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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 1343/67.

DATE OF DECISION: 24.3.1993.

Dr. (Mrs) Chandrama Anand. ... Petitioner.

Versus

Union of India. ... Respondent.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A).

For the Petitioner. ... Shri A.K. Goel and
Mrs Sheela Goel,
Counsel.

For the Respondent. ... Mrs Raj Km. Chopra,
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The petitioner Dr. (Mrs) Chandrama Anand joined the Central Health Service as Assistant Professor in Anatomy on 18.2.1967. In due course, she earned promotion as Associate Professor on 16.10.1978. The next promotional post is that of the Professor. At the relevant point of time, 15 years service was necessary to earn eligibility for consideration to the post of Professor. The President promulgated the new Central Health Service Rules, 1982 under the proviso to Article 309 of the Constitution of India which came into force on 13.11.1982. Some of the provisions in these rules were incorporated with the object of giving relief to the members of the teaching staff who have been stagnating without promotion for a long number of years for want of vacancies. An attempt is made to upgrade certain posts, grant promotion on a personal basis in the said upgraded posts subject to their being ~~accommodated~~ accommodated in regular vacancies as and when they occur. Rule 4(6)(i) of the new Rules provides inter alia that twenty-five posts in the grade of Specialist Grade-II in the Non-Teaching Specialist Sub-Cadre or Public Health Sub-Cadre of

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Associate Professor in the Teaching Specialist Sub-
Cadre in the grade of Specialist Grade-I ^{be upgraded} /without altering
the combined authorised strength of posts of the respective
sub-Cadres from which these posts are temporarily upgraded.
Rule 4(6)(iii) provides that the appointment against such
upgraded post shall be made only if the officer concerned
has been duly assessed by a Departmental Promotion Committee
in regard to his suitability for holding the upgraded post
and has been working in the grade on a regular basis for not
less than fifteen years. Rule 4(6)(iv) of the new Rules
provides that for computing the period of service in the
grade of Associate Professor, the service rendered in the
post of Assistant Professor on regular basis shall also be
taken into account. We are informed that the service
rendered in the cadre of Lecturer is also required to be
treated as service rendered in the cadre of Associate
Professor. On the date the new Rules came into force, the
petitioner had earned promotion as Associate Professor
in her own right and not on the strength of Rule 7(9).
She was hoping to get the benefit under Rule 4(6) as she
had requisite eligibility period of 15 years of service
as on the date on which the rules came into force.

2. The petitioner's case is that if the benefit of
promotion according to the new scheme was extended to
her, she would have immediately got promotion to the cadre
of Professor on the coming into force of the new
Rules. But what actually happened in this case is that her
case was considered for regular promotion and she having
been found fit and suitable by the Departmental Promotion
Committee was promoted to the post of Professor on 16.1.1984.

The petitioner's grievance in this case is that if she was given promotion under Rule 4(6), she having earned eligibility for such promotion immediately on the promulgations of the Rules, she would have become senior to the Professors who were regularly promoted along with her on 16.1.1984. This would have given her an advantageous position for further promotion having regard to her superior seniority. In other words, the main contention of the petitioner is that she should have been given promotion under Rule 4(6) between 13.11.1982 and 16.1.1984. If such steps were taken and she was promoted, it is the contention that that would have adequately safeguarded her seniority vis-a-vis the others promoted on 16.1.1984. The essential question for consideration is as to whether the action taken by the respondents in not making promotions to the cadre of Professor under Rule 4(6) till 16.1.1984 and their embarking upon regular promotion on that date can be regarded as opposed to the rules or otherwise arbitrary.

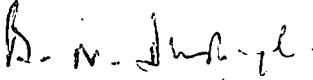
3. It is necessary to point out at the outset that when the petitioner was regularly promoted along with twenty-five others on 16.1.1984, so far as the Department of Anatomy is concerned, she is the only person promoted. It is, therefore, clear that no other member of the faculty of Anatomy was able to steal^a/march over her in the matter of regular promotion. As further promotions do not depend according to the learned counsel for the petitioner on the subject, this would not be of great relevance.


4. Sub-rule(3) of Rule 7 speaks of initial constitution of the Service. Rule 4(6) on which the petitioner relies upon is also in the sphere of initial constitution of the service. Sub-rule(3) of Rule 7 provides that the officers holding posts which are being upgraded under these rules

shall continue to hold these posts in the pay-scales applicable to them prior to such upgradation until such time as the same are filled in accordance with the relevant provisions of these rules. This provision makes it clear that the Rule making authority has taken note of the time that would normally be required for taking appropriate steps for making promotions in accordance with the rules including Rule 4(6) of the new Rules. Sub-rule(3) of Rule 7 makes it clear that there is no automatic promotion to the upgraded posts. Several steps have to be taken including subjecting the candidature of the eligible candidates to scrutiny by the DPC. All this, it is well known, would take considerable time. That is the reason why specific provision is made to clarify that the upgradation of the posts does not bring about automatic promotion of eligible persons and they would continue to hold the post in the feeder categories until those posts are filled up in accordance with the rules. It is not possible to understand the scheme of the rules as to mandate that regular vacancies as available should not be filled up on regular basis until action is taken to fill up the vacancies in accordance with Rule 4(6) of the Rules. It is necessary to point out that the orders of regular promotion were made after coming into force of the rules. The process would have to commence several months before. It is, therefore, not possible to take the view that there has been any undue delay in the matter of filling up all the posts on regular basis. The object of rule 4(6) is to prevent stagnation in respect of the cases where promotions cannot be earned for want of regular vacancies. If regular vacancies are available, it would be the primary duty of the authority concerned to ensure that in the first instance regular promotions are made and only those who are not regularly promoted, their cases should be considered for promotion in accordance with Rule 4(6)

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of the new Rules particularly when the vacancies were available for being filled up on regular basis immediately on the promulgation of the new rules. It is, therefore, not possible to agree with the contention of the learned counsel for the petitioner that failure on the part of the authorities to make promotions in accordance with Rule 4 (6) of the new Rules before the posts were filled up on regular basis on 16.1.1984 is opposed to the statutory provision or the action is unreasonable or arbitrary and, therefore, violative of Article 14 of the Constitution. We are satisfied on the facts of this case that the petitioner has not sustained any substantial injury by the action taken by the respondents. We, therefore, see no good ground to interfere. This petition fails and is, therefore, dismissed. No costs.


(B.N. DHOUNDIYAL)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

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