

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

(59)

Original Application No. 726 of 1997
Dated : This the 7th day of November, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, V.C.
HON'BLE MR. D.R. TIWARI, MEMBER (A)

Dr. H.K.Bajaj,
aged about 45 years
son of Shri Tek Chand Bajaj
Resident of 96, H.I.G.
Pritam Nagar Colony,
Sulem Sarai, Allahabad - 211011.

..... Applicant.

By Advocate : Shri H.S.Srivastava

V E R S U S

1. Union of India, through Secretary
Ministry of Health & Family Welfare,
(Department of Health), Nirman Bhawan
NEW DELHI.
2. Director General of Health Services Nirman
Bhawan, NEW DELHI.
3. Additional Director of Health Services,
7, Liddle Road, Allahabad - 211001.

..... Respondents.

By Advocate : Shri Amit Sthalekar

O R D E R (O R A L)

By Hon'ble Mr. Justice R.R.K.Trivedi, V.C.

We have heard Shri H.S.Srivastava, learned counsel for
the applicant and Shri Amit Sthalekar, learned counsel for
the respondents.

2- By this O.A., under section 19 of Administrative Tribunals Act 1985, applicant has prayed for direction to the respondents to consider the case of the applicant and take action to promote him to grade of Specialist Grade I from 1.2.1993 with all consequential benefits of seniority, pay and arrears of pay etc.

3- The facts of the case are that applicant joined as Specialist (Pathologist) Grade-II of Central Government Health Scheme (in short C.G.H.S.) at Allahabad on 01.02.1985 in the pay scale of 3000-5000. Applicant was promoted to senior scale of Specialist Grade II i.e. 3700-5000 after 5 years. The next promotion available to the applicant in senior scale ~~was~~ ^{was} specialist Grade I in the pay scale of Rs. Rs.4500-5700. The applicant was considered by DPC alongwith others. However, he was not recommended for promotion. The applicant subsequently promoted w.e.f. 01.2.1994 in specialist Grade-I. The grievance of the applicant is that the recommendation of DPC on 8.1.1993 was incorrect as the applicant was not given annual entry for the year ending on 31.3.1993. Thus, one annual entry was not with DPC and DPC could consider the A.C.R. of the applicant only up to 1991-92 i.e. A.C.R.s of only seven years. It has also been submitted that in 1990-91 the applicant was awarded very good entry but in 1991-92 applicant was ^{awarded very} ~~only~~ 'good' and thus as it ~~was~~ amounted to down grading applicant ought to have been given opportunity of hearing. For these reasons, it is submitted that the applicant ~~has~~ been denied ~~for~~ chance of promotion through his juniors were promoted and consequently he has suffered serious loss.

4- Shri Amit Sthalekar, learned counsel for the respondents, on the other hand, submitted that there is no discrimination as the applicant was duly considered

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by DPC on the basis of available record and he was not recommended for Specialist Grade I. It is also submitted that after he was promoted he made a representation on 25.8.1993, which was rejected by order dated 03.03.1994 (Annexure-5). But this O.A. was filed on 16.07.1997 i.e. after more than 3 years and the applicant is not entitled for relief and the O.A. is highly time barred. It is also submitted that the order dated 03.03.1994 has not been challenged by the applicant for this reason also he is not entitled for any relief.

5- We have ~~heard~~ carefully considered the submissions of the counsel for the parties. A copy of the office memorandum of 14.11.1991 has been filed as Annexure-I clause 9 whereof provides for promotion of specialist grade I which reads as under :

" ... In all the three sub-cadres, (Teaching, Non-teaching, and Public Health), officers with 6 years service in the scale of Rs.3700-5000, or total 8 years service in the scales Rs.3000-5000 and Rs.3700-5000, shall be placed in the scale of Rs.4500-5700 according to existing guidelines(which inter-alia, provide for overall good performance and at least two "very good" assessment during the preceding 5 years). On such placement in the scale of Rs.4500-5700, the Associate Professors will stand designated as Professors, and the Specialists Grade II officers (Non-teaching and Public Health) shall stand designated as Specialist Grade I officers.."

From perusal of the aforesaid, it is clear that the applicant's 8 years service was required to be considered i.e. 5 years service in the scale of Rs.3000-5000 and 3 years service of Rs. 3700-5000. Undisputed fact is that applicant joined on 01.2.1985. He was to complete 8 years service on 01.2.1993. On 08.1.1993 when DPC considered the cases for promotion of specialist grade I he had not completed 8 years service. It appears that the authorities had started the process of promotion as applicants and other were going to complete 8 years service shortly i.e. after a month.



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6- In the circumstances, it could not be said that the procedure adopted was illegal or arbitrary. On our direction learned counsel for the respondents produced before us original record of the DPC, a perusal of which shows that assessment ~~for~~ ^{of} the applicant ⁱⁿ ~~years~~ 1986 and 1990-91, ^{last} ~~was a~~ ~~there are~~ very good and in remaining 5 years he was assessed for good. In the circumstances it cannot be said that the applicant was down graded. The applicant assessed as good in 1985 then very good in 1986 then as good in 1987-88, 89 and 90. Thus, in most of the years the assessment in respect of the applicant was 'good'. So, in our opinion, it was not a case of down grading and applicant cannot claim that he should have been given opportunity of hearing. As in ^{last} 5 years applicant had only one 'very good' entry, according ^{to} to rules he could not be recommended for specialist grade-I. In the circumstances we do not find any error in the recommendation of the DPC.

7- The next question for consideration is whether the applicant has suffered adversely on account of meeting of the DPC on 08.01.1993 when the applicant had not completed 8 years service and he was not awarded entry ^{for} ~~in~~ the year 1992-93. For this purpose we perused the record of DPC which considered the cases of 31 candidates and in respect of all candidates the entries were considered up to 1991-92. As already observed earlier, the applicant was to complete 8 years in about a month ^{time}. Thus, we do not find that the applicant has ~~not~~ been, in any way, discriminated and he has suffered loss. Admittedly, applicant was promoted w.e.f. 01.02.1994. The entry for the 8 years could only be available after 31.3.1993. Aggrieved by this applicant filed a representation on 16.9.1993, which was rejected on 03.03.1994. Thereafter applicant kept quite. The applicant filed this O.A. on 16.7.1997 i.e. after 3 years. There is a long delay of 3 years. The delay has been tried to explained by the applicant on the ground that he was making representation.

However, the limitation cannot be extended by making successive representation and this legal position has been established by various judgments of Hon'ble Supreme Court i.e. State of Orissa v. P. Samantaray AIR 1976 Supreme Court 2617, which is reproduced as under :

"...There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in Rabindra Nath Bose v. Union of India, (1970) 2 SCR 697=(AIR 1970 SC 470) the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay..."

~~judgement~~
~~Administrator~~
The ~~case~~ is squarely applicable in the facts of the present case. Similar view has been taken by the Hon'ble Supreme Court in case of Administrator of Union Territory of Daman and Diu and others v. R.D. Valand 1995 Supp(4) Supreme Court Cases 593. The relevant para is being reproduced below:

"....We are of the view that the Tribunal was not justified in interfering with the stale claim of the respondents. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.9.1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8.10.1986. Thereafter for four years the respondents did not approach any court and finally he filed the present application before the Tribunal in March 1990. In the facts and circumstances of this case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way..."

8- In the present case the representation of the applicant was rejected on 03.03.1994. The limitation provided under the Act is of one year. The applicant filed O.A. on 16.7.1997. Thus, there is delay for more than 2 years which is being explained only by saying that applicant made representations against the order dated 03.03.1994. The representation dated 16.9.1993 was rejected. The order has become final as it has not been challenged by the applicant

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in this O.A.. In the circumstances we do not find that applicant is entitled for any relief. The learned counsel for the applicant placed before us para 20 of the C.A. and submitted that representation of the applicant was rejected on 15.10.1997. Thus, the delay stands explained. However, we do not find ~~any such material submission~~ ^{any such} made in para 20 of the C.A. The learned counsel for the applicant also invited our attention for the guidelines laid down by DOPT for consideration of the confidential report which required that the DPC should consider the C.R.s for equal number of years in respect of all officer considered for promotion subject to below. On the basis of this rule applicant has submitted that 8 years' ACR should have been considered as required ⁱⁿ ~~Rule~~ and if ~~entire consideration~~ ^{of 8 A.C.R.s the concerned} there were 2 years entires and applicant could not have been ignored. However, after the judgment DPC guidelines were issued by letter dated 14/11/1991 (Annexure-I) on the basis of which DPC considered the cases. After such a long time it is difficult to say that the procedure adopted by DPC ^{was illegal} on account of this Rule cited by the applicant. The department concerned may ^{apply} ~~comply~~ Rules of DOPT with certain modification for this reason. We do not find any illegality in the recommendation of the DPC.

9- The representation dated 21.4.1997 was ~~not~~ rejected. It does not improve the case of the applicant. It was a subsequent ¹ representation and does not explain delay which had already occurred. The representation was ¹ received ~~not~~ rejected on 15.10.1997 i.e. after filing of the O.A.

10- In the circumstances and for the reasons stated above we do not find any merit in the O.A. The O.A. is accordingly dismissed with no order as to costs.

H. L. Dix
Member A

Vice-Chairman

Brijesh/-