

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No. OA 621/93

Date of decision:12.8.1993

Dr.Sunil Gomber

...

Petitioner

vs.

Union of India through
Secretary,
Ministry of Health & Family
Welfare, New Delhi & anr. ...

Respondents

For the Petitioner

...Sh.V.S.R.Krishna, Counsel

For the Respondents

...Mrs.Raj Kumari Chopra,
Counsel.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT(ORAL)

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

The grievance of the petitioner is that even though he has been given an appointment as Assistant Professor of Paediatrics in the G.T.B.Hospital, Shahdara, Delhi with effect from the forenoon of the 17th March, 1992 under the orders passed by this Tribunal in OA No.286/91 decided on 13.12.1991, the respondents have not fully complied with the directions given in the aforesaid OA.

2. Steps were taken to fill up the post of Assistant Professor of Paediatrics in the Ministry of Health and Family Welfare. In that direction, an advertisement was issued by the Union Public Service Commission(hereinafter referred to as the Commission). The said post

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was shown to be reserved for a Scheduled Caste candidate in the advertisement. However, it was made clear that in case a suitable Scheduled Caste candidate was not available, the post will be filled up by considering the cases of general candidates. The Commission interviewed the petitioners and others. No Scheduled Caste candidate was found suitable. The Commission accordingly made a recommendation to the Government that the petitioner may be appointed as Assistant Professor of Paediatrics. However, no letter of appointment was issued to the petitioner. He, therefore, came to this Tribunal by means of the aforesaid OA 286/91. In order to appreciate, the grievance of the petitioner as also the relevant directions given by this Tribunal, we consider it appropriate to extract paragraph 5 of the judgement in the aforesaid OA:-

" We have heard the learned counsel for the applicant and considered the record carefully. We find that the post of Assistant Professor, Paediatrics was advertised in 1988 and it was specifically provided that "the post is initially reserved for Scheduled Castes failing which to be treated as unreserved." It is undisputed that no Scheduled Caste candidates were available. Accordingly the UPSC treated the post as unreserved and went through the process of selection and recommended a general candidate for the post. The applicant who happened to be the general candidate selected for the post was duly advised by the UPSC vide their letter dated 16.3.1989. Once a selection has been held and a candidate recommended and the result thereof published, in our view, the candidate has a right to be considered for appointment after the Government respondents have satisfied themselves after such enquiry as may be considered necessary in regard to character and antecedents and mental and bodily health etc. In a case of this kind, what has to be seen is whether the executive action is fair and just. Once the process of selection has been completed and a candidate having been given the bona fide impression that

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he is likely to be appointed against the said post, subject to his fulfilment of other requirements e.g. medical fitness etc. It will not be fair and just and would tantamount to a violation of the principles of natural justice if he is denied the appointment. It is not the case of the respondents that the vacancy is no longer required to be filled up. The basic question is whether the post having been treated as unreserved, as is evident from the action of the respondents, would come under the general ban on dereservation vide OM dated 25.4.1989. We are of the view that once the post has been treated as unreserved as per the advertisement published by the UPSC and the process of selection is completed it is for the Department to complete the process of dereservation."

3. Now we may read the directions given by this Tribunal which run:-

" In the facts and circumstances of the case, we order and direct that the respondents shall consider the case of the applicant for appointment in accordance with the recommendations of the UPSC for the post of Assistant Professor of Paediatrics against 1989 vacancy, deeming the vacancy to be unreserved as advertised in the advertisement dated 6.8.1988 after completing the other formalities as prescribed in UPSC's letter dated 16.3.1989. The applicant, however, shall be entitled to the pay only from the date he joins the post. We further direct that the above orders shall be implemented within 90 days from the date of its communication."

4. According to the petitioner, the Tribunal clearly directed that he should be appointed of Paediatrics as Assistant Professor /from the year 1989 and that he has to be paid the salary attached to the post of Assistant Professor from the date on which he actually joined.

5. In the counter-affidavit filed on behalf of the respondents, the stand taken is this. The only clear direction given was that the petitioner shall be entitled to the pay from the date he joins the post. It is

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quite clear that even if the petitioner had been considered deeming the vacancy to be unreserved, it would not have benefitted him in any manner when there was no direction that he should be given retrospective seniority etc. There was no direction that the petitioner should be appointed with effect from a retrospective date. However, the Tribunal had also directed that the petitioner shall be entitled to the pay only from the date he joins the post.

6. It is true that the Tribunal has not used the words "retrospective operation". For interpreting the order of the Tribunal, we have to see its import. In the background of paragraph 5, the directions as referred to above, in our opinion, clearly convey the idea that the petitioner should be given appointment as Assistant Professor of Paediatrics from the year 1989.

7. It is to be presumed that the Tribunal was aware of the legal position that no payment can be claimed for not doing any work. It has also to be presumed that the Tribunal was conscious of its limitation that it could not direct that the petitioner should be paid the emoluments of Assistant Professor of Paediatrics during the period he did not perform the job of Assistant Professor of Paediatrics. That is why it directed that even though the petitioner was to be given an appointment from the year 1989, he would not be paid the salary from that year. It left open to the respondents to apply the relevant law after giving an appointment to the petitioner from the year

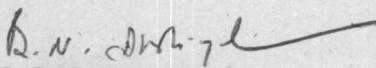
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
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1989. Therefore, nothing will turn on the mere fact that the Tribunal did not pass a specific order that the appointment of the petitioner should be given retrospective operation. In service jurisprudence the expression "retrospective operation" is seldom used. The idea is conveyed through the use of the words "notional appointment" or "notional promotion". The Tribunal, in our opinion, had clearly in mind that the petitioner should be given notional appointment from the year 1989. We, therefore, come to the conclusion that the respondents have failed to carry out the directions of this Tribunal in its entirety.

8. The respondents are directed to appoint the petitioner as Assistant Professor of Paediatrics notionally from the year 1989 and thereafter deal with him in accordance with law.

9. With these directions, the OA is disposed of finally. There shall be no order as to costs.


(B.N.DHOUNDIYAL)
MEMBER(A)


(S.K.DHAON)
VICE-CHAIRMAN(J)

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