

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 185/1989

NEW DELHI, THIS 25TH DAY OF FEBRUARY, 1994

HON'BLE C.J. ROY, MEMBER(J)  
HON'BLE P.T. THIRUVENGADAM, MEMBER(A)

Dr. V.P. Malik  
s/o late Shri C.B. Malik  
r/o Flat No.10, Lady Hardinge Medical College Complex  
New Delhi .. Applicant  
By Shri Ajit Puddiserry, Advocate

## VERSUS

Union of India, through

1. Secretary  
Min. of Health & Family Welfare  
Nirman Bhavan, New Delhi
2. Dr. P.C. Dixit  
Associate Professor  
Forensic Medicine, through the  
Dean, Maulana Azad Medical College  
New Delhi .. Respondents  
By Mrs. Raj Kumari Chopra, Advocate

## ORDER(ORAL)

(HON'BLE SHRI C.J. ROY, MEMBER(J))

This is an old case of 1989 coming up now. We have heard the learned counsel for the parties. In this application the applicant has questioned the seniority of Dr. P.C. Dixit, a direct recruit, (Respondent No.2 herein) above him. Admittedly, the applicant had earlier filed two OAs being 1058/86 and 799/87 both having been ~~disposed~~ on 25.5.87 and 14.1.88 respectively on the similar point.

2. In the present OA he claims that his date of promotion to the grade of Associate Professor should have been 18.11.85 vis-a-vis his seniority, should be fixed ~~above~~ <sup>and</sup> Respondent No.2 and further he has challenged the recruitment rules for the post in question that were notified in November, 1982 and further amended on 4.6.86.

3. On the point that Respondent No.2 was not eligible to be appointed according to the Recruitment Rules, he has relied upon the judgement of Hon'ble Supreme Court reported in 1990-Vol3-SCC-668 - Dt. Collector & Chairman, Vizianagaram SWRS Vs. Tripura Sundari Devi. We have seen the relevant paras of the judgement but we hold that these are not applicable in the present case.

4. In so far as the applicant's questioning the eligibility criteria, qualifications etc. in the recruitment rules as well as the appointment of Respondent No.2, it is pertinent to mention the categorical reply of the respondents in para 6 (iii), (iv) and (vi), which is reproduced below:

"Dr. V.P. Malik was appointed as Lecturer in Forensic Medicine, NDMC, on 23.10.82 and not on 21.10.81 as stated by him and in all the seniority lists issued from time to time, his date of appointment as Lecturer has been shown as 23.10.81. He was transferred on his own request to LHMC where he joined on 18.11.85(AN). He had himself requested for his transfer from MAMC and the Delhi High Court in their order No., CW 2310/85 dated 30.10.85 had directed that Government should take a decision on the request of Dr. V.P. Malik within two weeks. As there was no post of Asstt. Professor of Forensic Medicine vacant in LHMC, he was adjusted against the post of Associate Professor of Forensic Medicine.

"As per the provision of the CGHS Rules in force prior to 4.6.86, the eligibility for promotion to the post of Associate Professor was 5 years regular service as Asstt. Professor. Dr. Malik was appointed as Asstt. Professor from 1.1.83. He was therefore not eligible for promotion till 1.1.88 according to the rules in force prior to 4.6.86. However, from 4.6.86, the eligibility for promotion to the post of Associate Professor was reduced from 5 years service to 3 years service as Asstt. Professor and thus Dr. Malik became eligible for promotion as Associate Professor only 4.6.86 with the coming into force of the amended rules. His request for applying the amendment dated 4.6.86 retrospectively has been rejected by the CAT in OA 1058/86.

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cont...3/-

"A requisition to fill up the post of Associate Professor of Forensic Medicine by direct recruitment through UPSC was sent on 28.3.85, as no Asstt. Professor was eligible for promotion on date as per the Recruitment Rules in force at that time. The post of Associate Professor is required to be filled by promotion, failing which by direct recruitment. On the date of sending the requisition to UPSC, no Asstt. Professor including the applicant who had been appointed as such from 1.1.83 had 5 years regular service and thus no officer was eligible for promotion. The action to fill up the post by direct recruitment was therefore strictly in accordance with the Rules. The post was advertised by the UPSC on 11.5.85. Interviews were held on 14.8.85. The applicant was free to apply to the UPSC and take his chance alongwith others in the open competition. The first candidate recommended from the panel was Dr. P.C. Dixit vide UPSC's letter dated 7.3.86. Even on this date the applicant was not eligible for promotion. Dr. Dixit joined on 22.7.86. The applicant never represented against the appointment of Dr. Dixit. His objection now that he was not eligible for appointment as Associate Professor is therefore untenable."

5. From the above, it is clear that the applicant was not eligible as per the Recruitment Rules of 1982 as he was not having 5 years regular service as Asstt. Professor. However, as per the amended Rules, the length of service was reduced to 3 years. In view of the fact that the appointment of Respondent No.2 was made in the year 1986 which was not questioned by the applicant, which he has now questioned indirectly asking thereby to change the seniority list, we are not convinced that the applicant is entitled for the relief because in the second OA of the applicant rendered on 14.1.88, the Hon'ble Tribunal had given a direction to the respondent to consider the applicant for promotion even without considering his latest ACR. That direction was followed, a DPC was held and the application was given promotion from 5.8.86. The applicant had filed a CCP which was dismissed, the operative portion of which is as under:

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"We have heard the ld. counsel for both the parties. The main grievance of the applicant is that even though according to our order he was to be promoted with effect from 4.6.86 (mistyped as 4.4.86), he was promoted as Associate Professor with effect from 5.8.86. The judgement merely directs that the applicant should be considered for promotion with effect from 4.6.86 from which date he became eligible to be so considered. The learned counsel for the respondent has clarified that the DPC, subsequent to 4.6.86, for the first time met on 5.8.86 and accordingly the review DPC considered the case of the applicant and on their recommendation, he was promoted with effect with effect from 5.8.86. Accordingly, we do not find any disobedience or non-compliance of our direction in this judgement and dismiss the CCP with the direction that the typographical error which has crept in the first para and sub-para a) should be corrected by reading the date 4.4.86 as 4.6.86" Lof para 6

6. In the circumstances, we are of the opinion that the date of promotion which forms the basis for seniority of the applicant is 5.8.86. When the CCP was dismissed, this date was crystallised. We can not unsettle a settled law by reopening the case. We are also of the opinion that the applicant is not entitled to file OA after OA with permutations and combinations claiming reliefs. In view of the directions given in the disposed OAs, this OA becomes untenable as it is hit by constructive resjudicata. We feel that the seniority fixed for Dr. P.C.Dixit need not be disturbed as the same has been correctly fixed. ~4

7. The present OA is therefore dismissed. However, in view of the strange circumstances, the applicant is directed to pay a sum of Rs.100/- (Rupees one hundred only) towards costs.

*T. J. T.*  
(P.T. Thiruvengadam)  
Member(A)  
25.2.94

*for*  
(C.J. Roy)  
Member (J)  
25.2.94