

17

R.A.No. 322/94.  
in  
O.A.No. 1049/93.

17-10-1994

Dr. (Mrs.) Vijay Lakshmi,  
W/o Shri A.V. Janaradhan,  
R/o 925, B.K.S. Marg,  
New Delhi-110 001.

.. Applicant

versus:

- (1) Union of India  
through  
The Secretary,  
Ministry of Health & Family Welfare,  
Department of Health,  
Nirman Bhawan,  
New Delhi-110 001.
- (2) Directorate General of Health Services,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi-110 001.
- (3) Dr. S.B. Chauhan,  
Asstt. Adviser/Sr. Medical Officer,  
Department of Health,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi-110 001. .. Respondents

(By Circulation)

O\_R\_D\_E\_R

This review application has been filed against the judgment dated 5.8.1994 in O.A. No. 1049/93. We have carefully considered the review application and we are satisfied that the same can be disposed of by circulation under rule 17(iii) of the CAT (Procedure) Rules, 1987 and we proceed to do so.

2. The applicant has sought review of the judgment on the ground that there is error apparent on the face

18



of the order on the following grounds :-

- (A) Para 2 of the order says that there were 7 "existing" posts of SMO/Assistant Adviser but the fact is that the posts of SMO did not exist at all before declaration of the existing 26 posts of Ayurvedic Physicians as the upgraded posts of SMO vide order dated 5.12.91 and accordingly the question of merger of the said 7 posts of SMO with the upgraded posts of SMO does not arise at all.
- (B) That the application of the Recruitment Rules of 1985 to the post of Senior Physician for filling the upgraded post of SMO was absolutely illegal and unconstitutional. Till now, there are no recruitment rules for filling the upgraded post of SMOs which had not been noted in the judgment under review.
- (C) Since there was no recruitment rules for filling the upgraded post of SMOs there was no question of any existence of vacancy in the higher post or resultant vacancy in the lower post in accordance with recruitment rules. It is apparent that the regular posts have been filled



19

in a highly irregular manner in violation of the recruitment rules for the posts of Senior Physician (Ayurvedic); the upgraded post of SMO were not at all filled against any existing vacancies in the cadre of SMO; hence the case did not at all involve any element of promotion and, therefore, there was no scope for applying the principle of reservation as done by the respondents.

3. We have carefully considered the above points.

4. Regarding para (A) above, para 1(vi) of the Respondents letter dated 5th December, 1991 (Annexure II) states that the 26 upgraded posts are in addition to 7 existing posts of SMO/Assistant Adviser. Apart from this, the applicant herself has stated in page 2 of the Rejoinder filed on 10.4.1994 to the Counter submitted by the Respondent 3, that there are 7 existing posts of SMO. Therefore, the ~~claim~~<sup>claim</sup> applicant's present<sup>is</sup> that the posts of SMO did not exist at all before declaration of the upgradation of the 26 posts vide order dated 5.12.1991 is untenable and is rejected.

5. Para 8 of the letter dated 5.12.1991 further

provides the method of promotion which is to be



20

on the basis of seniority-cum-fitness subject to fulfilment of prescribed qualifications. We had considered in detail the question whether the persons in the lower posts have to be promoted to the upgraded posts, and the method of promotion, which was on the basis of seniority-cum-fitness, involving an element of selection of persons with the prescribed qualifications in paragraph 3-6 of our judgment. Hence, the question of reconsidering the same issues, already dealt with in the O.A. which have been raised in paragraphs B & C of the review application does not arise. The grounds raised in the review application are more germane for an appeal and the review application cannot be the remedy for seeking relief only because the applicant states that the decision is wrong.

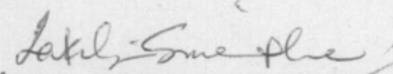
6. The scope of the review application is very limited and it cannot be utilised for rearguing the case traversing the same grounds as taken in the O.A. It is a well settled principle that review can only be undertaken where there is a glaring omission or grave error which has crept in earlier by judicial

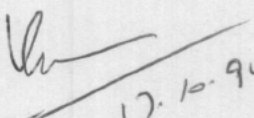
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fallibility. This review application does not disclose any error apparent on the face of the record to justify review of the order dated 5.8.1994.

6. There is no merit in this review application and it is accordingly dismissed.

  
(Lakshmi Swaminathan)  
Member (J)

  
17.10.94  
(N.V. Krishnan)  
Vice-Chairman (A)