

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NOS: 201/2000 and 261/2000

Friday the 29th day of AUGUST 2003

CORAM: Hon'ble Shri S.K. Agrawal - Member (A)

Hon'ble Shri S.G. Deshmukh - Member (J)

1. Sanjay Mahadeo Tilekar
Residing at 252, Old Bazar
Khadki, Pune.

...Applicant in
OA 201/2000

By Advocate Shri K.R. Yelwe.

2. Mohan Janardhan Dengvekar
Senior Pharmacist in
Central Government Health
Scheme, having their office
at Swasthya Sadan,
Mukundnagar, Pune.

...Applicant in
OA 261/2000

By Advocate Shri Uday Warunjikar.

v/s

1C
1. Union of India through
Secretary,
Ministry of Health and
Family Welfare,
Nirman Bhavan, New Delhi.

2. The Director
Central Government Health
Scheme, Directorate General
of Health Services,
Nirman Bhavan, New Delhi.

3. Additional Director
Central Government Health
Scheme, Second floor,
Swasthya Sadan,
Mukundnagar, Pune.

By Advocate Shri V.G. Rege.

4. Shri R.B. Bhosale
Residing at / available at
Central Government Health
Scheme, Second floor,
Swasthya Sadan,
Mukundnagar, Pune.

...Respondents.

By Advocate Ms. Neelima Gohad for Shri S.P. Saxena

...2...

O R D E R

{Per S.K. Agrawal, Member (A)}

OA 201/2000 and OA 261/2000 have been filed by the applicants. Being common points involved and as such both OAs are taken up together and disposed by a single and common order.

2. In both the OAs the relief claimed by the applicant is to quash the order dated 24.6.1998 and order dated 22.2.1999 passed by the respondents authorities in favour of Shri R.B. Bhosale and further prayer to direct the respondents to place Shri R.B. Bhosale, on his reversion to Pharmacists Grade I at the bottom of seniority list of Pharmacist Grade I and revert him from the post of Senior Pharmacist to Pharmacist Grade I and promote the eligible employee to the upgraded post of Senior Pharmacist and also direct the respondents to prepare consequential seniority list showing the applicant's name as on 1.3.1999.

3. Counsel for the applicants in both the OAs and counsel for the respondents alongwith ^{Counsel for} Shri R.B. Bhosale private respondents appear and their arguments were heard.

4. In both the OAs the grievance of the applicants are against the appointment and promotion of Shri R.B. Bhosale private respondents from the post of Pharmacist Grade I to the post of Assistant Stores Superintendent vide Office Order No.72 dated 19.12.1994. This order mentions that Shri R.B. Bhosale shall be on probation for a period of two years from 18.10.1994 when he

took over the charge of the post of Assistant Stores Superintendent. The learned counsel for the applicants have argued that the respondents vide their order dated 24.6.1998 (Annexure A1 page 18) issued another order reverting Shri R.B. Bhosle from Assistant Stores Superintendent to Pharmacist Grade I and he will be given subsequent upgradation to the post of Senior Pharmacist on being found him to be eligible for upgradation after refixing his seniority in the reverted post. The learned counsel for the applicant further submitted that on the same day i.e. on 24.6.1998 the respondents have issued another Office Order re-fixing his seniority in the post of Pharmacist Grade I and promoted him to the post of Senior Pharmacist as per revised seniority. The said order reads as under:

OFFICE ORDER

Consequent on the acceptance of his request dated 25.9.1997 for reversion, Shri R.B.Bhosale, Assistant Stores Supdt. is reverted to the post of Pharmacist Gr.I. On refixing his seniority in the post of Pharmacist Gr.I, and on being found him to be eligible for upgradation to the post of Senior Pharmacist as per the refixed seniority of Pharmacist Gr.I and as per the orders of the Min. of Health & F.W. vide O.M. No.S.11011/1/88-CGHS (P) (Pt.I) dated 11.7.95 regarding the upgradation of 25% of the Pharmacists to the post of Senior Pharmacist, Shri R.B.Bhosale, Pharmacist Gr.I is upgraded to the post of Senior Pharmacist on ad-hoc basis for a period of six months in the pay scale of Rs. 5000-150-8000/- w.e.f. 19.6.98. Shri R.B.Bhosale will be shown against the vacant post of Asstt. Store Supdt. and continue to hold the job responsibilities of A.S.S. until further orders without any additional remuneration.

5. The respondents have gone a step further as submitted by the learned counsel for the applicant that after a gap of 7 months again vide order dated 22.2.1999 (Annexure A 1 page 17),

the respondents have issued partial modification order accepted the request of Shri R.B. Bhosle to continue ^{his} as Assistant Stores Superintendent which reads as under:

In supersession of this office order No. SGHS/PNE/Estt. 2(52)/ dated 24.6.98 and in partial modification of this order No. SGHS/PNE/Estt. 2(5)/82/3485, dated 2.12.98, Shri R.B. Bhosale, Pharmacist is allowed to continue as Assistant Store Superintendent w.e.f. 10.6.98 in the Pay Scale Rs. 4500-125-7000/- on the condition that he will not ask for any reversion in future.

6. The learned counsel for the applicant have therefore argued that the respondents authorities have tried to accommodate Shri R.B. Bhosale ~~on ever stay~~ by giving him promotion, thereafter reverting him, and again given him promotion and lastly has accepted his request for continuing in the post of Assistant Store Superintendent with effect from 10.6.1998 in the pay scale of Rs. 4500-125-7000. In the latest order issued by the respondents on 22.2.1999 the condition~~s~~ has been laid down that Shri R.B. Bhosale will not ask for any reversion in future.

7. The learned counsel for the applicant have further submitted that so far as private respondent Shri R.B. Bhosale is concerned, the grievance of the applicant is similar to that raised in original application No. 329/1998. The applicant states and submits that a Misc. Petition was filed by the applicant herein for amendment in the above mentioned original application No. 329/1998. However at the time of hearing of the

said M.P. this Tribunal had directed that the applicant will be at liberty to file appropriate original application as the cause of action was different and the same was disposed of vide order dated 19.1.2000. The applicant further submitted that in the due course they were upgraded to the post of Senior Pharmacist with effect from 11.7.1998 which implies that they were found suitable for promotion to the post of Senior Pharmacist. The applicant further submitted that from the cadre of Pharmacist the next promotion available to the applicant is to the post of Assistant Store Superintendent. Since very few Pharmacist were getting the chance of being promoted to the post of Assistant Store Superintendent the post of Pharmacist Grade I was upgraded as Senior Pharmacist. The applicant's main grievance is that the respondents have passed several order as per their own whims to accommodate Shri R.B. Bhosale. By virtue of which the applicant and other candidate in the seniority list of Pharmacist Grade I was affected badly.

8. The respondents in their counter reply have stated that normally on reversion from higher to the lower post, the concerned person is entitled to regain his seniority fixed in the lower post at the place as it originally stood prior to his promotion to the higher post unless any rule lays down otherwise. The respondents further submitted that so far as the fixation of seniority in the cadre of Pharmacist Grade I are concerned, there is no rule which prohibits granting the same place in the seniority/gradation list to an employee promoted from the post of

Pharmacist Grade I to the post of Asst. Store Supdt. on his reversion there from to the post of Pharmacist Grade I. The respondents have therefore submitted that both the applicants are not entitled to question the action of respondents in giving placement in the seniority of the cadre of Pharmacist Grade I to Shri R.B. Bhosale as he was senior most in the seniority list compared to both the applicants. As such he was rightly placed prior to his promotion to the post of Assistant Store Supdt. The learned counsel for the respondents has drawn our attention to Office Order No.47 dated 23.12.2002 issued by the Joint Director, CGHS, Pune wherein it has been stated that the post of Senior Pharmacist and Assistant Stores Superintendent / Stores Superintendent have been merged by the Vth Central Pay Commission and the revised pay scale was fixed was Rs.5000-150-8000 with effect from 1.1.1996. The said order reads as under:

In terms of Govt. of India, Ministry of Health and Family Welfare (Department of Health) Letter No.C-18013/8/CA1/98-CGHS-II/CGHS(P) dated 30.10.2002 regarding the upwaard revision of the Pay Scale of Assistant Stores Superintendent / Stores Superintendent from Rs. 1400-21300 to Rs.1600-2660 with effect from 11.7.1995 and from Rs. 4500-125-7000 to Rs. 5000-150-8000 with effect from 1.1.1996 in the revised pay scale and also merger of the posts of Sr. Pharmacist and Assistant Stores Superintendent / Stores Superintendent w.e.f. 11.7.1995, the post of Shri R.B. Bhosale, Assistant Stores Superintendent has been re-designated as Senior Pharmacist w.e.f. 11.7.1995 and his pay fixed @Rs. 1850/- as on 11.7.1995 in the scale of Rs. 1600-50-2300-EB-60-2660 under FR-22(1)(a)(2) with D.N.I. 1.7.1996.

The learned counsel for the respondents therefore concluded his arguments by saying that whatever discrepancy existed upto 1995 has been considered rightly by the Central

Government by merging the various posts putting them together to the scale of Rs. 5000-8000 w.e.f. 1.1.1996. As such there is no merit in the OA filed by the applicants. The learned counsel for the respondents has also submitted that if there were any grievances to the applicants with regard to pay fixation and promotion against Shri R.B.Bhosale they should have first approached the respondents authorities by filing representations. But so far no representation was filed by the applicants with regard to their grievance if any and straight away they approached the Tribunal for the reliefs. The respondents further submitted that earlier the applicants had approached this Tribunal by filed OA which was disposed of but no relief could be given to them as they were not entitled for the same. Their case is hit by res-judicata because on the same point they have approached this Tribunal again. The learned counsel for the respondents submits that both the OAs suffer from delay and laches as they were not filed within the time limit.

9. We have considered the facts of the case and material placed before us along with the arguments put forth by the learned counsel for the applicants as well as counsel for the respondents. ~~From~~ The facts of the case as it appears that the respondents authorities have passed various orders on different dates to accommodate Shri R.B.Bhosale by giving him promotion then reversion and then again promoting him after a gap of 3 1/2 years which was not permissible under the rules. However ~~his promotion~~ decision

has been set right by the Central Government by merging the various posts and putting them to the scale of Rs. 5000-150-8000 with effect from 1.1.1996 in revised pay scale after which there should not be any grievance to the applicants. Shri R.B. Bhosale's case is covered under Rule 3 of Seniority and promotion Rules in the Central Government service as per Swamy's compilation which laid down the seniority of permanent / quasi-permanent employees on reversion to the original post , in the event of reversion to the parent department within the specified period of two /three years, to the original seniority in the grade/post, from which they proceeded. In view therefore Shri Bhosale on his reversion was given original seniority. His case is well covered under Rule 3 of the aforesaid rules and cannot be agitated by the applicants.

10. In view of what has been discussed above, as there remains nothing to be agitated, both the OAs stand ~~dismissed~~ ^{disposed of} leaving the parties to bear their own costs.

Member (J)

Member (A)

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