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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1094 OF 1990

New Delhi this 2nd day of December 1994

Hon'ble Mr. J.P. Sharma, Member (J)

Hon'ble Mr. S.R. Adiga, Member (A)

Dr. Gurcharan Singh
S/o late Shri Gurdit Singh
Age 53 years
R/o B-6/1 MS Flat
Sector 13 R.K.Puram
New Delhi-66

ENT Specialist

Safdarjung Hospital
New Delhi.

.....Applicant

(Through Sh.B.K.Aggarwal, advocate)

Versus

Union of India through
The Secretary
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi

....Respondent

(Through Sh.P.H.Ramchandani, advocate)

J U D G E M E N T (Oral)

Hon'ble Mr. J.P. Sharma, Member(J)

The applicant who had already been confirmed as Assistant Surgeon in the grade of GDMO-I w.e.f. June 1975 was selected by UPSC as ENT specialist in October 1980. The grievance of the applicant is that promotions to the post of CMO were undertaken by the Ministry of Health, and though he was asked an option but he ^{was} ~~did~~ not give any option to retain himself in the Specialists' channel of promotion, called Specialist Grade, while other specialists were given promotion to the grade of Chief Medical Officer (CMO). The scale of CMO and the Specialist Grade-II is the same Rs. 3700-5000. For the applicant, it was not a promotion post.

2. After filing unsuccessful representation, the present OA was filed in May 1990 praying for grant of relief that a direction be issued to

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the respondent to assign the applicant his own seniority in the cadre of Chief Medical Officer with consequential benefits of promotion, arrears etc., from the date juniors of the applicant had been promoted to the next higher grade.

3. A notice was issued to the respondent who contested the application and stated that the applicant was like others working in the Specialists Sub Cadre who were required to give an option of switching over to General Duty Cadre by the memo dated 26th March 1988. The applicant did not give any option which was required to be given by April 1988, mentioning that if an option is given it will be presumed that he is not interested for promotion to the post of CMO.

4. The respondent has also referred to the fact that the service of the applicant is governed by the CHS Rules of 1982 as amended from time to time. The Central Government Health Service comprised 4 Distinct Sub Cadres:-

- (i) General Duty Sub-Cadre
- (ii) Specialist Grade (Non-Teaching)
- (iii) Specialist Grade (Teaching) Sub Cadre
- (iv) Specialist Grade (Public Health) Sub Cadre

They also averred that in view of the said rules, transfer of such officers from one cadre to another cadre is not permissible. The respondent has also annexed along with reply a schedule as Annexure R-I where promotional avenues of this sub-cadre have been annexed.

5. The applicant has also filed a rejoinder reiterating the facts already stated in the OA. It is further stated that since the applicant had not relinquished his lien on the General Duty Cadre in the post of GDMO Grade-II, and he being a confirmed incumbent, in the normal course, he should have been given a promotion in the

General Duty Cadre in the next higher post of CMO.

6. We have heard Mr. B.K. Aggarwal for applicant and Mr. J.C. Madan, proxy for the respondent. During the course of hearing, it was revealed by the applicant's counsel that after taking voluntary retirement from service, the applicant has settled abroad. During the course of hearing, the learned counsel for the applicant placed before us an order dated 27 July 1992 whereby the applicant has been granted permission for voluntary retirement under Rule 48-A of the CCS (Pension) Rules, 1972, when he was holding the post of Senior ENT Specialist in Safdarjung Hospital. That document has been taken on record.

7. The sole contention of the learned counsel for the applicant in respect of the grounds in the OA is that since the applicant has not relinquished his lien on the post of General Duty Cadre of GDMO Grade-II, the respondent should have considered the applicant as they have considered others for promotion in the sub-cadre of General Duty Post in Central Health Service. We have considered this matter thoughtfully and also the ^{relevant} ~~relief~~ law placed by the learned counsel, reported in 1977 SC 19(A) and 1977 SC 58 AIR 77 SC 1988. Both authorities are regarding lien on the post. Here the question of termination of lien of the applicant is not an issue. The point in issue is whether the applicant could have been considered without giving an option of switching over to the sub-cadre of General Duty post for promotion in that channel. The applicant made repeated representations asking for another option stating therein that he was not aware of the channel of promotion for the officers in the sub-cadre of General Duty Cadre because of a decision in Joint Action Council (JAC) meeting in April 1989 where SAG level post was increased from 7 to 123 while in other case of non-teaching and public health, the increase is nominal. In the non-teaching staff, there were earlier 27 posts which have been increased to 35, in teaching staff, there were 29 posts which have been increased to 37 and in public health, there were 35 posts which have been increased to 37.

The applicant belongs to non-teaching cadre. His representation which he filed in August 1989, followed by a reminder immediately thereafter was not favourably considered by giving a reply to the applicant. It cannot be disputed that ^{if} a person holds a lien, as in the present case, he can be given promotion in the level. However, when statutory rule provides 4 categories of Medical Officers working in different disciplines as stated above and when a particular discipline does not envisage inter-transfer, nor the balance of equities, an option is not only required but also is mandatory. Earlier the applicant did not give an option because he was satisfied with the existing strength of the cadre and his chance of promotion. Subsequently, when certain posts were enhanced in the General Duty Cadre posts, he asked for a second option. It means that he was having a vacillating mind in regard to fixing a particular discipline at one point of time. If the contention of the applicant's counsel is accepted, then all the 4 categories enumerated above will, at no point of time, have separate entities. Every person working in his discipline, according to his seniority, will like to get higher promotional grade category and thereby stepping over a person already working in that discipline or category.

8. In view of above contention, we do not accept the contention of the learned counsel that retention of lien was in itself necessary to consider the applicant for promotion to the next higher grade of CMO.

9. We also find that the scale of Senior CMO is Rs. 3700-5000 and that of Specialist grade is also the same. The applicant at no point of time has suffered any disadvantage in the existing conditions of payment of emoluments to him. It is only because avenues of promotion, according to him, got minimised or lessened, he raised a point of being considered for the post of CMO in the General Duty Post.

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10. We have also considered this aspect from certain earlier decided cases - one Dr. M.P. Agarwal Vs. UOI OA No. 1811/90 decided on 11 Oct. 1994 by the Principal Bench where Dr. M.P. Agarwal was a senior physical pharmacist and the other case is of Dr. D.P. Garg Vs. UOI OA 303/91 decided by PB by order dated 6th March 1992. Both doctors had similar grievances, and the reliefs prayed for by them have not been considered favourably to them by the Tribunal.

11. Having given the case a careful consideration, we find that the present application is totally devoid of merits and is dismissed, leaving the parties to bear their own costs.

S.R. Adige
(S.R. ADIGE)
MEMBER(A)

J.P. Sharma
(J.P. SHARMA)
MEMBER(J)