

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

Date of Decision

30/7/92

O.A. No. 1035/92

Dr. N.C. Saxena & Others ... Applicants

VS.

Union of India & Others ... Respondents

CORAM:

Hon'ble Justice Mr. Ram Pal Singh, Vice-Chairman (J)

Hon'ble Member, Shri I.P. Gupta, Member (A)

For the Applicants ... Shri G.D. Gupta

For the Respondents ... Mrs. Raj Kumari Chopra,

Shri G.L. Sanghi, Sr. Advocate  
for intervener respondents with Mr. M.K. Dua, counsel for the  
petitioners.

1. Whether Reporters of local papers may  
be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ? Yes.

DELIVERED BY HON'BLE SHRI I.P. GUPTA, MEMBER (A)

In this application filed under Section 19 of  
the Administrative Tribunal Act, the applicants have  
broadly asked for the following reliefs :-

- (i) Directing that the O.M. dated 19th July 1989  
(Annexure A5) is ultra vires and unconstitutional to the extent it fixes 1st October  
of the year, to which the vacancies belong  
and where ACRs are written financial year-  
wise, as the cut off date for determining  
the eligibility for promotion;
- (ii) directing that the cut-off date for the above  
purpose should be 31st March 1992 in the  
present case; and
- (iii) declaring the applicant as eligible for  
consideration in the OPC to be held for  
making promotions to 35 additional posts  
among others in the SAG/Consultant Grade  
in the scale of Rs 5900-6700.

2. The applicants are presently employed as Specialists  
Grade I in the scale of Rs. 4500-5700, which post belongs to

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non-teaching Specialist sub-cadre of the Central Health Service constituted under the Central Health Service Rules, 1982 as amended from time to time. The applicants were initially appointed/recruited as Specialists Grade II by direct recruitment on the basis of their selection in the open competition through the UPSC on various dates between May 1970 and November 1979. In the non-teaching Specialists Sub-Cadre, the post higher to the post of Specialist Grade II happened to be that of a Specialist Grade I. The said post was to be filled by the method of promotion to the extent of 75% of the posts failing which by direct recruitment and 25% by direct recruitment. The experience required was 7 years combined regular service in the grades.

3. Later on, on the basis of the recommendations of the Fourth Pay Commission, the scales of the two levels i.e. Level I and Level II became Rs 5900-6700 and some of the applicants who were Specialists Grade II got the revised scales from 1.4.98 and some from 31.3.89 after completion of a minimum of 9 years service in the post of Specialist Grade II. The orders issued in this regard said that Specialist Grade II Officers of the Non-Teaching Specialist Sub-Cadre of the Central Health Service were placed in the Specialist Grade II (Non-Functional Selection Grade) in the payscale of Rs. 4500-5700 in their respective speciality.

4. A committee had been set up under the Chairmanship of Shri R.K. Tikku in the Cabinet Secretariat to look into all aspects of career improvement and cadre restructuring of the doctors of the Central Health Service. The committee submitted its report to the Government which considered the report and took certain decisions. These decisions are contained in the Office Memorandum dated 14th November 1991 (Annexure A3). Amongst various recommendations, the

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following are included :-

- (1) 35 additional posts of Consultants (Rs 5900-6700) shall be created in the Non-teaching Specialists Sub-cadre of the Central Health Service by upgrading an equivalent number of posts of Specialists Grade I (Rs. 4500-6700) on floating basis.
- (2) The distinction between the Non-Functional Selection Grade (Rs. 4500-5700) and Functional Grade (Rs.4500-5700) will be eliminated in the Central Health Service. All Associate Professors in Non-Functional Selection Grade (Rs.4500-5700) shall be designated as Professors from 1.12.91. All Specialists Grade II officers (Non-teaching and Public Health Sub-Cadres) in the Non-Functional Selection Grade (Rs.4500-5700) shall be designated as Specialists Grade I w.e.f. 1.12.1991.
- (3) All Professors (Rs. 4500-5700) and Specialists Grade I officers (Non-teaching and Public Health Sub-cadres) will be eligible for consideration for promotion to the Senior Administrative Grade level posts (Rs.5900-6700) subject to availability of vacancies, provided they have completed at least 3 years of regular service in the scale of Rs. 4500-5700 irrespective of whether the said service was performed in the Functional Grade or Non-Functional Grade of Rs.4500-5700. The Associate Professors and Specialists Grade II, officers presently in the Non-functional Selection Grade and to be designated as Professors and Specialists Grade I officers respectively from 1.12.1991, shall on masses be placed below the existing Professors and Specialists Grade I officers respectively for the purpose of preparing eligibility lists for consideration for



promotion to Senior Administrative Grade level posts (5900-6700).

5. According to the Central Health Service (Amendments) Rules, 1989, the posts of Super-time Grades are to be filled by promotion failing which by direct recruitment. For promotion officers holding posts in Specialists Grade I in Non-teaching Sub-cadre with 3 years regular service in the grade is required. Alternatively they should have 17 years of regular service in Group A posts. The applicants do not have 17 years service in Grade A but the Learned Counsel argued on the strength of the provision for 3 years regular service in the grade of Specialist Grade I.

6. The contentions of the Learned Counsel for the applicants were :-

(i) The cut-off date as 1st October of the year where ACRs are written financially yearwise for determining the eligibility of the officers for promotion is arbitrary. His argument was that if the vacancies for the year 1991-92 were to be filled then the cut-off date should be 31st March 1992. There was no sound reason for fixing the date as 1st October when 35 posts in super time-scale were also created later than 1st October consequent upon the cadre review.

(ii) For purposes of computing 3 years regular service in the scale of Rs 4500-5700, the period of service performed in the functional grade or non-functional grade of Rs 4500-5700 should be taken into account alike in terms of para 6 of the O.M. dated 14th November 1991 issued by the Ministry of Health, as extracted earlier in this order.

(iii) To designate Associate Professor, <sup>Special</sup> Grade II in Non-functional Selection Grade of Rs 4500-5700 as Professors/Specialists Grade I from 1.12.91 is arbitrary. Since the payscale of Rs 4500-5700

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is the scale of Professors/Specialist Grade I also, therefore, the designation should relate to the date when this scale was granted to the applicants.

7. The Learned Counsel for the applicants argued that by designating the applicants as Specialist Grade I from 1.12.1991 and by taking the cut-off date for eligibility as 1.10.91, the applicants are being denied the benefit of being considered for the post of Consultant/SAG, though they have been getting the non-functional scale of Rs. 4500-5700 from 1.4.88 or 31.3.89.

8. The Learned Counsel for the respondents contended that the cut-off date as 1st October was fixed by the Govt. by order dated 19th July, 1989. This cut-off date which is the middle of the financial year was prescribed by a general circular and is applicable for all categories of posts. The applicant cannot find fault with this circular when it has been acted upon for various promotional posts under the Government of India and even in respect of other posts created as a result of the recommendations of the Tikku Committee Report. He added that the memorandum dated 14th November 1991 containing the decisions of the Government of India regarding the Tikku Committee Report was clear enough. 35 additional posts of consultants were created in the Non-teaching Specialists cadre of the Central Health Scheme by upgrading an equivalent number of posts of Specialists Grade I (Rs 4500-5700) on floating basis. The distinction between non-functional selection grade and the functional grade was eliminated from 1st December 1991. This date has also rationality since the decisions were taken by the O.M. dated 14th November 1991 and, therefore,

the elimination of the distinction between functional grade and non-functional grade could either be from 14th November 1991 or from the 1st of the month following the date of the issue of the order. The 1st December 1991 was accordingly chosen. There is no arbitrariness about it. The applicants were Specialists Grade II Officers (non-teaching) in the non-functional grade of Rs 4500-5700 and they were designated as Specialists Grade I from 1.12.91. The recruitment rules for promotion to the post of SAG/ Consultant provided that officers holding posts in Specialists Grade I in non-teaching sub-cadre with 3 years regular service in the grade would be eligible.

Though the applicants were holding the scale of Specialists Grade I, they were not holding the posts of Professors/ Specialists Grade I on the date of eligibility i.e. 1st October 1991 and were, therefore, ineligible for consideration for vacancies of the year 1991-92.

9. The Learned Counsel for the respondents cited the case of Sushma Sharma v/s State of Rajasthan [AIR 1985 Volume 72 SC 1378]. The Learned Counsel cited the following therefrom :-

The problems of government are practical ones and may justify, if they do not require, rough accommodations, illegal, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void.

10. As an interim relief the respondents were restrained by order dated 13th April 1992 from holding the DPC for filling up the 35 additionally created posts in the SAG/ consultant in the scale of Rs. 5900-6700. This interim

relief is continuing. A SLP was filed in the Hon'ble Supreme Court against the order of the interim relief and against another order dated 1st July 1992 rejecting an M.P. for impleading some petitioners. The Hon'ble Supreme Court observed that it was open to the petitioners in the SLP to move the Tribunal for a modification of the Stay order so as to confine the stay only to the extent of the posts corresponding to the number of original petitioners before the Tribunal. The Court further observed that it will be within the jurisdiction of the Tribunal to decide whether they should embark upon a consideration of such an interlocutory prayer if made or to proceed to dispose of the main matter itself expeditiously. The Hon'ble Court further gave the directions to allow the petitioners in the SLP to be formally impleaded. However, they made it clear that the participation of the petitioners should not entitle them to re-open the earlier stages of the pleading and they shall be entitled to make their submissions on the existing pleadings.

11. We heard extensively the Learned Counsel on both sides including the counsel for the impleaded petitioners (referred above) on the O.A. as also on the interim relief.

We have decided to deal with the case and dispose of the main matter itself, having had the benefit of detailed arguments.

12. The first question before us for consideration is whether the cut-off date given in the O.M. dated 19th July 1989 of the Department of Personnel & Training is maintainable or not. This Memorandum fixed the cut-off date as 1st October of the year where ACRs are written financial year-wise for determining the eligibility of officers for promotion. About cut-off date, no doubt the choice of the date, which has necessarily to be introduced to effectuate some benefits is open to scrutiny by the Bench and must be supported on the touch stone of Article 14. The Learned Counsel for the applicants quoted extensively from the judgement in



the case of D.S. Nakara v/s Union of India (AIR 1983 SC 130). In this case the classification in the revised pension formula between pensioners on the basis of date of retirement specified in the memorandum was held arbitrary and violative of Article 14 of the Constitution. The Court had observed that all persons similarly circumstanced should be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situations and there should be no discrimination between one person and another, if as regards the subject matter of the legislation the position is substantially the same. The Court added that it was the event of retirement subsequent to the specified date which introduced discrimination in one otherwise homogeneous clause of pensioners. The Government could not pick out a date from a hat..

13. Similarly, the Learned Counsel for the applicant cited the case of R.K. Ojha v/s Land & Development Officer, New Delhi & Others [1988 (6) ATC 601] where Government allowed benefit of special pay in pay fixation from a particular date and the applicant was denied benefits because he stood promoted before that date. It was held that no valid basis was shown for fixation of cut-off date and therefore it was arbitrary.

14. Yet another case was quoted by the Learned Counsel for the applicant. This was the case of Ranjit Singh v/s Government of India [1990 (14) ATC 320]. The observation therein was that the stipulation requiring the applicant to clear the trade test scheduled to be held during April 1988 was discriminatory when there was no such stipulation for those appointed prior to 18.3.87.

15. In the case of D.R. Nim v/s Union of India [AIR 1967 SC 1301], the Hon'ble Supreme Court had held that there could not be an arbitrary date for fixing of a principle.

16. Keeping in view the above case laws and arguments, the thing to be seen is whether the cut-off date in this case has been picked out from a hat, whether it divides a homogenous class, whether it imposes any condition on a particular group exempting others similarly placed and whether there is any illegality or irrationality or arbitrariness about it. Just as the period of service in the previous post is required to be laid down by the executive for promotion, the cut-off date for purposes of reckoning has also to be so prescribed. The respondents have done so. The date chosen is the mid of a financial year (1st October) for the vacancies of the year. One can argue that if the vacancies relate to 1991-92 these being considered should have acquired the requisite experience by the beginning of the year so that they could be considered for a vacancy falling in the earlier part of the year. Others can argue with equal force if not greater that it should be the end of the year i.e. 31st March 1992 since the vacancies of the whole year were being considered. The respondents have chosen a mid path and fixed 1st October as the cut-off date. This is clearly intelligible. It is not a case of dividing a homogenous class or stipulating something for one group and something else for another group in a homogenous class. In the case of D.S. Nakara all were pensioners and removal of the barrier in regard to date of retirement did not affect adversely any petitioner. In this case the cut-off date is equally applicable to all. Shifting of the cut-off date may help some but at the cost of others, whether this cost is marginal or marked is immaterial. The respondents have fixed a cut-off date not only for the purpose of promotions in question in this case but for promotions to posts generally in various Departments. The

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order stood issued much before the question of promotions in this case arose. We find no irrationality or arbitrariness about it. We cannot fault the decision even on the ground that malafide vitiates or extraneous and irrational factors foul. In this view of the matter the cut-off date fixed by the respondents as 1st October is upheld.

17. The next question which arises is whether the full service performed in the functional grade or non-functional grade should count towards eligibility. Doubtless, they would so count in terms of the O.P. of Ministry of Health dated 14th November, 1991. But the important consideration is that according to the recruitment rules the officers to be considered should be Specialists Grade-I. The date for eligibility is determined on the basis of the cut-off date 1st October. The applicants were holding posts in Specialist Grade-II only though in the scale (non-functional) equivalent to Specialist Grade I. The distinction between the non-functional selection grade (Rs 4500-5700) and functional grade (Rs 4500-5700) was eliminated and all Specialist Grade-II officers (non-teaching) in the non-functional selection grade were designated as Specialist Grade I w.e.f. 1-12-91. Therefore, it is evident that the applicants were not Specialist Grade I on 1st October, 1991. An argument that the matter was under consideration for long and the date 1st December, 1991 could have been advanced does not take us far in consideration of the applicant's case. The fact remains that the Government's decisions were taken on 14th November, 1991 and there was nothing arbitrary in the respondents giving effect to their decision from a prospective date; the date of issue of the decision was 14th November, 1991 and the respondents understandably fixed 1st December as the date for elimination of the distinction between the Specialists Grade II (nonfunctional)

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and Specialists Grade I carrying the same pay-scale. It was the prerogative of the Executive to decide from which date the benefits should flow and so long as the fixation of date was not arbitrary or unintelligible we cannot find fault more so, when it does not show any discrimination.

18. In the context of the aforesaid facts and arguments in this particular case we are of the view that the reliefs claimed in the application are not maintainable. However, we hasten to say that we expect respondents to set in motion the question of convening the subsequent DPC expeditiously for the vacancies carried forward and anticipated during 1992-93, more so, when the respondents are said to be having 40 vacancies during 1991-92 for which the eligible ones according to the criteria fixed by the respondents are reported to be only 33. The object of creating posts was to remove stagnation and avoid frustration amongst Specialists who are discharging very important and responsible duties. It was with this objective that it appears that non-functional scale equivalent to scale of Specialists Grade I was prescribed and given to some members of Specialists Grade II who had had long years of experience. If the next DPC is held early their avenues for promotion to posts of SAG/Consultants would open up and minimise their frustration as they would be missing the bus by a thin and small margin of time. This would also be consistent with the guidelines of DPC issued by respondents wherein it has been mentioned that the appointing authorities should initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents for placement before the DPC.

19. With the observation as above, the OA is dismissed with no order as to costs. The interim order, which gets merged into this order, therefore, stands vacated.

*I.P. Gupta*  
I.P. Gupta  
Member (A) 30/7/92

*Ram Pal Singh*  
Ram Pal Singh  
Vice-Chairman (J)