most of the contentions raised by the applicant in this O.A. are also the subject matter of some O.As filed by one Dr. V.P.Bansal in which final arguments have already been heard and the judgement has been reserved. It needs to be mentioned here that after the filing of the counter replies by the respondents in this O.A., the judgement in the OAs filed by Dr. Bansal was pronounced on 20.3.1997. As a matter of fact the applicant later filed M.A. 2162 in which he raised some additional pleas in view of the Tribunal's judgement in Dr. V.P.Bansal's O.As.

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13. The respondents have also raised the plea of limitation and it is averred that challenge to an act that took place more than a decade prior to the filing of this O.A. can hardly be entertained. This is so both on the ground of laches as well as the bar of limitation. (34)

14. The applicant has also filed rejoinder reiterating the contentions raised in the O.A.

15. We have heard at length the arguments of the learned counsel for the parties and have perused the material on record as also the relevant departmental files including ACR folders made available by Mr. V.S.R. Krishna, the learned counsel for respondents no. 1 to 3.

16. As already mentioned hereinabove, Dr. V.P.Bansal had also in his three O.As filed in this Tribunal, being O.As Nos. 202/95, 566/92 and 952/96 taken pleas which are identical to those raised by the applicant in the O.A. A Bench of this Tribunal, of which one of us (T.N.Bhat) was also a Member, rejected most of the contentions made in those OAs. We have no hesitation in treating the common judgement dated 20.3.1997 in Dr. Bansal's case as a binding precedent so far as most of the pleas raised herein relating to the alleged non-eligibility of respondent no. 4 is concerned, though we hasten to add that the aforesaid judgement would not operate as re judicata. In the aforesaid judgement the Tribunal held that so far as the question of eligibility and recording of ACRs of respondent no4 are concerned, it would neither be just nor appropriate to rake up the past events after the lapse of so many years as that would result in unsettling of settled matters.

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17. In the instant case the entire claim of the applicant is based upon the alleged wrongful promotion granted to respondent no. 4 to Specialist Grade I Post nearly fourteen years before the filing of this O.A. How can the applicant be allowed to rake up this issue now, particularly so when respondent no. 4 has got further promotions to the higher Grades by at least three stages? The applicant has not given any reasons why he remained silent for all these years. The only reason given is that it is only now when the OM dated 26.8.1996 issued by respondent no.1 herein was brought to the applicant's notice that he came to know for the first time about the alleged machinations and manipulations. This contention cannot be accepted, for the simple reason that according to his own admission the applicant was well aware of the recruitment rules as also the fact that under those rules a person would require a particular number of years' experience in the lower Grade to make him eligible for Grade I and the respondent no. 4 did not fulfil the eligibility condition. He did not even represent against the said respondent's promotion. On the contrary he acquiesced and later sought a foreign assignment. Again, when the applicant felt aggrieved in the year 1994 with the action of the respondents in not giving effect to the applicant's placement in NFSG from the year 1991 the applicant chose to remain a mute spectator and waited for three more years before filing the O.A. in which one of reliefs claimed is that he should be placed in the NFSG w.e.f. the year 1991 and should also be given the consequential benefits in the form of further promotions on that basis.

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w.e.f. the year 1991 and should also be given the consequential benefits in the form of further promotions on that basis.

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18. As mentioned hereinabove, the common judgement in Dr. V.P.Bansal's three OAs came to be passed on 20.3.1997 and the applicant thereafter filed MA 2162 of 1998 annexing thereto an additional affidavit. We have carefully gone through the contents of the affidavit and find that the applicant has by way of the additional affidavit sought to assail the judgement as being incorrect and unacceptable. We are of the firm view that a judgement of the Tribunal cannot validly be challenged in this manner. The judgement is a well reasoned one in which all the relevant circumstances have been considered and it has been held that there are no grounds for setting aside or quashing the orders by which respondent no. 4 herein, who was also respondent no. 4 in one of those three O.As, was promoted/appointed to different posts including the post of Additional Director General. The Bench which delivered the judgement further accepted the views expressed by the then Health Secretary, Govt. of India in his O.M. dated 26.8.1996. We find no grounds to disagree with those views nor with the finding recorded in the aforesaid judgement which, as already mentioned, are quite relevant so far as the questions in issue in the instant OA are concerned.

19. Even on merits the applicant has no case. The first point raised by the applicant is regarding the inter-se seniority of the applicant and respondent no. 4. The applicant has not produced any material to

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substantiate his plea that the UPSC had adjudged him more meritorious than respondent no. 4 at the initial selection for the post of Specialist Grade II. On the contrary the respondents have taken the plea that in the seniority list of Specialist Grade II officers as on 1.1.1983 the name of respondent no. 4 figured at serial no. 1 while that of the applicant figured at serial no. 2 and even so the applicant never represented against that seniority list. (37)

20. It is also admitted by the applicant that he joined the Grade II post several months after respondent no. 4. Apart from that the respondent no. 4 was found to have worked as Surgeon Specialist Grade II from 11.12.1975 to 4.1.1979 during which period he had acted as Head of Surgical Unit in Willingdon Hospital and had been looking after all the Neuro surgery cases in that Hospital as also other hospitals in New Delhi. He had also acted as the In-charge of the Head Injury & Neuro-physchiatric Clinic and Neuro-Surgical Clinic that was being run in the Willingdon Hospital. It was on the basis of the above said facts that the name of respondent no. 4 had been forwarded to the UPSC when the occasion for filling up the posts of Specialist Grade I presented itself.

21. As regards the alleged undue favour shown to respondent no. 4 by the AIIMS the respondents have taken the plea that the duration of M.Ch course was only two years and that respondent no. 4 passed within that period while the applicant appeared along with respondent no. 4 but failed and it was only on the second attempt that he passed. In the meantime one

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extra year had passed. In these circumstances the applicant's plea cannot be accepted. The contention of the applicant about non-consideration of his case is equally devoid of force, for the simple reason that when in the year 1982 two posts of Specialist Grade I were created - one post was in fact thrown open to direct recruits and only one post was kept for promotion. In these circumstances, no question for considering the applicant would arise, particularly so in view of the fact that he was not senior to respondent no. 4. Perusal of the official records reveal that on 29.6.1984 when the post of Specialist Grade I (Neuro Surgeon) was advertised, the applicant had also applied and appeared in the interview along with other two doctors, namely, Dr. R.K. Navalakha and Dr. S. Pathon. But the applicant was not selected by the Union Public Service Commission.

22. As regards the posts in Senior Administrative Grade the contention of the respondents is that out of 35 floating posts in the SAG 15 posts and 20 posts were identified and allocated to Non Teaching Specialist Sub Cadre and Teaching Specialist Sub Cadre, respectively but the DPC could be held only on 31.3.1989. The DPC considered 14 more officers of the non-teaching sub cadre in addition to respondent no. 4, and several other officers in the teaching sub cadre were also considered. The promotions were given effect from 1.4.1989. Quite clearly, therefore, the applicant could have no grievance against the said promotion.

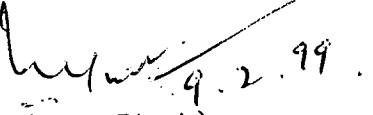
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23. The respondents have also given a valid reason for not giving effect to the applicant's promotion to the NFSG (Rs. 4500-5700/-) from 1991 as claimed by him. The plea taken by the respondents is that the applicant remained on foreign assignment from 10.6.1989 to 28.2.1994 and as per the provisions of the relevant rules he was considered for placement in the NFSG after completion of 8 years service and his name was included in the list issued on 11.7.1991. However, since the applicant was on foreign assignment at that time it was stated in the order that the date of placement in respect of officers on deputation/study leave would be the date on which they resumed their duty on return from deputation/study leave. We do not find any infirmity in this action of the respondents. It may further be stated that the Next Below Rule, the benefit of which the applicant seems to seek, is not available because the applicant has not established that any of his juniors in the Speciality of Neuro Surgery was promoted before the applicant.

24. To sum up, the applicant has failed to make out any case which would justify our interference with any orders passed by the respondents particularly in a reference to respondent no. 4 herein. We find no merit in this O.A. and accordingly the O.A. is hereby dismissed, but without any order as to costs.


(S.P. Biswas)

Member (A)


(T.N. Bhat)

Member (J)

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