

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

cv

O.A. No. 2436/92
T.A. No.

199

DATE OF DECISION 21.1.98

Dr. (Mrs.) Bandana Talukdar Petitioner

Sh. V. S. R. Krishna

Advocate for the Petitioner(s)

Versus

UOI & Ors.

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. 2436/92

New Delhi this the 21 th day of January, 1998

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

Dr. (Mrs.) Bandana Talukdar,
Professor, Deptt. of Biochemistry,
R/o BT/31, Shalimar Bagh,
Delhi-52.

...Applicant.

By Advocate Shri V.S.R. Krishna.

Versus

1. Union of India through
Secretary,
Ministry of Health and
Family Welfare (Deptt. of Health),
Nirman Bhawan,
New Delhi.
2. Shri R.C. Sharma,
Under Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
(Deptt. of Health),
Nirman Bhawan,
New Delhi.

...Respondents.

By Advocate Mrs. Raj Km. Chopra.

O R D E R

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

The applicant who is working as Professor of Bio-Chemistry is aggrieved by the order passed by the respondents dated 7.9.1992 in which they have rejected her request for appointment to the post of Professor on regular basis against the direct recruitment quota and refixation of her pay and seniority in the cadre of Professors. She claims that this order is ultra vires, mala fide exercise of powers and in violation of the Rules of fair play and justice.

13

2. The applicant who was holding the post of Associate Professor in Non-Functional Selection Grade (NFSG) in the department of Bio-Chemistry, Maulana Azad Medical College, New Delhi had applied for the post of Professor in the same discipline, in response to the advertisement by the Union Public Service Commission (UPSC) dated 26.5.1991. She was interviewed for the post by the UPSC on 15.10.1991 and was informed by them by letter dated 23.10.1991 that her name had been recommended to Respondent 1 for appointment to the post of Professor of Bio-Chemistry. In the meantime, the recommendations of the High Power Committee (Tikku Committee) on service conditions of Doctors were submitted in October, 1991. After examination of these recommendations, the Government issued O.M. dated 14.11.1991. Thereafter, they issued a letter dated 8.1.1992 by which the applicant and other similarly situated Doctors were redesignated as Professors in their respective disciplines w.e.f. 1.12.1991. The applicant contends that the recommendations of the Tikku Committee and its subsequent acceptance by Respondent 1 are not applicable to her as the UPSC had recommended her for regular appointment to the post of Professor of Bio-Chemistry which had also got the approval of the Appointment Committee of Cabinet (ACC) on 16.1.1992. She has referred to her representation dated 24.4.1992 in which she has requested that she may be appointed to the post of Professor on regular basis against the direct recruitment quota in which she had been selected through the UPSC, and not to the upgraded post as a result of the Tikku Committee recommendations. Shri V.S.R. Krishna, learned counsel has submitted, relying on the DOP&T O.M. dated 3.7.1986 that since the applicant had been selected in the direct recruitment quota prior to her selection/upgradation as Professor in pursuance of the Tikku

12

Committee recommendations, her seniority should be fixed accordingly, that is on the basis of her earlier selection by the UPSC. The learned counsel for the applicant relies on the judgements of the Supreme Court and the Tribunal in **N.C. Bhattacharjee & Ors. Vs. Union of India and Ors.** (1992 SCC (L&S) 236), **Y.V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors.** (1983 SCC (L&S) 382), **State of Rajasthan Vs. Fateh Chand Jain** (1996 SCC (L&S) 140), **Union of India Vs. Vipin Chandra Hiralal Shah** (1996(6) SCC 721), **Trojan and Co. Vs. Nagappa** (AIR 1953 SC 235), **Dr. Mrs. Krishna Chakraborty Vs. Union of India & Anr.** (O.A. No. 1679/91 with connected case), decided on 16.1.1996 and **Dr. Sunil Gomber Vs. Union of India & Ors.** (ATR 1992(1) CAT 707). He has submitted that in **Dr. Krishna Chakraborty's case (supra)**, the respondents had taken the stand that candidates recruited on the basis of an earlier selection would be senior to those recommended on the basis of a subsequent selection, which is also what has been stated in the DOP&T O.M. dated 3.7.1996 and they cannot take a different stand here. Shri V.S.R. Krishna, learned counsel has, therefore, vehemently submitted that the applicant is entitled for appointment as Professor with seniority prior to 1.12.1991 i.e. from the date of selection by UPSC. He has also submitted that the learned counsel for the respondents cannot make submissions outside the pleadings that the vacancies have been utilised in giving effect to the Tikku Committee recommendations.

3. The respondents have filed their reply and we have also heard Mrs Raj Kumari Chopra, learned counsel. A preliminary objection has been raised by the respondents that the applicant has impleaded Respondent 2 by name which is not permissible and, therefore, this application is liable to be

dismissed on this ground alone. Mrs. Chopra, learned counsel, has submitted that it is a fact that the UPSC had recommended the applicant for appointment as Professor of Bio-Chemistry in the direct recruitment quota on 23.10.1991. The approval of the recommendations of the competent authority/ACC were received on 16.1.1992. Learned counsel has submitted that since in pursuance of the decision taken by the Government of India on the recommendations of the Tikku Committee that all Associate Professors (NFSG) were to be redesignated as Professors w.e.f. 1.12.1991 and the applicant was one among them, she was not given another offer to the post of Professor subsequent to 16.1.1992, as she had already accepted the post w.e.f. 1.12.1991. We may mention here that Shri V.S.R. Krishna, learned counsel, on the other hand, has submitted that it was necessary that the respondents ought to have given her an option whether the applicant would have liked to become a Professor as a result of the UPSC recommendations ^{or} ~~or~~ the upgradation of the post following the Tikku Committee recommendations. However, the respondents have submitted that the applicant could have in any case been appointed as Professor on the basis of the direct recruitment only after 16.1.1992, whereas on that date by virtue of the redesignation of the post as a result of the Tikku Committee recommendations she had already been appointed as Professor in the same discipline and she having accepted the post with the benefits cannot now dispute it. The learned counsel has relied on the judgements of the Supreme Court and the Tribunal in Dr. V.P. Malik & Ors. Vs. Union of India (1996 (32) ATC 249), Dr. Lal Chand Thakur Vs. Union of India (O.A. 1997/97 with connected case), decided on 24.10.1997, Dr. N.C. Saxena and Ors. Vs. Union of India & Ors. (O.A. 1035/92) decided on 30.7.92 and Dr. V.P. Malik Vs. Union of India and Anr. (O.A.

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2269/92) decided on 9.1.1998 (copies placed on record). She has submitted that the judgement in **Dr. Krishna Chakraborty's case(supra)** and the DOP&T O.M. dated 3.7.1986 are not applicable to the facts in this case. While in that case the question of seniority was between the direct recruits and promotees, the present case deals with the question of direct recruitment vis-a-vis the position on redesignation of the post of the same person. The learned counsel has also submitted that the other cases relied on behalf of the applicant are not applicable to the facts in this case, particularly when the issues have been decided in a number of cases by the Tribunal and the Supreme Court.

4. The applicant has filed a rejoinder more or less reiterating the averments in the application, namely that ^{as is} she had been recommended for appointment as Professor in Bio-Chemistry on the basis of the direct recruitment, the respondents cannot deny her the seniority and consequential benefits in that post because she had been appointed on the redesignated post of Professor w.e.f. 1.12.1991.

5. We have carefully considered the pleadings, the submissions and the cases relied upon by both the parties.

6. From the facts mentioned above it is seen that the applicant is already a Professor of Bio-Chemistry w.e.f. 1.12.1991. She seeks ante dating her promotion for the purposes, mainly of seniority and pay, claiming that she should be appointed in the same post on the basis of the direct recruitment by the UPSC. Having considered the judgements relied upon by the parties very carefully, we are of the view that the cases relied upon by the applicant, on

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the question that a person appointed from an earlier selection will rank senior to a person who is appointed from a later selection is not applicable to the facts of this case. Unlike in those cases, here there is only one party, namely, the applicant who has been selected under two different modes of selection as Professor i.e. one through UPSC where the competent authority had approved the selection on 16.1.1992 and the other by redesignation of the post w.e.f. 1.12.1991. ^(this Bench) The Tribunal/ has dealt with this very question in Dr. V.P. Malik's case (O.A. 2262/92 supra) which has been decided on 9th of January, 1998. ~~xxxxxxx~~ In that case, the Tribunal had declined to direct the respondents to hold the DPC as of 1990 for the post of Professor in Forensic Medicine as claimed by the applicant, inter alia, on the ground that by virtue of the Govt. of India O.M. dated 8.1.1992 a decision had been taken to give him promotions and other similarly situated doctors to the post of Professors w.e.f. 1.12.1991 which has been accepted. Similarly in Dr. Lal Chand Thakur's case (supra) the Tribunal has observed that after the implementation of the recommendations of the Tikku Committee report w.e.f. 1.12.1991, no further vacancy was available for consideration for the purpose of promotion on the direct recruitment quota. A perusal of these cases will show that on similar facts and issues the claims of the applicants have already been dismissed and these cases are final and binding. We as a coordinate Bench respectfully agree and follow the decisions in Dr. V.P. Malik's case and Dr. Lal Chand Thakur's case (supra).

7. Since Shri V.S.R. Krishna, learned counsel for the applicant, laid much stress on the judgement in the case of Dr. Krishna Chakraborty (supra) and the DOP&T O.M. dated

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3.7.1986 we would also like to deal with the same. In that case, the dispute was regarding the determination of seniority between the promotees and a direct recruit and these persons were selected on different dates by the Selection Committees, with the person selected earlier through UPSC joining after the others. In that case, reference had been made to DOP&T O.M. dated 3.7.1986 which, inter alia, provides that persons appointed as a result of an earlier selection will be senior to those appointed as a result of a subsequent selection. Shri V.S.R. Krishna, learned counsel, had vehemently submitted that the applicant and other similarly situated Doctors had been redesignated as Professors in the wake of the Government accepting the Tikku Committee recommendations only after due selection and, therefore this O.M. was applicable to the applicant. However, in the facts of this case, we are unable to accept his contention that as she had been earlier recommended for selection by the UPSC as a direct recruit on 23.10.1991, her promotion should be antedated, with consequential benefits. In this case, the concerned selection pertains to the same person. The redesignation/promotion of Associate Professors as Professors in their respective disciplines was an exercise carried out by the Government as a one time measure and there is no doubt that the applicant had accepted the post of Professor in Bio-Chemistry w.e.f. 1.12.1991 i.e. prior to the date of receipt of the competent authority's approval of her earlier selection on 16.1.1992. The applicant has stated that she had thereafter made a representation on 24.4.1992 claiming appointment on regular basis to the post of Professor with seniority and refixation of pay, on the basis of her selection by UPSC on the direct recruitment quota. This she cannot do as she has already accepted her appointment as Professor of Bio-Chemistry from

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1.12.1991. The Tribunal in similar cases of Dr. Lal Chand Thakur and Dr. Meena Gupta (O.A. 1997/93 with connected case) have also taken note of the fact that in implementing the recommendations of the Tikku Committee report the existing vacancies of Professors have been taken into account ~~xxx xx~~ ~~xxxx xx xxxxxx~~ which is a conclusion of fact with which we fully agree. Any other conclusion^{as} urged by the learned counsel for the applicant is unwarranted in the circumstances of the case. The applicant cannot get unintended benefits over her colleagues who were similarly situated and the stand taken by the respondents can neither be termed as arbitrary or unreasonable which warrants any interference in the matter. We also find no merit in the other contentions of the applicant.

8. In the result, we find no merit in this application. The O.A. is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige

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

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