

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 362 OF 2006

Dated the 5th September, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

Dr. SS Mishra,
S/o Kashiunath Mishra,
Chief Ayurvedic Physician,
Indira Gandhi Hospital,
Kavaratti (Union Territory of Lakshdweep)
Residing at NO.D-3, Government Quarters,
Kavaratti, Union Territory of Lakshadweep.

.. Applicant

[By Advocate: Mr. TC Govindaswamy]

-Versus-

1. Union of India,
Represented by the Secretary to the
Govt. of India, Ministry of Health and Family Welfare,
Department of Indian Systems of Medicine and
Homeopathy, New Delhi.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti,
Union Territory of Lakshadweep.
3. Union Public Service Commission
New Delhi, represented by its
Secretary.

...Respondents

[By Advocates: Mr. Sunil Jose for Mr. TPM Ibrahim Khan, SCGSC
Mr S. Radhakrishnan for R/2]

The application having been heard on 28th August, 2008 the
Tribunal delivered the following -

ORDER

(Hon'ble Dr. KS Sugathan, AM)

The applicant in this OA is aggrieved by the alleged non-compliance of the directions issued by this Tribunal in OA 1348 of 2000. The following directions were issued by this Tribunal on 13.2.2003 in 1348 of 2000:

"5. In the light of what is stated above, we dispose of this application by permitting the applicant to make a representation regarding date of effect of his *insitu* promotion to the 2nd respondent within a month and directing the 2nd respondent to consider the same in the light of the rules and instructions on the subject and to give an appropriate reply within a period of three months from the date of receipt of a copy of this order -regarding the inclusion of the post of Senior Ayurvedic Physician and Ayurvedic Physician in the Lakshadweep Administration in the cadre of CGHS, ISM&H, we direct the 1st respondent to finalise the amendment to the recruitment rules referred to in R2(c) as expeditiously as possible at any rate within a period of six months from the date of receipt of a copy of this order and thereafter consider the inclusion of said posts in the cadre of CGHS, ISM&H within a period of three months thereafter. No costs."

[2] In the year 2004 the applicant filed a Contempt petition (42 of 2004) for non-compliance of the aforesaid directions. The said Contempt petition was closed on the basis of the affidavits filed stating that draft recruitment rules have been sent to the UPSC on 6.6.2003 and the matter is being pursued vigorously. The applicant has now sought the following relief in this OA:

"(a) direct the first respondent to finalise the amendment to the Recruitment Rules referred to in Annexure R2(c), Annexure A1 herein, forthwith and to consider the inclusion of the post of Senior Ayurvedic Physician and Ayurvedic Physician in the Lakshadweep Administration in the cadre of CGHS ISM & H and to grant consequential benefits arising therefrom forthwith.

(b) Award costs of and incidental to this application.



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

[3] The respondent No.3 i.e. the UPSC has filed a reply statement in October 2006. Respondents No.2 i.e. the Lakshadweep Administration filed their reply in February 2007. Respondent No.1 filed their reply on 22.8.2007. The UPSC has contended in their reply that the recruitment rule for the post of Ayurvedic Physician was approved by the Commission in May 2006 and no proposal regarding recruitment rule for the post of Senior Ayurvedic Physician has been received so far. In the reply filed by the respondent No.2 it is stated that the first part of the direction of this Tribunal regarding the claim of the applicant for retrospective promotion with effect from 1.1.1996 has been complied in as much as the representation has been considered and rejected by an order dated 22.7.2003. It is further stated that the promotion given with effect from 16.11.2000 was itself cancelled subsequently as it was found that the letter dated 16.11.2000 allegedly issued by the Ministry was a forged one. This is now the subject matter of another OA pending in the Tribunal. The new recruitment rules for the post of Ayurvedic physician has already been approved and sent to respondent No.1 for issue of notification. Respondent No.1 has stated in their reply that there is no cadre called CGHS ISM&H, so the question of including the Ayurvedic Physicians of Lakshadweep in that cadre does not arise. The applicant has not come to the Tribunal with a clean hand. He is the beneficiary of an in-situ promotion granted by respondent No.2 on the basis of



a forged letter. Action has been taken to finalise the recruitment rules for the post of Ayurvedic physician. Several clarifications sought by the UPSC had to be obtained from the Union Territory and furnished to the Commission. Finally the recruitment rule has been approved by the Commission and after the notification was vetted by the Ministry of Law and Justice, it was issued on 17th July 2007 (R/4). Since no senior medical officer is expected to be recruited directly no provision was provided in the recruitment rules for senior Ayurvedic physician. On the issue of inclusion of Ayurvedic Doctors of the Union Territory of Lakshadweep in the CGHS ISM &H cadre the respondent No.1 has contended that the 5th Central Pay Commission has recommended the constitution of an organised service called Central Indigenous & Homeo Medical Service with 182 practitioners in different Central Ministries. The 5th CPC has not recommended the inclusion of UT cadre of Ayurvedic physicians in the proposed cadre. In any case the said proposal was not approved by the Department of Personnel. There is no justification for the applicant's claim for inclusion in the Central cadre. He joined the Union Territory fully aware of the promotional avenues available there. He cannot compare himself with promotional avenues available elsewhere. It is up to the UT Administration to work out a viable promotional scheme and submit for approval of the Ministry. A proposal prepared for extending time-bound promotional scheme was indeed taken up with the Ministry of Finance, but that Ministry advised to wait for the recommendations of the 6th Pay Commission. Thus the

issue of time bound promotion to Ayurvedic Physicians of Lakshadweep is already under consideration. But there is no justification to include them in the Central cadre.

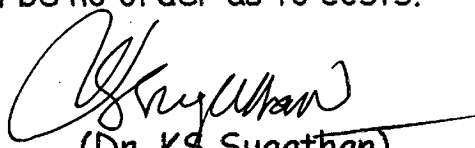
[4] We have heard the learned counsel for the applicant Shri TC Govindaswamy and the learned counsel for the respondent No.1 and 3 Ms.Jisha for TPM Ibrahim Khan, SCGSC, Shri S.Radhakrishnan for respondent No.2. We have also carefully perused the documents on record.

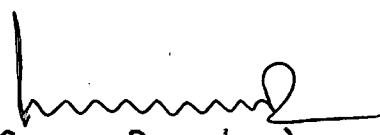
[5] There were three components in the directions issued by this Tribunal in OA1348 of 2000, namely (i) consideration and disposal of the representation made by the ~~applicant~~ ^{application} regarding the date of effect of his in situ promotion; (ii) finalisation of the recruitment rules referred to in R2 (c) and (iii) consideration of the demand for inclusion of the posts of Ayurvedic physicians of Lakshadweep in the cadre of CGHS & ISM&H. The first component of the direction has been complied with the rejection of the representation by respondent No.2 by their order dated 22.7.2003. The second component of the direction has been partly complied with the issue of recruitment rules for the post of Ayurvedic Physician on 17.7.2007. As regards the recruitment rules for the post of Senior Ayurvedic Physician, the latest communication dated 5.8.2008 from respondent No.1 to the SCGSC indicates that the proposal for framing of recruitment rules for the post of Senior Medical Officer (Ayurveda) under the Union Territory of Lakshadweep



has been sent to the Department of Personnel and Training on 23rd July 2008 for their approval. On receipt of the approval from the Department of Personnel and Training, the same will be sent to the UPSC and the Ministry of Law and Justice for approval and vetting before notification. The third component of the direction appears to be the most contentious issue. The respondent No.1 has given elaborate reasons why the Ayurvedic Physicians working under the Union Territory of Lakshadweep cannot be made part of the Central cadre. But the respondent No.1 should have taken a final decision on this proposal and communicated it to the respondent No.2 and the applicant. That does not appear to have been done.

[6] For the reasons stated above, this OA is disposed of with a direction to the respondent No.1 to finalise and notify the Recruitment Rules for Senior Ayurvedic Physician in the Union Territory of Lakshadweep within a reasonable period of six months from the date of receipt of copy of this order, and (ii) communicate its decision on the proposal for inclusion of Ayurvedic Physicians of UT of Lakshadweep in the Central cadre, to the respondent No.2 and the applicant within a period of two months after the notification of the Recruitment Rules for Senior Ayurvedic Physicians. Under the circumstances, there shall be no order as to costs.


(Dr. KS Sugathan)
Member (Administrative)


(George Paracken)
Member (Judicial)