

CA
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

199

AdS

DATE OF DECISION

9.1.98

Dr. V.P. Malik	Petitioner
Shri Ajit Puddisery	Advocate for the Petitioner
VERSUS	
Union of India & Anr.	Respondent
Mrs. Raj Kumari Chopra	Advocate for the Respondent

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The Hon'ble Shri S.R. Adige, Vice Chairman (A).

The Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 2269/92

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X

New Delhi this the 9th day of January, 1998.

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Dr. V.P. Malik,
Professor,
Forensic Medicine & Toxicology,
Lady Hardinge Medical College,
New Delhi. Applicant.

By Advocate Shri Ajit Puddisery.

Versus

1. Union of India through
the Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Chairman,
UPSC Dholpur House,
Shahjahan Road,
New Delhi. Respondents.

By Advocate Mrs. Raj Kumari Chopra with Shri Subramaniam,
S.O. (departmental representative) on behalf
of the respondents.

O R D E R

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

The applicant who is a Doctor in the Central Health Service (for short 'the CHS') is aggrieved by the respondents' letter dated 27.6.1991 rejecting his representation. His claim is that the respondents ought to have held DPC for selection to the post of Professor in the speciality of Forensic Medicine as there was a clear vacancy on 1.6.1990 and the applicant alongwith two other Associate Professors was eligible for promotion w.e.f. August, 1990.

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2. The applicant claims that as per the CHS Rules he became eligible for promotion as Professor w.e.f. 5.8.1990 in his discipline. He submits that in other specialities, promotions have been given and only in Forensic Medicine the applicant and other eligible officers have been denied the next promotion which is, therefore, violative of the right of equality enshrined under Articles 14 and 16 of the Constitution. He has submitted that on the recommendation of the High Power Committee known as Tikku Committee set up under the 1989 settlement which was entered into between Respondent 1 and the Doctors who had gone on strike, Respondent 1 issued Office Memorandum dated 14.11.1991 whereby the distinction between Non-functional and Functional grades was removed and all Associate Professors in the Non Functional Selection Grade (NFSG) were redesignated as Professors w.e.f. 1.12.1991. The applicant who was then working as Associate Professor (NFSG) had also been redesignated as Professor w.e.f. 1.12.1991. Shri Ajit Puddisery, learned counsel for the applicant, has submitted that in the light of the intervening events which have taken place during the pendency of this O.A., he is only pressing relief, as prayed for in paragraph 8(a), namely, for a direction to the respondents to hold DPC as on August, 1990 for promotion to the post of Professor by taking into account the ACRs till that year and not pressing relief given in paragraph 8(b). He has submitted that by Office Order dated 31.5.1990 on the retirement of the then Director (Professor), in the Department of Forensic Medicine, the applicant who was Associate Professor of Forensic Medicine in the Department was asked to look after the said Department w.e.f. 1.6.1990 till further orders. He, therefore, submits that from 1-6-1990, the post of Professor in the Department of Forensic Medicine was vacant which should have

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been filled in accordance with the CHS Rules which provides, *inter alia*, that Associate Professors with 7 years combined regular service in the grades of Associate Professor and Assistant Professor out of which not less than 4 years shall be as Associate Professor are qualified. He, therefore, submits that since the applicant was qualified to be considered under the CHS Rules as well as the two other persons who were qualified in 1990, the respondents ought to have held the DPC. He has questioned the decision of Respondent 2, i.e. the UPSC to *suo moto* amend the eligibility requirement from 7 years to 8 years stating that this was, therefore, illegal. He has submitted that as per the facts given by Respondent 1 in the additional affidavit filed on 20.7.1994, they have admitted that as per the recruitment rules, the eligibility condition for promotion to the post of Profesors is 7 years. They have also stated that the case of the applicant was referred to Respondent 2 in the letter dated 5.12.1990 but by the Commission's letter dated 24.7.1991 his case was not considered for promotion against the vacancy for the year 1990-91 with which the Ministry of Health also did not disagree at that time. The Tribunal by order dated 13.8.1993 had allowed MP No. 2620/92 for condoning the delay in filing the O.A. He has also emphasised that in other disciplines, Respondent 1 had held the DPC in the year 1990 itself for promotion to the post of Professors and there is no reason why in the speciality of Forensic Medicine the same should have been delayed.

3. The respondents in their reply have submitted that this application has become infructuous as the applicant has been promoted as Professor w.e.f. 1.12.1991 after the settlement of the grievances with the Doctors. They have admitted that the eligibility requirement under the relevant

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recruitment rules for promotion from Associate Professor to Professor is 4 years regular service in the grade in the case of persons who are directly recruited as Associate Professors; or Associate Professors with 7 years' combined regular service in the grades of Associate Professor out of which not less than 4 years shall be as Associate Professor. The Doctors had gone on strike in 1987 and subsequently a package of benefits had been offered to them in which one of the terms and conditions was that NFSG should be available after 6 years regular service as Associate Professor or 9 years of combined service as Assistant Professor and Associate Professor. They have submitted that one post of Professor of Forensic Medicine was referred to the UPSC-Respondent 2 for being filled by promotion on 5.12.1990, including the names of 3 officers, namely, Dr. P.C. Dikshit, Dr. Amrendra Sahai and the applicant. The UPSC, however, informed that since the eligibility condition for promotion to the Specialist Grade-I of CHS has been raised to 8 years' service (from 7 years) in the Specialist Grade-II, only Dr. P.C. Dikshit would be eligible for being considered against the vacancy for the year 1990-91. They have further submitted that because of the decisions taken on the recommendations of the High Power Committee/Tikku Committee that all Associate Professors in NFSG would be redesignated as Professors w.e.f. 1.12.1991, the recommendations of the DPC were not given effect to in few cases, including the case of Professor of Forensic Medicine. They have stated that both Dr. P.C. Dikshit and the applicant were inter alia redesignated as Professors w.e.f. 1.12.1991. According to them even if the minutes of the DPC have been given effect to, the applicant would not have been promoted as Professor of Forensic Medicine because he was not found eligible or recommended by the DPC. Another Doctor senior to the applicant and eligible for promotion had been recommended

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by the DPC and the Minutes were received on 13.11.1991. However, the minutes of the DPC could not be given effect to because in the meantime decisions were taken on the recommendations of the Tikku Committee and communicated by O.M. dated 14.11.1991. One of the decisions was that all Associate Professors in the NFSG would be redesignated as Professors w.e.f. 1.12.1991. Thus, the applicant and other similarly placed doctors were redesignated as Professors w.e.f. 1.12.1991. They have also stated that the DPCs have been held in those specialties where vacancies were available to be filled by promotion and where eligible officers were available for being considered and promotions have been given to those doctors who had been specifically recommended by the DPCs for promotion. They have, therefore, submitted that since a person senior to the applicant had been recommended for promotion by the DPC meeting held by circulation of papers, the applicant as such has no case and there has been no discrimination against him or against the Specialy of Forensic Medicine as contended. According to them, the applicant who was promoted as Associate Professor on 5.8.1986 was not a direct recruit, hence he was not eligible for being considered for promotion as Professor w.e.f. 5.8.1990 as he had not completed 8 years of service, as required for the promotees. We may mention here that this statement of the respondents does not appear to be correct as under the relevant recruitment rules, the combined service required is 7 years. In this connection, Shri Ajit Puddissery, learned counsel for the applicant, has referred to the letter from UPSC dated 4.4.1994 addressed to Respondent 1 (Annexure R-1 to the additional affidavit filed by Respondent 1) in which it is stated that the case of the applicant was referred to Respondent 2 by their letter dated 5.12.1990. However, as agreed to by the

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then Addl. Secretary, Ministry of Health, he was not considered by the DPC which was finalised by circulation of papers in November, 1991.

4. Mrs. Raj Kumari Chopra, learned counsel, has submitted that this application has become infructuous because the applicant has already been promoted as Professor w.e.f. 1.12.1991. She refers to the judgement of the Supreme Court filed by the applicant and others (**Dr. V.P. Malik and Ors. Vs. Union of India**, 1996(32) ATC 249) and submits that this issue has already been settled. as the Supreme Court had upheld the period of 8 years of combined service as Assistant Professor and Associate Professor for promotion as Professor w.e.f. 1.12.1991, as recommended by the Tikku Committee. The learned counsel for the applicant on the other hand submits that the matter in issue in the present case was not agitated or required to be agitated by the applicants before the Supreme Court. In that case, he submits that the grievance of the petitioners was that the recommendations of the Tikku Committee to give promotion on a time bound basis on completion of 8 years as Specialists were not implemented from the date of the submission of the report i.e 31.10.1990 but from 1.12.1991 which date according to the petitioners was arbitrary and would have adverse effect on seniority of some. While dismissing the writ petition, the Supreme Court had held that the Tikku Committee's report being recommendatory in nature, a decision was required to be taken as to which of the recommendations could be accepted. As the final decision was taken within about a year of the submission of the report, the time-lag cannot be held to be unjustified because the recommendations being many in number involving huge financial implications and needing sorting out some service problems, the period of about one year taken to

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finally come to a decision was regarded as reasonable. The learned counsel for the respondents has also submitted that in the case of other Doctors similarly situated, they have taken into account 8 years' combined service as Assistant Professor and Associate Professor for promotion purposes and, therefore, there is no discrimination against the applicant. She has submitted that in the case filed by the applicant and others before the Supreme Court, the Court had referred to the Tikku Committee recommendations for promotion to the grade of Rs.4500-5700 on completion of 8 years of service as Specialist and the point on discrimination submitted by the petitioners was also rejected. She has, therefore, submitted that the applicant cannot now take a differnt stand that the staturoy rules should be strictly applied, which would mean a review of the judgement of the Supreme Court which had held that the executive instructions issued were within reasonable time and the writ petition had been dismissed. In the facts and circumstances of the case, she submits that the doctrine of acquiescence will apply against the applicant, relying on the case of the Tribunal (Principal Bench) in **Dr.(Mrs.) Chandrama Anand Vs. Union of India** (O.A. 1343/87), decided on 24.3.1993. She has also submitted that no substantial injury has been suffered by the applicant. The DPC held on 13.11.1991 was not completed as immediately after that the Tikku Committee's report was submitted on 14.11.1991 and even Dr. P.C. Dikshit, who was senior to the applicant was not promoted. The learned counsel has, therefore, submitted that the applicant is not entitled to any reliefs as prayed for in the application and the same may be dismissed.

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5. We have carefully considered the pleadings and the very able submissions made by the learned counsel for the parties.

6. The issue in question is whether the applicant is entitled to be considered for promotion to the post of Professor in the Department of Forensic Medicine in the vacancy which fell vacant in August, 1990 in accordance with the CHS (Amendment) Rules, 1989. The applicant has relied on the fact that on the retirement of the then Director Professor, Department of Forensic Medicine w.e.f. 31.5.1990, he was Associate Professor in the same Department and was asked to take charge and look after the Department w.e.f. 1.6.1990 till further orders. The respondents in their affidavit have stated that the case of the applicant was referred to the UPSC vide their letter dated 5.12.1990 but he was not considered by the DPC in November, 1991. He was also not considered for promotion against the vacancy of the year 1990-1991 as intimated in the letter from the UPSC dated 4.4.1994. Strictly speaking under the Rules, the applicant was eligible for consideration if he had 7 years combined service as Assistant Professor and Associate Professor. The case of the respondents is that after the acceptance of the Tikku Committee's report in 1991, they have taken the eligibility condition for promotion purposes as 8 years and not 7 years which have been uniformly applied for all the doctors and, therefore, there is no discrimination. However, the applicant has stated that in other Departments, the DPCs have been held for promotion in accordance with the Rules, prior to the coming into effect of the Tikku Committee's report whereas only in the case of the Department of Forensic Medicine, the same has not been done.

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7. In Dr. V.P. Malik & Ors. (supra), the petitioners were members of the Teaching Specialist sub-cadre of CHS under Respondent 1. In the case filed by the applicant and others before the Hon'ble Supreme Court decided on 8.12.1995 (Supra), it has been stated that the learned counsel for the petitioners, had strenuously contended that the delay in implementing the recommendations of the Tikku Committee which had submitted its report on 31.10.1990 had not only deprived the petitioner of the financial benefits but had also affected their seniority as Professors. They had contended that if their seniority had been given from 31.10.1990 they would have been deemed to have become Professors from that date and the postponing of the date to 1.12.1991 had thus postponed the date of acquiring the status of Professor by the petitioners and, therefore, affected them injuriously both in terms of money and service prospects. The respondents on the other hand had contended that the recommendations of the Tikku Committee were considered by the Union Cabinet. The report being recommendatory in nature, it was held that a decision was required to be taken as to which of the recommendations could be accepted and which not. As the final decision was taken within about an year of the submission of the report, the Supreme Court held that the time-lag cannot be held to be unjustified taking into account the fact that there were numerous recommendations involving huge financial implications and needing sorting out of some service problems. The Office Memorandum itself was issued on 14.11.1991 incorporating the decisions of the Government on the Tikku Committee's recommendations and the benefit was made available from the first date of the ensuing month i.e. 1.12.1991 which was held as reasonable. The petitioners had also urged in that case that the cut off date being 1.12.1991 had resulted in discrimination between the officers of the same

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grade in that, those juniors to the petitioners who were considered for promotion after 1.12.1991 got it on completion of 8 years of combined service as Assistant Professor and Associate Professor while the seniors who got promoted to the NFSG were redesignated as Professors w.e.f. 1.12.1991 are being treated differently and in most cases would get promotion to the post after serving much longer in the feeder grade. The Supreme Court held that this result is not really likely to follow because promotion as a matter of Rule can be effective only from a prospective date. The Court has also observed that apart from this, those of the juniors who were promoted after the issuance of the O.M. dated 14.11.1991 cannot steal a march over the earlier promotees because of the orders passed in IA No. 4/93 on 17.10.1994 stating that any promotion made during the pendency of the writ petition in the teaching sub-cadre will abide by the result of the petitions. The Court further observed that it also deserved to be pointed out that the recommendations of the Tikku Committee for placing of the teaching specialists in the Grade of Rs.4500-5700 after 4 years of the granting of the scale of Rs.3000-5000 is more beneficial than the one which was part of the Memorandum of Settlement, according to which, Associate Professor in the scale of Rs.3700-5000 on completion of 6 years of regular service as Associate Professor or 8 years of combined services as Assistant Professor and Associate Professor were eligible. It is relevant to note that the arguments advanced by the applicant and others for implementation of the Tikku Committee report from the same date the report was given i.e. 31.10.1990 were not accepted by the Apex Court.

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case

8. We find that in the circumstances of the case the respondents' action in not finalising the DPC proceedings in 1990-91 is neither unreasonable nor discriminatory and as held by the Supreme Court in **Dr. V.P. Malik's case (supra)** the promotion can be given effect to only from a prospective date and the applicant has got it w.e.f. 1.12.1991. Having agitated the matter in the Supreme Court and accepted the promotion in terms of the Tikku Committee's recommendations, the applicant cannot reagitate the same issue of his promotion from an earlier date in this application especially when even in the case of his senior, Dr. P.C. Dikshit, the DPC's recommendations were not implemented. It is also a settled law in service matters that it is not in public interest to unsettle a settled position. In the case of **The Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra (AIR 1990 SC 1607)**, the Supreme Court has held that the decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. Therefore, taking into account totality of the facts and circumstances of the case, the fact that there was an agitation on a large scale by the doctors for better conditions of service, the report of the Tikku Committee which had looked into the whole matter and made their recommendations in 1990 which were implemented by O.M. dated 8.1.1992 w.e.f. 1.12.1991 which takes into account the important questions concerning doctors in the Central Health Services in the country, and the decision of the Supreme Court in **Dr. V.P. Malik's case (supra)**, we are unable to persuade ourselves that the contention of the applicant to direct the respondents to hold DPC as of 1990 for the post of Professor in Forensic Medicine can be accepted.

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9. In the result, for the reasons given above, the application fails and is accordingly dismissed. No order as to costs.

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Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S. R. Adige

(S. R. Adige)
Vice Chairman (J)

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