

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 259 of 2009

Friday, this the 5th day of March, 2010

CORAM:

**Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member**

Dr. Joseph Thomas, aged 58 years, S/o. V.A. Thomas,
Research Officer (Under Central Council for Research in
Homoopathy, Department of AYUSH, Ministry of Health
and Family Welfare, Government of India), Presently working at
Clinical Research Unit, Moolamattom, Residing at : Velamkunnel House,
Arkkulam P.O., Idukki Dt., Pin-685 591. Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the Secretary to the Government of India, Ministry of Health and Family Welfare, New Delhi.
2. The Director, Central Council for Research in Homeopathy, 61-65, Institutional Area, D Block, Janakpuri, New Delhi - 110 058. Respondents

[By Advocate – Mr. Sunil Jacob Jose, SCGSC(R1)]

This application having been heard on 05.3.2010, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. Justice K. Thankappan, Judicial Member -

The applicant filed this Original Application with the following prayers:-

- "(i) Call for the relevant records leading to the issue of Annexure A1 order and quash the same;
- (ii) Declare that the applicant is eligible to be considered for appointment/promotion to the post of Deputy Director taking into



consideration his status as a physically handicapped person;

(iii) Direct the respondents to consider him Annexure A3 and A4 representations and pass orders thereon after hearing the applicant;

(iv) Direct the 2nd respondent to consider his application submitted by the applicant in response to Annexure A8 notification;

(v) Award costs of and incidental to this Application;

(vi) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The few facts which are necessary for consideration of the OA are as follows:-

a) The applicant is a physically handicapped person and now working as Research Assistant in the Central Council for Research in Homeopathy. The applicant is having diploma in Homeopathic Medicine and Surgery. Originally he was appointed in the above post and as per the qualification which he has and the experience, according to him, he is entitled to be promoted to the post of Deputy Director in Homeopathy. Apart from the qualification and experience the applicant claims the benefit of reservation being granted to a physically handicapped person.

b) Prior to filing of this present Original Application, the applicant filed OA No. 62 of 2000 which was rejected and finally confirmed by the order passed by the Hon'ble High Court in WP(C) 19167 of 2005. Subsequent to the above, applicant filed representations Annexures A-3 and A-4 to promote him on the ground of reservation available to him being a physically handicapped person. Since the representations



are not answered in time the applicant filed this Original Application with the prayers as stated above.

3. The Original Application has been admitted by this Tribunal on 8.9.2009 and notice has been ordered on 1.5.2009. On receipt of the notice from this Tribunal a reply statement has been filed for and on behalf of the respondents. The stand taken in the reply statement filed on behalf of the respondents is that the post of Deputy Director (Homeopathy) in the Council has to be filled up 100% by promotion from Assistant Director, Homeopathy with five years regular service in the grade failing which by direct recruitment and there was only one post of Deputy Director (Homeopathy) in the Council. Apart from the above it is stated that the applicant is not in the feeder category for promotion as he is working as Assistant Research Officer in Homeopathy though the said post was subsequently redesignated as Research Assistant, Homeopathy with effect from 11.7.2005. Hence, the applicant is not entitled for consideration for promotion to the post of Deputy Director. However, it is stated that there was no reservation for physically handicapped person in the matter of promotion from Group-C to Group-B and Group-B to Group-A. It is further stated in the reply statement that as per the notification issued by the Government of India, Ministry of Health and Family Welfare, Department of Ayush, a post of Deputy Director (Tech/Hqs) has been advertised through DAVP by direct recruitment. The applicant was also one of the candidates but process of filling up the post could not be taken up due to the stay order of 19.1.2005 granted by the Hon'ble High Court of Delhi in a Writ Petition



pending in the said Court. However, subsequently the post has to be filled up by direct recruitment and as the applicant as stated earlier is not qualified to be promoted to the said post his case has not been considered. However, as per Annexure A-7 order it is answered by the Department that there was no reservation to physically handicapped person from Group-B to Group-A.

4. We have heard the counsel appearing for the applicant Mr. T.C. Govindaswamy and also the counsel appearing for the respondents Mr. Sunil Jacob Jose, SCGSC. We have perused all the records produced before this Tribunal. In the light of the stand taken in the Original Application and the reply statement the question to be decided is that whether the applicant is entitled to be promoted on the ground of reservation available to physically handicapped persons or not. The specific case set up by the applicant is that he is qualified and he has got experience to be promoted to the post of Deputy Director and if the reservation policy is considered in the case of physically handicapped persons in Group-C, Group-B or Group-A he should have been considered. To substantiate his claim the applicant relies on the orders issued by the Government of India, DOP&T OM No. 36035/7/95-Estt. (SCT) dated 16.1.1998 which provides reservation for Physically handicapped persons for promotion in all groups. The percentage also is fixed as 3% as per the roster of appointment for the physically handicapped person. The first post has to be reserved for physically handicapped person for promotion. To the above arguments the counsel for the respondents relying on paragraph 11 of the reply statement submitted that even though the Government of India orders provide for reservation for

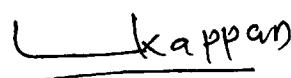


physically handicapped persons, as the applicant is not coming under the feeder category for promotion his case cannot be considered at all. We are also of the view that the stand taken by the respondents in the reply statement is justifiable and we are not in a position to over rule such a position of the law relating to the subject.

5. In the above circumstances, even though the experience or qualification which the applicant is now possessing, we cannot order the promotion of the applicant even if the only one post of Deputy Director Homeopathy is available, on the ground that applicant is nowhere in the zone of consideration. In other words he is not in the feeder category for promotion.

6. In the above circumstances and the reasons stated in this order the applicant is not entitled for any relief. The OA fails and it is dismissed. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

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