

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 304 of 2020

Present: Hon'ble Ms. Manjula Das, Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A)

Dr. Ashok Kumar Panda, aged about 51 years, son of Shri Basudev Panda, presently residing at 95 – Indraprashta, Phase-II, Near Kokila Enclave, Pokhariput, Bhubaneswar - 751020

.....Applicant

VERSUS

1. Union of India, represented through the Secretary to the Govt. of India, Ministry of AYUSH, B-Block, CGO Complex, New Delhi – 110 001.
2. The Director General, Central Council for Research in Ayurvedic Sciences, No – 61-65, Institutional Area, Opp. “D” Block, Janakpuri, New Delhi – 110 058.
3. The Director, Central Ayurveda Research Institute for Hepato biliary disorders, Ministry of AYUSH, Bharatpur, Bhubaneswar – 751029.
4. Dr. M. M. Rao, presently working as Director, Research Institute for hepato biliary disorders, Ministry of AYUSH, Bharatpur, Bhubaneswar – 751029.
5. The Asst. Director (Coordination), in the office of Director General, Central Council for Research in Ayurvedic Sciences, No-61-65, Institutional Area, Opp. “D” Block, Janakpuri, New Delhi – 110 058.
6. The Research Officer (Incharges), Regional Ayurveda Research Institute, Ranikhet, Uttarakhand – 263645.

.....Respondents.

For the applicant : Mr. S.K. Ojha, Counsel

For the respondents: Mr. G.R. Verma, Counsel

Heard & reserved on : 21.09.2020

Order on : 25.09.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA under the section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the orders dated 11.8.2020 and 12.8.2020 transferring him from Bhubaneswar to Ranikhet on ad-hoc promotion to the post of Assistant Director and relieving him from the post

of Research Officer held by him at Bhubaneswar and has prayed for the following reliefs:-

- i. *To allow the Original Application.*
- ii. *To quash the order of relieve dtd. 11.08.2020 under Annex.A/7 and the order of rejection dtd. 12.08.2020 under Annex.A/11 and to hold that the Applicant is deemed to have been continuing in the post at CARIHD, Bhubaneswar;*
- iii. *Accordingly, direct the Respondents to pay the applicant all his service and financial benefits retrospectively;*
- iv. *To pass any further order/orders as deem fit and proper in the facts and circumstances of the case.*

2 The facts leading to this OA are that the applicant, working as Research Officer under the respondent no.3 at Bhubaneswar since 23.4.2016, had submitted his willingness for promotion to the rank of Assistant Director in response to the letter of the Central Council for Research in Ayurvedic Sciences (in short CCRAS) for such willingness from officers eligible for promotion. Subsequently, the applicant submitted a representation dated 6.7.2020 (Annexure-A/5 of the OA) requesting for posting at Bhubaneswar on ad-hoc promotion to the post of Assistant Director, mentioning some of his personal difficulties in support of his request. The applicant claims that by his representation, he has modified his willingness for promotion to the post of Assistant Director submitted by him earlier.

3. Thereafter, vide the order dated 11.8.2020 (Annexure-A/6 of the OA) of the respondent no.2 the applicant was promoted to the post of Assistant Director (Level-11) on ad-hoc basis and on such promotion, he was posted to Regional Ayurveda Research Institute, Ranikhet against the existing vacancy. This order was followed by another order dated 11.8.2020 (Annexure-A/7) passed by the respondent no.3 relieving him from his post of Research Officer at Bhubaneswar with effect from 11.8.2020 (AN). On 12.8.2020, the applicant submitted his unwillingness to accept the promotion vide his letter at Annexure- A/8 of the OA and when he was not allowed by respondent no.3 to join in his office at Bhubaneswar, he submitted a representation dated 12.8.2020 (Annexure-A/9) addressed to the respondent no.2, requesting for withdrawal of order dated 11.8.2020 (A/7) relieving him from the post of Research Officer at Bhubaneswar in view of his letter dated 12.8.2020 refusing the said promotion. The letter dated 12.8.2020 (Annexure-A/10) of respondent no.3 to the applicant states that his office room cannot be opened "till further instructions from the Hqrs." and refusing to allow the applicant to discharge his duty pending instruction of the competent authority. On 12.8.2020, a message was sent by respondent no.2 to the applicant by email (Annexure-A/11) rejecting his request and stating as under:-

"Your act of forgoing promotion to AD Ay. Now when order of promotion are issued/materialized. You have given ur unconditional option for promotion before this promotion process. Now forgoing/rejecting promotion will invite disciplinary action as per rules. Therefore u are advised to hands over ur charge and join new place of transfer and lead the institute as incharge."

4. Being aggrieved by the order at Annexure-A/11 rejecting his letter dated 12.8.2020 (A/8) not accepting the promotion in question and order dated 11.8.2020 (A/7) relieving him from his post at Bhubaneswar, the applicant has filed this OA advancing the following grounds:-

- (i) The applicant has been allowed higher pay at Level-12 vide order dated 16.7.2019 (Annexure-A/4), where as the post of Assistant Director carries the pay at Level-11 as stated in the promotion order. Hence, he cannot be forced to accept lower pay scale by accepting promotion.
- (ii) His willingness dated 14.3.2018 was for regular promotion and the same cannot be considered as his willingness for ad-hoc promotion.
- (iii) The respondents are bound by the circulars issued by DOPT on the issue, which are violated by action of the respondent nos. 2 and 3 in this case.

5. Counter filed by the respondents urged following grounds to resist the OA:-

- (i) Tribunal/Courts ordinarily refrain from interfering administrative orders. Posting of officers on promotion is done as per the need of the organization and posting of a person as per his choice without requirement is wasteful.
- (ii) The applicant has given his willingness for promotion vide letter dated 22.10.2019 (Annexure-R/3 of the Counter in response to the letter dated 16.10.2019 (Annexure-R/2 of the Counter). On receipt of willingness, the DPC for promotion was held on 29.1.2020 vide minutes at Annexure-R/5. He has refused promotion only after he was relieved from the post.
- (iii) The applicant has been allowed upgradation to Level-12 under MACP and he will continue to draw the same pay after promotion to the post of Assistant Director and his pay will not be reduced on promotion.
- (iv) The representation dated 6.7.2020 (A/5) of the applicant is premature and not sustainable administratively and his willingness for promotion cannot be conditional. Order of promotion and posting is not a punishment and the applicant can be posted as per the need irrespective of family problem.
- (v) The applicant has been allowed ad-hoc promotion subject to outcome of court cases filed by some officers claiming enhancement of retirement age and due to stay order, the applicant has been promoted on ad-hoc basis subject to outcome of court cases. Vide order dated 1.6.2020 of Hon'ble Apex Court (Annexure-R/10 of the Counter) stay orders have been vacated and though applicant was aware of the facts, he did not reveal in the OA.
- (vi) There was a complaint dated 2.3.2020 (Annexure-R/11) against the applicant by one patient, for which he was issued a warning. The applicant cannot claim his right to be posted in his home town when he is liable for all India transfer

(vi) The impugned orders are issued on administrative exigencies without malafide. No document has been produced by applicant to substantiate the allegations raised in OA. No DOPT circular has been violated by the respondents while passing the impugned orders.

6. Opposing the averments in the Counter, the applicant filed Rejoinder stating that in extra ordinary circumstances, Tribunal can interfere on administrative matters. The discretion of the authority cannot be exercised arbitrarily. It is further stated that the action of the respondents is a result of malafide exercise of power and the applicant, after serving six years in North Eastern region, his request to refuse promotion to continue at his place of choice should have been allowed. It is stressed that the willingness of the applicant submitted in 2019 was for regular promotion and not for ad-hoc promotion. It is averred by the applicant that he is willing to join the post of Assistant Director if such promotion is made on regular basis. It is also stated in Rejoinder that since the applicant has been given ad-hoc promotion, there is a likelihood of his reversion depending on the final order on the pending litigations.

7. The respondents have filed their reply to Rejoinder, referring to DOPT OM dated 1.10.1981 (Annexure-R/8 of the Counter) which provides for initiation of disciplinary action against a person who refuses promotion and his refusal was not acceptable to the appointing authority. It is also stated in the reply that the OA No. 926/2019 before Hyderabad Bench of the Tribunal has been dismissed vide order dated 4.9.2020 copy of which has been enclosed with the reply.

8. We heard learned counsel for the applicant and the respondents reiterating the stand in their respective pleadings and also perused the pleadings on record. The applicant's counsel also referred to the guidelines of DOPT Office Memorandum dated 22.11.1975 regarding the policy for refusal of promotion and argued that there is nothing wrong on the part of the applicant to refuse the ad-hoc promotion. Considering the pleadings as well as the submissions by both the parties, the relevant issues to be decided in this OA are:

- (i) Whether the applicant can refuse the ad-hoc promotion in spite of his willingness for promotion submitted by him on 22.10.2019 (R/3); and**
- (ii) Whether the respondents are justified to compel the applicant to accept the ad-hoc promotion in view of his willingness at Annexure-R/3 in accordance with the DOPT OM dated 1.10.1981 (Annexure-R/8 of the Counter).**

Issue at paragraph 8(i)

9. It is noticed from the letter dated 16.10.2019 (Annexure-R/2 of the Counter) inviting willingness from the officers for promotion to the post of Assistant Director that it invited willingness from the Research Officers including the applicant, eligible for consideration. There is no mention in the said letter that promotion referred in the letter may include ad-hoc promotion also. Regarding consequences of not joining the place of posting on promotion after giving willingness, it is mentioned in the said letter that disciplinary proceeding will be initiated as per the DOPT OM dated 1.10.1981. In reply to the letter dated 16.10.2019 (R/2), the applicant has furnished his willingness for promotion to the post of Assistant Director and for his posting at any place on 22.10.2019 (Annexure-R/3 of the Counter), mentioning that he had submitted his willingness earlier on 14.3.2018. The respondent no.2 issued the order of promotion on 11.8.2020 (Annexure-A/6 of the OA) to the applicant, in which the promotion was stated to be ad-hoc promotion and on such ad-hoc promotion the applicant was posted to Ranikhet. On the same day, i.e. on 11.8.2020 itself, the respondent no. 3 passed the order at Annexure-A/7 relieving the applicant on the same day i.e. on 11.8.2020. The applicant submitted the letter dated 12.8.2020 (A/8) refusing the promotion opting to forego the promotion for one year. Though no reason for refusing the promotion has been mentioned in the letter at Annexure-A/8, but in the OA it is stated that his willingness was for regular promotion and not for ad-hoc promotion.

10. The DOPT OM dated 22.11.1975 and 1.10.1981 provide for refusal for promotion by an employee who needs to furnish reasons for the same. If such reasons are accepted by the competent authority, then he will not be promoted for one year and on subsequent promotion, he will lose his seniority and if the reasons are not acceptable to the appointing authority, then refusal of promotion will make the concerned employee liable for disciplinary action. From the OM dated 1.10.1981 of DOPT (Annexure-R/8), relied on by the respondents, it is noted that the said OM refers to promotion without specifying that such promotion will include ad-hoc promotion, which is for a temporary period. It is noticed that as per the DOPT OM dated 3.4.2013, ad-hoc promotion is to be resorted to only in exceptional circumstances when a post cannot be kept vacant till its filling up through regular DPC as per the rules. The said OM states as under:-

“5. As already provided in this Department's O.M. No.22011/3/75-Estt.(D) dated 29th October, 1975, and reiterated in O.M. No.28036/8/87-Estt.(D) dated 30.03.1988 and O.M. No.28036/1/2001-Estt.(D) dated 23.07.2001, an ad-hoc appointment does not bestow on the person a claim for regular appointment and the service rendered on ad-hoc basis in the grade concerned also does not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade. As per existing provisions, these facts are to be clearly spelt out in the orders of the ad-hoc

promotions/ ad-hoc appointments. Therefore, such ad-hoc arrangements are neither in the interest of the individuals nor the organizations concerned. It is, thus, not appropriate to resort to ad-hoc arrangements in a routine manner.

6. As per existing instructions vide O.M. No.28036/8/87-Estt.(D) dated 30.03.1988 and O.M. No.28036/1/2001-Estt.(D) dated 23.07.2001, the total period for which the appointment/ promotion may be made, on an ad-hoc basis, keeping in view the exceptionalities anticipated in these OM, by the respective Ministries/ Departments, is limited to one year only.....”

11. It is clear from the above provisions of the OM dated 3.4.2013 of DOPT that the ad-hoc promotion is neither in the interest of the organization nor the employees concerned and services rendered on ad-hoc appointment will not be counted for the purpose of seniority and for eligibility for subsequent promotion. In other words, ad-hoc promotion cannot be equated with the regular promotion in which an employee can claim seniority. Further, ad-hoc promotion can be cancelled anytime as per the guidelines of DOPT. Therefore, it cannot be said that the promotion for which the applicant submitted his willingness on 22.10.2019 (Annexure-R/3 of Counter) for promotion will also include ad-hoc promotion in absence of any specific mention to that effect in his willingness. Since no willingness has been furnished by the applicant for ad-hoc promotion to the post of Assistant Director, the applicant can legitimately refuse such promotion without attracting the penal provisions of the DOPT OM dated 1.10.1981 (R/8) which is not applicable for ad-hoc promotion as discussed earlier. **Hence, the issue at paragraph 8(i) of this order is answered in affirmative in line with the applicant's contentions.**

Issue at paragraph 8(ii)

12. As discussed in preceding paragraphs, the DOPT OM dated 1.10.1981 is not applicable for ad-hoc promotion. The respondents only relied on the OM dated 1.10.1981 (Annexure-R/8 of the Counter) for justifying the impugned order to reject the applicant's refusal of ad-hoc promotion. No rule or guidelines of Government has been furnished in the pleadings of the respondents to substantiate the respondents' contentions that an employee who is promoted on ad-hoc basis cannot refuse such ad-hoc promotion if he has submitted his willingness for promotion. Learned counsel for the respondents had submitted that the ad-hoc promotion was resorted to by the respondents in view of interim orders in pending litigations regarding retirement age. Copy of no such interim order of any Court or Tribunal directing the respondents not to promote the employees to the post of Assistant Director on regular basis, has been furnished by the respondents. On the other hand, copy of the order dated 1.6.2020 of Hon'ble Apex Court vacating the interim order to allow the concerned

officer to continue in service beyond the retirement age has been enclosed at Annexure-R/10 the Counter.

13. It is noted from the minutes of the DPC meeting held on 29.1.2020 (Annexure-R/5 of the Counter) in which the applicant was considered for promotion to the post of Assistant Director that only clear vacancies were considered excluding the resultant vacancies on superannuation of the officers who are claiming higher superannuation age in pending litigations. But for reasons not mentioned in the minutes, the DPC recommended that due to pending litigations, the posts are to be filled up on ad-hoc basis subject to outcome of the pending cases before Tribunal. What was the difficulty for promoting the officers selected for the post by the DPC on regular basis subject to final outcome of pending cases before the Tribunal has not been revealed in the minutes of the DPC or in the pleadings of the respondents. It is also noticed that for two posts, the DPC has recommended two officers including the applicant for ad-hoc promotion and has kept two more officers in the waitlist. The administrative difficulties in promoting the officers from the waitlisted panel after refusal of ad-hoc promotion by the applicant vide his representation dated 12.8.2020 (Annexure-A/8) have not been explained by the respondents in their pleadings except for general averment that the authorities are competent to decide the place of posting of the applicant on ad-hoc promotion as per the need of the organization. In this context we take note of the contention of the applicant in Rejoinder that he is willing to accept regular promotion and the fact that one OA relating to the claim of some officers for higher superannuation age has been dismissed by Hyderabad Bench of this Tribunal vide order dated 4.9.2020 in the OA No. 926/2019, copy of which has been enclosed by the respondents in their reply to Rejoinder.
14. In such factual background as discussed above, the reasons mentioned by the respondents for resorting to ad-hoc promotion in this case and for compelling the applicant to accept the ad-hoc promotion are not at all convincing. Taking into consideration the guidelines of the DOPT on ad-hoc promotion and non-applicability of the DOPT OM dated 1.10.1981 to ad-hoc promotion as discussed earlier, we have no hesitation **to answer the issue at paragraph 8(ii) of this order in negative contrary to the contentions of the respondents.**
15. The respondents in the Counter have submitted that no interference in an administrative decision is called for as the applicant has been posted on ad-hoc promotion as per the need of the organization and if he refuses to join in the said post, disciplinary action can be initiated as per the

DOPT OM dated 1.10.1981. There is a threat of disciplinary action against the applicant. The decisions taken by the respondents in this case affect the rights of the applicant, for which it is necessary on the part of this Tribunal to interfere in the matter in accordance with the provisions of law if the decisions taken by the authorities are not in accordance with the rules and the policy guidelines of the DOPT/Government of India.

16. In the facts and circumstances as discussed above, the impugned orders dated 11.8.2020 (Annexure-A/7) relieving the applicant from his post of Research Officer and dated 12.8.2020 (Annexure-A/11) rejecting his representation dated 12.8.2020 (Annexure-A/8) to refuse the ad-hoc promotion to the post of Assistant Director are not sustainable in the eyes of law and hence, these orders are quashed. The respondents are directed to allow the applicant to continue at Bhubaneswar in the post he was working prior to his being relieved on 11.8.2020 (AN) with the consequential service benefits including payment of his salary and allowances from 12.8.2020 till he is allowed to join duty and to comply with this order within one month from the date of receipt of a copy of this order. It is, however, made clear that the respondents will have the liberty to promote the applicant to the post of Assistant Director on regular basis in accordance with the extant rules and post him suitably taking into account his willingness submitted on 22.10.2019 (Annexure-R/3 of the Counter) and failure on the part of the applicant to comply such regular promotion will attract actions as per the DOPT OM dated 1.10.1981 (Annexure-R/8 of the Counter).
17. The OA is allowed in terms of the paragraph 16 above. There will be no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)