

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

O.A.No.760/99

Wednesday this the 14th day of November 2007

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.S.MENON, ADMINISTRATIVE MEMBER

Dr.Vishwaveer,
S/o.late Mahabir Prasad Srivastava,
R/o H.No:105/36, Prem Nagar, Kanpur.

...Applicant

(By Advocate Mr.R.K.Shukla)

Versus

1. Union of India through the Secretary,
Ministry of Defence, Govt. of India,
New Delhi – 11.

2. The Secretary,
Ordnance Factory Board,
10-A, Shaheed Khudi Ram Bose Road,
Calcutta – 1.

3. The General Manager,
Ordnance Equipment Factory,
Kanpur.

...Respondents

(By Advocate Mr.A.Mohiley)

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was appointed as Assistant Surgeon Grade I vide DGOF Calcutta letter dated 3.10.1969 and earlier to this he was appointed on ad hoc basis in Comb.O.E.&P Hospital, attached to Ordnance Equipment Factory, Kanpur on 11.7.1969. He was confirmed on 8.5.1972. Due to compelling circumstances, the applicant had to take leave w.e.f. 10.5.1977 in connection with his father's sickness followed with death and meanwhile the respondents

transferred the applicant to Ambajhari, Nagpur w.e.f. 9.6.1977. Intimation of transfer though not communicated, they preferred to initiate departmental disciplinary proceedings and penalty of removal from service was passed w.e.f. 5.4.1982. The petitioner filed suit No.561/82 in Munsif City, Kanpur which was decided on 16.7.1984. Respondents filed appeal No.288/84 in the District Judges' Court, Kanpur which was also decided in applicant's favour on 3.9.1985 with the following orders/directives :

"It is hereby declared that the impugned order dated 5.4.1982 of terminating the services of the plaintiff respondent is illegal, invalid and ineffective for the reason that the said order has been passed without the consultation and advice of the Union Public Service Commission as contemplated in the proviso to Sub Rule (4) of Rule 15 of the CCS & CCA Rules 1965. The plaintiff respondent shall be deemed to have been in continuous service of the defendant appellant and shall be entitled to all his emoluments and benefits as if his termination of service never came into existence."

2. Respondents filed second appeal No.2305/87 in the Hon'ble High Court at Allahabad and the same is still pending. Stay application No.150/87 was dismissed on 8.8.1988. Respondents filed a SLP No.14390/88 and sought stay but the same was also dismissed on 10.1.1989.

3. The respondents did not allow the petitioner to join duties immediately and was allowed to join duties w.e.f. 23.11.1991. They did not allow the petitioner to draw his full pay and allowances as per orders/directives of Lower Court as well as the Appellate Court and paid Rs.2500/- as Basic Pay instead of Rs.3500/-. Besides, the respondents did not regularise the petitioner's period of absence spent in Court's litigation i.e. the period from the date of removal from service to the actual date of reinstatement. They did not allow the petitioner to draw the benefits accrued in consequence of acceptance of the recommendations of

Tikku Commission's Report in respect of Indian Ordnance Factories Health Services. The Govt. of India extended certain benefits to the serving Medical Officers of IOFHS, which are mainly related to the (i) promotion of Assistant Medical Officers to the higher post/grade of Senior Medical Officers on completion of four years service in A.M.O. cadre, (ii) promotion of Senior Medical Officers to the post of higher post/grade of Principal Medical Officers on completion of six years service in S.M.O. cadre or total 10 years service in A.M.O and S.M.O cadre (iii) the promotions be effected with immediate effect, and (iv) the promotions be made strictly on seniority basis without any restriction of zone of selection or supersession by outstanding officers. In the instant case, the petitioner was appointed as Assistant Surgeon Grade I (now A.M.O) on 11.7.1969. After completion of 4 years service in the grade i.e. w.e.f. 11.7.1973, he must be promoted as Senior Medical Officer and after completion of six years service in the grade of S.M.O he must be promoted as Principal Medical Officer w.e.f 11.7.1979 but the respondents did not promote the petitioner whereas his juniors placed below in seniority list prepared on the basis of select list of Union Public Service Commission (69 Batch) were promoted to the post/grade of Principal Medical Officer/DDHS. After a great persuasion, the respondents granted promotion of Senior Medical Officer to the petitioner w.e.f. 1.1.1996, though the applicant is entitled to get the promotion of S.M.O ante-dated w.e.f. 11.7.1973 instead of 1.1.1996 and the promotion of P.M.O w.e.f. 11.7.1979. The applicant superannuated from service w.e.f. 31.7.1997 on completion of 58 years but on the day of his retirement, the respondents declined to pay any terminal/retiral benefits on the pretext of pendency of their second appeal No.2305/85 in Hon'ble High Court Judicature at Allahabad.

4. The prayer in this OA includes direction to the respondents to promote

the applicant on the post of S.M.O & P.M.O on the dates his juniors in select list of UPSC has been promoted; to make proper fixation of pay arising out of promotions as envisaged in Govt. of India letter dated 29.9.1994 and pay arrears of pay and allowances, to issue a mandamus directing the respondents to revise pension, gratuity and leave encashment etc.

5. The respondents contested the O.A. According to them, SRO 154 applicable at that time provides that promotions to the grade of Senior Medical Officer and Principal Medical Officer, were based on the availability of vacancy in those grades. The applicant therefore, cannot claim retrospective benefits of the Government orders dated 29.9.1994 and the recruitment rules promulgated subsequently vide SRO 78 dated 18.3.1995. It is stated the present petition is barred by limitation. Since the petitioner remained continuously absent, the competent disciplinary authority initiated disciplinary action against the applicant under Rule 14 of CCS (CC&A) Rules 1965. Finally penalty of removal from service was imposed on the petitioner vide order dated 5.4.1982. The petitioner has already been paid the amount of difference as due in his credit.

6. As far as Tikku Commission's report is concerned, benefits on its recommendations have already been extended to the petitioner with prospective effect of the directives issued by the Ministry of Defence.

7. That the petitioner has been granted promotion on the basis of the seniority maintained as per directives issued by the Hon'ble Central Administrative Tribunal, Allahabad in O.A.No.600 of 1986 filed by the petitioner himself. Later on the petitioner was imposed with penalty of removal from service after due completion of Court of Inquiry.



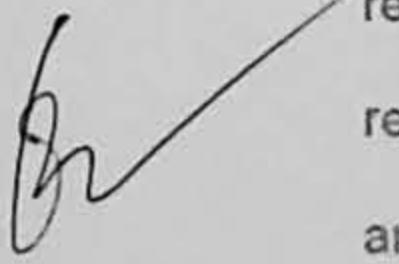
8. Arguments were heard and documents perused. The applicant's claim is that Tikku Commission Recommendation has not been properly extended to him. According to him, the period of service prescribed in Annexure A-1 order of the Ministry of Defence should reckon from the date of initial appointment and not from the date of issue of the said order. Thus, his claim is for promotion to the post of Sr. Medical Officer and Principal Medical Officer from July, 1973 and July, 1979 respectively, whereas the contention of the respondents is that promotion being "with immediate effect" as per the terms of the Annexure A-1 order, the same had already been granted and since the applicant had superannuated before completion of the requisite years of service as Sr. M.O., he was not promoted further.

9. The applicant has specifically contended in para 6 of the OA that his juniors placed below in seniority list prepared on the basis of select list of Union Public Service Commission (69 Batch) were promoted to the post/grade of Principal Medical Officers/DDHS. This point has not been denied by the respondents in specific terms. They have only referred SRO 320 and 154, and to the seniority list prepared in pursuance of the order of this Tribunal in OA No. 600/86 and contended that the applicant had been given the due benefits of Tikku Committee's recommendation. The applicant has reiterated his contention as in para 4.6 of the O.A. in his Rejoinder Affidavit. In the seniority list furnished by the respondents, vide Annexure SA-4, the applicant's name has been shown at serial No. 3. This has been made provisional in view of the pendency of the second Appeal before the High Court. The claim of the applicant is that as per Annexure A-1 order he should be promoted as Sr. M.O from July, 1973 and as P.M.O. from July 1979, by reckoning the period of 4 and 6 years respectively

from 1969 and 1973 respectively. If the respondents have reckoned the period of service from the date of initial appointment in respect of any juniors, or for that matter any other individual, they should extend the same benefits to the applicant. In fact, the applicant's counsel referred to one Dr. Lingaraj Nayak as junior to the applicant and stated that the said individual had been promoted before the applicant was promoted. If junior has been promoted ignoring the senior, then the same is violative of Art. 16 of the Constitution as held by the Apex Court as under in the case of **Bal Kishan v. Delhi Admn.**, 1989 Supp (2) SCC 351:-

"9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution."

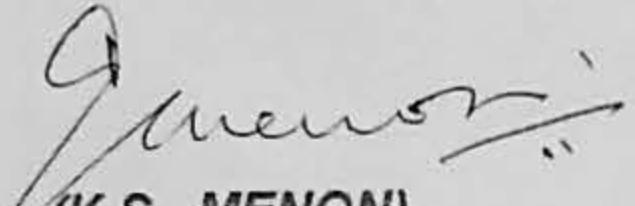
10. Thus, necessarily, the respondents are to conduct an exercise of scrutiny of the relevant records to see as to whether uniformly all the medical officers were granted promotion to the post of Sr. Medical Officer w.e.f. 1996 or thereafter in pursuance of Tikku Committee Recommendation or is there any such case where, the requisite period of service of four years had been reckoned from the initial date of appointment. If so, and if any of the juniors to the applicant had been given such promotion, the respondents shall consider the case of the applicant also for such promotion. In that event, the fixation of pay on the promotional post would be notional and the final pay as on the date of retirement in 1997 shall be arrived at; quantum of terminal benefits and pension re-worked on the basis of such revised pay and the difference in pension due and paid as well as the arrears of terminal benefit paid to the applicant.

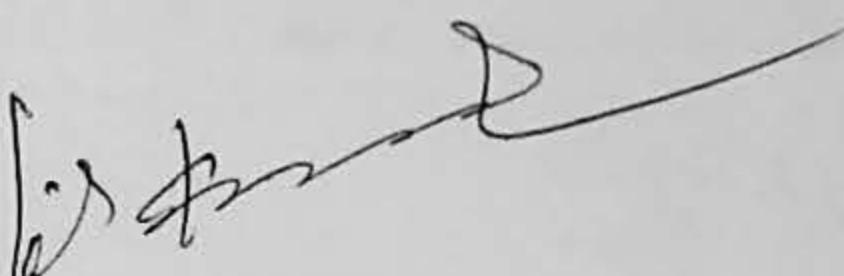


Revised PPO should also be duly issued. In case all have been uniformly promoted only from a prospective date, then the applicant has no case and in that case the applicant be so informed. This drill shall be completed within a period of four months from the date of communication of this order. Needless to mention that all these would be subject to outcome of the second appeal.

11. No costs.

(Dated, the 14th November, 2007)


(K.S. MENON)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.