

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 834/2004

This the 16th day of May, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.K.MALHOTRA, MEMBER (A)

Dr. K.U.Siddique,
R/o B-1/4 Tibbia College
Staff Quarters,
Karol Bagh, New Delhi.

(By Advocate: Sh. S.D.Raturi)

versus

1. Hon'ble Lt. Governor of Delhi,
Govt. of NCT of Delhi,
Rajpur Road, New Delhi.
2. Govt. of NCT of Delhi
through its Chief Secretary,
Delhi Secretariat,
I.P.Estate, New Delhi-110002.
3. Govt. of NCT of Delhi
through its Principal Secretary,
Health and Family Welfare,
Govt. of NCT of Delhi
Delhi Secretariat,
I.P.Estate, New Delhi-110002.
4. The Director of (ISM&H),
A & U Tibbia College Campus,
Karol Bagh, New Delhi-110005.
5. The Executive Officer,
A & U Tibbia College Campus,
Karol Bagh, New Delhi-110005.

(By Advocate: Sh. Vijay Pandita)

ORDER

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant seeks a direction to the respondents to consider him for
promotion to the post of Reader under the Merit Promotion Scheme, 1987 from

M. A. Khan



the date of promotion of his juniors to the said post with all consequential benefits.

2. Applicant joined the respondent A&U Tibbia College, Karol Bagh as Junior Lecturer in the faculty of Ayurvedic and Unani medicine in the pay scale of Rs.325-590. He was confirmed in the post on 6.7.1981. The post of Junior Lecturer in the pay scale of Rs.650-1200 and the Senior Lecturer in the pay scale of Rs.700-1300 were amalgamated into a single cadre designated as Lecturer in the U.G.C. pay scale of Rs.700-1300 vide A&U Tibbia College Board's Resolution No.17 dated 3rd and 6th March, 1986 which was circulated vide letter No. 30.3.1988 (Annexure A-3). The applicant was granted the Senior Lecturer grade Rs.3000-5000 under Merit Promotion Scheme, 1987 vide office order dated 21.6.1999 (Annexure A-4). Clause (C) of Section 16 of Tibbia College Act, 1952 was amended vide Delhi Gazette Extraordinary Notification dated 20.5.1996. The amended Regulation 3A provided that Lecturer/Lecturer in Senior Scale would be eligible for promotion to the post of Reader in the pay scale of Rs.3700-5700 subject to fulfillment of certain conditions. Applicant fulfilled those conditions and was eligible for promotion to the post of Reader under Merit Promotion Scheme, 1987. The respondent have promoted juniors of the applicant to the post of Reader but his representation has been rejected by the impugned order dated 13.2.2004 (Annexure A-1).

3. In the counter the respondents have, firstly, pleaded that the present application is barred by time and secondly, that in the meeting of the Screening Committee dated 11.12.1996 it was felt that the performance of certain Lecturers was not up to the mark, therefore, interview was held on 22.1.1997. The note dated 28.2.1997 was placed before the Health Minister for approval. The Tibbia College Board held a meeting on 21.3.1997 for considering promotion under Merit Promotion Scheme from the post of Lecturer to the post of Reader in which applicant was considered and his name was placed in sealed

cover along with 3 other persons. The minute of the Board's meeting were confirmed by the Tibbia College Board held on 9.8.1997. After the opening of the sealed cover the applicant was given the grade of Senior Lecturer in the pay scale of Rs.3000-5000 w.e.f. 1.12.1996 under the Merit Promotion Scheme of 1987 vide office order dated 21.6.1999. As per the record there was a complaint against the applicant with regard to period when he was Hostel Superintendent. The departmental enquiry was also initiated by the then Chairman Tibbia College Board, and Sh. Kalka Das, M.P. had given some uncharitable remarks against the applicant for his indiscipline and irresponsible behaviour as a hostel Superintendent. Besides this, there was another case regarding ELFA para 2 of 1994-95 pertaining to LTC payment pending against the applicant. The Board after considering the matter had approved his placement under the Merit Promotion Scheme in a lower scale of Rs.3000-5000 i.e. of Senior Lecturer instead of Reader i.e. scale of Rs.3700-5700. He was considered for the scale of Senior Lecturer by the Tibbia College Board with the condition that in future he will perform the duties with full responsibility as expected from an officer of his status. It was denied that there was any hostile discrimination or order was unjust, unfair, discriminatory or arbitrary.

4. In the rejoinder, applicant has reaffirmed his case. He has denied that any disciplinary enquiry was initiated against him or that he was indicted in it. He also denied that any case relating to LTC payment was pending. According to him the said matter has already been settled and he had been paid the LTC claim.

5. We have heard the learned counsel for the parties and have gone through the relevant record.

6. It is admitted that the applicant was appointed as a Junior Lecturer in the respondent Tibbia College and he was confirmed on the said post w.e.f. 6.7.1981 (Annexure A-2). From the circular dated 30.3.1988 (Anexure A-3) it also appears that the post of Junior Lecturer in the scale of Rs.650-1200 and the

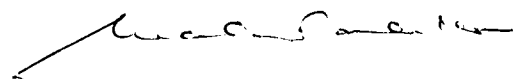


post of Senior Lecturer in the pay scale of Rs.700-1300 were amalgamated into a single cadre designated as Lecturer as per the U.G.C. pay scale. Vide this circular the option of the applicant was solicited for acceptance of the new designation Lecturer and the pay scale of Rs.700-1300. Vide notification dated 20.5.1996 Clause (C) of Section 16 of Tibbia College Act 1952 was amended and Regulation No.3-A was inserted after the existing Regulation 3. The Regulation provided for promotion of the College Teachers under the Merit Promotion Scheme, 1987 in accordance with the eligibility conditions and in the manner prescribed in Appendix-II-A of the said Regulation. Appendix-II-A appended to the Regulation provided :

- (i) every Lecturer in the College will be eligible for promotion as Lecturer in the senior scale of the pay scale of Rs.3000-5000, if he has completed 4 years of service out of which he has completed at least 2 years in the College where he is being considered for promotion etc. etc.
- (ii) every Lecturer/Lecturer in Senior Scale in a college shall be eligible for promotion to the post of Reader in the college in the pay scale of Rs.3700-5700 provided he has completed 4 years of service out of which he has completed at least 3 years service in the College as Lecturer/Senior Lecturer etc.etc.

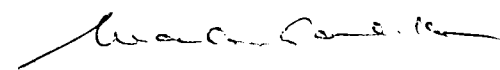
Applicant fulfilled the condition and was eligible to be considered for promotion to the post of Reader under Merit Promotion Scheme, 1987.

7. Respondents constituted the Screening Committee which held its meeting on 11.12.1996 for consideration of the Lecturers for promotion to the post of Reader under Merit Promotion Scheme, 1987. Applicant along with a number of other Lecturers, senior and junior to him, was considered by the Screening Committee. The recommendations of the Committee were approved by the Health Minister. Tibbia College Board in its meeting dated 21.3.1997 placed the names of the applicant and three other Lectures in sealed cover. The



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minute of the meeting of the Board dated 21.3.1997 were confirmed in the subsequent meeting dated 9.8.1997. As per the copy of the minute of the meeting held on 21.3.1997 (Annexure-1 to the counter) 22 Lecturers in Ayurvedic and Unani Medicine were promoted on temporary basis in the pay scale of Rs.3700-5700 plus Usual Allowance on probation of one year w.e.f. 1.12.1996. The minute further showed that the recommendation of DPC in respect of 4 Lecturers including the applicant was accepted by the Board and was kept in sealed cover. The minute of the Board's meeting Annexure-1 also showed that the Board was considering the recommendation of the DPC in respect of the promotion of Lecturers to the post of Readers under Merit Promotion Scheme, 1987. It further showed that the DPC was convened only to consider the promotion of Lecturers to the post of Readers and not from the post of Lecturers to the post of Senior Lecturers. Copy of the note of the Principal Secretary (Medical) of Government of NCT of Delhi dated 28.2.1997, photocopy of which has been annexed to the counter reply, also revealed that the recommendation of the DPC for promotion of 22 members of the teaching staff from the post of Lecturer to the post of Reader had been approved by the Health Minister and the recommendation in respect of 4 Lecturers including the application was kept in sealed cover. The proposal received from the Tibbia College Board as approved by the Health Minister did not indicate that the DPC was convened for the consideration of promotion of the Lecturer to the post of Senior Lecturer. In fact the post of Senior Lecturers had ceased to exist after its amalgamation with the post of Junior Lecturer into a single cadre designated as 'Lecturer' as per UGC pay scale (see Annexure A-3) as observed earlier. Even in the minute of the meeting of the Board dated 21.3.1997, there are no mention that the recommendation of the DPC for promotion in respect of the 4 Lecturers including the applicant was not considered for promotion to the post of Reader. Rather it averred that the recommendations of the Committee for promotion to the post of Reader in respect of 4 Lecturers was put in a sealed cover. But



what transpired is that 3 persons, other than the applicant, were also promoted as Reader from the post of Lecturer leaving the applicant as the only Lecturer who had been promoted to the post of Senior Lecturer vide office order dated 21.6.1999.

8. We have called the minute of the meeting of the Screening Committee/ DPC and do not find that the case of the applicant or any of the Lecturer^s was placed before the DPC for consideration of his promotion to the post of Lecturer in senior scale or the post of Senior Lecturer under Merit Promotion Scheme, 1987. Surprisingly, we also did not find that there was any material before the DPC for justifying the exclusion of the applicant's name from promotion to the post of Reader. In para 1 of the reply on merit, the respondent had alleged that there was a complaint against the applicant when he was working as a Hostel Superintendent. Departmental enquiry was also held by the then Chairman, Tibbia College Board, Sh. Kalka Das, M.P. who had recorded some adverse remarks against the applicant for his indisciplined and irresponsible behaviour as a hostel Superintendent. We did not find that any departmental enquiry report or any remark made by the Chairman of the Board in writing on any such report was placed before the DPC or the DPC had considered any other material before making the recommendation in respect of the applicant. It appears that the DPC had considered the oral remark of the Chairman against the performance of the applicant. Neither the copy of the enquiry report has been placed on record nor had it been submitted that any departmental enquiry was ever held against the applicant. The applicant has empathetically denied that any departmental inquiry was conducted against him. The second allegation in the same para was that a matter pertaining to the LTC claim was also pending against the applicant, but detail of the nature of the case was not disclosed. Even this material was not before the screening committee when it considered the case of the applicant for promotion to the post of Reader under Merit Promotion Scheme, 1987. Though the DPC or Screening Committee was constituted for considering the



promotion of Lecturers to the post of Readers and DPC also found the applicant eligible for promotion but instead of promoting the applicant as Reader like other 25 Lecturers, applicant was singled out for promotion to the post of Senior Lecturer. Though the applicant was found fit to be promoted as Senior Lecturer, which post had ceased to exist after its amalgamation with the post of Junior Lecturer into a single cadre designated as Lecturers as appeared from office circular dated 30.3.1988, yet he was not fit to be promoted as Reader because of some oral adverse observation of the Chairman of the College. The applicant was never conveyed these oral adverse remarks made by the Chairman of the College against him nor was he given an opportunity to explain his conduct. Taking such oral adverse remarks into consideration by the Screening Committee has clearly vitiated the recommendation of the Committee and so far as it related to the applicant. It is also pertinent to mention that the applicant has not been promoted as 'Lecturer in the senior scale' which post also does not seem to exist in the establishment of the college. All the 25 candidates who have been promoted to the post of Reader were Lecturers like the applicant, many of them were junior to the applicant.

9. Counsel for applicant has cited **Kashinath Dikshita vs. Union of India and others** (1986) 3 SCC 229 where it was observed that if the copies of the documents were not supplied in a disciplinary proceeding it would amount to denial of reasonable opportunity. It has been cited in support of the contention that the applicant had never been supplied any copy of the enquiry report and that no enquiry was ever held against him. The learned counsel for the respondent during the course of argument did not claim that any departmental enquiry was ever held against the applicant. So this judgment does not apply to the facts of the case. Applicant next cited **Ajit Singh and others (II) vs. State of Punjab and others** 1999 SCC (L&S) 1239 where it was held that if a person satisfies the eligibility and zone of criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be considered for



promotion which is his personal right. In the present case the applicant has been considered for promotion to the post of Readers along with his junior, therefore ^{there is} no violation of his fundamental right.

10. Applicant also referred to another judgment of Hon'ble Supreme Court in **Bal Kishan vs. Delhi Administration and another** 1989 (6) SLR (SC) 35 where the Hon'ble Supreme Court observed that there could be one norm for persons belonging to the same cadre and that no junior should be confirmed or promoted without considering the case of the senior. It was further observed that any deviation from this principles will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution. In the present case though the applicant along with his junior was considered for promotion to the post of Reader but while his juniors were promoted to the post of Reader as existing hierarchy the applicant was promoted to a non-existent post of Senior Lecturer. This is clearly a violation of Article 16(1) of the Constitution of India.


11. Lastly, the applicant relied upon **Life Insurance Corporation of India and others vs. Jagmohan Sharma and others** where the Hon'ble Supreme Court held that the learned Single Judge was not justified in directing the promotion of respondent 1 to the higher post and such a direction could not be given while exercising power of judicial review. The Hon'ble Supreme Court directed that the appellant would consider the case of the respondent for his promotion with effect from the date his juniors were promoted and if found fit for promotion to grant him all consequential benefits and that the consideration of the respondent for promotion would be on the same basis and for such material has to be considered for promoting the juniors.

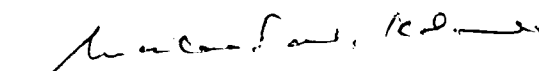
12. Applying the law laid down in the Hon'ble Supreme Court in above cited cases it must be held that the applicant had a fundamental right to be considered for promotion from the post of Lecturer to the post of Reader like Lecturers junior to him were considered and he should be considered on the basis of the same material and norms which was taken into consideration by

the DPC for making recommendation for promotion in respect of other 25 Lecturers.

13. Counsel for respondent has not argued that the present OA is barred by time. The representation of the applicant for promotion from the post of Lecturer to the post of Reader under Merit Promotion Scheme like other Lecturers including his juniors were promoted was rejected by the respondent vide order dated 3.2.2004 (Annexure A-1). The present OA was filed by the applicant on 31.3.2004. It is within the time prescribed under Section 21 (1) read with Section 20 (2) of the Administrative Tribunal Act, 1985 as the limitation will start from the date of communication of the said order. Even otherwise, the technicality of law of limitation should not be allowed to come in the way of substantial justice. The contention of the respondent in the reply has no substance and is rejected.

14. The result of the above discussion is that the OA succeeds. The order of the respondents dated 3.2.2004 (Annexure A-1) is set aside. The respondents are directed to consider the case of the applicant for his promotion from the post of Lecturer to the post of Reader under the Merit Promotion Scheme, 1987 w.e.f. the date Lecturer junior to him were promoted and if he is found fit for promotion he shall be granted promotion with all the consequential benefits at par with his juniors. It is further directed that the consideration for promotion of the applicant shall be on the ^{ce} basis of the same material/norm as was considered for promoting the other 25 Lecturers to the post of Reader under the Merit Promotion Scheme, 1987. The needful shall be done by the respondents within 3 months. Parties, however, shall bear their own costs.


(S.K. MALHOTRA)
Member (A)


(M.A. KHAN)
Vice Chairman (J)

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