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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 676/89

New Delhi this the 4th March, 1994.

Shri Justice B.C. Saksena, Vice Chairman(J).

Shri S.R. Adige, Member(A).

Dr. Prabhu Dayal Nigam,
R/o A-2, Multistorey Building,
Baba Kharak Singh Marg,
New Delhi-110 001.

... Petitioner.

By Advocate Shri S.P. Mittal with Shri Inderjit Singh.

Versus

1. Union of India through
its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Director General Health Services,
Nirman Bhawan,
New Delhi.
3. Chairman,
Union Public Service Commission,
Dholpur House,
Shah Jahan Road,
New Delhi.
4. Dr. D. Sengupta,
Sr. Physician,
Dr. Ram Manohar Lohia Hospital,
New Delhi.

By Advocate Shri P. H. Ramchandani.

ORDER

Shri Justice B.C. Saksena.

Dr. P.D. Nigam, the applicant, by means of this O.A. claims that he was eligible and qualified and being the seniormost Specialist Grade-I officer in Medicine with further specialisation in Cardiology was entitled to be considered for the post of 'Consultant in Medicine', Dr. Ram Manohar Lohia Hospital, Delhi. He, therefore, prayed

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for the following reliefs:

- (1) That the concerned respondents be directed to consider him for promotion to the post of 'Consultant in Medicine' at Dr. R.M.L. Hospital, New Delhi.
- (2) Alternatively, declare as null and void and non-est any decision(s)/recommendations having already been taken/made in this regard by the concerned respondents and/or the Departmental Promotion Committee, without considering the name of the applicant.

2. A reply to the O.A. has been filed by the respondents to which a rejoinder has been filed by the applicant. We have heard the learned counsel for the parties at some length.

3. During the course of hearing, it transpired that the applicant sought voluntary retirement and relinquished the charge of the post of Consultant in Cardiology in Dr. Ram Manohar Lohia Hospital, New Delhi on the afternoon of the 31st December, 1990. The learned counsel for the respondents has also placed before us copy of an order dated 4.9.1990 issued by the Department of Health and Family Welfare, Govt. of India. It shows that the applicant was appointed on an officiating capacity to the post of Consultant in Cardiology, Dr. Ram Manohar Lohia Hospital, New Delhi which post ~~is also~~ ^{is also} to the Supertime Grade of the Central Health Service. The officiating appointment was made admissible with effect from 1st March, 1990. We have also been shown a copy of the order dated the 6th September, 1989 whereby Respondent No. 4 was appointed on officiating basis as Consultant in Medicine,

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Dr. Ram Manohar Lohia Hospital (CGHS) New Delhi which is a post of the Super Time Grade of the Non-Teaching Specialist Sub-Cadre of the Central Health Service. The learned counsel for the respondents on the basis of these facts submitted that since the applicant had already been appointed with effect from 1st March, 1990 to a Super Time Grade of the Non-Teaching Specialist Sub-Cadre and he has also since thereafter proceeded on voluntary retirement, reliefs claimed in the O.A. do not subsist and the O.A. may be disposed of accordingly.

4. The learned counsel for the applicant, however, submitted that the claim in the O.A. survives in view of the fact that the applicant has sought a relief that the respondents be directed to consider him for promotion to the post of Consultant in Medicine and has also sought to declare as null and void and non-existent any decision/recommendation by the Departmental Promotion Committee to the post of Consultant in Medicine if the same was made without considering the name of the applicant. The submission of the learned counsel for the applicant precisely was that the O.A. be decided since it raises an important question as to whether or not appointment to the post of Super Time Grade has to be made on the basis of speciality or the sub-cadre of the Specialist Grade-I. He submitted that the applicant is insisting on a decision in the O.A. not only to get ~~redressed~~ ^{redressed} for the harassment caused to him because of the appointment of Respondent No.4, his junior to the post of Consultant in Medicine, Dr. Ram Manohar Lohia Hospital, New Delhi without the applicant's candidature having been considered, ~~but~~ ^{but} he submitted that this is a question of deprivation of status

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without justification and it affects his post retirement benefits also.

5. The learned counsel for the respondents in reply submitted that the applicant does not suffer in any manner in the matter of his post retirement benefits since he had already been selected and appointed to the Super Time Grade post of Consultant in Medicine, Dr. Ram Manohar Lohia Hospital, New Delhi with effect from 1st March, 1990 and he demitted the office on voluntary retirement on 31.12.1990. For purposes of computing the post retirement benefits the pay drawn for the last 10 months is taken into consideration. That requirement is fulfilled. There is force in the submission made by the learned counsel for the respondents as far as this aspect is concerned. We are satisfied that the applicant does not suffer in the matter of his post retirement benefits because of his delayed promotion, if at all, to the Super Time Grade of the Non-Teaching Specialist Sub-Cadre.

6. Since the applicant has already voluntary retired, relief No. 1 viz., a direction to the concerned respondent to consider him for promotion to the post of Consultant in Medicine Dr. Ram Manohar Lohia Hospital, New Delhi cannot be granted now. The applicant had been appointed to an identical post of Consultant in Cardiology. Respondent No. 4 was appointed as Consultant in Medicine. No doubt in the alternative, the applicant seeks declaration as null and void and non-est of recommendations made by the Departmental Promotion Committee to fill up the said post without considering the applicant's name. While passing interim order by this Tribunal, appointment to the post in question was directed ^{to be} subject to the outcome of this application and the appointee should be made specifically aware of this fact. All the same the question is whether in

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view of the subsequent events it would be necessary to adjudicate on the issues raised in the O.A. After having been given our anxious considerations, we do not feel inclined to go into the rival contentions of the parties on the issues involved in the case. The same can be adjudicated as and when an appropriate occasion arises for ^{in some other case for} the same. In view of the subsequent events as pointed out hereinabove, it would be a futile exercise to analyse the rival contentions. We can, if satisfied that there is merit in the contentions raised by the applicant, only require the respondents to consider the candidature of the applicant for promotion to the post of Consultant in Medicine. Since the applicant has already been considered and promoted to an equivalent post, we do not consider it appropriate to issue any such directions. The effect of consideration of the applicant's candidature will not benefit ^{him} in the matter of his post retirement benefits even if after consideration of his candidature he is promoted to the post of Consultant in Medicine from the date the Respondent No. 4 was so promoted. The quashing of the order of promotion of Respondent No. 4 at this stage will not ensure for the benefit of the applicant since he has already sought voluntary retirement and has demitted office. The questions raised in the O.A. thus in view of the subsequent circumstances would be merely an academic and would not be of avail to the applicant. In view of this, we are inclined to hold that the O.A. has ^{been for} rendered infructuous. The same is disposed of accordingly.

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(S.R. ADIGE)
MEMBER(A)

B.C. Saksena
(B.C. SAKSENA)
VICE CHAIRMAN(J)

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