

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
\*\*\*

O.A.No. 1049/93.

Date of decision 5-8-94

HON'BLE SHRI N.V. KRISHNAN, VICE-CHAIRMAN (A)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Dr.(Mrs.) Vijay Lakshmi,  
Wife of Shri A.V. Janardhana,  
R/o 925 B.K.S. Marg,  
New Delhi-110 001.

... Applicant

(By Advocate Shri D.C. Vohra)

versus:

- (1) Union of India  
through  
The Secretary,  
Ministry of Health & Family Welfare,  
Department of Health,  
Nirman Bhawan,  
New Delhi-110 001.
- (2) Directorate General of Health Services,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi-110 001.
- (3) Dr. S.B. Chauhan,  
Asstt. Adviser/Sr. Medical Officer,  
Department of Health,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi-110 001.

(By Advocate Shri Madhav Panikar for  
Respondents No. 1 & 2)

(By Advocate Shri K.B.S. Rajan, for  
Respondent No. 3)

O\_R\_D\_E\_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

The applicant, who is working as <sup>an</sup> Ayurvedic  
Physician claims modification of the order dated  
27th January, 1992 (Annexure G-2) issued by the

18

Respondents stating that instead of Respondent

No. 3, who is at S.No. 33 her name should have

been included *in the promotion Order of Senior Medical Officers.*

2. The relevant facts of the case are that

based on the recommendations of the High-Powered

Committee, the Government had decided to upgrade

26 posts of Ayurvedic Physicians to the posts of

Senior Physicians (Senior Medical Officer (SMO) in the

scale of pay of Rs. 3000-4500 vide letter dated 5th

December, 1991 (Annexure 2). These 26 posts were

in addition to the 7 existing posts of S.M.O./

Assistant Adviser. The upgraded scales were to

come into force from the dates from which the res-

pective posts are filled in the upgraded scale.

Para 8 of this letter provides as under -

" Promotions from Physician to the level of Senior Physician and from Senior Physician to the level of Chief Medical Officer will be made on the basis of seniority-cum-fitness subject to fulfilment of prescribed qualifications and experience. Amendments to recruitment rules for various categories of posts will be issued in due course."

seniority

3. As per the list of Ayurvedic Physicians as on which shows the existence of 59 posts, 30th April, 1985 (Annexure 'C'), the applicant is shown

at S.No. 40 and Respondent No. 3, who belongs to the

*community*  
Scheduled Tribe is shown at S.No. 47. According to



the applicant, the promotional scheme in the upgraded post should follow the rule of <sup>13</sup>the seniority subject to suitability. Hence, she should have been appointed in S.No.33 instead of Respondent No. 3 who had been appointed to the higher grade under the reservation quota. The learned counsel for the applicant relies on the judgments in the case of Ashok Kumar Srivastava v. UOI [1987(4)ATC 385/ (Annexure 'J')], Asha Nayar v. UOI [1992 (21) ATC 290] and B.S. Gupta v. UOI [AIR 1972 SC 2627]. The applicant contends that in view of the upgradation of the 26 posts plus the 7 posts already existing, she ought to have got the 33rd position as there was nothing adverse against her, on the basis of seniority-cum-fitness by way of in situ promotion. The learned counsel for the applicant submits that there is no question of providing further reservations for SC/ST candidates in the higher scale of Senior Physicians as they have already been given the posts in the lower scale on the basis of the reservation quota. According to the counsel, the upgradation did not involve a process of selection but was meant to be in situ promotions of Ayurvedic Physicians to SMOs in the higher payscale.

4. The Respondents have denied the above averments. It is their contention that the incumbents of the lower posts were not straightaway adjusted against the upgraded posts but that they were promoted to the upgraded posts by the

13

prescribed mode i.e. by promotion on the basis of seniority-cum-fitness. Their stand is that <sup>these</sup> ~~here~~ promotions have been made in accordance with the existing Recruitment Rules, 1985, for the post of Senior Physician (Ayurvedic). The rules provide that the post is a selection post and should be filled by promotion failing which by direct recruitment, subject to fulfilment of prescribed qualifications and experience. Therefore, being a promotion post, reservation for SC/ST has been correctly provided as per the relevant Government Instructions and is in order. The learned counsel for Respondent No.3 has referred to the case of Rajan v.State of Tamil Nadu [1994 (26) ATC 803] which does not appear to be relevant to the facts of this case.

5. We have carefully considered the rival contentions. In the case of Ashok Kumar Srivastava (supra), the Tribunal was considering the applicability of the rule of reservation in the case of mass upgradation of posts. The Tribunal came to the conclusion <sup>that</sup> ~~that~~ "his mass upgradation of 300 ADMDs to the exactly equivalent number of posts of DMDs is a case of their being simply placed in the higher

13



senior scale of the grade and as admittedly also no selection is involved cannot be considered to involve any process of promotion or fresh appointment and, therefore, no fresh reservation of SCs and STs in terms of the prescribed percentages can be made to the upgraded posts and to the existing incumbents holding the posts of ADMOs which were upgraded.

6. The facts in Ashok Kumar Srivastava's case are distinguishable from the present case. The Respondent's letter dated 5.12.1991 conveying the President's sanction, inter-alia, for upgradation of only 26 posts of Ayurvedic Physicians to the grade of SMOs. It is seen from the Annexure 'C' seniority list there were 59 such posts. Therefore, only 26 of the 59 persons have to be promoted. The letter clearly provides that this will be made on the basis of seniority-cum-fitness subject to fulfilment of prescribed qualifications and experience. In other words promotion will be on seniority-cum-fitness basis. As this is a promotion, the rule of reservation has to be followed. This is not a case of mass upgradation or abolition of the lower posts and merger in the higher posts like the case before the Jabalpur Bench. Therefore, in this case, it was not a

question of simply placing the Ayurvedic Physicians en masse in the upgraded posts of SMOs but it involved a process of promotion to the Higher grade. Therefore, reservation was inevitable.

7. The other cases relied upon by the applicant are also not relevant as they are not directly on the issue raised before us. The learned counsel for the applicant has fairly conceded that if it is held that the post of SMO is a promotion post then the principle of reservation will have to be applied. We are satisfied that in the facts of this case <sup>that</sup> the Respondents have correctly followed the principle of reservation for SC/STs.

8. In the result, we feel that this is not a case which warrants any interference by this Tribunal.

The application is dismissed. No costs.

*Lakshmi Swaminathan*  
(Lakshmi Swaminathan)

Member(Judicial)

*N.V. Krishnan*  
5/8/84  
(N.V. Krishnan)

Vice-Chairman (A)