

Promolax

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
XXXXXXSXXXXX

O.A. No. 431 of 1990.
TAX No.

DATE OF DECISION 16.4.1991

Dr. P.C. Goklani

Petitioner

Party-in-person

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Mr. P.M. Raval

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi Vice Chairman

The Hon'ble Mr. S. Santhana Krishnan Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Dr. P.C. Goklani,
Medical Officer,
P&T Dispensary,
Maninagar,
Ahmedabad-380 008.
(Party in person)

.. Applicant

Versus

Union of India,
Through,
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi.

.. Respondents

(Advocate-Mr. P.M. Raval)

CORAM : Hon'ble Mr. P.H. Trivedi

.. Vice Chairman

Hon'ble Mr. S.Santhana Krishnan

.. Judicial Member

O.A. No. 431 of 1990

O R D E R

Date : 16.4.1991

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

Heard the petitioner in person and learned advocate Mr. M.R. Raval for Mr. P.M. Raval for the respondents. Inspite of the orders in MA/12/91 dated 28.2.1991 giving as a last opportunity time to respondents to file reply, no reply has been filed. Learned advocate for the respondents has stated that the copy of the Original Application was not supplied to him but from record, it does not appear to be the case. In any case, after the order dated 28.2.1991 there is no reason why the reply should not have been filed. Learned advocate stated that time be allowed for taking instruction whether the relief prayed for be given by the petitioner himself if found reasonable and justifiable. The petitioner, however, prays for a decision in view of the failure of the respondents to file reply.

2. After hearing the petitioner and the learned advocate for the respondents, we find that the relief pertains to opening of the sealed cover and if the recommendation is to promote the petitioner, it should be done from the due date 21.8.1987 and to grant of benefits etc. There is ample justification made out in the petition regarding the relief atleast so far as a decision on the opening of a sealed cover is concerned. We direct, therefore, that the respondents open the sealed cover and pass appropriate orders regarding the promotion giving reasons why the promotion is withheld, if the respondent authorities decide to do so. The recommendation in the sealed cover should also be brought out in the speaking order. We direct that such speaking order be passed within two months of the date of this order in accordance with the direction. Accordingly, the case is disposed of. No order as to costs.


(S Santhana Krishnan)
Judicial Member


(P H Trivedi)
Vice Chairman

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

394854

No. of 199

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 654 OF 1992
 (Petition under Article 136 of the Constitution of India
 from the Order dated the 16th April, 1991 of the Central
 Administrative Tribunal, Ahmedabad Bench, Ahmedabad in
 O.A. No. 431 of 1990)

WITH

INTERLOCUTORY APPLICATION NO. 1
 (Application for condonation of delay in filing
 Special Leave Petition)

AND

INTERLOCUTORY APPLICATION NO. 2
 (Application for stay by notice of motion)

Union of India,
 through Secretary,
 Ministry of Health and
 Family Welfare, Nirman Bhawan,
 New Delhi.

Certified to be true copy

Assistant Registrar (Judi.)

Supreme Court of India

.. Petitioner

Versus

Dr. P.C. Goklani,
 Medical Officer, C.G.H.S.,
 Shalimar Co-op. H. Society,
 Ashram Road, Ahmedabad - 380 009.

.. Respondent

Dated: 18th August, 1992

CORAM:

HON'BLE MR. JUSTICE LALIT MOHAN SHARMA
 HON'BLE MR. JUSTICE S. MOHAN
 HON'BLE MR. JUSTICE N. VENKATARAMANI

For the Petitioner: Mr. K.T.S. Tulsi, ^{Additional} Solicitor General
 of India
 (M/s. A.K. Srivastava and C.V.S. Rao,
 Advocates with him).

For the Respondent: Mr. R. Venkataramani, Advocate.

THE PETITION FOR SPECIAL LEAVE TO APPEAL AND THE
 APPLICATIONS ~~RE~~ above-mentioned being called on for
 hearing before this Court on the 18th day of August, 1992

UPON hearing Counsel for the parties herein THIS COURT
DOETH ORDER THAT the Petition for Special Leave to
Appeal above-mentioned be and is hereby dismissed
with the clarification that this will be without
prejudice to the right of the petitioner in taking
any appropriate decision in accordance with law as
directed by the impugned judgment, AND consequently
this Court's Order dated 13th January, 1992 made in
Interlocutory Application No.2 above-mentioned
granting stay be and is hereby vacated;

AND THIS COURT DOETH FURTHER ORDER THAT THIS
ORDER be punctually observed and carried into execution
by all concerned;

WITNESS the Hon'ble Shri Madhukar Hiralal Kania,
Chief Justice of India, at the Supreme Court, New
Delhi, this the 18th day of August, 1992.

Sd/-
(B.S. JAIN)
JOINT REGISTRAR

SUPREME COURT
CRIMINAL/CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(CIVIL) NO.654 OF 1992

WITH

ok 199

INTERLOCUTORY APPLICATION NO.1

(Application for condonation of delay in
filing Special Leave Petition)

AND

Appellant
Petitioner

INTERLOCUTORY APPLICATION NO.2

(Application for stay by notice of motion)

Union of India

.. Petitioner
Versus

Versus

Dr. P.C. Goklani

.. Respondent

ORDER DISMISSING THE SPECIAL LEAVE
PETITION & VACATING EX-PARTE STAY.

Respondent

DATED THIS THE 18TH DAY OF AUGUST, 1992.

Dated the

Engrossed by CS

SHRI C.V. Subba Rao,

Examined by

Advocate on Record for the Petitioner.

Compared with

SHRI R. Venkataramani,

No. of folios

Advocate on Record for the Respondent.

SEALED IN MY PRESENCE

29/8/92

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Submitted ;

C.A.T./JUDICIAL SECTION.

Original Petition No.: H 31 of 90.

Miscellaneous Petition No.: — of —.

Shri Dr P. C. Goklani Petitioner(s).

Versus.

Union of India & ors Respondent(s).

This application has been submitted to the Tribunal by
Shri Pimp

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunals Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Application has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 21 days/draft letter is placed below for signature.

Asstt. : 17/10

S.O.(J). :

Dy. R.(J):

Date of A3 not shown.
Copy sent to both sides.
23/10/90
KBSSaw 23/10/90

GAC/7690/-.

REFFED

Re submitted,

Applicant has removed office
etc, we may put up for order

or copy send to other side

copy

So

Okey

23/10/80

ISSANE
23/10/80

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

APPLICANT (S)

Dr P C Goklam

RESPONDENT(S)

Union of India & A

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO
RESULT OF EXAMINATION.

1. Is the application competent ? *yes*
2. (A) Is the application in the prescribed form ? *yes*
- (B) Is the application in paper book form ? *yes*
- (C) Have prescribed number complete sets of the application been filed ? *yes*
3. Is the application in time ?
If not, by how many days is it beyond time ?
Has sufficient cause for not making the application in time stated ? *Y*
4. Has the document of authorisation/Vakalat Nama been filed ? *Y*
5. Is the application accompanied by D.D./I.P.O. for Rs.50/- ? Number *801-865642* *fax* of D.D./I.P.O. to be recorded. *Y*
6. Has the copy/copies of the order(s) against which the application is made, been filed. ? *Y*
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed. ? *Y*
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ? *Y*
(c) Are the documents referred to in (a) above neatly typed in double space ? *Y*
8. Has the index of documents has been filed and has the paging been done properly ? *Y*

PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT
OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application? *Y*

10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal? *Y*

11. Are the application/duplicate copy/spare copies signed? *Y*

12. Are extra copies of the application with annexures filed?

- (a) Identical with the Original.
- (b) Defective.
- (c) Wanting in Annexures

No. _____ Page Nos. ?

(d) Distinctly Typed? *Y*

13. Have full size envelopes bearing full address of the respondents been filed? *Y*

14. Are the given addressed, the registered addressed? *Y*

15. Do the names of the parties stated in the copies, tally with Name(s) ~~Name~~ those indicated in the application? *Y*

16. Are the transactions certified to be true or supported by an affidavit affirming that ~~any~~ they are true? *Y*

17. Are the facts for the cases mentioned under item No.6 of the application?

- (a) Concise?
- (b) Under Distinct heads *Y*
- (c) Numbered consecutively?
- (d) Typed in double space on one side of the paper?

18. Have the particulars for interim order prayed for, stated with reasons? *Y*

To:

The Registrar,

C.A.T. Ahmedabad.

Sub:- URGENT NOTE.

Respected Sir,

I am to submit that I have approached ^{the Hon'ble} C.A.T. for promotion by this ^{8th Nov} 81. As it is time bound promotion, thousands of persons prior to me are promoted and I being made to work under juniors causing humiliations and mental torture, and financial loss. I have been twice to the Court vide D.A. No 154/88 and C.A. 341/890. The matter is urgent and may kindly be circulated for admission.

Copy served.

Off
3/10

15-10-90.

Yours faithfully,
M/s

(Dr. P. K. Gorlaani)
Medical Officer

PC & Dispensary
Maninagar, Ahmedabad.

I undertake to remove any
objection immediately

M/s

Slip No 441/90
7/8
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BRANCH

ORIGINAL APPLICATION NO. 431 OF 1990.

DR. P.C. GOKLANI

.....

Applicant

v/s

UNION OF INDIA

.....

RESPONDENT

INDEX

<u>Sr.No.</u>	<u>Annex.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	-	Memorandum of Petition	1-6
2.	A.I.	Judgement of the C.A.T. Ahmedabad dt. 2.2.1990.	6-12
3.	A.2	Copy of letter No.8-39/88-Medical dated 6.6.90 keeping the recommendation of D.P.S. in sealed cover..	13
4.	A.3	Judgement of the C.A.T. Ahmedabad dt. 10-8-1990.	14-15
5.	A.4	Judgement of the C.A.T. Ahmedabad in case of Dr. M.L. Verma.	16-19
6.	A.5	Judgement of the C.A.T. in case of Madhukar Vasudeo Mahendale.	20-22
7.	A.6	Copy of Reply filed by the Respondent in C.A.No.149/90.	23-25
8.	A.7	Copy of letter dated 20.8.1987.	28

Ahmedabad.
Dated 15-9-90

DR. P.C. GOKLANI
APPLICANT

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BRANCH

ORIGINAL APPLICATION

NO. 431 OF 1990.

DR. P.C.GOKLANI
MEDICAL OFFICER
P&T DISPENSARY MANINAGAR
AHMEDABAD-380008.

...

APPLICANT

RESIDING AT - 1, POSTAL OFFICERS' QUARTERS
SHAHIBAUG, AHMEDABAD-380004.

VERSUS

UNION OF INDIA

(To be served through) ...

RESPONDENT

SECRETARY

MINISTRY OF HEALTH & FAMILY WELFARE
NIRMAN BHAWAN, NEW DELHI.

I (a)

PARTICULARS OF THE APPLICANT

1. Name	}	As stated above.
2. Designation		
3. Address		

(b)

PARTICULARS OF THE RESPONDENTS

1. Name	}	As stated above.
2. Designation		
3. Address		

2.

ACTION/ORDER UNDER CHALLENGE.

Action on the part of the respondent withholding the promotion of the applicant to the post of Senior Medical Officer and keeping the recommendation of the Departmental Promotion Committee in the sealed cover by order dated 6-6-1990 Annexure A2.

3.

JURISDICTION

In view of the provision of the C.A.T. Act, this Hon'ble Tribunal has the jurisdiction to try and pronounce upon the subject matter of this application.

4. LIMITATION

This application has been filed within the period of limitation in view of the relevant provisions of the Administrative Tribunal Act.

5. FACTS OF THE CASE

The applicant is an employee of the respondent, working as Medical-Officer. The applicant was appointed as Jr. Medical Officer on ad hoc basis on 2.7.1973 and then as Medical Officer from 25.10.1979 on selection by the Union Public Service Commission. The applicant was due for promotion on 21.8.1987 when a number of juniors were promoted by an order dated 21.7.1987. Aggrieved by the order the applicant knocked the doors of this Hon'ble Tribunal by O.A. No.159/88 which was decided on 22.1990. Annexure A1. The application was allowed with the following observation.

"We declare as null and void the recommendation of the D.P.C. in case of the applicant and hereby direct that the D.P.C. should be reconstituted within a period of three months from the date of this order to consider the case of the applicant afresh in accordance with law and the respondents to take a decision on the recommendation within four months from the date of this order."

The respondents accordingly reconstituted the D.P.C. but have kept the recommendation in the sealed cover in violation of the law. Hence the applicant approached this Hon'ble Tribunal for contempt of Court proceedings vide O.A. No.34 of 1990. which was decided by this Hon'ble Tribunal on 10/08/1990 with the following observations -

"If the applicant has any grievance against the decision taken by the respondents on the recommendation of the D.P.C., it is open for him to move the Tribunal by filing a fresh application in that regard."

Hence the applicant is constrained to knock the doors of this Hon'ble Tribunal by way of this application against the order of the respondents for withholding the promotion of the applicant.

The applicant was due for the promotion on 21.8.1987 on the basis of the D.P.C. held on 19.8.1987. Till 21.8.87 the applicant was not served with any charge sheet nor any adverse remark from the confidential report was communicated to the applicant. The applicant is served with a chargesheet on 23.3.1988. According to the reply filed by Shri P.K.Kapoor on behalf of the respondent in O.A.No.149/90 before this Hon'ble Tribunal Annexure A.6, the Ministry of Communication intimated the Ministry of Health on 15.12.1987 that a decision was taken to issue the chargesheet to the applicant. The

10

The promotion of the applicant was due on 21.8.1987.

The services promotion of the applicant was regulated vide letter No 22011/3/77-Estt(A) dated 14.7.77 read with letter No 22011/3/79-Estt(A) dated 31.1.82 from Department of Personnel. The relevant portion is reproduced below.

"The mere fact that a P.E. or a R.C. has been registered by the Central Bureau of Investigation against an officer or complaints are being looked into a Preliminary departmental inquiry or otherwise but no conclusion has been reached, about the prima-facie guilt of the officer, should not be a ground for treating the said official as one whose conduct is under investigation is the basis for the view that "There is clear that the Government never had any intimated that mere registration of a Preliminary inquiry or a regular case should result in denial of promotion to an officer." Observed in this Hon'ble Tribunal in case of Dr.M.L.Verma Annexure A4.

The Hon'ble Principle Bench in case of R.D.Madras v/s Union of India and others observed.

"In the instruction in case of officers against whom a decision has been taken by the disciplinary authority to initiate proceedings and to whom sanction for prosecution is issued, sealed cover procedure is contemplated. Between the decision and the actual initiation of proceedings there may be a time lag which may not be uniform and specific. To ensure uniformity and certainty the date of initiation of proceeding should be taken as the basis for applying the sealed cover procedure and it is established that the date of initiation of the proceedings is the date on which the charge Memo is served on the official and the chargesheet is filed before the Court."

According to the full Bench judgement of the Principal Bench C.A.T. in case of K. Ch. Venkat Reddy reported in (1987) 3 ATL 111

"The sealed cover procedure can be resorted only after the charge Memo is served on the concerned official or the chargesheet filed before the criminal court and not before".

Relying on these judgements this Hon'ble C.A.T. in case of Dr. Verma v/s Union of India have allowed all benefits of service day.

1. Hon'ble C.A.T. Chandigarh Bench in case of J.P.Sethi v/s Union of India (Regn.No.T-142/1986 decided on 12th June, 1986.)
2. Madras Bench in case of AlRavindernath v/s State of Tamil Nadu SLJ (1988) 1 CAT 25.

"The Hon'ble Tribunal Ahmedabad Bench Annexure A.5 has observed that:-

Promotion - Disciplinary Proceedings - Contemptation of - Held not a valid ground for denial of.

"It was held that the power to keep such consideration in abeyance or to postpone actual grant of promotion which might otherwise be available to a person is a power which curtails the rights and the constitutional protection there of appertaining to the position of a public servant."

The disciplinary proceedings started against the applicant were not in the consideration of the respondent on 21.8.1987 as is evident from the reply of the respondents Annexure A.8 in reply to O.A.No.159/1988 before this Hon'ble Tribunal.

"When the D.P.C. has found him unfit, the question of chargesheet or no chargesheet".

They have not mentioned any thing about the contemplated disciplinary proceedings in their reply nor the recommendations of the D.P.C. were kept in the sealed cover. The review D.P.C. has to take into account the records as on the date of his entitlement to promotion subsequence developements are not relevant.

"Law is well settled that extraneous consideration cannot be taken into consideration for a period in which there was no dirty linen lying against a particular employee.

(Dr.Susila Mishra V. Union of India (1987) 4 ATC 511.

The criteria of the promotion was seniority-cum-fitness and it was time bound promotion, after five years of regular/qualifying service.

"No adverse material or assurance subsequent to the date of the promotion can be taken into account" in time bound promotion. observed the Hon'ble Tribunal in case of Union of India V. S.V.Ranade (1987) 3 ATC 124.

The Tribunal observed that since the information now-disclosed to the Tribunal was earlier available with the Department but was withheld from them, review proceedings could not be permitted in turn of order 47, Rule 4(1) of the code of Civil Procedure. The Tribunal reiterated their earlier decision that the so called DPC should have been held before the date of completion of the required period of service for the time bound promotion, no adverse happenings after that date can be taken into the account after that date. In fact the Tribunal observed that even if designated as 'D.P.C.' its function in a time bound promotion was that

of a 'Sereen Committee' only. The Tribunal accordingly, directed that the sealed covers be opened."

No adverse material or occurrence subsequent to their completion of 16 years of service or subsequent to the date of enforcement of the scheme i.e. 13.11.1983 could be taken into account." The applicant further prays that he should be given all the benefits from the back date i.e. 21.8.1987 as held by this Hon'ble Tribunal in case of Madhuker Vasudeo Mahendale Annexure A.5. The post of Medical Officer and senior Medical Office have become inter-changeable after the order dated 20.8.1987. Annexure A.7. The order of promotion dated 21.8.1987 was subject to the letter dated 20.8.1987.

"Relying on the judgement of (1) the Supreme Court in State of Mysore vs. C.R. Sheshadari A.I.R.1974 S.C.461,

2. Punjab and Haryana High Court in case of K.C. Jagga v. State of Haryana (1972) 2 SIR 578.

3. Delhi High Court in case of P.P.S. Gumbir v. Union of India (1984) ATC 174.

4. C.A.T. full bench in K.Ch. Venkat Reddy v. Union of India (1987) 3 ATC 174.

The Hon'ble Tribunal Madras Bench held that the applicant was entitled to the full arrears of the salary.

When the promotion was withheld due to administrative reasons - arrears of salary allowed on retrospective promotion, Com Parkesh v/s Union of India SLT(1987) 3 CAT 507

7. RELIEF(S) SOUGHT

In view of the facts mentioned above in Para 6 the applicant prays for the following reliefs.

- (1) Be pleased to direct the respondents to open the sealed cover. If recommendation is to promote the applicant, it should be done from due date i.e. 21.8.1987.
- (2) To grant all benefits i.e. Pay Seniority etc. from due date i.e. 21st August, 1987 and interest at market rate on the arrears of the salary.
- (3) Be pleased to grant this application with costs.
- (4) Be pleased to grant any other and further compensation as may be deemed just and proper in the facts and circumstances of the case.

13

8. INTERIM RELIEF

Pending admission, hearing and final disposal of this petition/hearing be pleased to direct the respondents to give the applicant promotion on ad hoc basis.

It is within the C.C.S.(CCA) Rules that when disciplinary proceedings are not completed within two years of the due date of promotion and the Disciplinary Authority should consider the case for ad hoc promotion. In the case of the applicant three years have passed from the due date of promotion, i.e. 21.8.1987 but the respondents have not granted ad hoc promotion to the applicant, nor the disciplinary proceedings have come to the conclusion. The grant of Interim relief has become necessity because hundreds of Medical Officers Junior to the applicant have been promoted on 21.8.1987 following the package deal given by the Govt. to the striking Service Doctors in July 1987 that first promotion will be after completion of five years of service. Later on one more agreement was made between the respondents and the Service Doctors on 21.8.1989 that the first promotion should be after four years of service. Hence subsequently many more juniors are promoted and the applicant has to work under his juniors, casting stigma, humiliation, and mental torture, apart from the financial loss.

9. OTHER REMEDIES EXHAUSTED

Looking to the circumstances of the case, the applicant has no other remedy except to knock at the door of this Hon'ble Tribunal.

10. MATTER NOT PENDING WITH ANY OTHER COURT ETC.

The applicant further declares that the matter regarding which the application has been made is not pending before any other Court or any other authority or any other Bench of the Tribunal.

11. PARTICULARS OF THE POSTAL ORDER

1. Number of the Postal Order.

91845642 dated 15-9-90

2. Name of the issuing Post Office.

Shahibaug, Ahmedabad.

3. Date of Issue of the Postal Order.

15-10-90

(Dr.P.C.Goklani)

VERIFICATION

I, Dr.P.C.Goklani, aged 46 years working as Medical Officer P&T Dispensary Maninagar, Ahmedabad, resident of 1, Postal Officers Quarters, Shahibaug, Ahmedabad, do hereby verify that the contents of this application are true to my personal knowledge and belief and that I have not suppressed any material fact.

Ahmedabad

Date:

15-10-90

(DR.P.C.GOKLANI)
APPLICANT