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Central Administrative Tribunal
Principal Bench: New Delhi

O.A.No.1811/1990

New Delhi this the 11th Day of October, 1994

Hon'ble Mr. Justice S.C. Mathur, Chairman

Hon'ble Mr. P.T. Thiruvengadam, Member (A)

Dr. M.P. Aggarwal,
S/o Shri Durga Parshad Aggarwal,
Senior Physician,
Head of Unit M.III &
Head of Department of Diabetology,
Safdarjung Hospital,
New Delhi.

... Applicant

(By None)

Vs.

Union of India,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.

through its Secretary ... Respondents

(By Counsel Shri P.H. Ramchandani)

ORDER (Oral)

Hon'ble Mr. Justice S.C. Mathur, Chairman

The applicant Dr. M.P. Aggarwal is aggrieved by the action of the respondents treating him ineligible for promotion to the Supertime grade. To the applicant's application counter affidavit has been filed but no rejoinder affidavit has been filed on behalf of the applicant. At the time of hearing no one appeared for the applicant even on second call. On behalf of the respondents Shri P.H. Ramchandani appeared. We have perused the record and heard Shri Ramchandani and proceed to decide the case on merits.

2. On facts there is no dispute between the parties. The applicant joined the Central Health Service on 28.12.1964. He was appointed on regular basis to the Non-teaching.

Specialist Sub-cadre on 3.11.1973. His speciality was Medicine. In this Sub cadre he earned promotions to higher posts of specialist Grade II (Rs.3700-5000), Specialist Grade II (Non-Functional Selection grade) (Rs. 4500-5700) and Specialist Grade I (Rs.4500-5700). To the last but one post he got promotion on 1.4.1988 and to the last post on 1.1.1990. The next post which the applicant could look forward to for promotion is the supertime grade Rs. 5900-6700. In the Non-Teaching Specialist Sub-cadre there are 35 posts in Supertime Grade out of which only 12 are earmarked for different specialities and the remaining 23 are floating and have not been allotted to any speciality. Out of the 12 earmarked posts only 2 have been earmarked for the applicant's speciality Medicine. Supertime Grade in all the Sub-cadres is the common feeding cadre for promotion to the next higher posts of Additional Director General, Health Services and Director General Health Services.

3. Service conditions of officers belonging to the Central Health Services are governed by the Central Health Service Rules 1982 framed in exercise of the power conferred by the proviso to Article 309 of the Constitution as amended from time to time. These Rules create the Central Health Service. Under these Rules the service has certain general administrative posts viz. Director General of Health Services, Additional Director General of Health Services and Medical Superintendent/Additional Medical Superintendent. Then there are four Sub cadres viz. 1. General Duty Sub Cadre, 2. Non-Teaching Specialists, 3. Public Health Sub Cadre and 4. Teaching Specialists Sub Cadre. In each Sub Cadre there is hierarchy of posts

and distinct eligibility qualifications have been prescribed for appointment/promotion to each post as would be apparent from the following tables:

I. General Duty Sub Cadre

<u>S.No.</u>	<u>Name of the Post</u>	<u>Scale of Pay</u>	<u>Eligibility Qualifications</u>
1.	Medical Officer	2200-4000	M.B.B.S.
2.	Senior Medical Officer	3000-4500	4 years service as Medical Officer
3.	Chief Medical Officer	3700-5000	6 years regular service as Senior Medical Officer or 10 years combined service as Medical Officer and Senior Medical Officer of which 2 years will be as Senior Medical officer.
4.	Chief Medical Officer (Non-Functional Selection Grade)	4500-5700	5 years regular service in Grade or 14 years regular service in Group 'A' posts.
5.	Supertime Grade	5900-6700	(Non-functional) 3 years regular service in Grade or 17 years regular service in Grade A posts.

II. Non-Teaching Specialist Sub Cadre

1.	Specialists Gr. II (Junior Scale)	3000-5000	Post-graduate degree and 3 years work in a responsible position connected with the speciality for pre-degree holder and 5 years for PG Diploma holders.
2.	Specialists Gr. II (Senior Scale)	3700-5000	4 years regular service in the Grade.
3.	Specialist Gr. II (Non-functional) Selection Grade	4500-5700	8 years regular service in Grade II
4.	Specialist Gr. I (Promotion is subject to availability of posts)	4500-5700	7 years regular service in Grade II
5.	Super Time Grade	5900-6700	3 years regular service in the Grade.

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4. More or less identical eligibility qualification has been prescribed for Public Health Sub Cadre.

III. Teaching Sub Cadre

Teaching Sub-cadre

1. Assistant Professor
(Rs.3000-5000)

Eligibility for promotion

Direct recruitment through Union Public Service Commission

2. Associate Professor
Rs. 3700-5000)

Assistant Professor with two years regular service in the Grade on the basis of seniority-cum-fitness without linkage to vacancies.

3. Associate Professor
(Non-Functional Selection Grade)
(Rs.4500-5700)

Associate Professor with six years regular service in the grade or eight years of combined regular service as Assistant and Associate Professor on the basis of seniority-cum-fitness without linkage to vacancies.

4. Professor
(Rs.4500-5700)

Associate Professor with four years regular service in the grade in the case of persons directly recruited as Associate Professor OR Associate Professors with 7 years combined regular service in the grades of Assoc. Professor and Asstt. Professor out of which not less than 4 years shall be as Associate Professor. Provided that the condition of 4 years regular service as Associate Professor shall not apply in the case of an Assoc. Professor who was promoted to the post of Associate Professor before 4.6.1986 after rendering five years regular service as Assistant Professor. The promotion is subject to availability of vacancies.

5. Supertime Grade
(Rs.5900-6700)

i) Specific post

Professor with three years regular service in the grade subject to availability of vacancies.

ii) Floating post

Officers who have been working in the grade of Professor on a regular basis for not less than three years, failing which have been working as Professor with 17 years of regular service in Group 'A' post subject to availability of a vacancy.

5. In the year 1990, the administration started selection for promotion to Supertime Grade of Non-teaching Specialist Sub Cadre. Since the applicant had not completed three years regular service in the feeding post, he was not being considered for the specific post. For the same reason he had no prospect of being considered against any of the floating posts though he had completed 17 years of regular service in Grade II. The applicant accordingly approached this Tribunal through the instant application which was filed on 23.8.1990. The only interim order he got on 7.9.1990 provided that if any appointment was made to the post in question the same would be subject to the outcome of the application and if the applicant succeeded, he would be entitled to the consequential benefits. Prior to the passing of this interim order, the administration had already issued promotion order on 4.9.1990 in respect of seven officers.

6. From the tables given above, it would be seen that the Supertime Grade (Rs. 5900-6700) exists in all the Sub Cadres but while in General Duty Sub Cadre, there is no division of grade into specific posts and floating posts there is such division in the remaining Sub Cadres. The administration has allocated certain number of Supertime posts to each Sub Cadre. In the Non-Teaching Specialist Sub Cadre there are 35 posts out of which 12 are earmarked for different specialities and the remaining 23 are floating. These 23 posts have not been allocated to any speciality. Out of the 12 posts earmarked for different specialities, only two are for Medicine which is the applicant's speciality. Out of these two posts only one post of Consultant in Medicine has been filled; the other is lying vacant and, as stated

in the respondent's counter, the same is proposed to be filled by transfer.

7. The applicant's contention appears to be that Members of his Sub Cadre and Members of the General Duty Sub Cadre constitute one class but in the matter of promotion to Supertime Grade different eligibility criteria have been fixed and this is discriminatory, violative of Article 16 of the Constitution. His further plea appears to be that the allocation of posts to different specialities is arbitrary and discriminatory again violative of Article 16 of the Constitution.

8. In the counter filed on behalf of the respondents the plea of discrimination has been denied. It has been pleaded that the posts in the Non-teaching Specialist Sub Cadre bear no comparison with the posts in the General Duty Sub Cadre. It is pointed out that the scale of pay of various posts in the sub two cadres is different and the eligibility qualification for appointment/promotion to the lowest post as also for promotion to the lowest post as also for promotion to the higher posts is different. It is accordingly pressed that the applicant cannot claim to be similarly situated as the officers in the General Duty Sub Cadre. The charge of arbitrariness and discrimination in respect of allocation of Supertime Grade Posts is also traversed.

9. From the Tables given above, it is apparent that the lowest post in General Duty Sub Cadre is only in the scale of Rs. 2200-4000 while the lowest post in Non-teaching Specialist Sub Cadre is in the scale of Rs. 3000-5000. Thus, the lowest post in General Duty Sub Cadre carries lower pay scale. From the same tables, it further appears that while academic qualification for

appointment to the lowest post in General Duty Sub Cadre is M.B.B.S. alone in the Non-Teaching Specialist Sub Cadre, it is post graduate degree. The M.B.B.S. degree remains qualification for the higher posts also in the General Duty Sub Cadre. The pay scales of two higher posts in the General Duty Sub Cadre are lower than the pay scales of two higher posts in the Non Teaching Sub Cadre. In the General Duty Sub Cadre for promotion to the first three higher posts regular service of four, six and five years is required in the lower grade; in the Non Teaching Sub Cadre the period of regular service for promotion to the first three posts is four years, eight years and seven years. Thus, different periods of experience in the lower grade have been provided in the two sub cadres. In the counter affidavit, it has also been stated that the nature of duties performed by officers in the General Duty Sub Cadre and Non Teaching Sub Cadre is different. The applicant has not filed any rejoinder affidavit and the averment in the counter filed remains uncontroversial. In our opinion in view of the facts stated herein, the applicant cannot claim parity with officers of the General Duty Sub Cadre. Accordingly, his charge of discrimination is misconceived.

10. In all the Sub Cadres two eligibility qualifications have been prescribed for promotion to the Supertime grade; one is the main qualification and the other is alternate qualification. In the General Duty Sub Cadre 3 years regular service is required in the feeding grade or 17 years total regular service in Group 'A' post. The main qualification and the alternate qualification

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operates simultaneously. The alternate qualification does not come into operation only on the non-availability of officers answering the main qualification. In the Non Teaching Sub Cadre, Public Health Sub Cadre and Teaching Sub Cadre, the alternate qualification operates only in the absence of an officer possessing the main qualification. If an officer possessing the main qualification is available, officers not possession the main qualification but possessing the alternate qualification will not be eligible for consideration. The applicant describes this as discriminatory. We have held hereinafter that the posts in General Duty Sub Cadre are not comparable with the posts in the Non Teaching Sub Cadre. Accordingly, the charge of discrimination based on the allegation noticed herein cannot be sustained.

11. We are also unable to uphold the applicant's plea that division of Supertime Grade Posts into specific posts and floating posts and allocating some to the former and the remaining to the latter is arbitrary. The workload in all the specialities may not be identical. In a speciality where the workload is less, lesser number of officers may be appointed. If allocation of posts is not made, officers in specialities having lesser workload may have to face stagnation. The device adopted by the administration appears to take care of the prospect of stagnation.

12. In view of the above, the application lacks merit and is hereby dismissed. There shall be no order as to costs.

P. J. Thiruvengadam
(P.T. Thiruvengadam)
Member (A)

S. C. Mathur
(S.C. Mathur)
Chairman