

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1167 OF 1996
ALLAHABAD THIS THE 3RD DAY OF DECEMBER, 2002

HON'BLE MR. S. DAYAL, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

1. Babban Singh
S/o Late Sri Kuldip Singh,
aged about 49 years,
R/o 327 Attaraiya,
Allahabad.
Working as Senior Pharmacist,
Central Government Health Scheme,
Drummond Road, Dispensary,
Allahabad.
 2. P.S. Gupta
son of Sri Vishnu Deo Gupta
aged about 49 years,
R/o 87-E Kachchi Sarak Daraganj,
Allahabad.
Working as Senior Pharmacists Central Government
Health Scheme,
Dispensary No.1.
Allahabad.
 3. R.N. Singh
son of Late Sri Kedar Nath Singh,
aged about 48 years,
R/o 87-F Kachchi Sarak,
Daraganj, Allahabad.
Working as Senior Pharmacists,
Central Government Health Scheme,
Dispensary No.7, Allahabad.
 4. S.K. Srivastava,
son of Sri Guru Dayal Lal,
aged about 48 years,
R/o Paket I Type III Kendranchal,
Dhumanganj, Allahabad.
Working as Senior Pharmacists,
Central Government Health Scheme,
Dispensary no.3, Allahabad.
 5. G.K. Ansari,
S/o Mohd, Zakariya Ansari,
aged about 49 years,
Resident of 57, Attala,
Allahabad,
Working as Senior Pharmacists,
Central Government Health Scheme,
Dispensary no.3, Allahabad.
 6. S.C. Lal
S/o Sri Bankey Lal
aged about 49 years,
R/o 64-C Rasulabad,
Allahabad,
Working as Senior Pharmacists,
Central Government Health Scheme,
Medical Store Depo 7, Liddle Road,
Allahabad.
- Applicant

(By Advocate Shri O.P. Khare)

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Versus

1. Union of India,
through the Secretary to the Government,
Ministry of Health and Family Welfare,
Department of Health,
Nirman Bhawan,
New Delhi.
2. Director Central Government Health Scheme,
Nirman Bhawan,
New Delhi.
3. Additional Director,
Central Government Health Scheme,
7, Liddle Road,
Allahabad. Respondents

(By Advocate Shri A. Sthalekar)

O R D E R

HON'BLE MR. S. DAYAL, MEMBER-A

This application has been filed for setting aside the impugned orders dated 09.05.1996 and 30.08.1996 passed by respondents no.1 and 2. Further direction to the respondents has been sought not to withdraw the monetary benefit from the applicant nos.1 to 5 and give effect to the order of fixation of pay to applicant no.6 and continue to pay the same in pursuance of the promotion of the applicants on the post of Senior Pharmacists retrospectively from 11.07.1995 in the higher pay scale of Rs.1600-2660 as per order dated 11.07.1995 issued by respondent no.1. It has also been prayed that the respondents be directed not to change the nature of promotion of the applicant due on regular basis to the post of Senior Pharmacists in the pay scale of Rs.1600-2600 and continue to give effect to the pay fixation order dated 24.05.1995 and 18.09.1996. The cost of the application is also claimed.

2. The short controversy in this case is that the impugned orders dated 09.05.1996 and 30.08.1996 were passed. By the first order dated 09.05.1996, the Additional Director, C.G.H.S. Lucknow was authorised to up grade the applicants as Senior Pharmacists on ad-hoc basis only and not on regular basis.


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He was requested to issue a corrigendum to that effect. By order dated 30.08.1996, the Ministry of Health and Family Welfare asked the Directorate of Central Government Health Services in clarification of the subject that the post of Senior Pharmacists could not be treated as promotional post and hence no benefits of increments for fixation of pay could be given.

3. By an amendment impugned order dated 28.10.1996 refixing the pay of the applicants was challenged. By this order the increment granted, while fixing the pay of the applicants initially, was dis-allowed and the pay was fixed accordingly. This gave cause to the applicants to come before us ^{through} this application.

4. We have heard Shri D.P. Khare, learned counsel for the applicants, and Shri A. Sthalekar, learned counsel for the respondents.


5. Learned counsel for the applicants has placed before us the judgment of full bench of Central Administrative Tribunal, Bangalore between M.L. Raja Ram Nayak Versus The Director C.G.H.S. and others 2001(2) (CAT) AISLJ 250 to show that it has been laid down that appointment at higher scale even in the same post without additional responsibility or making any addition of post but affected in order to remove stagnation amount to promotion and reservation will apply. This Full Bench judgment of the Bangalore bench has been followed in consequential order passed by the bench. The law laid down by the Full Bench of Central Administrative Tribunal who have held that the promotion of the applicants against the roaster appointments upgrading as Senior Pharmacists was valid and cancellation could not be sustained.




6. The learned counsel for the respondents has stated that the recruitment rules following upgradation of post are yet to be framed and, therefore, promotion of the applicants cannot be treated as valid and the order of refixation of pay, is correct.

7. We find from the pleadings that the applicant nos 1 to 6 had been promoted by order dated 07.03.1996 and 21.08.1996 respectively. Since it has already been held that the upgradation of the post of Pharmacists to the post of Senior Pharmacist would amount to promotion by the Full Bench in the case of MLN Raja Ram Nayak (Supra), the impugned orders dated 09.05.1996 and 30.08.1996 could not be sustained and are, therefore, set aside. We find that the applicants are continuing in the pay scale in which they were placed after their promotion in 1996 on account of stay granted on the order of refixation of their pay dated 24.05.1996 and 18.09.1996. The learned counsel for the applicants states that some recovery has been effected on account of refixation of the pay of the applicants on account of the impugned orders. As far as the applicant no.6 was concerned, the learned counsel for the applicant claims that he was not given arrears after fixation of pay from retrospective effect on promotion. The respondents are directed to examine these prayers and if any amount is due to be paid to the applicants, they shall pay the same within a period of three months from the date of receipt of a copy of this order.

8. There shall be no order as to costs.


Member-J


Member-A