

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

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O.A. No. 2398/89  
T.A. No.

199

DATE OF DECISION 30.10.91.

Dr. K.M. Palit	Petitioner
Shri S.C. Luthra	Advocate for the Petitioner(s)
Versus	
Union of India	Respondent
Mrs. Raj Kumari Chopra	Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

*I.K. Rasgotra*  
(I.K. Rasgotra)  
Member (A)

*T.S. Oberoi*  
(T.S. Oberoi)  
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI  
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OA NO. 2398/89

DATE OF DECISION: 30.10.1991.

DR. K.M. PALIT

APPLICANT

VERUS

UNION OF INDIA

RESPONDENT

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI S.C. LUTHRA, COUNSEL

FOR THE RESPONDENT

MRS. RAJ KUMARI CHOPRA,  
COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY  
HON'BLE MR. I.K. RASGOTRA, MEMBER(A))

Dr. K.M. Palit, who retired as Medical Commissioner Ministry of Labour (equivalent of Chief Medical Officer) on 28.2.1986 has filed this application under Section 19 of the Administrative Tribunal Act, 1985 challenging the following orders:

- (a) No. A.32014/I/73-CHS II dated 04.08.1975 passed by the Under Secretary to Government of India, Ministry of Health and Family Welfare, New Delhi (Annexure I)
- (b) No. A.12034/100/84-CHS.IV/II(Vol.II) dated 27.1.1988 (Annexure A-15); and
- (c) No. A.I.19011/6/85-WI dated 23/24.2.1989 (Annexure A-14);

2. The short issue raised in this application is whether the applicant is entitled to the arrears of pay and allowances w.e.f. 1.7.1965 the date from which he was appointed to the post of General Duty Officer Grade-I (GDO-I for short) in the Central Health Service to 10.7.1975, the date from which he has actually been allowed the benefit of his appointment.

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The brief facts of the case are that the applicant was appointed on 19.9.1959 as Civil Assistant Surgeon, Grade I in the North East Frontier Agency (NEFA) in the pay scale of Rs. 325-800. On the constitution of the Central Health Service in pursuance of Rule 7 of the Central Health Service Rules, 1963, the applicant was appointed as category 'E' (class-II) officer in the service w.e.f. 1.1.1965. The respondent, Ministry of Health and Family Welfare, Department of Health reorganised and revised the pay scales of Central Health Services with a view to rationalising the structure of the service vide OM No. F-5(I)-1/65-CHS dated 30th June, 1965. The service was divided into two classes, namely Class-I and Class II and was to consist of the following categories:

- (i) General Duty Medical Officers;
- (ii) Specialists Grade Officers;
- (iii) Super-time scale officers.

The General Duty Medical Officers possessing Licentiate qualification (Class II-B) were given the scale of pay of Rs. 350-600, while GDMO's possessing Graduate qualification (Class II-A) were allotted the scale of pay of Rs. 350-900. The minimum qualification for entry to Class-I category of General Duty Medical officers carrying a pay scale of Rs. 450-1250 was prescribed as five years experience after registration as a medical graduate. The said O.M. further prescribed grant of advance increments to those who possessed post-graduate degree qualifications.

The applicant herein contends that he was fully eligible for entry to Class-I category, General Duty Medical Officers in the scale of Rs. 450-1250, as he fulfilled all the qualifications and conditions prescribed

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in paragraph 3 of the said O.M. when the service was restructured and reconstituted. However, to his utter dismay he found that he had not been considered fit for appointment as G.D.O. Gr-I of the service vide Memorandum no. F.5(I).4/66...CHS dated 21.3.1967. He, therefore, continued to draw his pay in the scale of Rs. 325-800 till 10.7.1975 when he was appointed as G.D.O. Gr-I w.e.f. 11.7.1975 vide impugned O.M. No. A.32014/I/73-CHS II dated 4th August, 1975 and posted as Medical Officer in the Central Government Health Scheme, Allahabad. He is aggrieved by paragraph 2 of the said order which reads as under:

"2. The pay of Dr. K.M. Palit in the General Duty Officer Grade I will be fixed retrospectively i.e. with effect from 1.7.1965 without any payment of arrears of pay and allowances".

Although he was denied the arrears of pay and allowances he was assigned the correct place in the seniority list and included in the Civil List at the appropriate stage. He contends that in similar cases of retrospective appointment the respondent allowed the arrears of pay and allowances. By way of illustration he has quoted the case of Dr. (Mrs.) Shanti Shroff.

By way of relief the applicant prays that the order dated 4.8.1975 of the respondents denying him the arrears of pay from 1.7.1965 to 10.7.1975 being illegal be quashed and the respondents directed to grant him the full benefit of fixation of pay in the scale of Rs. 450-1250 from 1.7.1965 actually and not notionally.

4. The stand of the respondents as projected in the counter affidavit is that the applicant was considered along with other eligible officers for appointment to General Duty Officer Grade-I of the Central health Service by the Selection Committee held in the year 1971

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but was declared 'not yet fit' as he had been charge-sheeted by the NEFA Administration, under whose control he was working at the crucial time, which resulted in imposition of penalty of censure on him in consultation with the Central Vigilance Commission and in accordance with the advice of the U.P.S.C. The respondent further submitted that in such cases all appointments to the higher grade are regulated by the Ministry of Home Affairs O.M. dated 7/28/68-Ests.(A) dated 22nd December, 1964 according to which an officer against whom a disciplinary case was pending and who was completely exonerated alone can be given appointment/promotion with retrospective effect notionally without any payment of arrears of pay and allowances. The respondent affirm that accordingly the applicant was appointed w.e.f. 11.7.1975 to the post of GDO Gr-I because a penalty of 'censure' has been imposed on him. The respondents have further pointed out that the illustrative case of Dr. Smt. Shroff is not relevant as no disciplinary case was pending against her.

5. We have heard the learned counsel of both the parties and considered the record carefully. The relevant portion of the OM No. 7/28/68-Ests.(A) dt. 22.12.1964 referred to by the respondent in the counter affidavit is reproduced below:

Subject: Procedure to be followed by Departmental Promotion committee in the case of officers under suspension and officers against whom enquiries are pending - Fixation of seniority and pay.

"Para 2 of this Ministry's Office Memorandum No. 39/4/56-Ests.(A) dated the 3rd November, 1958 read with their Office Memorandum No. 39/3/59Estt(A) dated 31st August, 1960 inter alia provides that an officer under suspension, who, on the conclusion of the departmental proceedings against him is completely exonerated, the suspension

being held to be wholly unjustified, should be promoted in the first vacancy that could be made available for the purpose and his seniority in the next higher grade fixed as if he had been promoted in accordance with his position in the select list.

2. A question has been raised as to how the seniority should be fixed in cases of the above type where, for promotion to the next higher grade, a minimum period of service is prescribed but which the Government servant concerned could not put in on account of his suspension, which was ultimately found to be wholly unjustified. It has now been decided that in such a case, the period during which any officer junior to the suspended officer concerned was promoted to the higher grade should be reckoned towards the minimum period of service referred to above for the purpose of determining his eligibility for promotion to the higher grade. It has also been decided that the pay of such category of Government servants should, on promotion, be fixed by allowing the intervening period, during which the suspended officer could not be promoted due to his suspension, to be counted for increments in the higher grade, but no arrears, would be admissible. These concession will also be admissible to those Government servants who, though not under suspension, could not be promoted to the higher grade on account of their being implicated in departmental proceedings, or on account of their conduct being under investigation and who were subsequently completely exonerated."

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This in fact is tantamount to deeming the applicant as having been completely exonerated in the departmental proceedings. It would thus be apparent that ordinarily the applicant was not entitled to the benefit of notional promotion given to him, as he was not completely exonerated but was imposed the penalty of censure. The respondents have treated the applicant, having regard to the circumstances of the case sympathetically, and given him the benefit of OM dated 22.12.1964. He should, therefore, have no cause of grievance. Further, he was not cleared by the D.P.C. for appointment as G.D.O. Grade I in 1971, as there was a disciplinary case pending against him, although eventually he was appointed from the date of constitution of the Central Health Service and also restored his original seniority. Besides the matter has been taken up by the applicant only through this O.A. filed on 1.12.1989 whereas the cause of action had arisen in 1975 vide respondents' letter dated 4th August, 1975. He should have represented against the impugned order of 1975 at that time and after waiting for a reasonable time approached the proper judicial forum. The orders dated 27.1.1988 and 23/24.2.1989 do not extend the limitation, as the former is a communication to the Ministry of Labour with reference to their OM dated 23.12.1988, under which the applicant's representation was sent to the Ministry of Health and Family Welfare while the latter is a communication dealing with the representation dated 11/13.10.1988. Repeated representations do not extend the limitation. (State of M.P. V. S.S. Rathore AIR 1990 SC 10)

There is a specific provision in the Act that the cases, where the cause of action arose three years prior to the coming into the force of the Act on 1.11.1985, i.e. prior to 1.11.1982, are barred by limitation and cannot be adjudicated upon by the Tribunal. The OA is, therefore, hopelessly barred by limitation. Accordingly we do not see any reason for judicial interference in the matter.

The OA is dismissed being barred by limitation with no order as to costs.

*(Signature)*  
(I.K. RASGOPITRA) 30/10/91  
MEMBER(A) 29/10/91  
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*(Signature)* 30.10.91  
(T.S. OBEROI)  
MEMBER(J)