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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 405/2000

New Delhi: this the 28th day of JANUARY, 2001

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Dr. Lakshman Das,
S/o Shri Gurmukh Singh,
R/o D-II/C-10, Moti Bagh-I,
New Delhi and working as Specialist Gr. I in Neuro Surgery,
in Safdarjung Hospital,
New Delhi

.....Applicant.

(By Advocate: Shri S. S. Tewari).

Versus

1. Union of India,
through
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi.

2. Secretary,
Department of Personnel &
Training,
Ministry of Home Affairs,
North Block,
New Delhi

.....Respondents.

(By Advocate: Shri VSR Krishna)

ORDER

S. R. Adige, VC (A):

Applicant impugns para 2 of respondents' order dated 11.7.91 (Annexure-A) and order dated 2.3.94 (Annexure-AA). He seeks placement as Specialist Gr. I w.e.f. 1.12.91, the date on which Non-Functional Selection Grade and Functional Selection Grade were merged, with consequential benefits.

2. By letter dated 7.6.89 (Annexure-D) sanction was conveyed to the transfer on deputation of applicant (who at the relevant time was Neuro Surgeon in Safdarjung Hospital, New Delhi as a Specialist Gr. II in non-teaching specialist sub-cadre) on foreign service to Saudi Arabia for a period of one year. That period was extended from time to time.

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3. Meanwhile by impugned order dated 11.7.91 applicant and others were placed in Specialist Gr. II (Non-Functional Selection Grade) from the date shown against their names. In applicant's case the date was left blank, and in para 2 of that order dated 11.7.91, it was stated that in the event of any officer who was placed in the above mentioned Selection grade being on study leave/other kind of leave/deputation on foreign assignment, the placement orders should take effect from the date he/she resumed charge of the post on completion of leave/deputation on foreign assignment.

4. Upon applicant's return from Saudi Arabia^{he} was placed by impugned order dated 2.3.94 in NFSG w.e.f. 1.3.94, and meanwhile as the distinction between NFSG and FSG had been abolished in Central Health Service, applicant was designated as Sr. Neuro Surgeon (Specialist Gr. I) w.e.f. 1.3.94, which was the date of his resumption of duties on return from abroad.

5. The question for adjudication is whether applicant has an enforceable legal right to have his placement antedated to 1.12.91 when he was still on deputation abroad.

6. Heard both sides.

7. We note that applicant had earlier filed OA No. 89/97 in which inter alia applicant had specifically impugned para 2 of order dated 11.7.91 and had claimed promotion from the date of his eligibility with consequential benefits. That OA was dismissed on merits by detailed order dated 9.2.99 (Copy taken on record) in which it was observed thus

" The respondents have also given a valid reason for not giving effect to the applicant's promotion

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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 10.6.89 to 28.2.94 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 11.7.91. However, since the applicant was on foreign assignment at the 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."

8. Applicant therefore filed CW No.7419 and CM No.13950/99 in Delhi High Court which was dismissed as withdrawn by order dated 10.12.99 (Annexure - L) in order to enable him to challenge the specific condition imposed in para 2 of the order dated 11.7.91 before CAT.

9. It is well settled that ^{normally} the benefits of promotion to a higher post can be claimed ^{only} from the date of assuming charge of that higher post, which in the present case was 1.3.94, upon applicant's return from deputation abroad. An exception to this proposition may be said to be available in the 'Next Below Rule' (NBR)

but to invoke that Rule, applicant has to establish that any of his juniors in the speciality of Neuro Surgery were promoted before him. The Tribunal in its order dated 9.2.99 had held that applicant had failed to establish that any of his juniors in the Speciality of Neuro Surgery was promoted before him and no materials have been produced by applicant's counsel before us during hearing, to warrant our taking a different view.

10. During hearing, applicant's counsel Shri Tewari sought to persuade us to take the view that NBR would not be operative speciality wise, but sub-cadrewise. If so, the names in the impugned order dated 11.7.91 would have been arrayed seniority wise, but clearly there is no evidence that the names therein have been arrayed in order of seniority. Indeed the impugned order dated 11.7.91 contains names of specialists in different medical specialisations. Inter se seniority can be meaningful only within a particular speciality and it is only at the SAG level that a combined seniority list is prepared. Hence this contention also does not avail applicant.

11. However, in this connection, there is DOPT's OM No. 22038/1/86-Estt. (D) dated 22.11.90 which commands attention. This circular which is reproduced in para 37 of Govt. of India's Orders below FR.22 in Swamy's Compilation of FRSR Part I General Rules (13th Edition-1997) is extracted below :

"(37) Grant of proforma promotion (NBR) for Non-Functional Selection Grade Appointments in Group 'A' services.- This Department's OM No. 22038/1/86-Estt. (D), dated the 9th October, 1989 (not printed) lays down the procedure and criteria to be followed

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for appointment to Non-Functional Selection Grade (NFSG) in organised Group 'A' Central Services. In this connection, it has now been decided to follow the procedure indicated below in respect of extending the benefit of 'next below rule' for NFSG appointments and also the sealed cover cases.

(a) In the case of promotion to NFSG, there is no need to extend the select list beyond the actual number of Selection Grade vacancies even when any of the officers included in the select list remains on deputation, since there is no functional need to fill the vacancy created by some one being away on deputation. Though the junior is not thus promoted to fill the NFSG vacancy, there should, however, be no objection to allow proforma promotion, as a special case, to an officer included in the select list while he is on deputation in public interest, without insisting on the normal condition of NBR.

(b) As regards sealed cover cases, if the recommendations in respect of a person for appointment to NFSG are kept in the sealed cover, the NFSG vacancy should be kept unfilled till the disciplinary proceedings are completed. In such cases, it is not permissible for a junior person to officiate in the vacancy. In the meantime, the post will only be operated at JAG level. If on finalisation of the disciplinary proceedings, the officer is fully exonerated, he will be entitled for appointment to the NFSG from the date from which it was due and also for arrears of pay on that account."

12. Para (a) of the Circular outlines the procedure for NBR for NFSG's appointments without insisting on the normal condition of NBR. In this connection during course of hearing applicant's counsel Shri S.S. Tewari stated that applicant would be satisfied with grant of NFSG w.e.f. 1.12.91 on notional basis without the benefit of arrears.

13. The OA is disposed of with a direction to respondents to consider applicant's claim for grant of NFSG on notional basis w.e.f. 1.12.91, with consequential benefits in the background of aforementioned Circular dated 22.11.90, and other rules and instructions on the subject, by means of a detailed, speaking and reasoned order under

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intimation to applicant within 4 months from the date of receipt of a copy of this order.

14. The OA is disposed of accordingly. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

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