

(29)

O.A. No. 263/2005

This, the 21st May, 2008.

Hon'ble Shri Justice Khem Karan, Vice Chairman
Hon'ble Sri Shailendra Pandey, Member (A)

Dr. Pratibha Shailendra aged about 59 years wife of Sri S.N. Mehrotra, resident of 3/444, Vishwas Khand, Gomti Nagar, Lucknow presently working as Lady Medical Officer, Central Command, Hospital, Lucknow.

Applicant.

By Advocate: Shri Sharad Bhatnagar

Versus

1. The Union of India through the Secretary Ministry of Defence, South Block, Central Civil Secretariat, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Director General Armed Forces, Medical Services, Army Headquarters, New Delhi.

Respondents.

By Advocate: Shri Sunil Sharma

ORDER (ORAL)

By Hon'ble Shri Justice Khem Karan, Vice Chairman

Heard parties counsel and perused the minutes of the Meeting of Screening Committee held on 27.3.2002, 23.11.2004 and 15.7.2005 as produced before us by Sri Sharma. The records produced by Sri Sharma do not contain Annual Confidential Reports.

2. Applicant, Dr. Pratibha Shailendra, has filed this O.A. praying for directing the respondents to give promotion to her in the scale of Senior Medical Officer at least from the date, circular dated 26.4.2001 was issued and consider her case for promotion to the post of Chief Medical Officer. She further prays that the respondents be directed to give retrospective effect to the circular dated 26.4.2001.

3. Based on the recommendations of ^{the} Tikku Committee, the respondents issued circular dated 26.4.2001 (A-2), providing inter-alia that a Lady Medical Officer ^{who had} _{having} put in 4 years of regular service shall be eligible for ⁹ in-situ promotion to the post of Senior Medical Officer, on seniority-cum-fitness basis. By 26.4.2001, the applicants had put in more than 20 years of service. On 21.5.2002, the respondents issued a list (A-3) of Lady doctors found fit

for promotion to the post of Senior Medical Officer and they were accordingly given that scale w.e.f. 23.4.2001 but the name of the applicant was not there. She represented against this exclusion and she was told that for want of certain ACRs, the screening committee could not clear her. She alleges in para 4.21, that she was never communicated any adverse remarks and so she should have been promoted, as criteria for promotion was seniority subject to rejection of unfit. She says had she been given timely promotion in 2002, she would become eligible for further promotion to the post of Chief Medical Officer.

4. The respondent No. 3, says in his reply, that the Departmental Promotion Committee met on 27.3.2002 and then on 23.11.2004, but found the applicant unfit on both the occasions. She was found fit on 15.7.2005 and was promoted to the post of Senior Medical Officer. Vide order dated 15.7.2005.

5. We have heard Sri Sharad Bhatnagar, for the applicant and Sri Sunil Sharma for the respondents and have also perused the minutes of the Screening Committee meetings held on 27.3.2002, 23.11.2004 and 15.7.2005.

6. Shri Bhatnagar has ^{argued} pointed out that circular dated 26.4.2001 should have been given retrospective effect, from the date, the recommendations of the Tikku Committee were accepted. We think, we will not be justified in directing the respondents to give retrospective effect to the scheme dated 23.4.2001. This scheme appears has been firmed in exercise of powers under proviso to Article 309 of the Constitution of India. It is the prerogative of the rule making authority to decide the date, from which the rules are to come into operation. Perhaps, the Tribunal will not be justified, at least in this case, to direct the respondents to give effect to the said scheme from the date different to one given therein. So, we find ourselves unable to accept first submission of Sri Bhatnagar.

7. The next contention of Shri Bhatnagar is that it is ^{the} clear cut case of the applicant from the very beginning that she was never communicated any adverse remarks/ material upto the year 2002, when the screening

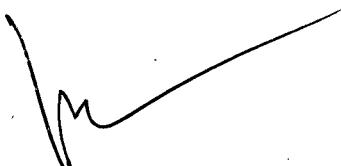


committee met for the first time, to consider the applicant and others, for promotion and also until she was promoted in July 2005. It is never the case of respondents, that applicant had adverse material. The committee however, declared her unfit on both the occasions i.e. in 2002 and 2004. Shri Bhatnagar urges in a case where promotion was to be made on seniority cum -fitness basis, applicant could not have been declared unfit in absence of adverse remarks/material.

8. Shri Sharma has tried to say that this Tribunal should not enter into the exercise as to whether the decision of the Screening Committee is good or bad. He says in absence of Annual Confidential Remarks, it will not be possible to say whether the committee was justified or not in assessing her unfit in 2002 or in 2004.

9. We have considered the respective submissions and have perused the relevant minutes of the meetings held in 2002 and 2004. The respondents, do not say that applicant was superseded, because of any adverse remarks /material . They do not say she was communicated any adverse remarks. If it is so, then we fail to understand as to how the Committee assessed her unfit in 2002 and 2004. Her subsequent promotion in July 2005 also supports her case. If there was some adverse material, the same should have been referred to in the reply and placed before us. That has not been done. We come to the conclusion that her supersession in promotion to the post of Senior Medical Officer, in 2002 and in 2004 was wrong. Had she been promoted in 2002, along with others, she would have become eligible for next promotion.

10. So, the O.A. is disposed of with a direction to the respondents to promote the applicant to the post of Senior Medical officer , from the date, candidates of list dated 21.5.2002, were given such promotions i.e. from 26.4.2001 and give consequential benefits and also to consider her case in accordance with Rules for next promotion, if any Junior to her was so promoted to the post of Chief Medical Officer, within a period of three months

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from the date, a certified copy of this order is produced before respondent No. 1.

No order as to costs.

Chandru
MEMBER (A)

22.05.08

Chandru
VICE CHAIRMAN

22.5.08

HLS/-