

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.2553/92

22

New Delhi this the 16th day of July, 1998.

Hon'ble Mr. N. Sahu, Member (A)  
Hon'ble Dr. A. Vedavalli, Member (J)

Dr. Dinesh Chandra

... APPLICANT

(By Advocate Shri Ajit Puduserry)


-Versus-

Union of India & Ors.

... Respondents

(By Advocate Shri Madhav Panikar)

1. To be referred to the Reporter ? YES/~~NO~~
2. Whether to be circulated to other  
Benches of the Tribunal ? YES/ NO

  
(Dr. A. Vedavalli)  
Member (J)



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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

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New Delhi this the 16th day of July, 1998.

HON'BLE MR. N. SAHU, MEMBER (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Dr. Dinesh Chandra,  
Director Professor of Pharmacology,  
Maulana Azad Medical College,  
New Delhi.

...Applicant

(By Advocate Shri Ajit Puduserry)

- V E R S U S -

1. The Secretary,  
Ministry of Health and Family Welfare,  
Nirman Bhawan, —  
New Delhi.

(By Advocate Shri Madhav Panikar)

2. Dr. P.L. Dhingra,  
Director Professor of E NT  
Maulana Azad Medical College,  
New Delhi.

3. Dr. D.K. Srinivasan,  
Director Professor of P & S M,  
Jawaharlal Institute of Postgraduate Medical  
Education and Research,  
Pondicherry.

4. Dr. Kusum Sehgal,  
Director of Professor of P & S M,  
Maulana Azad Medical College,  
New Delhi.

5. Dr. S.K. Khanna,  
Director Professor of Cardiac Surgery,  
G.B. Pant Hospital,  
New Delhi.

...Respondents

(None for respondents 2-5)

O R D E R

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

The applicant, Dr. Dinesh Chandra is working as a Director Professor of Pharmacology, Maulana Azad Medical College, New Delhi. He has filed this OA against an order of the official respondents dated 21.6.91 communicated on 27.9.91 (Annexure D) turning down his representation against the alleged violation of his seniority in the eligibility list prepared by them for promotion to the post of Director

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Professor and in granting seniority to the private respondents Nos.2-5 over him in the promotion order issued by them.

2. The facts of this case briefly stated are as under:

2.1 The Central Health Service (CHS) is divided into four sub cadres. The sub cadres are further divided into various specialities. The applicant belongs to the teaching sub cadre and his speciality is Pharmacology. He joined the aforesaid service as Assistant Professor on 13.11.73 as a direct recruit through the Union Public Service Commission (UPSC). He was promoted as an Associate Professor w.e.f. 5.6.79 and was working on that post at Jawaharlal Institute of Post Graduate Medical Education and Research at Pondicherry. He was promoted as Specialist Grade I in the teaching sub cadre by an order dated 12.3.86 (Annexure A) and was posted as Professor of Pharmacology in the Maulana Azad Medical College at New Delhi. He joined that post on 21.3.86. The respondents issued a combined seniority list of Specialist Grade II officers of the teaching specialist sub cadres of the Central Health Service as on 1.1.86 corrected upto 1.7.86(Annexure B). The applicant is at serial No.99 and his date of appointment in the grade/date of confirmation was shown as 21.3.86. The private respondents 2-5 were shown at serial Nos. 103, 104, 107, and 100 respectively in the said list.

2.2 The applicant was further promoted to the post of Director Professor in the Super Time grade of the aforesaid Service (Rs.5900-6700 NPA) alongwith five others by an order

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dated 7.8.92 (Annexure E). The applicant is at serial No.6 of the said order. Private respondents No.2,3 and 4 who are alleged by him to be his juniors are at serial No.3-5 in the said promotion order. The aforesaid order has not been impugned in this OA.

2.3 According to the applicant, he came to know that the eligibility list for promotion to the said post of Director Professor was prepared by the official respondents but the same was not circulated to the officers concerned. Apprehending that his seniority in the post of Professor in the feeder grade is violated in the said list, he submitted a representation dated 14.12.90 and 11.3.91 (Annexure C colly) to the respondents for protection of his seniority. Those representations were rejected by the impugned order dated 21.6.91 which was communicated on 27.9.91 (Annexure D) and hence he filed the present OA.

2.4 The applicant seeks the following reliefs in this OA:

- " a) Issue Writ order or direction quashing letter No.A.32018/37/91-CHS.III dated 21/6/91 and direct the respondents to fix the seniority of the applicant according to the position in the feeder grade.
- b) Direct the respondents to correct and publish the seniority/eligibility list for the promotion.
- c) Pass such other and further order/orders as are deemed fit in the facts and circumstances of the case."

3. The official respondents have contested the OA and have filed their counter, to which a rejoinder has been filed by the applicant. The private respondents have not filed any counter.

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4. The grounds on which the aforesaid reliefs are sought by the respondents, briefly stated, are as follows:

- i) The general rules of seniority apply to the Central Health Service also as per its Rules and the respondents are bound to publish a seniority list from time to time so that the concerned officers can know their seniority position in the service.
- ii) The applicant should be given the same seniority as provided in the feeder grade after his promotion also according to the CHS Rules and also as per the judgement of this Tribunal (Madras Bench) dated 20.1.92 in OA-925/90 (Dr. P. Rajaram vs. Union of India & Ors.) (Annexure F) as the present promotion itself (Director Professor) is to be filled up on the basis of seniority alone. Action of the respondents in violating the seniority of the applicant and making him junior to respondents 2-5 is arbitrary and unconstitutional.
- iii) The applicant, according to the CHS Rules, is entitled for consideration/promotion when his juniors were considered and granted promotion, particularly respondent No.5 who was promoted in January, 1992.





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5. The learned counsel for the applicant and the official respondents have been heard. No-one was present on behalf of the private respondents. We have gone through the pleadings, relevant papers and the documents placed on record. The original record containing the minutes of the concerned DPC (File No.A-32012/18/91-CHS-III) was made available for our reference by the respondents has been perused. We have given our careful consideration to the matter.

6. Re the first ground raised by the applicant as to the publication of the seniority list, the official respondents in reply have submitted that according to the CHS Rules, 1982 the post, in question namely Director Professor in the Super Time Grade of Teaching Specialists sub cadre are to be filled up by promotion. Officers working in the grade of Professors on a regular basis for not less than three years failing which by officers who have been working as Professors with 17 years regular service in Group A posts are eligible to be considered for promotion. 34 posts of Director Professor were newly created in the aforesaid grade by upgradation and a proposal was sent to the Union Public Service Commission on 30.12.91 to fill up 37 posts (34 newly created posts plus three existing). Two eligibility lists were drawn up for this purpose. One list contained the names of persons having three years regular service in the grade and the other contained the names of regular Professors with 17 years service in Group 'A' posts. A meeting of the DPC was held on 5th and 7th May, 1992 and a panel of 37 names was recommended by the said committee.

7. The respondents have submitted further that the eligibility list of persons for being considered for promotion as Director Professor is prepared with reference to the date

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of completion by the officers of the prescribed years of qualifying service. Since the said list is prepared in accordance with Rule 4 (10) of the CHS Rules, 1982, therefore no need to circulate the same. The need for circulation arises only when any such list is prepared on the basis of new principles which are not in the statutory recruitment rules. The applicant was informed that the said list was correctly prepared by the impugned order (Annexure D) in response to his representation dated 1.4.91.

8. The respondents have contended that the eligibility list is not a seniority list and the method of preparation of both are different. Respondents No.2-4 were junior to the applicant in the seniority list of Professors in the Specialist Grade I as on 1.1.86 (As corrected upto 1.7.86) at Annexure B to the OA) but that was prepared keeping in view the inter se seniority in the feeder grade, i.e., Specialist Grade-II. The dates of appointment of the applicant and other respondents remain the same and the eligibility list was drawn up with reference to their date of appointment as Professors.

9. We have considered the rival submissions and contentions of the parties regarding the circulation of the eligibility list carefully. We have also perused the original departmental file No.A32012/18/91-CHS.III\_containing the eligibility lists and the minutes of the concerned DPC held on 5th and 7th May, 1992 in the Union Public Service Commission chaired by a Member of the said Commission and two departmental officers to the post of Director Professors in the Super Time Grade. It is seen that 37 vacancies of 1991-92 were considered for being filled up.





(28)

It is seen from the note for the DPC at page 91/c that:

"NOTE FOR DPC

34 posts of Director-Professors (Rs.5900-6700) have been created in the Teaching Specialist Sub-cadre by upgradation - 3 more posts are also available for the year 1991-92. All these posts are to be filled by promotion.

According to Rule 4 (10)(iii) of the CHS Rules, 1982, Professors with 3 years' regular service in the grade failing which Professor with 17 years' of regular service in Group 'A' post are eligible to be considered for promotion as Director-Professors. Hence two separate eligibility lists, one containing the names of Professors who have completed three years' service in the grade and the other containing the names of Professors who have put in 17 years' of regular service in Group 'A' post are also enclosed. The said list also contained those Professors who do not have 17 years' service in Group 'A' but who are senior to the junior-most Professor (as on 1.10.91) in the list who has completed 17 years' service in Group 'A' and hence have to be considered.

The other documents are available with the UPSC."

10. Two separate eligibility lists accordingly were submitted by the department to the DPC. The applicant is in the first category eligibility list. The said list appears to be a combined list showing against each officer (Professor) his speciality, date from which appointed as Professor and the eligibility date for promotion. The applicant's speciality is Pharmacology and the date from which he is Professor is given as 21.3.86 and the date of his eligibility for promotion is 21.3.89, i.e., after three years of requisite service. Inter-se-seniority in the Speciality/Feeder grade is also indicated. Respondents No.2,3 and 4 are in other specialities and respondent No.5 S.K. Khanna does not appear to be in the said list.

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11. Relevant Rule 4 (10) of the Central Health Service Rules, 1982 (as amended upto 30.6.89) (Annexure G) is quoted below:

"(10)(i) There shall be 35 newly created floating/common posts in the Supertime Grade of Rs.5900-6700 (twenty posts in the Teaching Specialist Sub-cadre as Director-Professor and fifteen posts in the Non-Teaching Specialist Sub-cadre as Consultant) which will be in addition to the authorised strength of posts in Supertime Grade of Rs.5900-6700 in different Sub-cadres of Central Health Service.

(ii) The promotions under this Sub rule shall be made on the basis of a common eligibility list to be drawn separately for Teaching Specialist Sub-cadre and Non-Teaching Specialist Sub-cadre covering all officers in the respective Sub-cadre viz. Teaching and Non-Teaching without regard to any specialities.

(iii) The appointment against such posts shall be made only if the officer concerned has been duly assessed by a Departmental Promotion Committee in regard to his suitability for holding the post and has been working in the grade of Professor-Specialist Grade-I on a regular basis for not less than three years, failing which, has been working as a Professor Specialist Grade-I with 17 years of regular service in Group 'A' post.

NOTE :-

The eligibility list shall be prepared with reference to the date of completion by the officers of the prescribed qualifying years of service in the respective grades. however, in case of persons who have been appointed on the same date the seniority shall be determined as under:-

- (a) Where the eligible officers were considered by the same DPC the seniority shall be based on the order of merit.
- (b) If there is no order of merit, the seniority shall be on the basis of seniority in the feeder grade.
- (c) If there is no seniority in the feeder grade or it is not possible to determine the seniority even in the feeder grade, the length of regular service in the feeder grade shall be the guiding factor for determining the seniority.

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- (d) If length of service in the feeder grade is also the same, regular service in the next lower grades shall be taken into account, failing which date of birth."

12. There is nothing in the said rule which makes it obligatory on the part of the respondents to circulate the eligibility list to the concerned officers. The applicant has not been able to refute the contention of the respondents that the eligibility list and the seniority list are different. Even otherwise, "eligibility list" by its very nature contains the names of the officers who are eligible to be considered for promotion/selection as per the relevant rules and is prepared for the use of the DPC/Selection Board, as the case may be. It cannot be equated or considered as synonymous with the "Seniority List" particularly when the specialities in the feeder grade are more than one, as in the present case.

13. In view of the above position and since there is nothing to establish that the respondents have not followed the relevant rules quoted supra, regarding preparation of eligibility list concerned, we are of the opinion that the first ground is neither valid nor tenable in the eye of law. The said ground is, therefore, rejected.

14. Re the second ground urged by the applicant that the same seniority in the feeder grade should be given in the promotion post also, as it is filled up on seniority alone etc. the respondents in reply have denied the same vehemently. They have submitted that the promotion to the Director Professor post is done on "selection basis" and the judgement of the Tribunal (Madras Bench) in Dr. P. Rajaram's





31

case (supra) is set aside by the Hon'ble Supreme Court's judgement dated 20.10.92 (In UOI vs. Dr. P. Rajaram & Ors. (CA-4507/92)) (Annexure R-1).

15. It is seen from the aforesaid judgement of the Apex Court that the relevant rules and instructions including Rule 4 (10) of the CHS Rules, 1982 quota supra have been elaborately discussed and it was observed, inter alia, that "eligibility means interplacing of seniority lists on different specialities" and that:

"A careful reading of Rule 8 (4) (ii) reveals that departmental promotion to higher post in the respective special cadres and specialities within the sub-cadre concerned shall be made on the basis of selection on merit. It implies that, should vacancy arise in a particular speciality, this method is to be adopted. In contradistinction to this, under Rule 4 (10)(iii) even though one of the floating or common posts may be held by a particular person of a particular speciality, the said post can go to a person not belonging to that speciality. The teaching, speciality sub-cadre, forms a class within itself since it comprises of 29 specialities. Thus it follows the word "selection" used in Rule 8 (4)(ii) with reference to inter-se merit of person belonging to a particular speciality with regard to the vacancy occurring in that speciality."

It was held ultimately that:

"Above all these, we can not lose sight of the fact that for posts of this character in super-time grade carrying high salary, promotion could not be accorded merely on the basis of seniority. In our considered view, it should be on merit.

For the foregoing reasons, we are clearly of the opinion that the Tribunal had erred in merely adopting seniority as the basis of promotion and merit.

The impugned judgement of this Tribunal (Madras Bench was set aside and the appeals were allowed by the Apex Court.

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32

Moreover, it is strange that the applicant, as even earlier noted, has not bothered to impugn the promotion order dated 7.8.92 (Annexure E) which he himself has filed with the OA. If he is aggrieved by the alleged violation of his seniority in the eligibility list and wants the correction of the same as per the position in the feeder grade and the publication and circulation of the eligibility list. In fact, the question as to the validity of the impugned order and the correction of the seniority position of the applicant in the eligibility list its publication/circulation have become academic and hypothetical in view of the applicant's acquiescence regarding the aforesaid promotion order dated 7.8.92. In the above facts and circumstances the second ground urged by the applicant is also not valid or sustainable and is rejected.

18. Re the third ground as to his consideration/promotion when his juniors and in particular respondent No.5 was promoted in 1992, the respondents have submitted that the specialitywise seniority list was prepared and circulated every year and officers can very well know their positions in their particular speciality. No officer junior to the applicant in his speciality of Pharmacology has been given promotion before him as Director Professor.

19. We are of the opinion that the aforesaid ground is devoid of any substance in view of the above facts and circumstances stated above. It is also, therefore, rejected.

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33

20. In the facts and circumstances of this case and in view of the foregoing discussion, we are of the considered opinion that the OA is devoid of any merit and does not warrant any judicial interference.

21. In the result, the O.A. is dismissed. No costs.

*A. Vedavalli*

(DR. A. VEDAVALLI)  
MEMBER (J)

*N. Sahu*

(N. SAHU)  
MEMBER (A)

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