

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.1176/97

Date of Decision: 21.12.2001

Dr. Kamala Kaht Chaube.

Applicants

Shri S.P. Saxena.

Advocate for Applicants

Versus

Union of India & others

Respondents

Shri R.K. Shetty.

Advocate for Respondents

R1 to R4

Shri D.V. Gangal

Advocate for R7, 9 and 10

CORAM: HON'BLE SHRI S.L. JAIN. . . . MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. . . . MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

Shanta S.
(SMT. SHANTA SHAstry)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 1176/97

THIS THE 21ST DAY OF DECEMBER, 2001

CORAM: SHRI S.L. JAIN.
SMT. SHANTA SHAstry

MEMBER (J)
MEMBER (A)

Dr. Kamala Kant Chaube,
working at Ammunition Factory,
Ordnance Factories Hospital,
Khadki, Pune-411 003. Applicant

By Advocate Shri S.P. Saxena

Versus

1. Union of India
through Secretary,
Ministry of Defence,
South Block,
New Delhi-110 011.
2. The Chairman,
Ordnance Factory Board,
10-A, Khudiram Bose Road,
Calcutta-700 001.
3. The General Manager,
Ammunition Factory, Khadki,
Pune-411 003.
4. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.
5. Dr. M.K. Langthasa,
PMO I/C,
Vehicle Factory,
Jabalpur-482 009.
6. Dr. S.P. Saxena;
PMI I/C,
O.F.C. Armapur,
Kanpur-208 809.
7. Dr. D.Sikdar,
D.D.H.S.,
10-A, Shaheed Khudiram Bose Marg,
Calcutta-700 001.

8. Dr. (Smt.) S. Patkar,
PMO, Ordnance Factory Hospital,
Dehuroad, Pune-412 113.
9. Dr. A.N. Malty,
PMO I/C,
Ordnance Factory Hospital,
Ichapore-740 144.
10. Dr. S.P. Sharma,
PMO I/C,
Gun Carriage Factory Hospital,
Jabalpur-480 001.
11. Dr. A.K. Roy,
PMO, Gield Gun Factory,
Kanpur-208 009.
12. Dr. L.R. Nayak,
PMO I/C,
Ordnance Factory Hospital,
Bhandara,
Nagpur-441 906.

... Respondents

By Advocate Shri R.R. Shetty for R1 to R4
Shri D.V. Gangal for R7, 9 and 10:

ORDER

Smt. Shanta Shastry. Member (A)

The relief sought by the applicant, who is at present working as Principal Medical Officer is to direct the respondents to recast the seniority list in the cadre of Senior Medical Officer (SMO), Principal Medical Officer (PMO) and Principal Medical Officer (SG) and place the applicant above respondents 5 and 8 and to hold a review DPC to consider the promotion of the applicant to the aforesaid various grades upto Chief Medical Officer (CMO) from the date respondent No.5/or respondent No.8 are promoted to PMO (SG) respectively

with all consequential benefits like seniority, consideration for next promotion, pay fixation, arrears of pay and allowances.

2. The brief case of the applicant is that respondents 5 and 8 were promoted to various grades from SMO to PMO (SG) much earlier than the applicant against reserved quota and on roster point, the applicant wants his original seniority over these respondents 5 and 8 in terms of the OM dated 30.01.1997 of the DOP & T.

3. The applicant joined service in 1973. he was appointed as Assistant Medical Officer (AMO) in Ordnance Factory, Dehradun on 02.02.1982 after being selected through UPSC. In the combined seniority list of Medical Officer in Ordnance Factory Organisation published by the Ordnance Factory Board, Calcutta on 02.02.1982 the applicant was shown at Sl.No. 45 whereas Dr. M.K. Langthasa (ST) and Dr. (Mrs.) Savitri Patkar (SC) were shown at Sl. No.87 and 88, thus they were junior to the applicant. However, Dr. Langthasa i.e. respondent No.5 received promotions earlier than the applicant. So also Dr. Patkar respondent No.8 received promotions upto the post of PMO earlier than the applicant. The following chart shows the dates from which respondents 5 and 8 and the applicant received promotions to the various posts.

4.

	Applicant	Respt No.5	Respt. No.8
Date of joining	21.9.73	19.9.77	01.9.77
Date of promotion to SMO	24.4.87	03.12.82 ST point	08.11.85 SC point
Date of promotion to PMO (OG)	31.10.95	05.3.87	16.9.93
Date of promotion to PMO (NFSG)	24.02.97	01.5.92	24.02.97
Date of promotion to SAG	--	12.5.2K	--

4. A judgment was pronounced by the Supreme Court in the case of Union of India Vs. Virpal Singh Chauhan (1995 (7) SC 231) in regard to interse seniority between general category candidates and those from reserved categories who were granted accelerated promotion against reservation quota. The ratio laid down in this case was that even if the SC/ST candidate is promoted earlier by virtue of rule of reservation/roster than the senior general candidate, then the general candidate regains his seniority over such SC/ST candidates promoted earlier when he is promoted subsequently. The Government implemented this decision by issuing orders vide DOP&T OM dated 30.01.1997. The operative part of this OM reads "if a candidate belonging to SC or the ST is promoted to an immediate higher post/grade against the reserved vacancy earlier than his senior general/OBC candidate is promoted later to the said immediate higher

post/grade the general/OBC candidate will regain his seniority over such earlier promoted candidate of the SC and the ST. in the immediate higher post/grade."

5. The applicant claims that since he was senior to the respondents 5 and 8 in the grade of AMO and since respondents 5 and 8 got promotions to higher post of SMO earlier than the applicant, his seniority in the grade of SMO needs to be restored and the same would apply to the subsequent promotion granted to respondents 5 and 8.

6. The applicant has also relied on the judgment in the case of Ajit Singh II Vs. State of Punjab 1999 SCC 209 decided on 16.9.99 wherein also, the same principle as in the case of Virpal Singh Chauhan has been confirmed. Further, the applicant submits that the promotion of respondents 5 to the post of CMO is also not correct as it is not a reserved post. Therefore, the promotion granted on the basis of roster point should not apply in regard to this post.

7. The applicant represented to restore his seniority over respondents 5 and 8 in the post of SMO onwards vide letters dated 28.3.97, 07.4.1997, 01.7.1997 and 16.8.1997. According to the applicant, they were not considered nor was final order communicated to him.

8. The respondents have opposed the OA. According to them although the DOP&T had issued OM on 30.1.1997 immediately after the judgment in Virpal Singh Chauhan (supra) another judgment was pronounced by the Supreme Court in the case of Jagdishlal & Ors Vs. State of Haryana (1997 (2) SCSLJ 1). Therefore, the law laid down in this judgment needs to be followed. The post of SMO is a non selection post, therefore, the reservation applies to the post. Accordingly respondent No.5 was promoted to the post of SMO against reserved quota. So also respondent No.8. Respondents have refuted that respondents 5 and 8 were further promoted as PMO, PMO (SG) and CMO on the basis of reservation. According to them there is no reservation applicable in promotion to the higher post of PMO, PMO (SG), CMO etc. Therefore, the respondents 5 and 8 got their promotions according to their seniority and not on the basis of reservation to the post of PMO onwards. By the time, the applicant got promotion to the SMO respondent No.5 had already been promoted to the post of PMO i.e. he was already two levels above the applicant.

9. The respondents have also taken the plea that the applicant wants his seniority in 1987 to be restored but he has approached this Tribunal belatedly. All his representations are starting from 1997 onwards after the DOP&T OM dated 30.01.1997 was issued. The applicant never challenged the seniority list published every year. Thus, the applicant's prayer is hopelessly time

barred. Though the representations were received from the applicant, they were not replied to, since the matter was pending in the Tribunal. The applicant's representation was duly considered. According to the respondents, the applicant has no case as he was governed by the SRO 320/77 amended vide letter dated 15.6.1979 much before the coming into force of SRO 78/95.

10. We have given careful consideration to the rival pleadings in this matter. We have also perused the minutes of the DPC meetings held for promotions from SMO to CMO. Prior to the judgment in the case of Virpal Singh Chauhan (supra), the position was that once the reserved candidates get accelerated promotion, they retained their seniority as their promotions were to be reckoned from the date of the empanelment by the DPC. However, for the first time in Virpal Singh Chauhan's case the ratio was laid down that even though the SC/ST candidates get accelerated promotion, the candidates who were senior to them in the base grade would regain their seniority over the SC/ST candidates after being promoted to the higher post. There was a further judgment of the Supreme Court in the case of Ajit Singh Januja Vs. State of Punjab wherein it was further laid down that if, the SC/ST candidates get accelerated promotion and if the general candidate had not got the promotion to the immediate higher level and the SC/ST candidate get further promotion to the next grade, then the general

candidate would not regain the seniority. The ratio laid down in the Virpal Singh Chauhan as well as Ajit Singh Januja case was confirmed in the judgment in Ajit Singh II Vs. State of Punjab. In Ajit Singh II the Supreme Court also made it clear that while promotion can be protected, the seniority cannot be protected.

11. In the present case, the respondent No.5 had already reached two higher grades i.e. SMO and PMO even before the applicant got promoted to the post of SMO on 20.4.1987. There is, therefore, no question of the applicant regaining the seniority over respondent No.5 who had got promotion to the post of PMO on 05.3.1987 in the light of the judgment in Ajit Singh Januja's case supra.

12. In regard to respondent No.8, she had received promotion to the post of SMO on 08.4.1985 while the applicant got the promotion only on 20.4.1987 to the post of SMO. She got further promotion to the post of PMO on 16.9.93 while the applicant had got it later on 31.10.1995. Both of them got PMO (SG) on 24.2.1997. Here again the promotions to respondent No.8 were much prior to the judgment in Virpal Singh Chauhan (supra) or the OM dated 30.01.1997. The OM of 30.01.1997 has only prospective effect from the date of issue of the OM. Thus, the same cannot be applied to the promotion of respondent No.8. Also the applicant is challenging the seniority of respondent No.8 which was gained by her in

1985 itself. Thus, the claim of the applicant is certainly time barred. He cannot take advantage of the judgment in Virpal Singh Chauhan. In fact even the judgment in Virpal Singh Chauhan is applicable prospectively from 10.02.1995. Although the respondents have relied on the case of Jagdishlal (supra) in our considered view even Jagdishlal will not apply as in Ajit Singh II, the Supreme Court clearly set aside the ratio laid down in Jagdishlal's case. All the same, in our considered view, the applicant has no case and cannot claim restoration of his seniority over respondent No.5 and 8 based on the judgment of the Supreme Court pronounced at later dates. On perusal of the proceedings of the DPC meetings starting from 05.11.1986 till 11.12.2000 we are satisfied that respondents No.5 and 8 got their promotions on the basis of seniority and merit to the post of PMO, PMO (NSFG) and not on the basis of reservation. Respondent No.5 got promotion to CMO on merit. There was no reservation. Further, the applicant has also been empanelled for the vacancy of CMO for 2001-2002 while respondent No.8 has not been empanelled at all for CMO. Thus, the applicant has now stolen a march over respondent No.8. The application, therefore fails. Though some other PMOs were already impleaded as Respondents No.6, 7, 9, 10, 11 and 12 they had nothing against the promotion of respondents 5 and 8. However, their prayer was that in case applicant is placed above respondents 5 and 8 in the seniority list on succeeding

in the OA then they also would go above respondents 5 and 8 being seniors in the base grade. Since we are not granting the relief demanded by the applicant, the question of Respondents 6, 7, 9, 10, 11 and 12 getting relief does not arise.

13. In the facts and circumstances of the case, the OA is dismissed as being devoid of merit. We however, do not order any costs

Shanta 8
(SMT. SHANTA SHAstry)

MEMBER (A)

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(S.L. JAIN)

MEMBER (J)

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