

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2360/93

New Delhi this the 8th Day of November, 1993.

The Hon'ble Mr. N.V. Krishnan, Vice Chairman(A)

The Hon'ble Mr. B.S. Hegde, Member(J)

Dr. Narendra Bihari
S/o Sh. Krishan Bihari
Officer on Special Duty(Equipments)
Directorate General Health Services,
Ministry of Health & Family Welfare,
New Delhi

(By Advocate Sh. R.P. Oberoi)

... Applicant

Versus

1. Union of India, Through Secy.
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. The Chairman, U.P.S.C.
New Delhi
3. The Establishment Officer,
Department of Personnel,
Ministry of Home Affairs,
North Block, New Delhi
4. Sh. R.L. Mishra, I.A.S.
Secretary,
Ministry of Health,
Nirman Bhawan,
New Delhi
5. Dr. A.K. Mukherjee,
Director General Health Service
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.

... Respondents

ORDER(ORAL)

(Hon'ble Sh. N.V. Krishnan, Vice Chairman(A))

Applicant is aggrieved by the Annexure-I
notification dated 12.10.93, appointing the 5th

respondent as Director General of Health Service (DGHS) w.e.f. 6.10.1993 and the office order dated 6.10.1993 which states that the 5th respondent has assumed the charge of the post of Director General of Health Services in the D.G.H.S. with effect from 6.10.1993.

2. The applicant belongs to Central Health Service and is O.S.D. in the same Directorate.

3. While so, the Central Health Services Rule, 1982 Annexure-III was amended from 16.1.1989 by inserting Rule 4(9) consequent upon upgrading of 4 posts from the scale Rs 5900-6700 to Rs 7300- 7600/- The revised pay scale is similar to the post of Additional D.G.H.S, but not so designated. The amended Rule 4(9) laid down the criteria for promotion to the "upgraded posts"

4. The applicant was appointed to one of the upgraded posts in the year, 1989 regularly. It is stated in para 4.6. of the O.A. that two temporary posts of Additional D.G.H.S were created in November, 1991 for which selection was to be made. At that time, the respondents intended to consider the applicant also to one of the post of Addl. Director General/ by way of promotion though the applicant was already / working on an upgraded post on the same pay scale. Therefore, the applicant filed O.A. No. 545/92 in the Tribunal

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which was disposed on 12.11.92(ATR, 1993(1)CAT 68). A copy of the judgement is at annexure A-5. The contention raised was that as the applicant was already holding an upgraded post in a scale of Rs 7300-7600 after proper selection by an Expert Committee, he cannot be told that he would again be considered for promotion as Additional Director General, CGHS on the same pay scale. This contention of the applicant was upheld and the Tribunal disposed of the case with the following directions:-

" We therefore, direct that the respondents should consider suitable amendments to the CHS Rules regarding the method of recruitment to the post of Additional DGHS and lay down the method and manner of selection keeping in view that persons already holding upgraded posts in a scale of Rs 7300-7600 under Rule 4(9) of CHS Rules after proper selection by an Expert Committee cannot be told that they would be considered for promotion as Additional DG CGHS in a scale of Rs 7300-7600. It is for the respondents then to determine whether promotees under Rule 4(9) would be considered for appointment as Addl.DGHS by transfer or otherwise, by the method and manner to be prescribed or whether they would consider any other alternative including the one in para 23. Obviously, we refrain from suggesting any precise amendment which is the domain of the legislature/executive. But we cannot restrain ourselves from directing that the respondent's stand that the applicant would be considered for appointment as Additional DGHS by promotion is unjust and illegal."

5. It is stated in the O.A. that since then, the respondents have framed Draft Rules in pursuance of the Tribunal's decisions. However, the amended rules regarding the criterion for appointment of Additional Director General

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have not yet been notified. If they had been notified and appointments made to the posts of A.DGHS, the applicant would have also been eligible for consideration for the post of

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Land thereafter to the post of D.G.H.S. Additional D.G.H.S. *u* Without following this procedure,

the 5th respondent was appointed as Director General of Health Services.

6. Aggrieved by this action, this O.A. has been filed seeking the following reliefs in

para-8:-

- I. The impugned order dated 6.10.93 and notification dated 12.10.93 regarding appointment of Dr.A.K.Mukherjee (R.No.5) as D.G.H.S. be quashed.
- II. Respondent No.1 be directed to publish immediately the notification regarding amendment of the Recruitment Rules relating to the post of Additional DGHS which has already been approved by the UPSC and which publication has been deliberately and purposely withheld till date.
- III. Respondent No.1 and 2 be directed that after publication of the amendment referred to in clause II above, meetings of the Departmental Promotion Committee, be convened for filling up the existing vacancies of Additional DGHS and the posts under Rule 4(9) of C.H.S. rules, both of which posts carry the pay scale of Rs 7300-7600
- IV. The respondents 1 and 2 be directed that after completion of action as per clauses II and III above, a meeting of D.P.C. for selection of DGHS be convened which consider at least five officers coming in the Zone of consideration on basis of seniority and make necessary assessment of their merit on basis of their records."

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7. We are of the view, that the prayers in para 8 of the O.A. relate to implementation of the Annexure A-5 judgement. If that is not done, the proper method is not to file a fresh O.A. That apart, the applicant could very well have asked for a direction in the earlier O.A. that the post of D.G.H.S. should not be filed up until his claims for appointment as Additional D.G.H.S. are first settled. We wanted the learned counsel to elucidate how this OA lies in the above circumstances and the ld.counsel for the applicant was not able to satisfy us on both counts. At this stage he, however, requested that permission may be granted to the applicant to withdraw the OA with liberty to take such appropriate action as may be deemed fit. In the circumstances, such permission is granted. The O.A. is dismissed as withdrawn.

BS Hegde
(B.S. Hegde)
Member (J)

NVK
8/1/93
(N.V.Krishnan)
Vice Chairman (A)

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