

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 7th day of February 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. A.K. BHATNAGAR, J.M.

O.A. No. 752 of 2000.

R.S. Bajpai a/a 60 years s/o Sri G.N. Bajpai r/o 128/1348,
Block Y Kidwai Nagar, Kanpur..... Applicant.

Counsel for applicant : Sri A. Srivastava.

Versus

1. Union of India through Director General of Health Services,
CGHS-II Section) Niman Bhawan, New Delhi.
2. Director, Central Govt. Health Service, Niman Bhawan,
New Delhi.
3. Additional Director, Central Govt. Health Services, 117/
617, Pandunagar, Kanpur..... Respondents.

Counsel for respondents : Km. S. Srivastava.

O R D E R (ORAL)

BY HON. MR. S. DAYAL, A.M.

This application under section 19 of the A.T. Act has been filed for direction to the Respondent Nos.1 & 2 to grant promotion to the applicant on the post of Assistant Depot Manager with effect from the date of promotion of his juniors which is 18.2.1994. The applicant also seeks grant of all benefits and privileges including the monetary benefit of the pay and allowances from 18.2.94 along with 24% interest and fixation of his pension after retirement on the basis of pay drawn as arrears by his Junior Sri S.N. Shama after he got promotion on 18.2.94.

2. The case of the applicant is that he was registered as Pharmacist and was appointed as a Pharmacist under contributory health scheme on 4.5.62 and was posted at Delhi. Thereafter he was transferred to Kanpur in 1972. In 1975, the applicant succeeded in selection for the post of Asstt. Store Superintendent and was appointed as Asstt. Store Superintendent on 1.8.76. A seniority list of Assistant

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Store Superintendent as on 1.9.90 was issued sometime in 1991. The applicant's name was shown at Sl.No.1 but under the column meant for showing whether person was registered as Pharmacist or not, the remarks against the name of the applicant was 'no.' Since the applicant was already registered as a Pharmacist and he was not aware of the seniority list^{before 1993,} he made a representation on 12.11.93 against the wrong information contained in the seniority list. It is mentioned that the recruitment rules notified on 13.3.91 showed that post of Assistant Depot Manager was a selection post and Store Superintendent with 8 years regular service in the grade failing which Store Superintendent with 8 years in the grade of Store Superintendent and failing both Assistant Store Superintendent with 8 years regular service in the grade were eligible. The applicant has claimed that if he had been considered for the post at that time when his junior Sri S.N. Shama was promoted, he would have been selected. The applicant has mentioned that he made representations thereafter and the respondents accepted that he had the qualification and that he was eligible for being considered. Yet he was neither considered nor granted promotion to the post of Assistant Depot Manager. The applicant has retired on 31.7.2000. The application has been filed for promotion from the date of the promotion of his junior and consequential benefits.

3. We have heard the arguments of Sri A. Srivastava for applicant and Km. S. Srivastava for respondents.

4. Counsel for applicant has shown Pharmacist Registration Certificate (A-I) dated 21.11.59 which shows that the applicant was duly registered as Pharmacist and the clause I A of Section 32 read with section 31(G) and was entitled to all privileges regulating the practice of Pharmacist in the state of UP. The applicant was appointed as a Pharmacist thereafter on 4.5.62. The seniority list annexed by the applicant shows that he was at Sl.No.1 in the list but was

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Not treated to be a Registered pharmacist in Coloumn 3 of the seniority list. He claims to have made ^a representation on 12.11.93. It appears that some correspondence between the office of Dy. Director, Central Govt. Health Scheme, Kanpur and the Director General of Health Services, Nimman Bhawan, New Delhi (Annexure A-9) had taken place ^{in which} the applicant's qualification as a registered pharmacist was shown. This was a correspondence in connection with promotion to the post of Assistant Depot Manager. The respondents thereafter appointed Sri Dhamveer Singh, Sri S.N. Shama and Sri V.B. Gupta as Assistant Depot Manager by order dated 18.2.94 without taking the qualification of the applicant into account. It is clear from the counter reply filed by the respondents that the applicant was not considered at the time of promotion of the three officials to the Post of Asstt. Depot Manager.

5. Counsel for the applicant has annexed as Annexure A-14 to his application a letter from DDA, CGHS, Director General of Hx Health Services, Nimman Bhawan, New Delhi dated 15.3.99 addressed to Smt. Kasturi Bajpai w/O Sri R.S. Bajpai which confirms the qualification of Sri R.S. Bajpai as a registered pharmacist and states that revised list of Asstt. Store Superintendent/Store Superintendent was being prepared and that the case of Sri R.S. Bajpai will be considered for the Post of Asstt. Depot Manager after finalisation of the seniority list of Asstt. Store Superintendent/Store Superintendent. Counsel for applicant has also shown that the case was taken up in the Zonal meeting taken by Director CGHS with the Adml. Director along with representatives of the local branch of the association of CGHS and the case of the applicant was considered in this meeting and it was clarified that when promotion was made in 1994 for the Post of Asstt. Depot Manager, the educational qualification required for the post was not shown in the seniority list against the name of Sri R.S. Bajpai. The matter was verified subsequently and it was found that the applicant was eligible for the Post of Asstt. Depot Manager. It was mentioned that efforts

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would be made to create a superannuary post by the end of May and in the alternative, the junior most Asstt. Depot Manager will be reverted so that Sri R.S. Bajpai may get the benefit at the time of retirement. This has not been done and the applicant has been forced to seek relief here.

6. Counsel for respondent has contended that the cause of action arose in 1994 when the junior of the applicant was promoted. The O.A. has been filed only in the year 2000 and, therefore, the O.A. is liable to summary rejection on the ground of limitation.

7. We have considered the submission of counsel for respondents. We find that the respondents themselves in Annexure A-14 and A-18 have been assuring the applicant that his case would be duly considered and he would be granted promotion as the mistake was clearly on the part of the respondents.

8. Since the applicant is retired, he cannot now work on a higher post. We have considered the fact that the O.A. has been filed in the year 2000. We hold that the applicant is entitled to proforma promotion from the date of promotion to his junior Sri S.N. Shama on 18.2.94. He would be entitled to fixation of his pension and grant of retiral benefits on the basis of re-fixation of his pay after considering him to have been promoted on proforma basis from the date mentioned. The respondents are directed to carry out the revision of pension and grant of retiral benefits from the date of receipt of a copy of this order.

There shall be no order as to costs.

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The Registrar is directed to ensure that the above judgment is fair typed and compared before a copy of the same is given to the parties.

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