

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 07th day of August 2005.

ORIGINAL APPLICATION No. 625 of 2003.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

1. Dr. P.K. Mishra, S/o late K.M. Mishra,
Posted as Sr. Divisional Medical Officer,
Indian Railway Cancer Institute,
NER Varanasi.
2. Dr. Lalatendu Sarangi, S/o Sri N.K. Sarangi,
Posted as Sr. Divisional Medical Officer,
Indian Railway Cancer Institute,
NER Varanasi.
3. Dr. S.C. Agarwal, S/o Sri R.S. Agarwal,
Sr. Divisional Medical Officer,
Posted at L.N.M. Hospistal,
NER Gorakhpur.
4. Dr. S.K. Agarwal, S/o Sri R.S. Agarwal,
Sr. Divisional Medical Officer,
Posted at L.N.M. Hospistal,
NER Gorakhpur.
5. Dr. M.K. Budlakoti, S/o Late G.D. Budlakoti,
Sr. Divisional Medical Officer,
Posted at L.N.M. Hospistal,
NER Gorakhpur.
6. Dr. J.P. Gupta, S/o Late R.R. Gupta,
Sr. Divisional Medical Officer,
Posted at L.N.M. Hospistal,
NER Gorakhpur.
7. Dr. S.C. Vaish, S/o Sri B.R. Vaish,
Sr. Divisional Medical Officer,
Posted at L.N.M. Hospistal,
NER Gorakhpur.
8. Dr. Anand Tandon, S/o Late B.B.L. Tandon,
Sr. Divisional Medical Officer,
Posted at L.N.M. Hospistal,
NER Gorakhpur.
9. Dr. K.S. Pangti, S/o Sri B.S. Pangti,
Sr. Divisional Medical Officer,
Posted at Indian Railway Hospital,
NER Varanasi.

10. Dr. T.P. Srivastava, S/o Late Babban Lal,
Sr. Divisional Medical Officer,
Posted at Indian Railway Hospital,
NER Varanasi.

.....Applicants.

By Adv: Sri S. Agarwal & Sri S.K. Mishra

V E R S U S

1. Union of India through the Secretary,
Ministry of Railways,
NEW DELHI.
2. The D.G.* (R.H.S.) Railway Board, New Delhi,
Through it's Chairman.
3. The Chairman,
Railway Board, Rail Bhawan,
NEW DELHI.
4. The Member Staff,
Railway Board, Rail Bhawan,
NEW DELHI.
5. Dr. Jasveer Singh, Sr. D.M.O.
Norther Railway Central Hospital,
Basant Lane,
NEW DELHI.
6. Dr. Amrish Gupta,
Dy. Chief Medical Director,
Room No. 105, Annexe-II, Baroda House,
NEW DELHI.

[Respondent No. 5 & 6 are implemented vide
order dated 16.3.2005]

.....Respondents.

By Adv: Sri P. Mathur, Sri Lalji Sinha,
Sri P.P. Khurana & Sri R. Verma

O R D E R

By K.B.S. Rajan, Member (J)

The short but pregnant question of law involved in this OA is whether the applicants' claim for extension of the order dated 21.3.2001 read with 18.10.2001 in OA No. 2232 of 1998 of the Principal Bench of the Tribunal is legally sustainable.

2. A brief narration of facts with terse sufficiency is essential at this juncture.

3. In the Railways, in Medical Services, the hierarchical structure is as under:

Sl No	Designation	Qual'n for DR	Scale of pay	Mode of recruitment
1.	ADMO	MBBS	2200-4000	Direct
2.	DMO	MBBS + MS with 3 years exp.	3000-4500	a) By DR b) by Promotion of ADMO's with 4 years service under time bound promotion.
3.	Sr. DMO/MS	NA	3700-5000	a) 10 yrs combined service as ADMO and DMO b) 6 yrs of service for Direct Recruit DMOs.
4.	Sr. DMO/MS (NFSG)	NA	4500-5700	By Promotion
5.	Chief Medical Director/Medical Director	NA	5900-6700	By Promotion

4. In the Central Health Services of Govt. of India, there is a hierarchical structure of Medical Officers comparable to the above structure. However, there were certain anomalies in the scale of pay, for removing which, the Central Govt. constituted a committee in 1990 known as "TIKKU COMMITTEE" which made recommendation in 1991 for two time bound promotions to Doctors who were recruited in the junior scale of different sub cadres under the Central Health Scheme. By letter dated 14th November, 1991, the Ministry of Health advised the Ministry of Railways to process proposals for restructuring the cadre and for providing greater avenues of promotion in the light of the decision taken for the Central Health Service Cadre with the

Government. Such advice on the part of the Ministry of Health was considered by the Ministry of Railways and a decision had been taken to grant two time bound promotions to Assistant Divisional Medical Officers (Junior Scale) which was the first level in the Ministry of Railway Medical Service, in the year 1996, the relevant promotion whereof is in the following terms:-

"2. For this purpose, all the sanctioned posts in Jr. Scale (Rs. 2200-4000), Sr. Scale (Rs. 3000-4500) and Jr. Grade (Rs. 3700-5000) will be considered together to form a combined strength and the posts will be interchangeable between Jr. Scales, Sr. Scale and JA Grade. In so doing, however, the total number of Jr. Scale, Sr. Scale and JA Grade posts put together will not exceed the total number of the sanctioned posts.

3. Accordingly, sanction of the Ministry of Railways is hereby accorded to the following:

- i. An Assistant Divisional Medical Officer (a Jr. Scale Officer of IRMS) may be promoted upto JAG (Rs.3700-5000) after completion of ten (10) years of service of which at last two years of regular service must have been rendered in Sr. Scale. The promotion will be accorded on the basis of seniority-cum-suitability subject to the rejection of the unfit. The promotion will be personal to the officer without linkage to vacancies.



ii. All the posts in the Junior Scale, Senior Scale and JA Grade may be considered together to form a combined strength and the posts may be inter-changed depending upon the number of officers eligible to be promoted."

5. Certain DMOs (Dr. Jasveer Singh and others) who were directly recruited in the said post in the scale of pay of 3000-4500, observed the following anomalies subsisting in the wake of acceptance of Tikku Committee recommendations :-

- a. ADMOs (pay scale Rs 2200-4000) who have only MBBS as their qualifications have two time bound promotions one as DMOs (pay scale Rs. 3000-4500) and the other as Sr. DMOs (pay scale Rs. 3500-5000)
- b. DMOs (Pay scale Rs. 3000-4500) who have qualifications of MBBS + MS + three years service directly recruited, have only one time bound promotion as Sr. DMO (pay scale Rs. 3700-5000)

6. These medical officers moved the Principal Bench of the CAT, by filing OA 2238 of 1998. It is pertinent to note here that in the said OA apart from the official respondents, certain ADMOs promoted as DMOs were also included as private respondents, since in the event of the OA being allowed, their seniority might be affected. The private respondents contested the OA, as also the

official respondents. The prayer in the said OA is as under :-

- i. Direct the respondents to consider the applicants for being given tow time bound promotions keeping in view their status as specialists and to place them in the pay scales of Rs. 4500-5700 on the completion of eight years of service w.e.f. March, 1997;
- ii. Quash and set aside the seniority list dated 14.10.1994 stipulating that the 31 DMO's who were directly recruited be assigned seniority on the basis of batch date of joining viz-a-viz the batch date of promotion of promotee DMO's on the completion on the completion of their 5 years regular service as ADMO's.
- iii. Accord due and correct seniority to the applicant in the seniority list above the General Duty Medical Officers after giving the pay scale of Rs. 4500-5700 to the applicants;
- iv. Pas any other or further order(s) as may be deemed fit and proper by this Tribunal in the light of facts and circumstances of the case.

7. The Tribunal Partly allowed the OA vide order dated 21.3.2001 which inter-alia reads as under:-

"15. However, we find no logic in the contention of the respondents when they say that those ADMOs, with lesser qualifications than the applicants, who joined service in the scale of Rs. 2200-4000 and promoted as DMOs, were equated with the applicants, who possess higher qualifications than the promotees at the time of initial appointment through direct recruitment as DMOs in

the higher pay scale of Rs. 3000-4500 in the inter-se-seniority list of 1994. Since as per the advertisement also the direct recruits have the promotion prospects to the grade of Rs. 3700-5000 and Rs. 5100-5700 respondents should have on their own considered the case of the applicants for promotion as such, Obviously this has not been done by them for the reasons best known to them. During the course of the arguments, the learned counsel for the applicants has also submitted that the applicants are stagnating in the present post.

16. We find that the applicant's prayer is to grant them single *bound promotions and to place them in the pay scale of Rs. 4500-5700 w.e.f. March, 1997 i.e. on completion of eight years service in the grade of Rs. 3000-4500. In this regard, we would like to refer to the R/Rules notified on 14.7.70 in which one of the essential all qualifications for the post of DMO/GMO is presser bad as under.

(iii) Atleast 8 years work in a recognized responsible position concerned with the specialty for post graduate degree holders and 5 years work in a responsible position connected with the specialty for post graduate diploma holders. Similarly as per the recommendation of the Tikku Committee dated 14.11.91, minimum essential qualification for recruitment as Specialist Grade II Officers (Rs. 3000-5000) shall, inter alia, be a post graduate degree with three years experience after

obtaining the post graduate degree, or post graduate diploma with five years experience after obtaining the post graduate diploma; thereafter they shall be promoted to the scale of Rs. 3700-5000 on completion of 2 years of service in the scale of Rs. 3000-5000, subject to seniority-cum-fitness.

17. Since the essential qualifications of the Tikku Committee and that of the DMO/SMOs (applicants herein) are the same, it would be in the interest of justice, equity and fair-play if the request of the applicants for grant of time-bound promotions and pay scale of Rs. 4500-5700 is considered by the respondents. It is an admitted position that the applicants were recruited in that pay scale of Rs. 3000-4500, and that they have put in long years of service thereafter, they deserves to be considered for the grant of the scale of Rs. 4500-5700 in accordance with the recruitment rules and other instructions on the subject, if they are otherwise found fit for the same. We direct the respondents to do so. This shall be done within a period of four months from the date of receipt of copy of this order."

8. As there was no compliance of the aforesaid orders of the Tribunal, a CCP was filed and the Tribunal passed the following order on 18.10.2001:-

4. "On the other hand Sri E.X. Joseph, learned Sr. counsel appearing for the respondents refers to paragraphs 13, 14 & 17 of the order of the Tribunal and states that as the Tribunal had

indicated that the case of the applicants be considered for the grant of the scale of Rs. 4500-5700 in accordance with the recruitments rules and other instructions on the subject if they are otherwise found fit for the same, the respondents would consider their case, in their turn in keeping with their seniority position. Presently they do not get covent two the benefit and accordingly the applicants have also been advised. In this connection, they also referred to the letter issued by the Joint Director, Establishment to one of the applicants.

5. We do not agree with this understanding or interpretation adopted by the respondents. The order of the Tribunal very specifically stated that the applicants who have been initially recruited in the scale of Rs. 3000-4500 and who have put in long years of service deserved the post of a higher scale when it is a question of time bound promotion. Which is a measure for saturation removal. Once the individual concerned have completed the requisite period, they are entitled for consideration for the grant of the same, if they are not otherwise found unfit. That is only interpretation which can be placed in the order of the Tribunal in the order of the Tribunal. Even the fact that in the Tribunal's order, the request by the applicants for alteration of seniority made by the applicants earlier has been rejected, does not alter this

position. That being the case, persons if any who have equally completed the period, but are seniors to the applicants would also get the benefit without prejudice to the case of the applicants."

9. Against the order dated 21.3.2001, the official respondents have filed Civil Writ Petition No. 6980 of 2001 before the Hon'ble High Court of Delhi and the same was, vide detailed judgment dated 29.8.2002, dismissed. SLP filed by the Govt. against the said judgment dated 29.8.2002 is pending before the Apex Court.

10. The order dated 21.3.2001 read with 18.10.2001 was implemented vide order dated 28.3.2003 where all the 19 directly recruited DMOs in the pay scale of Rs. 3000-4500 and granted the first time bound promotion had been granted the second time bound promotion after completion of the requisite years of service and placed in the NFSG grade.

11. The applicants in the present OA were recruited as ADMOs in scale of Rs. 2200-4000 and they have been afforded two time bound promotions as per the Tikku Committee recommendations, one after 4 years of their entry and the other after 10 years of their entry. Thus after the two time bound promotions their pay scale was at Rs. 3700-5000.

12. The above applicants having felt that the 19 directly recruited DMOs are promoted to the post as

SDMO/MS in the NFSG scale under the second time bound promotion which has not been extended to them. As such they have penned a representation on 3.3.2003 and requested for the following:-

- i. All the IRMS Officers, who are senior to above 19 directly recruited DMOs, promoted to selection grade vide Railway Board's promotion order no. E(O)III-2003/PM/28 dated 28.2.2003, be immediately placed in selection grade above them.
- ii. It may also be clarified that such placement in NFSG will not make any change in the existing seniority list. Future promotions to SAG and higher grades will be made only on the basis of existing seniority list.

13. The above representation was rejected by the official respondents on 28.10.2003. This OA is against the aforesaid rejection order and for a mandamus vide para 8 of the OA which reads as under:-

"1. To issue mandamus directing the respondents to allow time bound promotion and the pay scale to the applicants in the light of the orders issued by the Principal Bench of the Tribunal on 26.3.2001 passed by Principal Bench of the Tribunal in OA No. 2232 of 1998 Jasveer Singh and others Vs. Union of India & Others with all consequential benefits.

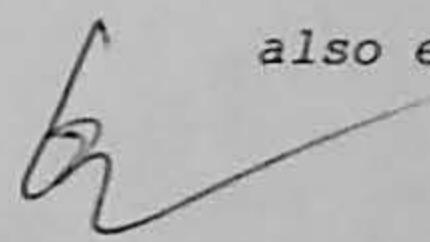
2. To issue a mandamus directing the respondent No. 2 to decide the representation of the applicants dated 3.3.2003 (Annexure 6) within

such time as this Tribunal may deem fit and proper in the circumstances of the case by a speaking and reasoned order and to grant time bound promotion and pay scale to the applicants in the light of orders issued by the Principal Bench of Tribunal in OA No. 2232 of 1998 Jasveer Singh and others Vs. Union of India and others.

2(a). To quash the order dated 28.10.2003 passed by the respondent No. 2 on the representation of the applicants and to direct the respondents to grant time bound promotion and pay scale to the applicants in the light of the orders issued by the Principal Bench of the Tribunal in OA No. 2232/1998 Jasveer Singh and others Vs. Union of India and others.

14. The respondents have filed a short reply. When the case came up for consideration, a question was raised as to what would be the effect of the outcome of SLP pending in the Hon'ble Supreme Court, should this OA be decided prior to the decision in SLP. The Tribunal held vide order dated 17.11.2004 that decision of this OA shall be subject to the outcome of the SLP. The Tribunal in the said order converged the issue in this OA as under:-

"The only question that requires consideration is whether in view of the clarificatory order issued by the Principal Bench the applicants herein are also entitled for time bound promotion."




15. Some of the direct recruit DMOs (applicants in OA 2238 of 1998) had filed MA No. 5491 of 2004 praying for impleadment as respondents, which was allowed vide order dated 16.3.2005.

16. Arguments were advanced on both the sides. Learned counsel appearing for the respondents submitted that non extension of the benefit of the judgment dated 21.3.2001 as NFSG would result in senior not being promoted while junior has been promoted. He has taken us through the seniority list and the promotion order to substantiate his contention. It has also been contended that indeed, order dated 18.10.2001 provides for seniors also to be considered for NFSG and since the applicants are seniors to some of the directly recruited DMOs who were promoted to the level of NFSG, the applicants should also be promoted.

17. The learned senior advocate for the private respondents succinctly brought out the entire history of the case and stated that the followings are vital points to be kept in view:-

a. Whereas the applicants in Dr. Jasveer Singh's case (OA 2238/98) were directly recruited to the post of DMOs, the applicants in the present OA were recruited only as ADMOs.

b. Whereas the qualification for DMOs is MBBS with MS and three years experience, in the case of the applicants in the present OA only MBBS is the requisite qualification.

- c. The necessity to file OA 2238/98 arose since the ADMOs were afforded two time bound promotions whereas for the DMOs (direct recruits), there was only one time bound promotion. It was only to equate the number of time bound promotions both for ADMOs and DMOs that the second time bound promotion for DMOs (direct recruits) was allowed. As such, if the OA is allowed it would create the very same anomaly (i.e. more number of time bound promotions to ADMO and less to DMOs)
- d. As regards the clarificatory order dated 18-10-2001, all that the Tribunal meant was that the second time bound promotion be not restricted only to the applicants before the Tribunal but should be made available to other similarly situated seniors as well. In other words all directly recruited DMOs on completion of requisite years of service as senior DMO/MS should be afforded the NFSG scale. And it was in pursuance of the said order that NFSG was made available to 19 Sr. DMOs/MS, while the number of applicants in the OA before the Principal Bench was only fifteen. Thus the applicants not being directly recruited DMOs are not eligible for the aforesaid time bound promotion and as such the benefit of order dated 21.3.2001 cannot be extended to them.
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18. The learned counsel for official respondents also made his submissions and by and large he had adopted the arguments of the learned senior advocate representing the private respondents.

19. We have given our anxious consideration to the case. The admitted position is that the applicants had joined the service as Asst. Divisional Medical Officers in the scale of Rs 2200 - 4000 and the minimum qualifications required for recruitment to the said post is M.B.B.S. In contradistinction to the above, applicants in Jasveer Singh's case were directly recruited Divisional Medical Officers in the scale of Rs 3,000 - 4,500 and that the minimum qualification for the said post is M.B.B.S. followed by M.S. coupled with three years experience. Thus, at the very inception stage itself there has been a marked difference in qualifications. The two sets of Direct Recruits are thus in two different classes and the same cannot be obliterated just because both of them attain the J.A.G. level of Senior DMOs/M.S. at a later stage. And, it is settled law that Educational qualifications have been recognized by the Apex Court as a safe criterion for determining the validity of classification, vide the Constitution Bench Judgment in the case of **State of J&K v. Triloki Nath Khosa, (1974) 1 SCC 19, (para 35)**.

20. Secondly, in Jasveer Singh's case, the main ground for allowing the second time bound promotion was on account of the fact that the ADMOs are

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afforded two time bound promotions whereas the directly recruited DMOs got only one and as such this anomaly had been removed by grant of the second time bound promotion to the direct Recruit DMOs. If the contention of the Applicants in this OA is accepted and they are given the third time bound promotion to the grade of NFSG, it would only bring back the very same anomaly of they having more time bound promotions than the directly recruited DMOs.

21. Another contention taken by the counsel for the applicants is that the order dated 18-10-2001 passed by the Principal Bench states, "persons if any, who have equally completed the period who are seniors to the applicants would also get the benefit without prejudice to the case of the applicants" This, argues the counsel for the applicants clearly means that all those who are senior to the applicants should also derive the benefit of the order dated 21-03-2001. We are unable to agree. The observation of the Tribunal as extracted above, cannot be read in isolation. It has to be correlated with the earlier observation of the Tribunal, which deals with the basic eligibility criterion for the second Time Bound Promotion at the NFSG level. The same reads, "The order of the Tribunal very specifically stated that the applicants who have been originally recruited in the scale of Rs 3,000 - 4,500/- and who have put in long years of service deserved the post of a higher scale when it is a question of time bound promotion, which is the measure for saturation removal. Once the

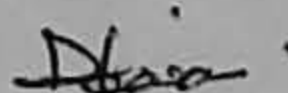
individuals concerned have completed the requisite period, they are entitled for consideration for the grant of the same if they are not otherwise found unfit. That is the only interpretation which can be placed in the order of the Tribunal." (Emphasis supplied). This, when read with the judgment dated 21-03-2001 wherein it is stated, "It is an admitted position that the applicants were recruited in the pay scale of Rs 3,000 - 4,500 and that they have put in long years of service thereafter, they deserve to be considered for the grant of the scale of Rs 4,500 - 5,700/-" would clearly mean that the primary requirement for deriving the benefit of the time bound promotion in the aforesaid scale of Rs 4,500 - 5,700/- is recruitment in the grade of Rs 3,000/- - 4,500/- . Thus, when the Tribunal meant 'seniors' should also be extended the benefit, it meant only seniors recruited in the same stream of DMO and not those seniors who were initially recruited as ADMOs and who have already availed of two Time bound Promotions. Thus the claim of the applicants is totally unjustified and cannot be acceptable.

22. In view of the above, reply to the question of law as reflected in para 1 above is in negative and the O.A. is therefore dismissed.

23. No order as to costs.



Member (J)



Member (A)