

Two
Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1997/93
OA No. 1235/93
OA No. 1792/93

32

New Delhi, this the 24th day of October, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

OA 1997/93

Dr. Lal Chand Thakur,
s/o Sh. Jawala Prasad,
r/o E-19, G.T.B. Hospital Complex,
Shahdara, Delhi.Petitioner

(By Sh. G.D. Gupta)

Versus

Union of India through

1. Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. The Secretary (Medical & Public Health)
Govt. of NCT of Delhi, Delhi.
3. The Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
4. Dr. (Mrs.) Meena Gupta,
Professor of Neurology,
G.B. Pant Hospital,
New Delhi.Respondents

(By Smt. Raj Kumari Chopra for official respondents and
Smt. Shyamla Pappau alongwith Sh. B.S. Mainee and Sh. M.R.
Krishnamurthy for private respondents)

OA No. 1235/93

Dr. Lal Chand Thakur,
s/o Sh. Jawala Prasad,
r/o E-19, G.T.B. Hospital Complex,
Shahdara, Delhi.Petitioner

(By Sh. G.D. Gupta)

Versus

Union of India through

1. Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. The Director General of Health Services,
Nirman Bhawan, New Delhi.

3. The Secretary,
Ministry of Personnel, Public Grievances &
Pension, Department of Personnel & Trg.,
New Delhi.

4. The Union Public Service Commission through
Secretary,
Shahjahan Road,
New Delhi. Respondents

(33)

(By Smt. Raj Kumari Chopra for respondents)

OA No. 1792/93

Dr. (Mrs.) Meena Gupta,
Professor of Neurology,
G.B.Pant Hospital,
New Delhi.
r/o 23/143, Lodhi Colony,
New Delhi. petitioner

(By Advocate: Smt. Shyamla Pappu alongwith Sh. B.S. Mainee
and Sh.M.R. Krishnamurthy)

Versus

Union of India through

1. Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.

2. The Secretary,
Ministry of Personnel, Pension and
Public Grievances,
Department of Personnel & Training,
Establishment (D) Section,
North Block, New Delhi.

3. The Secretary (Medical)
Delhi Administration,
Delhi.

4. Dr. Lal Chand Thakur,
s/o Sh. Jawala Prasad Thakur,
E-19, Guru Teg Bahadur Hospital Complex,
Shahdara, Delhi. Respondents

(By Smt. Raj Kumari Chopra for official respondents and
Sh. G.D.Gupta alongwith Shri Promod Gupta for private
respondents)

O R D E R

[Hon'ble Shri S.P. Biswas, Member(A)]

Petitioner in OA-1235/93 Dr. Lal Chand Thakur
is also petitioner in OA-1997/93 and respondent no. 4 in
OA 1792/93. The petitioner in OA 1792/93 was a respondent

of

(bX)

in OA 1235/93 and in OA 1997/93. Dr. Lal Chand Thakur and Dr. (Mrs.) Meena Gupta [in short Dr. Thakur and Dr. (Mrs.)Gupta] were appointed as Lecturer on 10.10.1980 and 25.1.1982 respectively. Thereafter, Central Health Services Rules of 1982 were promulgated vide Notification dated 11.11.1982 and as a consequence both Dr. Thakur and Dr.(Mrs.) Gupta were re-designated and appointed as Assistant Professor w.e.f. 1.1.1983.

2. One vacancy pertaining to the year 1985, which originally belonged to the direct recruit quota, was available and the same was referred to Union Public Service Commission (in short UPSC) for direct recruitment. On both the occasions the UPSC expressed its inability to recommend a suitable candidate. Subsequently in March, 1988 UPSC was requested to allow to fill up the vacancy by promotion. UPSC advised that since this fact amounts to relaxation of the recruitment rules the matter may be first referred to DOP&T and then to UPSC alongwith their advise. Subsequently, the matter was referred to DOP&T on 26.5.1988 seeking their concurrence to fill up the post of Professor of Neurology, GB Pant Hospital, New Delhi by promotion through DPC instead of by direct recruitment. DOP&T conveyed their no objection and as a one time measure allowed the proposed relaxation of recruitment rules so as to divert the vacancy to the promotion quota on 14.6.1988. Accordingly, the proposal was sent to UPSC to convene a meeting of the DPC to recommend the name of the eligible officer for promotion as Professor of Neurology on 22.7.1988. Subsequently a DPC held its meeting on

35

30.6.1989 and Dr. (Mrs.)Gupta was selected and posted as Professor of Neurology, G.B. Pant Hospital, New Delhi w.e.f. 7.12.1989. Dr. Thakur challenged this order of appointment of Dr. (Mrs.)Gupta by an OA-1659/89 alleging inter alia that Dr. (Mrs) Gupta was not eligible for consideration for promotion for the said post since she has not completed the period of eligibility in accordance with the recruitment rules for the post of Professor. Accordingly, he had prayed that the Tribunal may set aside the minutes of the DPC held in June/July, 1989 and declare the selection of Dr. (Mrs.)Gupta to the post of Professor of Neurology, G.B.Pant Hospital, New Delhi, illegal. It was also prayed in the said OA that the respondents therein be directed to declare the applicant as legally promoted to the post of Professor of Neurology, G.B. Pant Hospital, New Delhi w.e.f. 1987 with all consequential benefits.

The respondents in the said case submitted that in accordance with the rules of 1982 both Dr. Thakur and Dr(Mrs) Gupta had put in three years of service at the time they were appointed as Professors. As such both of them were appointed in accordance with the Rules by way of re-designation only as Assistant Professor w.e.f. 1.1.1983. It was also pointed out by the respondents in the said OA that in view of the decision to relax the recruitment rules with the approval of DOP&T and transferred the said vacancy from direct recruit quota to promotee quota. They have duly intimated the UPSC to fill up the post in accordance with the Rules of 1982. According to the said recruitment rules the Associate Professor with four years of regular service in the grade in the case of persons directly recruited as Assistant Professor or Assistant Professor with seven years combined

regular service in the grade of Associate Professor and Assistant Professor out of which not less than four years shall be as Associate Professor, were eligible for consideration to the post of Professor. It was also provided in the recruitment rules that the condition of four years of regular service as Associate Professor was not applied in case of an Associate Professor who was promoted to the post of Associate Professor before coming into force of the Central Health Service (Amendment) Rules of 1986, rendering five years of regular service as Assistant Professor. Thus the requirement in case of both the parties in this case was five years regular service as Assistant Professor.

3. The case of the petitioner in the said OA namely Dr. Thakur was that since the UPSC received the requisition for filling up the post on 22.7.1988 by relaxation of the rules and finally the DPC was held on 30.6.1989, on the crucial date both on 22.7.1988 as well as by 30.6.1989, Dr. (Mrs.) Gupta was not eligible to be considered since she had not completed five years of required service, by that period. The official respondents on the other hand submitted since at the time when the DPC was held both the parties had not fulfilled the requisite experience of four years as Associate Professor in respect of direct recruits for being eligible for promotion to the post of Professor, the remission of two years in the total qualifying service as admissible to them were granted to both of them. But this court by an order dated 9.9.1991 did not appreciate the said stand of the respondents and stated that the question of remission of two years in both the cases was not in accordance with the rules and tried to

3.1

proceed with the assumption that the required number of years for being eligible for promotion to the post of Professor was four years and Dr. (Mrs) Gupta did not fulfil the said eligibility criteria as on 30.6.1989.

4. Accordingly this court allowed the petition and directed the respondents to hold a fresh DPC to consider only those persons who were eligible as on 30.6.1988 and based on the recommendation of the DPC considered the persons recommended by the DPC only for appointment to the post.

5. In pursuance to the said order the respondents held the review DPC which was directed to be held as on 30.6.1989 and the said review DPC was held on 1.1.1992. It so happened and only Dr. Thakur was found eligible in accordance with recruitment rules and his name was considered but not recommended because of his service record. It was stated that the said DPC applied the bench mark of 'Very good' and Dr. Thakur could not make the grade in accordance with the said bench mark.

6. The contention of Dr. Thakur, therefore, is that the finding of the review DPC as per the orders of this court dated 5.1.1991 is illegal to the extent that the review DPC has wrongly applied the rules prescribing the higher bench mark which, according to him, was not applicable to this case. Thus, in this OA namely OA-1235/93 Dr. Thakur is seeking a declaration from this court that the review DPC held on 1.1.1992 which was to be held as on 30.6.1989 is illegal and the rejection of the

(38)

applicant's candidature is wrong since the OM dated 10.3.1989 requiring a bench mark of 'Very Good' was wrongly applied to the case of the petitioner by the DPC and the DPC ought not to have followed the office Memorandum dated 10.3.1989 rather it should have followed this O.M. prior to the said date. It was also stated by Dr. Thakur that since the higher bench mark of 'Very good' was prescribed only by the OM dated 10.3.1989, the said rule could not be made applicable to the case of Dr. Thakur for the reasons that the vacancy has already arisen as on 22.7.1988, the date on which the respondents had sent the requisition for filling up the post of Professor of Neurology, G.B. Pant Hospital, New Delhi after converting the same from the direct recruit quota to the promotee quota. Since in the present case, the date of occurrence of vacancy should have been considered as 22.7.1988, OM dated 10.3.1989 should not have been made applicable to the case of the petitioner and as such the review DPC has wrongly applied the rule that came into force before occurrence of the vacancy is illegal and contrary to various decisions of Hon'ble Supreme Court.

7. It is true that the case of the official respondents before this court in the previous OA was that they sought the concurrence of DOP&T to relax the recruitment rules so as to divert the vacancy to the promotee quota and the said approval of DOP&T was obtained on 14.6.1988. There is considerable force in the arguments of the petitioner to the extent that the vacancy even though had only arisen in the year 1985 as in the direct recruit quota, since the approval of DOP&T was obtained to alter the recruitment rules and convert the same to the promotee quota on 14.6.1988, the date of occurrence of this

(3a)

vacancy on a promotee quota should have been held to be 14.6.1988 or at least as 22.7.1988 the date on which the respondents had sent the requisition to the UPSC for recruiting the appropriate candidate to the post of Professor of Neurology and if the date of occurrence of vacancy is taken either as on 14.6.1988 or as on 22.7.1988, the review DPC held on 1.1.1992 could not have applied a rule contained in OM dated 10.3.1989 with retrospective effect to the case of the petitioner. It is also not the case of the respondents that OM dated 10.3.1989 has retrospective effect either. In the absence of the same, the review DPC could not apply a higher bench mark of 'Very good' while holding the review DPC as on 30.6.1989 in accordance with the previous decision of this court dated 5.1.1991.

8. Even though we find there is some substance in the contention raised on behalf of the petitioner and this was also the contention raised by the petitioner in the previous OA namely OA-1659/89 and said court had returned a finding that vacancy should be deemed to have been arisen as on 30.6.1989 and in view of the said finding, the direction that followed namely to hold a review DPC as on 30.6.1989 and when the said DPC in accordance with the said order was held, it is not now open to the petitioner to claim that the vacancy should be deemed to have been arisen in the promotee quota as on 14.6.1988 or as on 22.7.1988.

9. The counsel Mr. G.D. Gupta appearing on behalf of Dr. Thakur also attempted to argue that the finding of the previous court that the crucial date i.e.

30.6.1989, as the date on which the vacancy arose was only for the purpose of finding the eligibility of the incumbents to be considered promotion on the said date and that cannot be treated as finding as to the actual occurrence of vacancy for the purpose of application of the rules with or without retrospective effect. We are afraid, we will not be able to agree with the contention of the counsel for the petitioner, for this reason that even though the parties for which the date of occurrence has been found by the previous court to be as 30.6.1989, the findings of the court remains to be that the date of occurrence of vacancy as 30.6.1989, as far as the parties to the same case are concerned. It makes no difference that the said date will also be a crucial date for any other purpose such as to find out which of the rules will be made applicable at the time of holding the review DPC. Moreover in view of a specific direction of the previous court that the review DPC shall be held as on 30.6.1989 considering that that date being the date of occurrence of vacancy, it cannot be said to be otherwise nor it can be said that it is open to the petitioner now to state that the date of occurrence of vacancy is prior to the date of 30.6.1989 on these grounds, the claim of the petitioner that the OM dted 10.3.1989 has been wrongly applied to the case of Dr. Thakur, has no legs to stand and therefore rejected. In case this court agrees with the contention of this petitioner, that may amount to reviewing the findings of the previous court, which we are inclined to do, at present.

(A)

10. On the other hand, the Senior counsel Mrs. Shyamla Pappu appearing on behalf of Dr. (Mrs.) Gupta stated that since the review DPC has held on 1.1.1992 as on 30.6.1989 as per the directions of this court in the previous OA dated 5.1.1991 and it was found that no candidate is available, the DPC should have been held in the next year namely in the year 1991 by which time Dr (Mrs.) Gupta became eligible and applying the revised bench mark of 'Very good' by OM dated 10.3.1989. Dr. Gupta was eligible and available for promotion to the post of Professor Neurology in G.B.Pant Hospital, New Delhi. It was also stated that since the said review DPC held on 1.1.1992 considered only Dr. Thakur as the eligible candidate and the said DPC had found Dr. Thakur as suitable to be recommended for promotion to the said post, and since vacancy continued to exist, the DPC should have been held in the subsequent years by which time Dr. (Mrs.) Gupta had become subsequently eligible to be considered against the said post. It was stated that the right of Dr. (Mrs.) Gupta to be considered as eligible for the said post, remains and the respondents have denied the said right of being considered for promotion in case of Dr. (Mrs.) Gupta.

11. In the meantime on behalf of the official respondents, it was stated that in accordance with the Tikku Committee recommendations, the Government of India considered the said recommendations and announced implementation of the same by OM dated 14.11.1991. One of the decisions taken in this regard was that all specialised grade-II officers with six years service in the scale of Rs. 3500-5000/- or total 8 years service in the scale of

A2

Rs. 3700-5000/- shall be placed in the scale of Rs. 4500-5700/- according to the existing guidelines. On such placement in the scale of Rs. 4500-5700/-, the Associate Professor will be designated as Professor. It was also decided that all the existing Associate Professors (NFSG) shall be placed in the scale of Rs. 4500-5700/- and re-designated as Professor. Accordingly, both of them namely Dr. Thakur as well as Dr(Mrs) Gupta were designated as Professors from the same date namely 1.12.1991 in accordance with the orders passed on 8.1.1992. Thus, both the doctors became Professor w.e.f. 1.12.1991 while Dr. (Mrs) Gupta claimed the said designation as Professor w.e.f. 22.8.1989, the date on which she was eligible to be considered for promotion to the post of Professor of Neurology while Dr. Thakur claimed to be eligible for the post w.e.f. 30.6.1989, the date on which the review DPC was directed to be held by the previous court as on the said date.

12. Learned counsel Mrs.Raj Kumari Chopra, appearing on behalf of the official respondents, in her inimitable manner submitted that since both the parties namely Dr. Thakur as well as Dr (Mrs) Gupta were now become Professors w.e.f. 1.12.1991, no further vacancy existed for the purpose of considering their promotion to the post of Professor as back-dated or from the date on which they were seeking their promotions to be considered. It was also stated that the vacancy that arose in the year 1985 which was in the direct recruit quota was diverted to the promotee quota by relaxation of the recruitment rules only as a one time measure and the DPC has been held for the said purpose. Thereafter, even in a review DPC held



court or find any person eligible for promotion to the said vacancy. According to the course, the said vacancy has thereby lapsed and it is only an academic question that remains to be considered especially after that both both the parties have been promoted or treated as Professor w.e.f. 1.12.1991.

13. It was also stated by the counsel for the respondents that since both the parties are now Professor w.e.f. 1.12.1991, the parties are seeking pre-dated promotion only for the purpose of determining the seniority and thereby claiming the office of the Head of the Department which obviously is available only to the seniormost. According to the counsel for the respondents, the status of the Head of the Department adds no other benefit to the promoted post of Professor and as such, no further relief has been claimed in this petition for designating either Dr. Thakur or Dr (Mrs.)Gupta as Head of the Department, which will also be academic question to be considered that, between the two who would be the seniormost for the purpose of assignment as Head of the Department, this court may leave the question for the department to decide.

14. We find considerable force in the submission of the counsel for the respondents. Since the review DPC has been held against the vacancy after diverting the same from direct recruit quota to the promotee quota as a one- time measure and thereafter a review DPC was held as per the direction of this court contained in the order dated 5.1.1991 and thereafter since both the parties have been promoted to the post of



Professors, may be by upgradation, we are of the opinion that no relief in the circumstances can be given to the petitioner in OA No. 1235/93. Similarly for the same reason, the relief claimed by the petitioner in OA No. 1792/93, namely that the additional review DPC may be held for the subsequent for the subsequent years also has no legs to stand in view of the fact that all existing vacancies of Professors have been exhausted after the acceptance of the recommendation of the Tikku Committee report and both the parties became Professors alongwith a large number of similarly placed colleagues who became Professors on the said date. We are of the opinion, no further vacancy is available for consideration for the purpose of promotion as the same was made available as a one-time measure and that one-time measure has ceased to exist, after a DPC failed to recommend any person for appointment after both the parties alongwith many other incumbents were appointed as Professors.

18. In the circumstances, both the OAs are dismissed as devoid of any merit. There shall be no order as to costs.

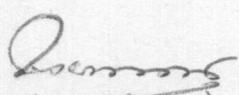
19. The petitioner in OA 1997/93 is the same as the petitioner in OA 1235/93 but in OA 1007/93 what the petitioner is seeking is a direction from this court to quash the order dated 13.4.1992 by which Dr. Thakur was transferred and posted as Professor of Neurology at G.T.B. Hospital, Shahdara, Delhi. The said petitioner had also sought a direction from this court that the order by which Dr (Mrs) Gupta was designated as Professor of Neurology w.e.f. 1.12.1991, also should be quashed since she was

45

never appointed to the post of Non-functional Selection Grade Associate Professor. The contention of the counsel appearing on behalf of the petitioner was replied to by the official respondents stating that Dr. Thakur was the Head of the Department of Neurology, JIPMER, Pondicherry and was transferred to G.B. Pant Hospital against the vacancy of Dr. M.M. Mahendiratta, Associate Professor of Neurology, G.B. Pant Hospital vide the letter dated 21.1.1992. Dr. Thakur joined the said post on 12.2.1992 and in the meantime Dr. M.M. Mahendiratta had requested the respondent no. 2 on 11.2.1992, that he should not be transferred to JIPMER due to his family circumstances. Respondents in consultation with the Health Secretary, retained Dr. Mahendiratta who was not relieved from his position as Associate Professor of Neurology, G.B. Pant Hospital and the Health Secretary on 27.2.1992 had directed the authorities to adjust Dr. Thakur in G.T.B. Hospital in order to operationalise the proposal. Thereafter a request was sent to the Ministry to create an additional post of Professor of Neurology in G.T.B. Hospital to accommodate Dr. Thakur on 24.2.1992 and the Ministry of Health on 3.3.1992 suggested to convert the post of Professor of Neur-Surgery in G.T.B. Hospital into that of Professor of Neurology for the purpose of adjusting Dr. Thakur after taking prior approval of Finance Department and the Lt. Governor of Govt. of NCT of Delhi on 16.4.1992. The post of Professor in Neuro Surgery was converted into the post of Professor of Neurology and Dr. Thakur made a representation against the said proposal and the same was rejected by the Ministry. As such the transfer of Dr. Thakur and thereafter the conversion of one post of Professor of Neuro Surgery into the post of Professor of

4b

Neurology was stated to have been done in public interest and for the purpose of operationalising the cadre in accordance as the situation necessitated. In view of the said statement, we find that the grievance of the petitioner in OA 1997/93 also has no legs to stand. Accordingly the said OA is also dismissed with no order as to costs.



(S.P. Biswas)
Member (A)

naresh



(Dr. Jose P. Verghese)
Vice-Chairman (J)