

Central Administrative Tribunal  
Principal Bench: New Delhi

13<sup>th</sup> Jan 1995

O.A. No. 1284/90

MA 3055/95

MA 3056/94

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Sh. S.K. Sharma,  
S/o Shri M.L. Sharma,  
Drugs Inspector,  
Drug Controller Office,  
Delhi Administration,  
15 Sham Nath Marg,  
New Delhi-110 034.

... Applicant

(By Advocate; Shri G.S. Lobana)

Vs.

1. Lt. Governor of Delhi.  
Raj Niwas, Delhi.
2. Delhi Administration, Delhi  
through its Secretary/Chief Secretary  
5 Sham Nath Marg,  
Delhi.
3. Secretary Medical (Health),  
5 Sham Nath Marg,  
Delhi.
4. Drug Controller,  
Delhi Administration,  
15 Sham Nath Marg,  
Delhi.

5. Union of India,  
through its Secretary (Home),  
Govt. of India, New Delhi.

... Respondents

(By Advocate: Smt. Avnish Ahlawat)

ORDER

Hon'ble Shri S.R. Adige, Member (A)

*And the two connected O.A.s*

In this application, Shri S.K. Sharma, Drug Inspector (Ayurvedic), Office of the Drug Controller, Delhi Administration has sought for a direction to be included in the zone of consideration for promotion as Assistant Drug Controller. He has also prayed that his seniority be counted from the date of ad hoc appointment w.e.f. 25.5.1973 as Drug Inspector and not from

the date of communication of regularization of service by Union Public Service Commission i.e. 24.5.1975. A further prayer is being made that a common seniority list of all Drug Inspectors be prepared on the basis of length of service as Drug Inspector and the applicant's name be placed in that list just after Shri P.P. Sharma.

2. Admittedly the applicant was appointed as Drug Inspector (Ayurvedic) on ad hoc basis vide order dated 25.5.1973 (Annexure 'C'). The said order made it clear that the appointment was on purely temporary and on emergent basis for a period of six months w.e.f. the date the applicant took charge of the post or till the post was filled up on regular basis, whichever was earlier, and the appointment would not confer upon him any right to claim regular appointment or seniority on this or any other equivalent post. The applicant's services against this post were extended from time to time and upon the recommendation of the Union Public Service Commission, the applicant was appointed to the post of Drug Inspector (Ayurvedic), on regular basis vide order dated 26.8.1975 (Annexure 'D'). The said order made it clear that the post of Drug Inspector (Ayurvedic) was temporary, but was likely to continue, and in the event of its becoming permanent, the applicant's claim for appointment that too in substantive capacity would be considered in accordance with the rules in force. The period of probation was stated to be two years, and the appointment was terminable by a month's notice given by either side. The applicant's contention is that he was regularised against this post, while the respondents contend that this was a fresh appointment. At any rate applicant is continuing against that post since May 1973. His case

is that he has not been considered for promotion to the next higher post of Assistant Drug Controller, in spite of several representations to that effect, as a result of which he is stagnating since 1973.

3. We have heard Shri Lobana for the applicant and Mrs. Ahlawat for the respondents.

4. In so far as the first prayer is concerned viz. considering the applicant for promotion as Assistant Drug Controller, the relevant recruitment rules, a copy of which is placed on record, indicate that post of Assistant Drug Controller (Scale Rs. 1100-1600 pre-revised) are selection posts, which are to be filled by promotion from amongst Drug Inspectors with 8 years regular service in the grade. A Drug Inspector is defined under Section 21 Drugs and Cosmetics Act as a person appointed by the Central Government or by a State Government by notification in the Official Gazette, <sup>who</sup> possess the prescribed qualification. It is further provided in the Section that the person appointed as Inspector may be assigned to such areas as may be determined by the Central Government or by State Government, and powers which may be exercised by him and the duties which may be performed by him as well as the Drugs or classes of drugs or cosmetics or classes of cosmetics) in relation to which and the conditions, limitation or restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed. It is further laid down that no person who has any financial interest in the import, manufacture or sale of drugs or cosmetics) shall be appointed to be an Inspector under this Section.

5. The qualifications prescribed for Drug Inspector are laid down in Rule 49 Drugs and Cosmetics Rules 1945,

and are extremely elaborate. A person who is appointed as Inspector under the Act shall be a person who has a degree in Pharmacy or Pharmaceutical Chemistry or a post-graduate degree in Chemistry with pharmaceuticals as a special subject or holds the pharmaceutical Chemists diploma granted by the Pharmaceutical Society of Great Britain; or a graduate in medicine or science of a university recognised for this purpose by the appointing authority and has had at least one year's post-graduate training in a laboratory under a Government Analyst appointed under the act or a Chemical Examiner, or a fellow of the Royal Institute of Chemistry of Great Britain (Branch E) or the head of an institution specially approved for the purpose by the appointing authority. Various proviso have also been laid down, restricting appointment as Drug Inspector only to those who meet the stringent requirement of the office.

6. On the other hand there is an entirely separate chapter, numbered chapter 4 A containing provisions relating to Ayurvedic, Siddha and Unani Drugs, which was inserted in the Drugs and Cosmetics Act, 1945<sup>by</sup> Act 13 of 1964. In this chapter, Section 33 G relating to Inspectors states that the Central Government or a State Government may by notification in the official gazette appoints such persons as it thinks fit having the prescribed qualifications to be inspectors for such areas as may be assigned to them by the Central Government or the State Government as the case may be. In other words the appointment of Drug Inspectors for Ayurvedic, Siddha and Unani drugs falls in a Chapter separate and distinct from other drugs and cosmetics. The prescribed qualifications for Drug

Inspectors (Ayurvedic and Unani) are prescribed under Rule 167 of the Drugs and Cosmetics Rules, 1945 which prescribe that a person who is appointed as Inspector under Section 33 C shall be one who has the qualification laid down under Rule 49 and shall have undergone practical training in the manufacture of Ayurvedic (including Siddha or Unani) drug as the case may be; or has a degree in Ayurvedic, Siddha or Unani system or a degree in Ayurvedic pharmacy as the case may be conferred by a university or a State Government or a Statutory Faculty Council or Board of Indian System medicines recognised by the Central Government or the State Government for this purpose; or has a diploma in Ayurvedic, Siddha and Unani system as the case may be granted by a State Government or an institution recognised by the Central Government or a State Government for this purpose.

7. In regard to the first prayer, namely including the applicant within the zone of consideration for promotion as Assistant Drug Controller, Shri Lobana has argued that the Recruitment Rules for filling up the post of Asstt. Drug Controller state that the Drug Inspectors with eight years experience are eligible to be considered, and as no distinction is made between Drug Inspectors on the allopathic side and those on Ayurvedic /Unani side, and as the applicant has much more <sup>than 8 years</sup> experience, he cannot be excluded from consideration for promotion. In this connection, we note that by Delhi Administration's order dated 26.10.71, two posts of Drug Inspectors were redesignated as Drug Inspector (Ayurvedic/Unani system of Medicines), and the applicant was appointed against one of those posts, first on adhoc basis w.e.f. 25.5.73 and later

on regular basis through UPSC on 25.8.75. The ,  
ad hoc appointment order as well as the regular  
appointment order explicitly state that the  
applicant was appointed as Drug Inspector (Ayurvedic)  
and not simply as Drug Inspector. In other words,  
the applicant was appointed to the specialised post  
of Drug Inspector ( Ayurvedic ) and,  
under the circumstances, 'Shri Lobana's contention  
that the applicant having been appointed to the  
general post of Drug Inspector has to be treated  
on all fours with the other Drug Inspectors for  
consideration for promotion as Asstt. Drug  
Controller, lacks merit.

8. We may look at this issue <sup>from another angle</sup> / All promotions ~~also~~ <sup>ultimately have to serve</sup> must <sup>the public interest and</sup> bear some nexus with the  
object sought to be achieved. The incumbent on  
the promotion post of Asstt. Drug Controller supervises  
the work of Drug Inspectors under him, and from  
the materials on record it appears that there are 22  
posts of Drug Inspectors; one post of Drug Inspector  
(Ayurvedic), one post of Drug Inspector (Unani) and  
four posts of Asstt. Drug Controller at present  
in Delhi Administration. In other words, each Asstt.  
Drug Controller supervises the work of 4/5 Drug  
Inspectors under him, besides functioning as a  
Licensing Authority for issue of licenses to sell  
allopathic drugs and homeopathic medicines, and  
is also required to be a member of the panel for  
inspection for grant of license for manufacture  
of allopathic medicines, blood banks, homeopathic  
and for approved laboratories. These are activities

which vitally affect the health and well being of the entire population and, therefore, the posts of Drug Inspectors and Asstt. Drug Controllers are extremely sensitive and have to be manned by persons fully equipped through academic qualification and training, to man them, particularly having regard to the increasing sophistication of drug formulations and the pharmaceutical industry. A Drug Inspector (Ayurvedic) like the applicant is a specialist in his own subject of Ayurveda, and has come through his own channel of appointment which is distinct and separate from the channel of Drug Inspectors and is, therefore, not likely to be equipped either by qualification or by training to supervise effectively their specialised duties or discharge effectively the functions of the Licensing Authority for the manufacture or sale of allopathic drugs, homeopathic medicines, inspection of approved laboratories etc. Under the circumstances, if the respondents held that the applicant, by virtue of the fact that he occupies the specialised post of Drug Inspector (Ayurvedic), could not be considered for promotion as ADC, it cannot be said that they acted arbitrarily or illegally, or discriminated against him, or acted in violation of Articles 14 and 16 of the Constitution. Shri Lobana has sought to seek support from certain rulings including the decision in General Manager, SC, Rly. Vs. AVR Siddhanti- reported in AIR 1974 SC 1755, but that judgment was delivered in the facts and circumstances of that particular case and does not apply to the facts of the present case.

9. In so far as the second prayer is concerned, viz: treating his seniority as Drug Inspector with effect from the date of his adhoc appointment as Drug Inspector (Ayurvedic)

on 25.5.73, it is now well settled that such adhoc period of appointment can be counted towards seniority only if, either the adhoc appointment was made strictly in accordance with the rules, or in the event that the adhoc appointment was made de hors the rules, the period of such adhoc appointment is of 15-20 years duration. In the present case, neither situation obtains. The adhoc appointment was made as a purely temporary and stop-gap measure, which was not in accordance with the rules (because no recruitment rules were in existence at that point of time) and it was specifically stated that the adhoc appointments would be for six months at a time and would not confer any right to claim any regular appointment or seniority on this or any other equivalent post. The period of adhoc appointment is also barely two years three months and nowhere near the 15-20 years prescribed. Shri Lobana has contended that the recruitment procedure followed at the time of the applicant's adhoc appointment was no less rigorous than that followed by the UPSC at the time of his regular appointment and a very high powered committee presided over by the Chief Secretary, Delhi Administration interviewed the applicant at the time of his adhoc appointment. Be that as it may, in view of the legal position referred to above, the adhoc period cannot be counted towards the applicant's seniority. In this connection, the legal position has been explained in detail and set at rest in the case I.K. Sukhiya & another Vs. UOI & others (O.A.No.727/87) decided on 13/14.9.93 which has discussed all the important rulings

cited by Shri Lobana. Under the circumstances, therefore, the second prayer viz., for counting of seniority with effect from 25.5.73 also fails.

10. The third prayer viz. for placement of the applicant in a common seniority list of Drug Inspectors, also cannot be acceded to, because the post of Drug Inspector (Ayurvedic) held by the applicant is a specialised post in the Ayurvedic discipline, which has its own qualifications and mode of recruitment, which is distinct and separate from that of the other Drug Inspectors.

11. Under the circumstances, we find ourselves unable to grant the reliefs prayed for by the applicant. However, before parting with the case, we note that the applicant, who has been working as Drug Inspector (Ayurvedic) since 1973 on adhoc basis and since 1975 on regular basis, has not received a single promotion in the course of his career. Unless the number of posts of Drug Inspector (Ayurvedic) increases, the respondents may find it difficult to justify the creation of a post of Asstt. Drug Controller (Ayurvedic), or redesignate any of the existing posts of ADC as ADC(Ayurvedic). This would mean that the applicant would continue to function on his existing post without any reasonable prospect of promotion, in future, which would naturally affect his morale, motivational level and performance adversely, and would not also be in the public interest. It is to overcome contingencies such as this that the Department of Personnel had issued O.M.No. 10(1)/E III/88 dated 13.9.91, so that a person may not retire in the same grade in which he has been recruited after

reaching the maximum in his recruitment grade. This circular was issued in the background of various court rulings, some of which have been relied upon by Shri Lobana to grant the applicant in situ promotion, to overcome the acute stagnation.

12. Thus, while finding ourselves unable to grant the reliefs prayed for by the applicant, in the light of what has been stated above, we direct the respondents to consider the applicant's case in the background of O.M. dated 13.9.91 (Supra) and grant him all the reliefs admissible <sup>to him</sup> under that O.M. from due date, together with all consequential benefits flowing therefrom, within three months from the date of receipt of a copy of this judgment. No costs.

*Lakshmi Swaminathan*  
( LAKSHMI SWAMINATHAN )  
MEMBER ( J )

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

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