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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA-1385/88

Date of decision: 20.10.1989

Dr. Vinod Kumar Ramteke

.....Applicant

Vs.

Union of India represented
by the Secretary, Ministry of
Health & Family Welfare

.....Respondents

For the Applicant

.....Shri J.P. Verghese,
Counsel

For the Respondents

.....Mrs. Raj Kumari
Chopra, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. P.C. JAIN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *No*

(The judgment of the Bench delivered by
Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who is an Associate Professor of Surgery in Dr. Ram Manohar Lohia Hospital, New Delhi filed this application under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:-

- (i) To direct the respondents to confirm him in the grade of Assistant Professor as on 23.6.1983 when he completed his 2 years probation period as also when a clear vacancy was available.
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(ii) To direct the respondents to revise the seniority of Assistant Professors as on 1.11.1985 showing him as senior to those who were not confirmed before 15.10.1984 in the post of Assistant Professor and review the promotion panel issued by them as on 6.11.1985 and appoint him to the post of Associate Professor with effect from that date.

(iii) To direct the respondents to pay him arrears of pay and allowances due to him on account of promotion to the post of Associate Professor with effect from 13.9.1985 and also to recast his seniority in the post of Associate Professor showing his seniority with effect from 13.9.1985.

(iv) To direct the respondents to consider him to the post of Professor on his attaining the eligibility to be considered for the same on the basis of his holding the post of Associate Professor with effect from 13.9.1985.

2. The pleadings in this case are complete. The case was listed for admission on 23.8.1989 when we heard the learned counsel of both parties. We have also gone through the records of the case carefully.

3. The facts of the case in brief are as follows. The applicant belongs to the Scheduled Caste Community. He was initially recruited as a Specialist Grade II Officer in the non-teaching sub-cadre under the Central Health Service with effect from 23.6.1981 in the pay scale of Rs.1100-1800. He was placed on probation for a period of 2 years. Before the expiry of the said period, he was appointed to the teaching post of Lecturer in Surgery under

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the Central Health Service with effect from 15.10.1982 and was placed on probation for a period of 2 years. This appointment was pursuant to an open competition conducted by the UPSC. The teaching post of Lecturer was redesignated as Assistant Professor. The grievance of the applicant is that he was not confirmed in the post of Assistant Professor with effect from 23.6.1983, i.e., after the expiry of 2 years of his appointment to the post of Specialist Grade II with effect from 23.6.1981. His non-confirmation in the grade of Assistant Professor with effect from 23.6.1983 has adversely affected his further promotions in the Central Health Service.

4. The applicant has submitted several representations to the respondents which did not bear fruit. These representations date from 11.6.1985 onwards. He did not, however, receive any reply from the respondents.

5. The case of the respondents is that the applicant could not have been confirmed prior to 15.10.1984, as he ceased to be a Surgeon Specialist upon his appointment as a Lecturer in Surgery (Assistant Professor) with effect from 15.10.1982. His case for confirmation is still under consideration, in view of the restructuring of the Central Health Service in 1982 and the revision of the relevant recruitment rules. Prior to 13.11.1982, there was a combined seniority list of Specialists (Non-teaching) and Specialists (Teaching) Officers. Confirmations were made in the Grade of Specialist Grade II on the basis of the combined seniority list. After restructuring, Specialists

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Grade II (Non-teaching) and Specialists Grade II (Teaching) have been divided into various specialities and seniority lists are now being prepared speciality-wise and not grade wise. This is being done in consultation with the Department of Personnel & Training. No final decision has yet been taken in this regard.

6. As regards the applicant's promotion to the post of Associate Professor of Surgery w.e.f. 13.9.1985, the contention of the respondents is that he is not eligible for the same, having regard to the fact that he did not have 5 years requisite service as Assistant Professor, as stipulated in the relevant rules. The rules were, however, amended vide notification dated 4.6.1986, according to which, the period of eligibility for promotion as Associate Professor has been reduced from 5 years regular service as Assistant Professor to 3 years regular service. By virtue of the amendment of the rules, the applicant became eligible for promotion as Associate Professor. Accordingly, a meeting of the DPC was held in August, 1986 and the applicant along with other eligible officers has been promoted as Associate Professor of Surgery with effect from 5.8.1986.

7. We see no substance in the plea of the applicant that he is due for promotion from 13.9.1985 on the ground that he belongs to the Scheduled Caste Community. The respondents have stated in their counter-affidavit that as per the Rules which prevailed prior to 4.6.1986,

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Assistant Professor with 5 years of regular service in the grade alone were eligible for such promotion. The applicant, who was appointed as Assistant Professor with effect from 1.1.1983 did not have 5 years requisite service as Assistant Professor even by counting his service rendered as Lecturer from 15.10.1982 to 31.12.1982. A Departmental Promotion Committee to consider Assistant Professors for promotion as Associate Professor on personal basis was held on 13.9.1985. A total of 50 Officers were promoted as Associate Professors on personal basis on the recommendations of the Departmental Promotion Committee. There were 7 Officers belonging to the Scheduled Caste Community in different specialities out of which only one officer belonging to that community possessed the requisite 5 years of service as Assistant Professor. He was promoted as Associate Professor along with 49 Officers belonging to the general category. The other 6 Officers including the applicant who belonged to the Scheduled Caste Community were also considered by the DPC. The DPC, however, did not find them eligible for promotion as they did not have the requisite service. The amendment of the rules which was made with effect from 4.6.1986 cannot be given retrospective effect as claimed by the applicant. We see ~~no~~ merit in this contention raised by the respondents.

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8. In the facts and circumstances of the case, we are of the opinion that the applicant is not entitled to any of the reliefs as prayed for in the present application. The application is, therefore, dismissed as devoid of any merit at the admission stage itself. The parties will bear their own costs.

Recd 29/10/89
(P.C. JAIN)
MEMBER (A)

20/10/89
(P.K. KARTHA)
VICE CHAIRMAN(J)