

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 153 of 2010

Reserved on 31.7.2014

Pronounced on 6th August, 2014

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Dr. Vijaya Mishra, aged about 59 years, W/o Late A.P. Mishra,
R/o E-1702, Rajajipuram, Lucknow 226017.

.....Applicant

By Advocate : Sri D. Awasthi

Versus.

1. Union of India through the Director General of Health Services, Nirman Bhawan, New Delhi.
2. Secretary, Health & Family Welfare (HFW), CHS-Section Nirman Bhawan, New Delhi.
3. Secretary, Department of AYUSH, IRCS Building, Red Cross Road, New Delhi.
4. CPIO and Deputy Secretary, Department of AYUSH, Ministry of Health and Family Welfare, IRCS Building, Red Cross Road New Delhi
5. Under Secretary, Government of India, Ministry of Health and Family Welfare, Department of AYUSH, Red Cross Building, New Delhi.
6. Additional Director, CGHS, Lucknow.

.....Respondents.

By Advocate : Sri S.P. Singh

ORDER

Per Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

- (a) *quash the order dated 14.9.2009 passed by opposite party no.4 which is contained as Annexure no.1 to this Original Application whereby the applicant has been declared as 'Unit' for promotion to the post of CMO (NFSG).*
- (b) *to direct the Opposite parties to promote the applicant on the post of CMO (NFSG) in the pay scale of Rs. 1400-18300 + NPA w.e.f. 25.8.2006 juniors have been promoted.*

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- (c) *to direct the Opposite parties to pay all the consequential benefits till date of its payment with interest.*
- (d) *pass any other suitable orders or direction which this Hon'ble Tribunal may deem fit just and proper under the circumstances of the case in favour of the applicant.*
- (e) *allow the present Original Application of the applicant with costs."*

2. The applicant's case is that she was appointed as Ayurvedic Physician under CGHS and joined on 20.9.1984. She was posted at various places and was given her promotion as and when due. Finally, she was promoted vide order dated 2.1.2002 on the post of Chief Medical Officer/Deputy Advisor in the pay scale of Rs. 12000-375-16500/- w.e.f. 25.1.2001. The Department of AYUSH brought out the seniority list of Ayurvedic Doctors on 30.11.2007 in which the name of the applicant finds place at sl. No. 22. By order dated 12.8.2009 issued by the Ministry of Family Welfare, Department of AYUSH, 17 doctors were promoted to the post of Chief Medical Officer in the pay scale of Rs. 14300-18000/- + NPA (Rs. 37400-67000 + GP + NPA) (Annexure no.4). The applicant was not included in the list of persons found fit to be promoted whereas her juniors were promoted. She gave a representation dated 25.8.2009 to the Secretary, Department of AYUSH (Annexure no.5). In the representation, she pointed out that no adverse entry was ever communicated to her either orally or in writing. She submitted another representation dated 9.9.2009 to the Secretary, AYUSH (Annexure no.7). Ultimately, her prayer for promotion as Chief Medical Officer (NFSG) was rejected by impugned order dated 14.9.2009, hence this O.A.

3. The applicant has challenged the impugned order on the ground that as per departmental norms as disclosed by the Ministry of Health & Family Planning letter dated 2.12.2009 only two 'Very Good' gradings are required in the preceding five years from the due date of promotion. As the applicant was aware that she had received two 'Very Good' entries, she fulfilled the minimum requirement for promotion to the post of Chief Medical Officer (NFSG).

4. The respondents have filed Counter Reply and Supplementary Counter Reply by which they have stated that the

case of the applicant came up before selection committee as per the relevant rules of selection. It is open to a committee to set up the minimum cut off standard for determining the persons as fit or unfit. The case of the applicant had come up before the selection committee in its meeting dated 22.5.2009 wherein in terms of DoP&T order dated 10.4.1989 read with O.M. dated 8.9.1998 and 16.6.2000, the DPC took a conscious decision that officer attaining atleast four bench mark grindings "Very Good" out of the Five ACRs falling within the zone of consideration should be assessed as 'Fit' for promotion. This decision of the DPC is for determining the suitability for promotion finds support in the pronouncement of Hon'ble Supreme Court in the case of Union of India Vs. A.K. Narula reported in AIR 2007 SC 2296. More-over, the same yardstick has been applied to certain other doctors who were also found unfit. Three doctors namely Dr. Raj Kumari Sharma, Dr. Vinod Kumari and Dr. Shashi Gokhale had filed Original Application Nos. 1193/2010, 1194/2010 and 748/2010 respectively before Principal Bench of this Tribunal, which were decided by common judgment and order dated 22.10.2010 directing the respondents for reconsideration of their cases through review DPC. On receipt of representation of the applicant against the grading below bench mark, the competent authority vide order dated 29.4.2011 upgraded the ACRs of the applicant alongwith Dr. Raj Kumari Sharma, Dr. Vinod Kumari and Dr. Shashi Gokhale. Thereafter, the review DPC was conducted by the UPSC on 12.10.2012 in the case of Dr. Raj Kumari Sharma, Dr. Vinod Kumari and Dr. Shashi Gokhale. However. The Review DPC still declared them unfit for the post of Chief Medical Officer. The Principal Bench of this Tribunal has not interfered with the decision of Review Committee in the contempt petition filed by them. Therefore, the case of the applicant deserves to be dismissed as it is similar to the case of the persons named above.

5. The applicant has filed Rejoinder Reply refuting the contentions of the respondents made in Counter Reply and reiterating the stand taken in the Original Application.

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6. We have heard the learned counsel for the parties at length and have also gone through the pleadings on record.

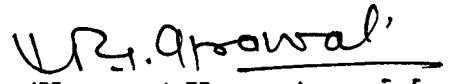
7. In the instant case, the facts of the case is that the promotion order dated 12.8.2009 by which Dr. (Ms) G.R. Arya, who was at sl. No. 23 in the seniority list of 30.1.2007, has been promoted and the applicant, who was at sl. No. 22 in the seniority list, has been found unfit for promotion. On careful scrutiny of the meeting of DPC dated 22.5.2009, it shows that the committee had said the Bench mark of atleast four ACRs has been Very Good out of five should be considered as Fit. This conscious decision was taken in terms of DoP&T O.M. dated 8.8.1998 read with subsequent order dated 8.9.1998 and 16.6.2000. The department had considered the applicant eligible for promotion for the year 2007-08 had found the applicant unfit on the basis of bench mark set up by the DPC. However, it is also noticed that by order dated 29.4.2011 passed by the Ministry of Health and Family Welfare, the applicant's three ACRs for the year 2003-04, 2004-05 and 2005-06 were up-graded from 'Good' to 'Very Good'. While, it is correct that in the case of Dr. Raj Kumari Sharma, Dr. Vinod Kumari and Dr. Shashi Gokhale the review Committee did not find them fit for promotion to the post of CMO, but the same outcome cannot be extended to the applicant as no review DPC has been held in her case pursuant to the upgraded entries vide order dated 29.4.2011. Under the principle of equability, her case should also have been reviewed pursuant to ACRs upgraded vide order dated 29.4.2011.

8. In view of the above, the O.A. succeeds. The order dated 14.9.2009 passed by respondent no.4 is quashed. The respondents are directed to convene a review DPC pursuant to the up-graded ACRs of the applicant vide order dated 29.4.2011 within a period of three months from the date of receipt of copy of this order and if the applicant is found fit by the review DPC for promotion to the post of Chief Medical Officer (NFSG), she would be given promotion notionally from the date her immediate junior has been promoted. As the applicant had already been superannuated from service in 2011, the respondents are further directed that if the applicant fits for promotion to the post of Chief

Medical Officer by the review DPC, then the retiral benefits of the applicant be calculated accordingly within the next three months from the date of meeting of review DPC. No costs.



(Ms. Jayati Chandra)
Member-A
Girish/-



(Naveent Kumar)
Member-J