

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1538/93

Date of Order: 12.2.97

BETWEEN

B.R.Sroy

.. Applicant.

AND

1. Union of India, rep. by the Secretary
to the Govt. Ministry of Health and
Family Welfare, New Delhi.

2. Directorate General of Medical Sciences
New Delhi.

.. Respondents.

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Counsel for the Applicant

.. Mr.V.Venkataramaiah

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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J U D G E M E N T

X Oral order as per Hon'ble Shri B.S. Jai Parameshwar, M(J) X

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None ^{appears} present for the applicant. Applicant is absent.

Heard Mr.W.Satyanarayana for Mr.N.R.Devraj, learned standing
counsel for the respondents. Sri V.K.Saxena, Assistant Director
General, Ministry of Health, Hyderabad was present.

2. The applicant in this OA has prayed this Tribunal to
direct the respondents to consider and appoint him as Assistant
Director General of Health Services, (Medical Stores Department)
in accordance with the In-situ Promotion Rules without insisting
upon the Master's degree and to direct the respondents to review
the proceedings dt. 22.1.92 in A.11019/2/91-PH (Vol.III) and
dt.24.10.92 in No.A.12014/2/92-CHS-VI of the Respondent No.1,
to consequential
and direct the respondents to give all benefits including
seniority, and fixation of salary, etc, effective
from 15.11.89.

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3. The case of the applicant is that he was selected by the UPSC as Deputy Assistant Director General (MS) in the Medical Stores Organisation as per order dt. 7.11.78 (A-4) that he reported for duty on and from 27.12.78 that he completed the period of probation effective from 26.12.80 and he was appointed in a substantive post w.e.f. 18.12.82 that the notification dt. 14.6.84 fixes the substantive dates of six officers and determines the seniority of the six officers, that as per the said list seniority commenced on and from the date of his appointment to the substantive post that according to the recruitment rules for Class I and II categories in the organisation the minimum qualification is a Master's Degree for the post of Deputy Assistant Director General (MS) that he possessed only Bachelor's Degree in Science, that the UPSC recommended his case for relaxation of his qualification as he belonged to SC community that Group-A Scientists filed a Writ Petition before the Supreme Court of India in W.P. (Civil)1018/89 due to lack of promotional opportunities and that the said Writ Petition was allowed by the Hon'ble Supreme Court of India (reported in AIR 1990 SC 311) that the Supreme Court had directed the Ministry of Health and Family Welfare to frame a set of appropriate rules inter alia providing suitable promotional avenue for 'A' group Scientists in the non-medical circle in the establishment of the Director General of Health Services and that the Government shall examine the claim of equal pay scales for this category of officers within 4 months from the date of the judgement that, accordingly, the organisation framed rules called In-situ promotion rules 1990 that as per the said rules 'In-situ' promotion is defined as personal promotion of a candidate holding any post in Annexure II from the existing Scientists level to the next higher Scientist's level without any change in the post or in the designation thereof according to Rule 2(f) of the said rules, that Rule 4 of the rules provides inter alia that the candidate should possess the minimum qualification prescribed in Annexure-I, that Rule 10 of the rules

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empowered Central Government to relax any of the rules for reasons in writing and in consultation with the UPSC that the departmental assessment Board constituted under Rule 7 of the said rules considering all the cases of the officers included in the list prepared by the Department under Rule 6 of the Rules. The period of qualifying service was also provided for inclusion in in-situ promotions that the said rules were issued on 28.11.90 and came into force from 15.11.89 that his case falls in the category of the cases mentioned above that he possessed a Bachelor's Degree in Science that the prescription of Master's Degree was relaxed at the time of his selection by the UPSC and that he is at Sl.No.14 in the said list. The promotion which he was entitled in in-situ rules was to the post of Assistant Director General of Health Services, that while considering the suitability for in-situ promotion, the departmental Assessment Board was required to consider the ingredients set out in Rule 5 that eventhough his name was included in the list appended to the order of the Government of India dt. 1.4.91 (Annexure-8), the Departmental Assessment Board did not consider the cases of officers at Sl.Nos 13 & 14 (including himself) that there was no necessity for further relaxation of his qualification as the same was done earlier by the UPSC at the time of his selection that there was no necessity for repeated relaxations of qualification at every stage of promotion in the service and that his juniors at Sl.Nos. 16, 10 & 20 were appointed subsequent to the appointment that non-consideration of his claim is absolutely void, illegal and discriminatory.

4. The applicant has retired from service w.e.f. 31.1.96.
5. The respondents filed counter affidavit stating that as per the in-situ rules the Board considered case of the applicant along with others and DOPr conveyed their approval to the proposed relaxation that proposal for grant of in-situ promotion

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to the applicant was again sent to the UPSC, that the UPSC in its meeting convened on 24.11.95 recommended the case of the applicant along with others for grant of in-situ promotion w.e.f. 15.11.89 that however orders of promotion to S-3 level to the applicant could not be issued as Vigilance investigation proceedings were pending against him.

6. Thus the respondents submit that even though the Board and the UPSC approved and recommended the case of the applicant of Vigilance Proceedings. It is submitted that as on 15.11.89 Vigilance investigation proceedings were not concluded and no charge sheet was issued against the applicant. The respondents have not produced any rule or any citation of the higher court to show that due to pendency of the vigilancy enquiry the applicant cannot be promoted. Normally the promotion of the applicant can be withheld only when a charge sheet is pending. In this case on 15.11.89 there was no charge sheet pending against him. The charge sheet was issued on the last date of his ~~recruitment~~ ^{superannuation}, namely, on 31.1.96.

7. In view of the above it has to be held that the applicant cannot be put at loss by not giving him in-situ promotion when there was no charge sheet pending against him, during November 1989. The vigilance investigation proceedings is not a bar to consider and promote the applicant. However the respondents are at liberty to inflict the punishment in accordance with the law notwithstanding the fact that he has been given the in-situ promotion.

8. Hence we feel it proper to give the following directions to the respondents.

(1) The respondents shall promote the applicant to the higher grade as per the in-situ promotion effective from 15.11.89 on the basis of the recommendations of the Board and the UPSC.


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(2) He is entitled for fixation of pay and arrears of salary on that basis. But he will not be entitled to any interest on the arrears to be paid. His pensionary benefits have to be decided on that basis and paid to him.

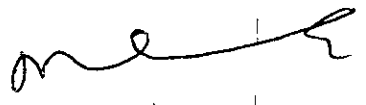
(3) The above directions will not stand in the way of the applicant in accordance with the rules.

(4) Time for compliance is six months from the date of receipt of a copy of this order.

9. The OA is ordered with no order as to costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)

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(R. RANGARAJAN)
Member (Admn.)

Dated: 12th February, 1997
(Dictated in Open Court)

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11/6/97
21-287
Dy. Reg. (S)

9/3/97
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:
M(J)

DATED: 12/2/97

~~Order/Judgement~~
~~R.P/C.P/M.A.NO.~~

O.A.NO.

in

1538743

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
वैद्युत/DESPATCH

10 MAR 1997

हैदराबाद न्यायपीठ
HYDERABAD BENCH