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CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH LUCKNOW.

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Registration O.A. No. 354 of 1987

Dr. Gopeswar Dutta Applicant.

Versus

Union of India
and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
HON'ble Mr. K. Obayya, Member (A)

(Hon. Mr. Justice U.C. Srivastava, V.C.)

who

The applicant/retired from service on attaining the age of superannuation i.e. on 31.1.1983 while posted as Senior Medical Officer at the Ordnance Factory, Kanpur has prayed that he remains entitled to have been promoted as Senior Medical Officer w.e.f. June/July, 1978 when he was superseded by his juniors in view of the adverse entry in his ACR for the period 1.10.1976 to 26.6.1977 and which was expunged by the DCOF in terms of the directions of the Hon'ble High Court of Judicature at Calcutta dated 10.8.1981, passed in writ petition No. 629 of 1978 and that the alleged decision of the so-called review DPC reviewing the previous proceedings of 8.5.1978 and 28.7.1980 and 20.10.1980 that the applicant did not qualify for empanelment to the said post, as well as the orders passed on his representations/tations/appeals rejecting the same. He has further prayed the promotion w.e.f. 1978 with all the benefits arising therefrom including the arrears of pay and allowances etc. The applicant joined service under the Government of India, Ministry of Defence, Indian Ordnance Factories Service in the year 1950 as Assistant Surgeon Grade-II. In the year 1973, he was promoted as Assistant Medical Officer and was confirmed. In the seniority List of

Assistant Medical Officers, published on 4.5.1978, the applicant ranked at Sl.No. 13. The applicant was given adverse remarks for the period 1.10.1976 to 26.6.1977. The applicant filed an appeal against the same on 7.4.1978, the said appeal was rejected by the DGOF without assigning any reason. Thereafter, the applicant preferred an appeal to the Secretary, Ministry of defence on 7.7.1978 and before the said appeal was disposed of, the applicant was superseded by his juniors in the matter of promotion to the post of Senior Medical Officer from the post of Assistant Medical Officer. The applicant filed a writ petition before the Calcutta High Court and his writ petition was allowed and the adverse remarks were expunged. The applicant made, thereafter several representations, and thereafter a review DPC ^{Confidential} prevails on the previous proceedings and it was found that the applicant did not qualify for empanelment. The applicant was given promotion on 27.9.1980 during the pendency of all the proceedings which he did not accept on the ground that the matter was already subjudice before the Calcutta High Court and he has also claimed promotion from the year 1978, and the applicant was to settle at Kanpur after retirement. In the year 1982, the DPC had considered the case of the applicant for promotion to the said post and he was promoted and posted at Kanpur. The grievance of the applicant ^{no more} ~~is now~~ subsists, as he has been promoted from the year 1978.

2. The contention on behalf of the applicant is that the adverse remarks have already been expunged, the applicant should have been promoted, w.e.f. June/July, 1978 and according to him, there was no question for


constituting review DPC in the year 1985 and this post was to be treated as non-selection post as was the case of Central Government Health Services adopted and made applicable. The applicant having been found fit and promoted in the year 1980 and finally in the year 1982, as such, he should ^{have} ~~been~~ promoted from the year 1978.

3. The respondents have refuted the claim of the ~~applicant~~ ^{officer} ~~claim of that applicant~~ and have stated that admittedly, the applicant was not promoted because of the adverse remarks in the year 1978. The review D.P.C. which met in the year 1980 did not consider the applicant for promotion in reference to the earlier DPC which met in the year 1978. However, in the empanelment for promotion of the year 1980, the applicant was considered fit by the DPC. He was accordingly ordered for promotion to the post of Senior Medical Officer on Transfer to Ordnance Factory Chanda from Ordnance Factory, Kanpur, but the applicant did not accept the said promotion to avoid the transfer.

4. According to the respondents, the promotion from Assistant Medical Officer to Senior Medical Officer was subsequently declared as non-selection post by a corrigendum issued in 1979 by the Ministry of Defence. In the light of corrigendum a DPC was held on 28.7.1980 to review the DPC held on 8.6.1978 and that DPC did not find the applicant fit for promotion w.e.f. 1978 and after expunction of adverse entries for the period 1976-77, a review DPC was held on 13.8.1985 to consider his promotion from 1978, and the DPC came to the conclusion that the applicant did not qualify for empanelment for promotion to the grade of Senior Medical Officer w.e.f. 1978. In the light of corrigendum

issued in the year 1979, the post was not clearly made as non selection post and the adverse remarks against the applicant before the DEC of the year 1978 and 1980 having been expunged, and the post clearly having been a non-selection post, the applicant became entitled to promotion w.e.f. the year 1979 when the corrigendum was issued. As the applicant was promoted in the year 1982, consequently, his promotion from the year 1989 will be notional and the actual promotion will be deemed to have been given in the year 1982. In view of the fact that the applicant gets promotion from the year 1979, the applicant will be entitled to consequential benefits including pensionary and other benefits and the respondents shall calculate the same within a period of 3 months and pay to him within another period of 2 months. His pension shall also be calculated and he will also be given the arrears of pension and thereafter every month, he will get the enhanced pension. The application is disposed of with the above observations. Parties to bear their own costs.


Member (A)


Vice-Chairman

Dated: 21.5.1992

(n.u.)