

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 668/ 1986.
TMXN6.

DATE OF DECISION March 26, 1987.

Dr. M. P. Srivastava Petitioner

Shri E. X. Joseph Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri M. L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, 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? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to other Benches? Yes.

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(KAUSHAL KUMAR)
MEMBER (A)
26.3.1987.

K. Madhava Reddy

(K. MADHAVA REDDY)
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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 668/86.

DATE OF DECISION: March 26, 1987.

Dr. M.P. Srivastava Applicant.

V/s.

Union of India & Ors. Respondents.

For the applicant Shri E.X. Joseph,
Advocate.

For the respondents Shri M.L. Verma,
Advocate.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

The applicant, holding the post of Associate Professor of Medicine, Maulana Azad Medical College and Physician in the Lok Nayak Jayaprakash Hospital and G.B. Pant Hospital, New Delhi, which is a Specialist Grade II post in the Teaching Specialists Sub-cadre of the Central Health Service, has through this application challenged the action of the respondents in promoting him against the post of Professor of Medicine, Specialist Grade I, in the Jawaharlal Institute of Postgraduate Medical Education & Research (JIPMER), Pondicherry and inter-alia claimed the following reliefs: -

- (a) to strike down the decision of respondents No.1 and 2 to make appointment to the post of Professor of Medicine, JIPMER, Pondicherry by direct recruitment in violation of the reference of the post to the DPC and in violation of the due selection made by the DPC for appointment to the post by promotion;
- (b) to strike down the advertising of the post of the Professor of Medicine, JIPMER, Pondicherry in the advertisement published by Respondent No.3 on 7.6.86;

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(c) to direct respondents not to take any further steps on the basis of the advertisement issued on 7.6.1986 calling for applications for appointment by direct recruitment to the post of Professor of Medicine, JIPMER, Pondicherry;

(d) to direct respondents No.1 and 2 to make appointments to the three posts of Professor of Medicine which arose in 1981, 1982 and 1985 respectively in accordance with the selection made by the DPC and in the order of the year in which vacancy arose and the placement in the select list on the basis of eligibility and seniority;

(e) to direct respondents No.1 and 2 to appoint the applicant to the post of Professor of Medicine, Lady Hardinge Medical College, New Delhi on the basis of the selection by the DPC;

(f) to pass any other order and grant any other relief deemed necessary in the facts of the case; and

(g) to award cost of the application to the applicant.

2. A few facts necessary to appreciate the various contentions made in the application as also at the time of arguments by the learned counsel for the applicant are stated below: -

The applicant joined the Central Health Service in September, 1966 and was promoted as Associate Professor on 1.1.1983. At the time of filing this application, he was holding the post of Associate Professor of Medicine, Maulana Azad Medical College, New Delhi. The Central Health Service Rules provide for promotion from the post of Associate Professor to the next higher grade of Specialist Grade I Professor. The Rules lay down that appointment to the said grade would be "75% by promotion failing which by direct

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recruitment and 25% by direct recruitment." One Dr. (Miss) Saroj Gupta, who was holding the post of Professor of Medicine, JIPMER, Pondicherry (Specialist Grade I of the Central Health Service) was transferred to Delhi in October, 1981 on compassionate grounds as she was suffering from cancer and was advised treatment at the All India Institute of Medical Sciences, New Delhi. According to the respondents, the post which Dr. (Miss) Saroj Gupta vacated at JIPMER, Pondicherry was not a regular vacancy and no action to fill it up was taken as she was to be posted back at Pondicherry on completion of her treatment. However, later on, it was decided to post her on a regular basis as Professor of Medicine in Maulana Azad Medical College when action to fill up the post of Professor of Medicine at Pondicherry on a regular basis was initiated. A requisition was sent to the UPSC in March, 1985 for filling up the said post by direct recruitment. However, the UPSC drew a blank in recommending any candidate and advised that a fresh requisition be sent to them after a period of six months. In the meantime, two posts of Professor of Medicine in Lady Hardinge Medical College, New Delhi also fell vacant according to the respondents in October, 1985 and December, 1985. However, as per averments made by the applicant the two posts fell vacant in 1983 and 1985. In December 1985/January 1986, another requisition was sent to the UPSC asking for three names for three posts of Professor of Medicine - two in the Lady Hardinge Medical College, New Delhi and one at JIPMER, Pondicherry. A meeting of the DPC was held in the UPSC on 10.2.86, which recommended three names for the three posts of Professor of Medicine in the order in which their names are indicated below: -

- (1) Dr. N.P.S. Verma.
- (2) Dr. R.C. Bhasin.
- (3) Dr. M.P. Srivastava (the applicant).

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The first two persons recommended by the UPSC were appointed on promotion against the posts of Professor of Medicine, Lady Hardinge Medical College, New Delhi, in June, 1986. The applicant, who was at Sr. No. 3 in the panel recommended by the UPSC, has been promoted against the post of Professor of Medicine, JIPMER, Pondicherry, which order is under challenge in the application filed by him. The applicant has yet to join the said post.

3. The learned counsel for the applicant argued that in terms of the instructions issued by the Government, the selections had to be made with reference to the vacancies in each year and the select list had to be prepared starting from the year in which the vacancy arose and onwards. It was stated that the post of Professor of Medicine at JIPMER, Pondicherry fell vacant in 1981 and the two posts of Professor of Medicine, Specialist Grade I, in the Lady Hardinge Medical College, New Delhi fell vacant in 1982 and 1985. Since the post at Pondicherry had fallen vacant earlier than the posts of Professor of Medicine in the Lady Hardinge Medical College, New Delhi, according to the applicant the first candidate recommended by the UPSC, namely Dr. N.P.S. Verma should have been posted against the Pondicherry post. However, in violation of the Government instructions on the subject, Dr. Verma was appointed against one of the two posts in the Lady Hardinge Medical College, New Delhi and Dr. R.C. Bhasin was appointed against the second post. The post at Pondicherry was once again referred to the UPSC for direct recruitment and it was, in fact, again advertised by the UPSC on 7.6.1986. After the promotion of Dr. N.P.S. Verma and Dr. R.C. Bhasin against the two posts in Delhi, the applicant was promoted

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against the post of Professor of Medicine at JIPMER, Pondicherry in December, 1986, against which he made a representation, which was rejected by the Ministry of Health & Family Welfare.

4. The case of the respondents is that three candidates having been recommended by the UPSC to the three posts of Professor of Medicine, the first two persons were promoted against the vacancies in Delhi. However, it has been contended in the counter-affidavit that "In view of the fact that all the three officers recommended by the D.P.C. on 10.2.86 were Delhi based and past experience showed that the Delhi based officers rarely go to Pondicherry and a large number of posts were lying vacant at Pondicherry, it was decided again to try the method of direct recruitment also while the recommendations of the D.P.C. were being processed at the various levels. A fresh requisition for filling up the post of Professor of Medicine, JIPMER, Pondicherry was accordingly sent to U.P.S.C. on 15.4.1986 and the post was advertised by the UPSC on 7.6.86." It is further contended by the learned counsel for the respondents that the applicant has no right to the post of Professor of Medicine in the Lady Hardinge Medical College, New Delhi. All the three posts are of Specialist Grade I of the Central Health Service and it is the prerogative of the Government to appoint any of the three candidates recommended by the UPSC to any of the three posts.

5. The learned counsel for the applicant relied on the instructions issued by the Government of India, Department of Personnel & Adm. Reforms vide Office Memorandum No. 22011/3/76-Estt(D), dated the 24th December, 1980 regarding "Principles for promotion to 'Selection'

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posts". The said instructions envisage the preparation of yearwise panels by DPC where they have not met for a number of years. Para 4 of the said instructions is reproduced below: -

"Preparation of year-wise panels by DPC where they have not met for a number of years.

"4. (a) Instructions already exist that DPC's should meet at regular annual intervals for the preparation of select lists and where no such meeting is held in any year, the appointing authority should accord a certificate that there were no vacancies to be filled during the year. Administrative Ministries should obtain periodical information/certificates on the regular holding of DPC's.

"(b) Where, however, for reasons beyond control, DPC could not be held in any year(s) even though the vacancies arise during that year (or years), the first DPC that meets thereafter should follow the following procedure.

(i) Determine the actual number of regular vacancies that arose in each of the previous year / years immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a 'select list' for each of the years starting with the earliest year onwards.

(iv) Prepare a consolidated 'select list' by placing the select list of the earlier year above the one for the next and so on."

Para 4(d) of the said instructions reads as follows: -

"(d) While promotions will be made in the order of the consolidated select list, such promotion will have only prospective effect, even in cases where the vacancy relates to an earlier year."

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6. The learned counsel for the applicant contended that in terms of para 4(d) cited above, promotions were to be made in the order of the 'select list' and since the vacancy at JIPMER, Pondicherry had arisen earlier, the first candidate recommended by the UPSC in terms of the instructions and in all fairness should have been posted to Pondicherry and not the applicant.

7. We have carefully considered the various contentions made on behalf of the applicant and find that they do not hold ground as the applicant has no legal right for promotion and posting against a particular post when all the posts in question form part of one cadre or sub-cadre of the Central Health Service. Such a contention could be valid only if the posts are isolated and selections are made against specific posts. This is not the case in the matter under our consideration. While it is true that the post of Professor of Medicine at JIPMER, Pondicherry had technically fallen vacant when Dr. (Miss) Saroj Gupta was transferred from there in October, 1981 to New Delhi against the post of Senior Physician in Dr. Ram Manohar Lohia Hospital, New Delhi, it is also evident from the averments made in the counter-affidavit that this was initially intended to be a stop-gap arrangement to accommodate Dr. Gupta and there was no intention on the part of the respondents to fill up the post at Pondicherry at that stage. This position is further confirmed from a perusal of the Ministry of Health & Family Welfare file No. A-22012/36/81-CHS-IV (Vol. II) wherein a note was recorded in October, 1982 that Dr. Gupta was posted "against the post of Senior Physician for a period of 1½ years on medical grounds. She assumed charge of the post in Dr. RML Hosp. on 22nd October, 1981. She is, therefore, to revert to her original post at JIPMER, Pondicherry by 21st April, 1983."

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A perusal of the file also shows that a decision was taken in December, 1983 that Dr. Gupta may be posted against the post of Professor of Medicine in Maulana Azad Medical College, ^{in New Delhi.} However, no action appears to have been taken to fill up the post at Pondicherry at that time. A requisition was sent to the UPSC only in March 1985 for filling up the post at Pondicherry by direct recruitment. This requisition drew a blank from the UPSC. Later on, an attempt was made to fill the post at Pondicherry along with two other posts of Professor of Medicine at Delhi by departmental promotion through the DPC, whose meeting was held on 10th February, 1986 and the applicant's name was recommended in the panel at Sr. No. 3. Another requisition was also sent to the UPSC in April, 1986 for filling up the post of Professor of Medicine at JIPMER, Pondicherry by direct recruitment and the post was, in fact, advertised by the UPSC on 7.6.1986.

8. Even though the vacancies for the post of Professor of Medicine, JIPMER, Pondicherry and the posts of Professor of Medicine at Delhi arose at different times, the DPC considered all the three vacancies at the meeting held in February, 1986 and recommended three names. While the rules relied upon by the learned counsel for the applicant do provide that the selections shall be made yearwise in accordance with occurrence of the vacancies and also that the promotions will be made in the order of names mentioned in the panel, it is nowhere provided that the postings or promotions from the panel shall be in the order in which the vacancies arise. It is quite possible that if the vacancy relating to the post of Professor of Medicine, JIPMER, Pondicherry had in the first instance been

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considered by the DPC and only one name would have been recommended, the person so recommended would have been promoted against the said post. But when selections are made for a number of posts at the same time even though vacancies might have arisen at different times and a consolidated panel is drawn up, it is certainly the prerogative of the appointing authority to promote persons from the said panel in the order in which the names are mentioned in the panel to any vacancies that may be available at the time of the posting irrespective of the dates when the vacancies arose. In this case, all the posts belong to the same cadre and selections were also made at the same time by the D.P.C. As such, the applicant has no legal right as such for promotion against a particular post.

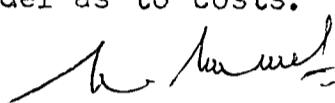
9. Before parting with this case, we cannot help observing that there was no justification on the part of the respondents to send a requisition to the UPSC in April, 1986 for filling up the post of Professor of Medicine at Pondicherry by direct recruitment when at the instance of the respondents themselves, the UPSC had recommended a name for the said post as per recommendation of the DPC meeting held in February, 1986 and none from the said panel had either been offered the post at Pondicherry or refused the promotion. There was delay also in notifying the post at Pondicherry to the UPSC for being filled up. Further, even though the post of Professor of Medicine, JIPMER, Pondicherry had technically fallen vacant in October, 1981 and although initially it was intended that the incumbent of the said post Dr. (Miss) Saroj Gupta would again be posted to Pondicherry after 1½ years, the post was in fact notified to the UPSC for being filled up by direct recruitment only in March 1985 after a period of nearly 3½ years. This delay coupled with the fact of a fresh requisition

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having been sent to UPSC in April, 1986 for filling up the post by direct recruitment even after the applicant's name had been recommended by the DPC after taking into account the post at Pondicherry would appear to lend some basis for the allegation made in the application that there was an attempt at denying promotion to the applicant and ultimately forcing him to accept promotion at Pondicherry.

10. However, for the reasons stated above, the petition fails and is accordingly dismissed with no order as to costs.



(KAUSHAL KUMAR)
MEMBER (A)
26.3.1987.



(K. MADHAVA REDDY)
CHAIRMAN
26.3.1987.