

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

No. OA 1038 of 2014

Present: Hon'ble Mr. Swarup Kumar Mishra, Judicial Member
Hon'ble Mr. T.Jacob, Administrative Member

Dr. Raghunath Pradhan, aged about 66 years, S/o Late Lalu Pradhan, Raghunath Niwas, Auyodhya Nagar, 3rd Lane, Berhampur-760010, Dist-Ganjam, Orissa, Ex-Chief Medical Officer (NFSG), Postal Dispensary, Berhampur-760010, Ganjam.

.....Applicant

VERSUS

1. Union of India represented by the Secretary, Ministry of Health and Family Welfare, Department of Health, Government of India, New Delhi.
2. Director General (Posts), Dak Bhawan, New Delhi- 110001.

.....Respondents

For the applicant : Mr.S.K.Dash, counsel

For the respondents: Mr.M.R.Mohanty, counsel

Heard & reserved on : 24.2.2021

Order on :09.07.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(a) To direct the respondent No.1 to give notional promotion to the applicant in the Supertime Administrative Grade w.e.f. from 24.4.2006 i.e. the day from which the promotion to such grade was made effective in the regularized side irrespective of their respective dates of retirement/superannuation;
- (b) To direct the respondents to release/extend all consequential benefits from out of the notional promotion including revision of the pay and disbursement of the financial emoluments in the shape of differential arrear pay and pension;
- (c) To pass any other/further order that the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

3. The facts of the case in a nutshell are that the applicant was initially appointed as Medical Officer on 2.3.1977 through the recruitment process conducted by the UPSC. Then he was promoted to the post of Sr. Medical Officer on 7.4.1982 and Chief Medical Officer w.e.f. 1.12.1991. He got promoted as Chief medical Officer, NFSG w.,e.f. 1.1.1998 and retired on superannuation on 30.6.2008. The promotion to the Supertime Administrative

Grade fell due in respect of the vacancies for the years 2005-06 and being in the feeder post, the applicant was duly considered and placed at Sl. No.2 in the merit list and was recommended for promotion by the ACC vide letter dated 27.12.2007, long before his retirement. Such promotion was not given effect to on account of the interim order passed by Hon'ble Apex Court in the case of Dr.P.P.C.Rawani & Ors. -vs- UOI. The matter was disposed of on 14.11.2008. In compliance to the direction of Hon'ble Apex Court dated 14.11.2008, the President was pleased to promote Chief Medical Officers (NFSG) listed in the Annexure to Supertime Administrative Grade of the General Duty of Central Health Service (Regularized Side) in the scale of pay of Rs.37,400-67,000 corresponding grade pay of Rs.10,000 (Pay Band-4) w.e.f. 24.4.2006 irrespective of their date of retirement. The applicant whose name appeared at Sl.No.2 of the merit list was left out from the list of promotes vide order dated 29.10.2008 (Annexure 4). The applicant submitted a representation to the respondent No.1 on 4.9.2009 (Annexure 5) for giving him notional promotion from NFSG to SAG and claim consequential benefits such as the differential emoluments and the pensionary benefits. On 5.8.2010 the applicant was informed that he had been promoted by the ACC long before his retirement vide order dated 27.12.2007 for the vacancy of the year 2005-06 and was placed at the second position in the merit list. The President vide order dated 9.8.2012 was pleased to promote 298 Chief Medical Officers (NFSG) to the post of SAG of the DACP (Dynamic Assured Career Promotion) Scheme but the applicant was left out. The applicant approached this Tribunal in OA 817/2010 which was disposed of vide order dated 12.2.2013 (Annexure 6) with a direction to consider the representation of the applicant and dispose of the same by way of a reasoned and speaking order and communicate the result to the applicant within two months from the date of receipt of the order. Vide order dated 17.1.2014 the President was pleased to promote 9 Chief Medical Officers (NFSG) to the post of SAG of the DACP scheme in the Pay Band-4 but despite the order of this Tribunal, the respondents kept silent in the matter. The applicant has hence approached this Tribunal in the present OA.

3. The respondents have filed their Counter stating that as per provision of CHS Rules, 1996 the promotion upto CMO(NFSG) was under DACP scheme which was extended to SAG level vide Ministry's order dated 29.10.2008. Before that promotion to SAG level was vacancy based. Since the applicant became due for promotion for SAG level for the year 2005-06, he was considered for promotion to SAG level in the DPC meeting held in UPSC along with other eligible officers. The recommendation of the DPC was approved by the Appointments Committee of the Cabinet (ACC) and the same was conveyed by DOPT vide letter dated 7.12.2007. However, before the promotion order in respect of the doctors approved by ACC could be issued, Hon'ble Supreme Court passed an interim order on 13.8.2007 in the Contempt Petitions No. 160/2005 and 169/2005 filed by Regular and Regularized Doctors of GDMO Sub cadre of CHS and directed that neither the regular promotes nor the so called regularized promotes would be communicated the orders of promotion without leave of the Apex Court. Therefore, the issue of promotion orders in respect of Regular CMO(NFSG) officers after the approval of ACC on the recommendation of the DPC for the year 2005-06 and 2006-07 and was kept in abeyance. After vacation of the stay by Hon'ble Supreme Court on 14.11.2008, the promotion orders in respect of regular doctors were issued on 28.11.2008. Since the promotion to SAG level for the year 2005-06 was vacancy based and the promotion was effective only from the date of assumption of charge, the applicant could not be promoted as he did not assumed the charge due to his superannuation on 30.6.2008. Hence they have prayed for dismissal of the present OA.

4. We have heard both the learned counsels and have gone through the pleadings on record.

5. The applicant was initially appointed as Medical Officer on 2.3.1977 through the recruitment process conducted by the UPSC. Then he was promoted to the post of Sr. Medical Officer on 7.4.1982 and Chief Medical Officer w.e.f. 1.12.1991. He got promoted as Chief medical Officer, NFSG w.,e.f. 1.1.1998 and retired on superannuation on 30.6.2008. The promotion to the

Supertime Administrative Grade fell due in respect of the vacancies for the years 2005-06 and being in the feeder post, the applicant was duly considered and placed at Sl. No.2 in the merit list and was recommended for promotion by the ACC vide letter dated 27.12.2007, long before his retirement. Such promotion was not given effect to on account of the interim order passed by Hon'ble Apex Court. After vacation of the stay by Hon'ble Supreme Court on 14.11.2008, the promotion orders in respect of regular doctors were issued on 28.11.2008. After vacation of the stay by Hon'ble Supreme Court on 14.11.2008, the promotion orders in respect of regular doctors were issued on 28.11.2008 but that of the applicant was left out. It is the claim of the applicant that some other doctors who were junior to him and were regularized subsequently, were given promotion as per the order dated 2.1.2009 (Annexure A/3). Although the applicant should have been considered for promotion, he being a regular appointee and senior to the said persons whose services were regularized subsequently, he was not given the said promotion since he retired on 30.6.2008 on attaining age of superannuation without assuming the charge. It has been mentioned in Para 2 of Annexure A/3 dated 2.1.2009 that "In the event of an officer, who is appointed in the said post, being on study leave/deputation/foreign assignment, this order will take effect from the date he/she assumes charge of the post on completion of his/her study leave/deputation/foreign assignment."

6. The decision given in OA 338/09 decided on 5.11.2009 by the Principal Bench of this Tribunal has been relied upon by the learned counsel for the respondents in support of their stand that the date of assumption of the charge of the promotional post is relevant and essential for the purpose of giving next promotion. It is the submission of the learned counsel for the respondents that as the applicant had never assumed the charge of promotional post and had never worked in that post, therefore he cannot claim retrospective promotion on the next hierarchy on notional basis since he has already retired from service. The decision of the Hon'ble Supreme Court vide Annexure A/28 has

also been relied upon by the respondents. The respondents have not categorically given the detail facts and reasoning as to why the applicant could not be considered for promotion and was not given promotion being a regular appointee although the persons who were junior to him and whose services were regularized thereafter, have been given promotion as per the promotion order dated 2.1.2009 vide Annexure 3. The averments made in para 5.1 of the OA has also not been satisfactorily explained by giving detailed facts and circumstances in the Counter affidavit filed by the respondents.

7. Since the representation dated 4.9.2009 (Annexure 5) of the applicant was not disposed of by the respondents, the applicant had earlier approached this Tribunal by filing OA 817/2010 which was disposed of vide order dated 12.2.2013 (Annexure 6).

8. Learned counsel for the applicant had filed the final order dated 14.11.2008 passed by Hon'ble Supreme Court in the case of Dr.P.P.C.Rawani – vs- UOI (Civil Appeal No. 3519/1984). Since the detailed facts and reasoning thereof with regard to the promotion given to some of the doctors, who were subsequently regularized, but were juniors to the applicant, as claimed by him and the reasons for not giving promotion to the applicant, as per his claim is senior to the said officers are not available and clear from the records. Pleadings to that effect is not categorical either from the side of the applicant or from the side of the respondents. Therefore in the absence of such detailed categorical averments and non-availability of these facts before this Tribunal, it is difficult to come to any categorical finding whether some of the officers as named in the list dated 2.1.2009 vide Annexure 3 have actually been given retrospective promotion/notional promotion inspite of the fact that they have attained age of superannuation. It is ascertained from both the learned counsels that due to the pendency of the case before Hon'ble Supreme Court the respondent authorities could not proceed ahead with the promotion matter of the applicant. It is also submitted on behalf of the respondents that after disposal of the said matter before the Hon'ble Supreme Court, the order dated 7.12.2007 vide Annexure 2 was passed in favour of some of the doctors, whose

services were subsequently regularized. The detailed reasons for not holding DPC to consider the promotion of the applicant although a DPC was convened for promotion for those regularized doctors is not forthcoming.

9. In view of the above the matter is remanded back for reconsideration of the promotion of the applicant. The applicant is given opportunity to submit one comprehensive representation within 3 weeks from the date of receipt of the copy of this order so that the concerned authorities/competent authorities/respondent authorities shall consider the said representation in accordance with law along with all relevant materials including observation as given by this Tribunal in this matter. The respondents shall pass a speaking and reasoned order to be communicated to the applicant within eight weeks thereafter.

The OA is accordingly disposed of with the above observation. There will be no order as to costs.

(T.JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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